HONG KONG / JUDGMENT

HKSAR v. MELENCION CHARITO LLANES

COURT
Court of First Instance

DECIDED
25 September 2007

CASE / FILE NUMBER
HCMA9/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA9/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 9 OF 2007 (ON APPEAL FROM STCC 11241 OF 2006)

BETWEEN HKSAR Respondent and MELENCION CHARITO LLANES Appellant

---

Before : Hon Nguyen J in Court Date of Hearing : 25 September 2007 Date of Judgment : 25 September 2007

J U D G M E N T

AUTONUMOUT The appellant was convicted by Mr Dufton sitting in Shatin Magistrates Court on 12 December 2006 of a charge of breach of condition of stay, the particulars of which were that on 6 October 2006, she, being a person permitted to land in Hong Kong did contravene a condition of stay namely, she was limited in her stay in Hong Kong until 25 September 2006, but on 6 October she was still in Hong Kong. AUTONUMOUT The particulars on this charge as they were preferred in court are confusing because it alleges that the appellant did remain in Hong Kong on 6 October 2006 after two weeks after termination of contract so ex facie even the drafter of the charge was unsure whether he was alleging an expiry of contract or termination of contract. As Mr McNamara for the appellant submits, the wording of the visa as it appears on the passport is probably clear to a lawyer because it says that the holder of the passport is permitted to remain until 25 September 2006 or two weeks after termination of contract, whichever is earlier. To somebody trained in the law that would mean the applicant could only stay until 25 September 2006 if she finishes the contract with the employer but where her contract is terminated prematurely before 25 September 2006 then she has only two weeks to remain in Hong Kong. That would not have been something which would have been patently obvious to a person such

as the appellant who is a domestic helper in Hong Kong and whose mother language is not English and the difficulty appears to have confused even the drafter of the charge as I have pointed out. AUTONUMOUT The facts are that on 25 September the day when the appellant s visa lapsed, she went to Shatin Immigration Office where she saw PW2. PW2 is an Immigration Officer and obviously is bilingual, but when she gave evidence in court she chose to give her evidence in Cantonese. I assume the appellant speaks some English but today in court she has been assisted by a Tagalog interpreter. One assumes that the conversation that the appellant had with PW2 on 25 September was in English. It is not clear from PW2 s evidence what she actually said to this appellant on that day. Her evidence is understandably that she could not remember this appellant nor could she remember seeing her. She obviously does not remember what she said to this appellant and that is for the simple reason that she sees so many people each day. When she gave evidence before the magistrate, she was at pains to emphasise that what she said to the appellant was that the appellant had to go to their Headquarters in Wanchai to apply for an extension otherwise she would be an overstayer. In cross-examination that was also the theme of her evidence that they would tell the person that she should be careful about the date and that the person should not wait until the visa has expired. AUTONUMOUT PW2 referred in her evidence to a two-week rule. It was then explained very clearly by her what she meant by the two week rule, but apparently it means that if a person s contract is terminated that person has 14 days in Hong Kong to finalise her affairs or to look for a new employer. She was asked in her evidence about the two-week rule and she confirmed there was such a rule. After she was cross-examined by the defence, probably because her evidence was not very clear to the court, the learned magistrate had to ask her 17 questions, and this next question and answer is rather pertinent. He asked if she s finished the contract, does the two week rule apply, on your understanding? and PW2 s answer was Yes, because they can pack their things and leave. She clarifies that in her next answer when she says If that person finished the contract, according to the date that the person leave the employer, that person can go to Wanchai and apply for an extension of 14 days to pack their things and leave. So apparently there was the rule laid down by the Immigration Department that if a person s contract has expired that person needs to go to Wanchai which is the Headquarters of the Immigration Department and apply for an extension of 14 days in which case they would be granted the 14 days for them to pack their things or to look for a new employer. AUTONUMOUT The last question in re-examination of PW2 was when a foreign domestic helper approached you after she finished the contract and you find that her limit of stay was expired on the same day, did the two week rule apply to such kind of foreign domestic helper? and PW2 s answer was Applicable, yes. AUTONUMOUT Now, I accept that if there was a rule of the Immigration Department that a person whose contract has expired and who is seeking a 14 days extension should go to Immigration Department Headquarters to apply for and get that 14 days extension, then that rule should be complied with. In the case of the appellant she did go to an Immigration Office on the day on which her visa expired, namely on 25 September, when instead of going to the Wanchai Headquarters she went to a Shatin branch office of the Immigration Department where she saw PW2. What impression she had of the laws of Hong Kong and the rules of Immigration Department after she left PW2 is anybody s guess, but we can have an insight of what she must have been thinking if we look at the chronology of the

events, because she did not go to the Headquarters and she waited until 6 October before she went to the Immigration Department Headquarters and handed in the form applying for an extension of stay and it is very pertinent to note that in that application form she filled in under the column permitted to remain until the date 9 October and in the same form the reason that she gave for the request of an extension of stay was extension of visa looking for another employer . That is dated 6 October 2006 and that was the same day that she went off to Immigration Headquarters and saw PW1. AUTONUMOUT At the trial, defence counsel submitted that a defendant needs only to raise the issue of honest and reasonable belief and then it would be up to the prosecution to disprove or to negative that a defendant had that honest and reasonable belief. The magistrate never mentioned whether he agreed with that submission. He gave his verdict on the same day and he gave brief oral reasons for the verdict, some of which have re-appeared in the Statement of Findings. And this is what the magistrate said in his oral reasons

21. Whilst at times PW2 did not express herself as clearly as she could have, considering her evidence as a whole, it was clear that what PW2 was saying is that when enquires are made about limitation of stay she would tell the person to be careful that the date of the visa did not expire.

22. Mr Chan criticised PW2 that this was not in her witness statement. I disagreed. PW2 referred to the two weeks rule, which enables a domestic helper to stay 14 days after termination or the date of the visa whichever is earlier. AUTONUMOUT With respect, that sentence by the magistrate is not very clear. Is the magistrate saying that the domestic helper has 14 days after termination of the contract, but has to leave on the date of the visa or is he saying that irrespective the domestic helper has 14 days after termination or 14 days after the date of the visa whichever is earlier. AUTONUMOUT In any case, in my view the evidence of PW2 was not sufficient to enable the prosecution to prove beyond a reasonable doubt that this appellant on 6 October did not have an honest and reasonable belief that she was entitled to stay in Hong Kong until 9 October. Her actions on 6 October by going to the Immigration Headquarters and submitting the form for the application of stay is not explainable if she knew that she had to leave Hong Kong on 25 September. There is a very reasonable doubt that on that day she must have been labouring under the misapprehension that she could remain in Hong Kong until 9 October which is why she chose 6 October to go to Immigration Headquarters and submitted that form. And so for those reasons, the appeal against conviction is allowed. The conviction is quashed and the sentence is set aside. (Peter Nguyen) Judge of the Court of First Instance, High Court Miss Winnie Lam, GC of Department of Justice, for HKSAR Mr John McNamara, instructed by Messrs Hui & Lam, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#$ & 6" ABC.dot setup Microsoft Word 9.0 "pa9 "pa9 Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=61349
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/hksar-v-melencion-charito-llanes-2007

Prepared on 27 October 2026 · Esheria