

HONG KONG / JUDGMENT

RE OGUNADE MICHAEL K.

COURT

Court of First Instance

DECIDED

9 December 2005

CASE / FILE NUMBER

HCAL155/2005

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bjbj HCAL155/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO. 155 OF 2005

IN THE MATTER of OGUNADE MICHAEL K. IN THE MATTER of an application for Writ of Habeas Corpus under Order 54, Rules of the High Court, Cap.4A

Before : Hon Chu J in Court Date of Hearing : 9 December 2005 Date of Judgment : 9 December 2005

J U D G M E N T

This is an ex parte application by Ogunade Michael K. (the applicant) for leave to issue a writ of habeas corpus. The applicant is a foreigner. On 19 September 2004, he was a passenger on board an Air Emirates plane en route to Beijing with Hong Kong as a stopover. He was arrested by the police near Arrival Gate 66 of the Hong Kong Airport. He was charged with two charges of possession of false instruments and one charge of possession of a false travel document in District Court case no. DCCC 14/2005. The false instruments and travel document in question are three credit cards, a false India visa on a Liberia passport and a Congo passport. On 28 January 2005, the applicant applied ex parte to the High Court for leave to issue a writ of habeas corpus in case no. HCAL 20/2005. The application was dismissed by Cheung J on 8 February 2005. The circumstances leading and subsequent to the applicant s arrest and prosecution and his application in HCAL 20/2005 were set out in the Judgment of Cheung J dated 8 February 2005. I will not repeat them. Since the Judgment, the applicant went on trial in the District Court. On 4 May 2005, he was convicted after trial of the three charges mentioned above. He was sentenced to imprisonment for a total term of three years. The applicant applied to the Court of Appeal for

leave to appeal against both conviction and sentence under CACC 213/2005. On 2 September 2005, Yeung JA refused the leave application. The applicant has renewed his application for leave before the full court. The renewed application will be heard on 8 February 2006. On 29 November 2005, the applicant made the present application for leave to issue a writ of habeas corpus. From the papers before the court and the applicant's submissions in court, the applicant based his present application on the following grounds: He is detained on account of acts that do not amount to crime on the aircraft or the place where the acts took place. Hong Kong court does not have jurisdiction over acts done on board a non-Hong Kong air-carrier. His arrest was unlawful. The detention by the court for the trial was unlawful. The detention of him in Hong Kong was unlawful. The detention order issued by the Secretary for Security was unlawful. The fundamental contention of the applicant is that he is a foreigner and a transit passenger, but was forcibly and unlawfully brought into Hong Kong by the police. The applicant also said that because the Immigration Officer had refused permission for him to land in Hong Kong, he was deemed not to be in Hong Kong by virtue of the Immigration Ordinance. It is also his case that whatever acts or crimes he had committed, they took place on board an aircraft during flight and before it landed in Hong Kong. It is the applicant's argument that his arrest, his detention pending trial, his trial and the conviction and sentence, and his present imprisonment were and are unlawful. In my judgment, the present application is misconceived. So far as it relates to the applicant's initial detention before his first appearance in court and his subsequent detention pending trial, the detentions are past. The law is clear that no writ of habeas corpus will lie in respect of a prior detention, even if it is illegal: *Barnardo v. Ford* [1892] AC 326, see also *Cheung J's Judgment* at para.10. That said, the previous detention cannot be said to be unlawful insofar as it was pursuant to orders made in the Magistrate Court and District Court. As the applicant acknowledges in court today, he had made a number of applications for bail, but were unsuccessful. As to the present detention, it was pursuant to the order of the District Court and consequent upon the conviction and sentence passed on him. It is not unlawful. The applicant has raised a number of arguments to challenge the propriety of the arrest, the prosecution and the charges preferred against him as well as to the jurisdiction of the Hong Kong Court to try him. These are matters he had either argued at the trial or before Yeung JA and had been rejected by the Court, or matters he will argue in his pending renewed application for leave to appeal. Unless and until the Court of Appeal decided in his favour, the conviction and sentence imposed in the District Court are valid and lawful. Finally, the applicant makes the point that he has been detained for nearly two years. This is not the case as he was arrested on 19 September last year. He further complains that his appeal to the Court of Appeal will only be heard in February 2006, and that the delay is tantamount to a denial of justice. This complaint does not accurately reflect the facts. The truth of the matter is that the applicant's application for leave to appeal was heard on 2 September 2005, less than four months from the date of his conviction and sentence. Subsequently, the applicant, as he is entitled to, renews his application to the full Court of Appeal, and the application is scheduled for 8 February 2006. Thus viewed, there is no inordinate delay. Nor is there any justifiable complaint of denial of justice. For the reasons indicated above, this application has no merits. I dismiss the application. (C Chu) Judge of Court of First Instance High Court The applicant, unrepresented, appeared in person. PAGE - PAGE A B C D E F G H I J K

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