

Neutral Citation Number: [2009] EWCA Crim 521

No: 200806335/6385/C2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 5 March 2009

B e f o r e:

MR JUSTICE OPENSHAW

THE RECORDER OF LIVERPOOL
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

v

JOSEPHINE SARAH MUNDIRWA AND CLEVER MUNDIRWA

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(Official Shorthand Writers to the Court)

Miss N Brissett appeared on behalf of the **Appellants**

Mr L Thompson appeared on behalf of the **Crown**

J U D G M E N T
(As approved by the Court)

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1. Mr Justice Openshaw: On 21 November last at the Crown Court at Isleworth, following their conviction after a trial, the appellants were sentenced by His Honour Judge Katkhuda as follows. Josephine Mundirwa for the theft of a passport to 12 months' imprisonment and her brother, Clever Mundirwa, for possession of an identity document contrary to section 25(5) of the Identity Cards Act 2006 also to 12 months' imprisonment. In each case the judge ordered that the short time which they had spent in custody was to count towards their sentences.
2. Both now appeal against sentence by leave of the single judge.
3. The facts are as follows. On 27 February 2008 Clever Mundirwa arrived at Heathrow Airport on a flight from Johannesburg and claimed asylum, stating that he had paid a smuggler to assist him into the United Kingdom from Harare. However, the flight manifest appeared to show that Clever's sister Josephine had travelled on the same flight with her boyfriend, a man called Tonderia Samanyanga, which led to the suspicion that Josephine had facilitated her brother's entry into the United Kingdom using Samanyanga's passport. Samanyanga was interviewed and claimed that his passport had been lost. It was later found hidden at Josephine's address and she was arrested.
4. In interview Josephine admitted that she had facilitated her brother's entry into the United Kingdom using Samanyanga's passport which she said she had stolen from him and handed to her brother to permit him to board the plane to the United Kingdom. Her theft of the passport and her retention of it in those circumstances gave rise to the charge of theft.
5. Clever Mundirwa admitted that he had entered the country with the help of his sister. He said that he did have Samanyanga's passport with him and that had permitted him to board the plane to travel to the United Kingdom. He said that he had it from his sister who gave it to him reluctantly. He agreed that he had told a number of lies to the immigration officers on his arrival in the country, but essentially his story that he was seeking refuge from Zimbabwe was accepted and he was therefore in due course granted asylum.
6. This, therefore, is rather different from those cases where a passport has been shown to the immigration authorities with a view to obtaining leave to enter the country by the production of a false, fraudulent, or stolen passport.
7. The guidance given in many of the cases, and in particular Kolawole [2005] 2 Cr App R(S) 71, are primarily directed at those people either who enter the country in possession of forged or stolen passports, or who have them in their possession with intent to use it for various reasons, usually to obtain or to retain paid employment. Therefore, we think that there is some distinction between the circumstances of this case and the usual cases where persons are found in possession of forged or stolen passports.

8. Each had some personal mitigation. Josephine Mundirwa was aged 26. She was in the final year of a three year degree in accountancy and finance. Whilst studying she was employed by a nursing agency working with people with learning disabilities. She was the principal carer for her younger brother who had mental health problems. Clever Mundirwa is aged 30, and, as we have said, he has now been granted refugee status entitling him to remain in the United Kingdom for five years with an entitlement to employment and indeed to benefits and housing.
9. Although the judge was, in our judgment, entirely correct when he said that the passport was an important document conferring on the holder of that document rights and to steal it for the purposes of defeating the immigration authorities is a serious offence and those who steal passports for that purpose and those who use them to get around and deceive the immigration authorities commit serious offences, and offences which essentially undermine the immigration system, that, of course, is correct, but not, in our judgment, entirely apposite on a proper analysis of the circumstances presented by this particular case.
10. Of course the possession of stolen passports and to steal a passport is a serious matter since valid passports are the key to so much of the control of immigration and employment in this country, but there is, as we have said, a distinction between those who possess such documents with intent to use them and those merely who have them in their possession. That distinction, we think, was perhaps not in the forefront of the judge's mind when he sentenced the appellants.
11. We are, therefore, persuaded that there is some force in the points made by Miss Brissett on behalf of the appellants. But these offences cannot be overlooked. They have to be marked by a custodial sentence. We will, however, in each case reduce that sentence to one of six months rather than the 12 months which was passed. To that extent the appeals succeed.