

Criminal appeal No. 555/37 BC

Hearing held on Tuesday, 30 April 1991 (corresponding to 16 Shawwal 1400 A.H.)

Before Justice: MUHAMMAD SAEED ISSA, *President of the Chamber,*

And Justices: ALI SALEM AL-ALOUS

ALI MUSBAH AL-MADHOUNI

FATHI ARIBI DEHAN

KAMAL AHMAD AL-KWIRI, *Members of the Chamber,*

Attended by the appeals chamber's prosecution office.

1 – Judgment – presence of defendant at hearing where case was listed – deemed <i>in presentia</i> – legally sound – extension of deadline for pronouncing judgment to other hearings – no impact – reason	1 – Whenever shown by case filings and district court transcripts that the appellant attended the first hearing in full, was faced with his charges, defended himself, with the prosecution submitting motions therein, and the case listed for a judgment to be pronounced at a later hearing, a court's designation of its ruling as <i>in presentia</i> is valid. Such designation is unaffected by the court's extension of judgment pronouncement beyond the first hearing scheduled for such purpose, provided oral arguments are not allowed anew. The appellant in such situation is required to follow his case through successive hearings, until a judgment is issued, which is possible for him even while in custody, as he would be allowed by the custody administration to attend a hearing should he so request.
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After a reading of the case summary, hearing the prosecutor's statement, an examination of filings, and legal deliberation.

Factual background

The facts are as follows: On 10 October 1988, the office of the public prosecutor at the people's middle precinct in Tripoli charged the appellant as follows:

[The appellant] gave the victim ((.....)) a cheque worth over a thousand Dinars without having sufficient funds payable from his current account at the drawee bank, as shown in filings.

He was then sent to the Bab ben Ghueshir district court for trial according to the foregoing description and pursuant to article 13 bis (A) of the 1979 laws number 9 and 2 on economic crimes. The district court sentenced the appellant *in presentia* to a one-year prison term with a one thousand Dinar fine for the charge brought against him.

The appellant appealed that judgment. The appeals chamber, misdemeanors and minor offences, at the Trial Court of Tripoli, ruled on 12 April 1990 *in presentia* the case procedurally inadmissible for failure to give notice in due time, at no cost. This is the impugned judgment.

Proceedings

The impugned judgment was handed down on 12 April 1990. The convict decided on 18 April 1990 to appeal the judgment and notified the competent custody officer accordingly. He appointed as his defence the people's public defence department, which lodged a notice containing the grounds for appeal, signed by one of its public defenders, and submitted it to the registry of the court in question on 12 May 1990.

The appeals chamber's prosecution office filed a legal opinion, in which it considered the appellant's grounds of appeal sound, and the appeal procedurally

admissible, and concluded that the judgment should be overturned, and a re-trial ordered.

A hearing was scheduled for 23 April 1991 to consider the appeal. In that hearing, the justice-rapporteur read out his report, and the case proceeded as shown in the transcript. The prosecution changed its stance, considering that, while procedurally admissible, the appeal should be dismissed on the merits. The court then listed the case for judgment during the day's session.

Grounds

The appeal meets the legal requirements of form.

The appellant complains that his appeal was procedurally dismissed for being out of time. The said determination was reached even though he was in custody in relation to another case and was not brought to attend the hearing where the judgment was pronounced. Hence, he was unaware of the judgment at the time, and became aware only when incarcerated, at which point he lodged an appeal, which was as such lodged in due time. The judgment in question therefore contains an error of law, and thus should be overturned.

The text of the impugned judgment shows that the district court had convicted the appellant *in presentia* on 3 October 1989, and that it took the appellant until 21 March 1990 to lodge his appeal, beyond the deadline set for appeals in accordance with section 369 of the Criminal Procedures Act. The appellant was unaware of the judgment until it was enforced by his incarceration. That does not affect the timeliness of the appeal, because, as the case filings and the district court transcripts show, the appellant did attend the first hearing where he was faced with his charges, defended himself, with the prosecution submitting motions therein, and the case listed for a judgment to be pronounced at a later hearing. The court's designation of its ruling as *in presentia* is valid. Such designation is unaffected by the court's extension of pronouncement of judgment beyond the first hearing scheduled for

such purpose, provided oral arguments are not allowed anew. The appellant in such situation is required to follow his case through successive hearings, until a judgment is issued, which is possible for him even while in custody, as he would be allowed by the custody administration to attend a hearing should he so request. The appellant's notice of appeal came after the legal deadline had passed, as explained above, thus his grounds of appeal in this regard are substantiated in neither fact nor law. Therefore, given the circumstances, the appeal should be dismissed.

For the foregoing reasons

The court rules that, while procedurally admissible, the appeal is dismissed on the merits.