

10 August 1987

REPUBLIC

versus

TEBARETA T. BENTOA

JUDGMENT

The accused person appeared before this Court charged with an indictment containing 15 Counts of Fraudulent Falsification of Accounts contrary to section 299 of the Penal Code, Larceny by Servant contrary to section 226 (a)(1) of the Penal Code, and Conversion contrary to section 271(1)(6) of the Penal Code. There were also various alternative charges. At a pretrial hearing the prosecution withdrew a large number of these and the accused was tried only upon Counts 3, 4, 6, 7, 8, 9 and 14. These are all Counts of Fraudulent Falsification of Accounts contrary to section 299 of the Penal Code, said to have been committed by the accused when he was employed as a Clerk to the Abaiang Council between June and November 1983.

It is for the prosecution to prove the guilt of the accused beyond a reasonable doubt. I find it is proved that between June and November 1983 the accused was employed as a Treasurer at the Abaiang Council. His duty was to make payments in respect of amounts due from the Council to persons authorised to receive them. Such authorisation came from the Council via the Clerk PW1 Rabunatai.

PW1 told the Court that he checked the cash books in November 1983 and found PVs which the witness claimed were raised without authority. Now the witness had earlier said in his evidence, "Payments by the Council to Labourers are authorised by the Council and when I receive this authority I authorise the Treasurer to raise a PV, Council approval is recorded in the minutes in most cases."

It is a noteworthy feature of this trial that no Council minutes showing approval or lack of it in relation to the transactions in question were produced. The transactions in question were:

1. A voucher ID1. PV 34/11 dated 11th November 1983 which was the cost of materials for maintenance of teachers quarters in an amount of \$89.20 and relates to Count 8.
2. A voucher ID3. PV 35/11 dated 18th November 1983 relating to the cost of maintenance of a classroom in an amount of \$115.90 and which is Count 9.
3. A voucher ID4. PV 62/11 dated 30th November 1983 relating to materials for teachers quarters in an amount of \$70.85 and which is Count 14.

4. A voucher ID5, FV 55/6 dated 14th June 1983 for maintenance of teachers quarters in an amount of \$94.30 and which is Count 3.
5. A voucher ID6, FV 56/6 dated 14th June 1983 being cost of materials for teachers houses in an amount of \$129.10 and which is Count 4.
6. A voucher ID7, FV 35/10 dated 19th October 1983 for maintenance of a classroom in an amount of \$93.20 being count. 7.
7. A voucher ID8, FV 33/10 dated 19th October 1983 for cost of materials for classrooms at \$87.50 and which is Count 6.

All these vouchers were signed by the accused and given out for payment.

The indictment does not allege as it should have done, in what respect the vouchers are false. However it seems from the evidence of PW1 that a query was raised as to the signature on some vouchers and as to whether the work was done at all. The accused was asked about these and he said he had no idea.

PW1 said that in relation to ID1 no work was done. This was a voucher payable to Dirirako. Dirirako gave evidence as PW3 and said he could not remember exactly if they did some work in November 1983. He said he did not sign the voucher ID1. Again in relation to ID3 work done in November 1983 by Councillor Tebuska PW1 said no work was done in November 1983 and that the voucher was not authorized. Tebuska did not give evidence. Again in relation to ID4, PW1 claimed no work was done and the signature on the voucher was not Tebuska's and the payment was not authorized. Tebuska did not give evidence. With regard to ID5, PW1 claimed that the signature on ID5 was not Tebuska's. When asked, Tebuska said "I think that's my signature on ID5". In relation to ID7 he said it was not his signature. He said, "I do not remember collecting money, its a long time ago." "The work in the FV, I can't recall if we did it. We did some work."

Again ID6 is a voucher relating to Tebuska who did not give evidence. PW1 says his signature is not Tebuska's and he repeated this in relation to ID8.

The accused did not give evidence, remarking that it was so long ago he could not remember anything about it. This is not surprising as the event, complained of took place almost four years ago.

The prosecution have to convince the court beyond a reasonable doubt that the Payment Vouchers were falsified in some material respect by the accused with intent to defraud.

The only possible evidence is that the signature of Tebuska is not his signature, and also just possibly that Tebuska's signature is false on one of the documents. No evidence have been adduced to show that accused was responsible for the false signature and no acceptable evidence has been adduced to show that the work said to have been done was not done. - Likewise no evidence which established beyond a reasonable doubt that the accused had no authority to prepare the vouchers has been adduced. Even if it had it must be arguable as to whether lack of authority to prepare the vouchers amounts to falsity.

The quality of the witnesses evidence was particularly poor, not surprisingly after such a lapse of time. This judgment is no reflection on the State Advocate who has to accept his witnesses as he find them but the accused's guilt has not been proved to requisite standard and he is acquitted on all Counts.

