COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
MCCrApp. No. 36 of 2020

B E T W E E N

JACINTHA MURAT-VESILOR

Appellant

AND

COMMISSIONER OF POLICE

Respondent

BEFORE:	**The Honourable Sir Michael Barnett, P** **The Honourable Mr. Justice Jon Isaacs, JA** **The Honourable Mr. Justice Roy Jones, JA**
APPEARANCES:	**Mr. Frederick Smith QC, with Raven Rolle, Counsel for the Appellant** **Ms. Olivia Nixon, Counsel for the Respondent**
DATES:	**1 February 2021; 18 February 2021**

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Criminal Appeal – Harbouring an Illegal Person – Section 47(A)(1) Immigration Act – Inadmissible evidence – Insufficient evidence – Unreasonable and unsupported Verdict - unsafe or unsatisfactory Verdict

On 31 July 2019, police and immigration officers went to a home to make checks for illegal migrants. Whilst at the home the appellant identified herself as Jacintha Murat-Vesilor and as the owner of the home. The officers searched the home and discovered a female in a bedroom closet. The appellant was arrested and charged with harbouring an illegal person, contrary to section 47(A)(1) of the Immigration Act. She was convicted after trial by a magistrate and fined $3000.00 or in default of payment of the fine, two years' imprisonment. She has appealed the conviction on the ground inter alia that the "**verdict is unreasonable and cannot be supported having regard to the evidence.**"

Held: appeal allowed; conviction quashed the sentence imposed on the appellant is set aside. The fine of $3,000.00, having already been paid by the appellant, is to be returned to her.

The offence with which the appellant was charged comprised of a number of elements that had to be disclosed on the prosecution's case, for example, the person being harboured had to be an

"illegal person" and for that to be established, the prosecution had to demonstrate that the female entered The Bahamas from a place outside The Bahamas, that such entry was without the leave of an Immigration Officer or elsewhere than at an authorized port or at such other place as an Immigration Officer may in any particular case allow. No such evidence was led.

In his judgment, the Senior Magistrate referenced the female as "the illegal", and it appears that he approached the case on the basis that the female was an "illegal person" but without ascertaining whether or not she fell to be considered as such a person under the Act bearing in mind the evidence that had been adduced by the Prosecution. Had he determined that issue first, he could not, on the evidence, have concluded that she was an "illegal person". In the absence of such a conclusion he could not have proceeded to find the charge against the appellant proved so as to provide the basis on which to convict her.

Gaio v The Queen [1960] HCA 70 considered
Dennis Hall v The Queen (1970) 16 WIR 276 considered

J U D G M E N T

Delivered by The Honourable Justice Jon Isaacs, JA:

1. On 1 February 2021, we heard Counsel's submissions; and reserved our decision. We render our judgment now.

2. The appellant was convicted on 24 February 2020 of harbouring an illegal person, contrary to section 47(A)(1) of the Immigration Act in a trial held before Senior Stipendiary and Circuit Magistrate Derrence Rolle-Davis ("the Senior Magistrate") and the Senior Magistrate fined her three thousand dollars or in default of payment, two years' imprisonment.

3. On 2 March 2020, she filed a Notice of Appeal that contained the following grounds:

> **"1. The Learned Judge (sic) wrongly admitted inadmissible evidence and there was not sufficient evidence to sustain the decision;**
>
> **2. The verdict is unreasonable and cannot be supported having regard to the evidence.**
>
> **3. That under all the circumstances of the case, the decision is unsafe or unsatisfactory.**
>
> **4. That the decision of the magistrate was based on a wrong principle or was such that a magistrate viewing the circumstances reasonably could not properly have so decided;**
>
> **5. The Conviction is erroneous in point of law.**
>
> **5.1 The point of law being that prerequisite of Harboring an illegal Person is for the prosecution to lead evidence to satisfy the Court that there was in fact an illegal person on the Appellant's premises; and**
>
> **5.2 That the burden shifted to the intended Appellant to refute the charges and that the burden was no longer with the prosecution to prove its case beyond reasonable doubt ".**

4. The appellant asked that the Court quash the Senior Magistrate's decision.

5. The Senior Magistrate had recorded the following:

> **"The issues Court had to decide were:-**
>
> **(1) Did the Defendant knowingly or recklessly or without reasonable cause do anything knowing that the person was illegal?**
>
> **(2) Was a person found in the care of the Defendant being housed or fed or sheltered in any way by the Defendant?**
>
> **The Defendant admitted that she was housing the illegal because her sister asked her to keep her. This was not refuted by the Defendant as she offered no evidence. The Court is satisfied that the burden of proof has never shifted from the Prosecution and**

by the admission of the Defendant the elements have all been made out.

Accordingly the Defendant is 'Guilty' of the offence of "HARBORING AN ILLEGAL PERSON": CONTRARY TO SECTION 47(A)(1) OF AND PUNISHABLE UNDER SECTION 47A(2) OF THE IMMIGRATION ACT, CHAPTER 191.

CONVICTION

The Defendant is Fined $3000.00, default will result in a sentence of Two (2) years to be served at the Bahamas Department of Correctional Services.

On the 2nd March, 2020 the Fine is paid and the matter is marked Complete".

Background

6. Although the Senior Magistrate's record comprises of handwritten notes, written in a not altogether legible form and somewhat cryptically, I have been able to glean a sufficient history of the matter to determine the appeal. The essential facts of this case are not in dispute.

7. On 31 July 2019, a team comprising of officers from the Immigration Department and the Royal Bahamas Police Force went to a home at No. 2 Bedrock Court. The purpose of their visit was to make checks for illegal migrants. Among the team were immigration officers Bonaby ("I/O Bonaby") and Curry. At the home the team encountered a female who identified herself as Jacintha Murat-Vesilor, the appellant; and as the owner of the home. The officers searched the home and discovered a female migrant - whose identity was disclosed in the particulars of the charge as "Milande Joseph" - "hiding" in a bedroom closet. At the time of this discovery, the appellant was in the front room of the residence some twenty to thirty feet away.

8. Officer Bonaby questioned the female, not in the presence of the appellant, and the female told officer that she was a Haitian national who had come to the country by boat in January 2019. The female was then taken to where the appellant was; and I/O Bonaby questioned the appellant about the female. The appellant responded that the female had come to her home two days earlier and she was helping the female because the appellant's sister had asked her to do so. She knew the female was in her home but she did know what status the female had in the country, that is, as we interpret the statement, that she did not know whether the female had entered the country in accordance with the Act or not. No evidence of the female's status

was elicited from any witness during the trial save and except for the testimony of I/O Bonaby that "the law determined the migrant was illegal".

9. Around 6:48p.m., Police Constable Aviel Bodie interviewed the appellant in the presence of her attorney. The appellant declined to answer any of the questions posed by officer Bodie; nor did she sign the record of interview. Officer Bodie charged the appellant with the offence of harbouring an illegal person, contrary to section 47A(1) of the Immigration (Amendment) Act, 2015; and punishable pursuant to section 47A(2) of the said Act. The appellant was granted bail by officer Bodie.

10. The main witness for the Prosecution at the trial of the appellant was I/O Bonaby. He recounted the circumstances of the search and the conversations with the female and with the appellant. It was his evidence that officer Curry translated for him when he questioned the female as he did not speak sufficient Creole to do so. He testified that the female had been charged after it was determined that she was an illegal migrant. No evidence was led as to how it was determined that the female was an illegal migrant. Officer Bonaby gave no evidence as to the records of the Immigration Department to show whether or not the female was admitted in the Country by an immigration officer.

11. I/O Bonaby testified further that he had arrested the female but the case did not go to trial. He was certain that the female had been deported. Under cross-examination I/O Bonaby stated that "the law determined the migrant was illegal". Officer Bodie testified as to her involvement in the matter. However, officer Curry did not give any evidence during the trial. The appellant elected to remain silent during the trial and she did not call any witnesses.

12. On 20 February 2020, the Senior Magistrate convicted the appellant. He imposed a fine of $3,000.00 and in default of payment, she was to be imprisoned for two years. The appellant paid the fine on 2 March 2020.

The Relevant Statutes

13. Inasmuch as statutes loom large in this appeal, I will set out those that I consider pertinent to its determination.

14. Section 47A of the Immigration (Amendment) Act, 2015 ("the Act") is a relatively new addition to the Act and provides as follows:

> **"47A. Harbouring illegal persons.**
>
> **(1) No person shall knowingly or recklessly or without reasonable cause -**
>
> **(a) provide housing, board or shelter of any kind to an illegal person;**

(b) Conspire with another to provide housing, board or shelter of any kind to an illegal person.

(2) A person who knowingly or recklessly does an act referred to in paragraphs (a) and (b) of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(3) For the purposes of this section, "illegal person" means a person who has landed in The Bahamas in contravention of the provisions of this Act or the regulations." [Emphasis added]

15. I have highlighted sub-section (3) of section 47A because in order for a person to fall into the category of being an "illegal person" he or she must have entered The Bahamas without complying with the provisions of the Act or the regulations made thereunder.

16. Section 19(1) of the Immigration Act bears the side note "Restriction on landing and embarking."; and states, inter alia, as follows:

"(1) **Subject to the provision of this Act, a person shall not land in The Bahamas from any place outside The Bahamas or embark in The Bahamas for any destination outside The Bahamas –**

a. save with the leave of an Immigration Officer; and

b. elsewhere than at an authorized port or at such other place as an Immigration Officer may in any particular case allow;

c. in case of embarkation, unless in possession of a valid passport, visa, or other form of travel document entitling him to enter the country or place of destination.

(2) **Any person landing or embarking in The Bahamas in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.**

(3) **The Director of Immigration may by order in writing direct the removal from The Bahamas of any person who has been convicted of an offence against the provisions of subsection (2)**

> **of this section and has been sentenced therefor to a term of imprisonment, and such person may, at any time before the expiration of his sentence, be placed on board any ship or aircraft about to leave The Bahamas and which is specified in the order and shall be deemed to be in legal custody until the departure of such ship or aircraft.**
>
> …
>
> (5) **In any proceedings under this section evidence that any person found in The Bahamas is not a citizen of The Bahamas and not a permanent resident and that there is no record of him having had the leave of any Immigration Officer to land in The Bahamas shall be evidence of his having landed in The Bahamas in contravention of this section, until the contrary is shown to the satisfaction of the court."**

The Appeal

Ground 1. - The Learned Judge (sic) wrongly admitted inadmissible evidence and there was not sufficient evidence to sustain the decision;

Ground 2. – The verdict is unreasonable and cannot be supported having regard to the evidence.

17. We have addressed grounds (1) and (2) together because they are intertwined that is to say, if there was insufficient evidence to sustain the decision to convict, the verdict would be unsustainable and unreasonable. Ground 1 could have been two grounds since the issue of hearsay evidence being admitted does not fully encompass the insufficiency of the evidence needed to sustain the conviction.

18. Mr. Smith submitted that the Prosecution had failed to establish by admissible evidence that the female was an illegal person, that is, a person "having entered The Bahamas in contravention of section 19 of the Act". He argued that the conversation I/O Bonaby had with the female was conducted in Creole through the assistance of officer Curry who translated what the female ostensibly said for I/O Bonaby. Mr. Smith contended that the evidence of I/O Bonaby regarding the "confession" made during the conversation was inadmissible as being hearsay evidence which was not excepted pursuant to any provision of the Evidence Act, and in particular, section 39(1) of that Act. Section 39 of the Evidence Act bears the side note, "Exceptions to rule as to hearsay evidence", and states, inter alia:

> **"39. (1) Subject to subsection (2) and to this Act, hearsay evidence shall not be admitted in evidence.**

(2) Hearsay evidence may be admitted —

(a) where the statement is a necessary part of any fact or transaction which is being investigated by the court;

(b) where the knowledge, intention, motive, state of feeling, state of mind or state of body of any person is a fact in issue and the statement proves or disproves the said knowledge, intention, motive, state of feeling, state of mind or state of body;

(c) where the statement is an admission or confession made by or to the prejudice of the party against whom it is sought to be proved but subject to the provisions of sections 14 to 19;

(d) where the statement was made in the presence and in the hearing of the person against whom the evidence is tendered, and where such person had an opportunity of replying to such statement;" [Emphasis added]

19. He relied on the Australian case of **Gaio v R** [1960] HCA 70; (1960) 104 CLR 419. In **Gaio**, the appellant was a native of the Territory of New Guinea and Papua who did not speak English. His language was Motu. He was suspected of the murder of his wife and was interrogated by a patrol officer who did not speak Motu; but who availed himself of the services of an interpreter who spoke both languages. The appellant allegedly confessed to killing his wife during the interrogation.

20. At his trial, the interpreter testified that he had truly translated to the officer everything that had been said by the appellant in answer to the questions posed by the officer. The officer had testified that he had immediately transcribed by typewriter what the interpreter told him. Notably, the interpreter did not himself give evidence at the trial of what was said by the appellant. This was probably because the interpreter was unable to read and could not, therefore, refresh his memory from the officer's typewritten notes as to what had been said by the appellant. An objection was taken to the officer's evidence of what the interpreter had said to him as being hearsay evidence. The trial judge ruled that it was not hearsay. The evidence of the officer was given and the appellant was convicted. He appealed.

21. The High Court of Australia (Dixon C.J., McTiernan, Fullagar, Kitto and Menzies JJ.) held that the officer's evidence was indeed hearsay evidence; but ultimately concluded that in the circumstances of the case, such evidence was admissible. At paragraph 2 of the decision of Mc Tiernan J he opined, inter alia, as follows:

"The fact therefore that the appellant was present when the interpreter was translating to the patrol officer and apparently

remained silent did not make what the interpreter said to the patrol officer an admission by the appellant which the patrol officer could prove. It seems to me therefore that in order to make the evidence in question of the patrol officer admissible it is necessary to hold that if (sic) falls within one of the exceptions to the general rule that hearsay is no evidence."

22. At paragraph 8 of his decision, Fullagar J stated:

> **"8. If Arthur had not been called as a witness to say that he had made a correct oral translation of what was said by the appellant and by Smith, I should have thought that this appeal must succeed on the ground that Smith's evidence alone did not prove what it was necessary for the Crown to prove. This view was taken, and, in my opinion, rightly taken, in Reg. v. Wong Ah Wong (1957) SR (NSW) 582; 74 WN 347 and in Reg. v. Attard (1958) 43 Cr App R 90."**

23. The "Arthur" mentioned above was the interpreter; and "Smith" was the patrol officer. Other members of the panel shared Fullagar J's view.

24. For his part, Kitto J was content to find that the role played by the interpreter as a "bilingual transmitter" was akin to an "electrical instrument … overcoming the barrier of distance". He stated:

> **"3. This view of the case depends upon the fact that Arthur was called as a witness and was believed; for there was no one else in a position to prove that Arthur converted into words intelligible to Smith everything that the appellant said, making neither addition nor subtraction. The crux of the matter is that Arthur acted, and acted only, as a translating machine (so to speak)… so that what he said to Smith had none of the subjective element which characterizes the giving of a man's own account of something he alleges he has seen or heard. This having been proved, to admit Smith's evidence of the words which the process of translation produced was not to encounter the mischiefs against which the rule excluding hearsay is maintained. (at p43)"**

25. Counsel for the respondent, Ms. Nixon, submitted that I/O Bonaby's evidence of what was said by the female in his conversation with her and translated by officer Curry was admissible in the appellant's trial and rightly accepted as such by the Senior Magistrate because the

appellant was present when the "confession" was made by the female and within her hearing. Ms. Nixon placed reliance on sub-section of section 39(2) of the Evidence Act:

> **"39(2) Hearsay evidence may be admitted:**
>
> **(d) Where the statement was made in the presence and in the hearing of the person against whom the evidence is tendered, and where such person had an opportunity of replying to such statement;"**

26. I/O Bonaby's evidence in relation to the circumstances surrounding the statement allegedly made by the female, as gleaned from the officer's evidence in chief in the Senior Magistrate's notes, is as follows:

> **"Def was in the ft room and migrant was 20'-30' in bedroom closet.**
>
> **I questioned her about who she was? She gave me certain information. Discovered person was a Haitian Natl came by boat Jan 2019. ... Female taken to where Vesilor was. I asked Vesilor how she came in house for 2 days helping her because her sister asked her to. ...She said she did not know what her status was to be in the country." [Emphasis added]**

27. I/O Bonaby was cross-examined by Mr. Krispin Hall about the female found in the closet and he responded as follows:

> **"The law determined the person was illegal. She was charged. It didn't go to trial. Deported end result.**

28. In relation to the conversation with the female and he said:

> **"I was not alone. 1 officer who interpret for us, translated. I spoke with Jacintha afterwards."**

29. I/O Bonaby was recalled as a witness and under further cross-examination added the following evidence regarding his conversation with the female:

> **"I spoke through Curry because of language barrier. She spoke creole. I can only speak a few words."**

30. The above evidence recorded by the Senior Magistrate was the sum total of the Prosecution's case against the appellant because as we already noted, officer Curry who acted as an interpreter between the female and I/O Bonaby did not give evidence at the trial.

Discussion

31. The record reflects that when I/O Bonaby spoke to the female while officer Curry translated, the appellant was not in the bedroom. She was in the front room of the residence, some 20ft to 30ft away. There was nothing adduced into evidence suggesting that the sound of the conversation reached the ears of the appellant so that she could hear the words being spoken by the female and the officers.

32. Additionally, there was no evidence led through officer Curry about what had been said to him by the female in Creole and what he had translated for I/O Bonaby as a result. In those circumstances whatever I/O testified that the female had said to him was hearsay evidence as explained in section 38(a) of the Evidence Act. It states:

> **"38. When a fact is proved by evidence —**
>
> **(a) that a statement as to the fact was made by any person;**
> **...**
> **the fact is said to be proved by hearsay evidence."**

33. The exception to the hearsay rule upon which the respondent sought to rely does not, in our view, avail them. I/O Bonaby would have of necessity to testify that the words spoken by the female were made within the hearing of the appellant and that she had an opportunity to respond to what was said. However, he did not.

34. Even if he had said so, the respondent faced the further hurdle that there was no evidence led that the appellant spoke Creole and could, by inference, be expected to understand what was being said by the female. In the absence of such evidence, the words spoken by the female were hearsay and inadmissible in the trial of the appellant since officer Curry did not appear at the trial and give evidence as to what was said by the female and translated by him for I/O Bonaby.

35. The issue of words spoken by another who may be considered participus criminus with the person whose appeal is being considered was raised in the Privy Council's decision in the Jamaican case of **Dennis Hall v The Queen** (1970) 16 WIR 276. The head note of the case is as follows:

> **"A search was made of a two-roomed building said to be occupied by the appellant and two women, DG and DT. In DG's room packets of ganja were found in a grip and brief case. DG admitted the grip was hers but denied knowledge of the ganja found in it. Packets of ganja were also found in a shopping bag in DT's room. DT said that the shopping bag had been brought there by the appellant.**

The appellant was not on the premises when the search was in progress but he was brought there shortly afterwards by another police officer. He was told by the police officer who had conducted the search that DT had said that the ganja belonged to him. He made no comment and remained silent. The appellant and the two women were subsequently charged for possession of ganja. At the conclusion of the prosecution's case it was submitted on behalf of the appellant that the evidence disclosed there was no case to answer. The resident magistrate overruled this submission. The defendants gave no evidence and called no witnesses. The appellant and DT made statements from the dock denying all knowledge of the matter and DG said that she wished to say nothing at all. The resident magistrate found all three defendants guilty.

All three defendants appealed to the Court of Appeal. The appeal of DT was allowed upon the grounds that it was not established beyond reasonable doubt that she knew what was in the shopping bag, and furthermore she had immediately disclaimed ownership of the bag. The appeals of DG and the appellant were dismissed. The Court of Appeal held that although there was some evidence of joint occupancy of the house if the matter rested on that alone the conviction would be unsafe. That court held, however, that the appellant's silence when told of the accusation made against him by DT amounted to an acknowledgment by him of the truth of the statement which DT had made.

On appeal to the Privy Council,

Held: silence alone, on being informed by a police officer that someone else has made an accusation against him, cannot give rise to an inference that the person to whom this information is communicated accepts the truth of the accusation; and this is so whether or not a caution has been administered at the time at which that person is informed of the accusation."

36. The Privy Council allowed the appellant's appeal. **Hall** (Supra) represents the common law position not only in Jamaica but in our jurisdiction as well. It must be noted, however, that in the present matter, the responses of the female to the questions of I/O Bonaby did not inculpate the appellant in any immigration offence.

37. The Prosecution's case suffered a fatal infirmity notwithstanding the evidence of I/O Bonaby being regarded as direct evidence. The offence with which the appellant was charged comprised of a number of elements that had to be disclosed on the Prosecution's case, for example, the person being harboured had to be an "illegal person" and for that to be established, the Prosecution had to demonstrate that the female entered The Bahamas from a place outside The Bahamas, such entry was without the leave of an Immigration Officer or elsewhere than at an authorized port or at such other place as an Immigration Officer may in any particular case allow. No such evidence was led even if the female's "confession" was accepted.

38. The record does not disclose what exactly was said by the female. I/O Bonaby said only that he: **"Discovered person was a Haitian Natl came by boat Jan 2019."** There is nothing in that evidence from which it may be taken as proven that the female breached any provision of the Act or the regulations made thereunder so as to be deemed an illegal person. It is not an offence to enter The Bahamas by boat. Additional questions needed to be posed to the female for greater specificity and bring the female within the definition of an illegal person, for example, where did you land and did you report to an Immigration officer on your arrival? I/O Bonaby's testimony about the female being charged and deported does not take the respondent's case any further. The mere fact that a person was deported does not mean that the person had entered the country illegally. Persons may be deported for overstaying their time notwithstanding that they entered the country legally. None of those events go to prove the female was an illegal person.

39. The Prosecution's evidence failed to disclose a case against the appellant sufficient for the court to call upon her to answer. A fortiori there was not sufficient evidence to support the Senior Magistrate's decision to convict the appellant.

40. Grounds 1 and 2 have merit.

41. We did not address the submissions of the appellant regarding the alleged "confession" in great detail because in our view the words attributed to the appellant do not constitute a confession as contemplated by section 20(5) of the Evidence Act which states:

> **"(5) In this Act –**
>
> **"confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;"**

42. There was nothing adverse to the appellant in her responses to I/O Bonaby. Hence, for that reason and those mentioned earlier in our judgment, it was unnecessary to delve deeper into the issue.

Ground 3. - That under all the circumstances of the case, the decision is unsafe or unsatisfactory.

43. This ground has been addressed in grounds 1 and 2.

Ground 4. - That the decision of the magistrate was based on a wrong principle or was such that a magistrate viewing the circumstances reasonably could not properly have so decided.

44. This ground has been addressed in grounds 1 and 2.

Ground 5. - The Conviction is erroneous in point of law.

5.1 The point of law being that prerequisite of Harboring an illegal Person is for the prosecution to lead evidence to satisfy the Court that there was in fact an illegal person on the Appellant's premises; and

5.2 That the burden shifted to the intended Appellant to refute the charges and that the burden was no longer with the prosecution to prove its case beyond reasonable doubt.

45. Ground 5.1 has merit as per our decision on grounds 1 and 2.

46. However, we are satisfied that provided the Prosecution has led sufficient evidence to disclose a prima facie case against a defendant in certain cases, such defendant bears an evidential burden of proof based on the standard of probability, that is to say, he will be called upon to make a defence. Nevertheless, the burden of proving their case against the defendant beyond a reasonable doubt never shifts from the shoulders of the Prosecution.

47. In the court below, the Senior Magistrate said:

> **"The Defendant admitted that she was housing the illegal because her sister asked her to keep her. This was not refuted by the Defendant as she offered no evidence. The Court is satisfied that the burden of proof has never shifted from the Prosecution and by the admission of the Defendant the elements have all been made out."**

48. The complaint made in 5.2 is without substance because it does not reflect what was said by the Senior Magistrate. He is fully cognizant of the onus placed on the Prosecution to prove their case.

49. If complaint may be made, it would be against the Senior Magistrate's reference to the female as "the illegal". It appears that he approached the case on the basis that the female was an "illegal person" but without ascertaining whether or not she fell to be considered as such under the Act bearing in mind the evidence that had been adduced by the Prosecution. Had he determined that issue first, he could not, on the evidence, have concluded that she was an

"illegal person". In the absence of such a conclusion he could not have proceeded to find the charge against the appellant proved so as to provide the basis on which to convict her.

Conclusion

50. We are satisfied that for the reasons expressed earlier in our judgment, the decision of the Senior Magistrate to convict the appellant cannot be sustained. We quash the conviction and set aside the sentence imposed on the appellant. The fine of $3,000.00, having already been paid by the appellant, is to be returned to her.

The Honourable Mr. Justice Isaacs, JA

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Jones, JA