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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY M.918/83

1097

BETWEEN KASANITA VAMIAKU MAHANGA

Appellant

A N D DEPARTMENT OF LABOUR

Respondent

Hearing : 20th August 1984

Counsel : P.B. Taylor for Appellant
Miss Shine for Respondent

Judgment : 20th August 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an appeal against the conviction of the appellant in the District Court at Auckland on 24th March 1983 on a charge of being an "overstayer" under Sections 14 and 20 of the Immigration Act 1964. The appellant was convicted and ordered to be deported.

In evidence, the appellant's passport was produced which showed that on 21st January 1982, the appellant was given a permit to enter New Zealand for a period of one month. This permit was issued apparently by an Airport Customs Officer pursuant to a visa issued at the New Zealand High Commission in Apia about a month previously. The form of the entry permit stamped into the appellant's passport followed the form in the Immigration (Permits) Regulations 1979. Before the District Court Judge was evidence by way of a certificate under Section 34(2) of the Immigration Act 1964 by a properly authorised officer of the Department of Labour, which stated, inter alia, that the appellant was the holder of a permit granted under Section 14 of the Act and that that permit had expired. In terms of Section 34, such a certificate was admissible as prima facie evidence of the facts stated in the certificate.

The sole point made by Mr Taylor for the appellant is that the entry permit is not valid in that it does not comply with Clause 3 of the Regulations in that it is not signed or initialled by the Immigration Officer who placed it in the passport. He relies also on an obiter statement by Cook, J. in Mohu v. Department of Labour (Judgment 13th February 1984, M.572/83, Christchurch Registry) where the learned Judge stated that a permit depended for its validity on the signature or initials of the Immigration Officer who is authorised to grant it and who decides to do so. Clearly, that statement was not part of the rationale of the judgment which followed - the decision of the Court of Appeal in Fiefia v. Minister of Labour, (1983) N.Z.L.R.

The District Court Judge held that he was entitled to rely on the certificate under Section 34(2) and that the unsigned permit did not prejudice the case for the respondent. He considered that the appellant was at liberty to contest the facts stated in the certificate and that, for that reason, he was not prepared to allow the defence.

Mr Taylor relied on the well-known judgment in Ngata v. Department of Labour, (1980) 1 N.Z.L.R. 130 where the form of the permit was held to be invalid; in that case, of course, the form of the permit was ultra vires; it is a rather different point than that which applies in the present case.

In my view, the matter for decision by the learned District Court Judge was whether there was sufficient evidence upon which to enter a conviction. In this regard, he had the certificate under Section 34(2) which was prima facie evidence. He had also the passport which is not normally produced in these matters but which was on this occasion, which showed that the appellant had in fact arrived in the country and that an entry permit was granted pursuant to the visa which had already been stamped in the passport at the High Commission at Apia.

In my view, this case is different from the Ngata case and the learned District Court Judge was entitled to rely on the presumptions under Section 34(2) notwithstanding the lack of a

signature or identification by the Customs Officer when issuing the permit.

The evidence before the District Court Judge was that there was a permit and although, for other purposes the presence or absence of a signature or initial might be crucial in the circumstances, there was no evidence to rebut the prima facie presumption. In fact, the evidence tended to suggest that the presumption was properly taken, particularly in view of the fact that on this occasion, the appellant gave evidence. She acknowledged that a stamp was put on her passport just after she had come off the aeroplane by a person wearing a uniform. She also agreed that the person who stamped her passport told her to wait and on his return, told her that the permit would expire after the 21st which was in fact what the permit indicates.

It seems, therefore, that any deficiencies that there may have been in the prosecution evidence were readily alleviated by the decision of the appellant herself to give evidence and indeed to "patch up" any holes that there may have been in the prosecution case.

The appeal is therefore dismissed.

R.G. Ballin J

SOLICITORS:
Clive Edwards & Co., Auckland, for Appellant.
Crown Solicitor, Auckland, for Respondent.