

Criminal Appeal No. 453/43

Hearing held on the morning of Tuesday, 15 January 2002, (corresponding to 2 Dhu al-Qi'dah) at the Supreme Court of Libya, at its headquarters in Tripoli.

Before: Justice ALI SALEM AL-ALOUS, *President of the Chamber,*

And Justices: AL-FITURI MUHAMMAD DROUKI

FATHI ARIBI DEHAN

ABDULATHIM MAHMUD SAUD

ALI MOKHTAR SAKR, *Members of the Chamber,*

Attended by:

MUHAMMAD ABDULLATIF YUSUF, *Public Defender at the Appeals Chamber's Prosecution Office,*

And SALIM HADI SHQAQA, *Chamber Registrar*

Judgment

**In the criminal appeal no. 453/43 of the Judgment of the Court of Assizes of
Misrata of 5 December 1995 in the case no. 11/93, AL-Khums 124/22**

After examination of filings, reading of the case summary, hearing the oral argument, the opinion of the appeals chamber's prosecution office, and legal deliberation.

Factual background

The office of the public prosecutor at the Al-Khums precinct charged the appellee with, in 1989 and subsequently:

- 1) Forging an official document, the minutes of the Land Allotment Committee, number 1 of 1989, by adding his last name and his grandfather's name to an existing name, and by changing the signboard number from 92 to 985, as shown in filings.
- 2) Knowingly using a forged official document, by submitting the forged minutes of the Land Allotment Committee to the Land Registration Office, and registering a lot in his name through these improper procedures, as shown in filings.
- 3) Abusing his position for personal ends, given that he, as an employee of the Land Department, unduly benefited from his functional duties.
- 4) Abusing his functional powers to harm the victim (...); The indictment chamber at the Trial Court of Al-Khums sent him to the court of Assizes to be sentenced pursuant to the provisions of articles 344/1-347 and 283/235 of the Penal Code. The victim appeared before the chamber and lodged a civil action against the appellant requesting that he be referred to the court of Assizes to be ordered to pay twenty thousand Dinars. The chamber examined the case and decided to refer the appellant to the court of Assizes to be sentenced as per the regulation and description contained in the indictment decision submitted by the prosecution, and to refer the civil action filed by the victim. The court of Assizes of Misrata, after examining the case, acquitted the defendant, and dismissed the related civil action with costs to be paid by the applicant.

“This is the impugned judgment”

Proceedings

The impugned judgment was handed down on 5 December 1995. The applicant then decided to appeal the judgment to have it reversed, by notice on 23 December 1995,

at the court's registry, with appeal fees paid on the same day. On 31 December 1995 [...]

[...]

[...] Thus the applicant's contention that the judgment overlooks some filings and documents becomes objective only in relation to the court's belief in its conclusions, and is hence immaterial.

In the light of that, and since determining whether a ruling was *in presentia* or *in absentia* depends on how it was actually rendered and not on how it was designated by the court, an error of designation has no impact, and thus cannot serve as a basis for appeal. It is established from trial transcripts that the appellant was present with his defence at the hearing of 7 November 1995, where the case was listed for judgment, and where the defendant was represented by his defence. Hence, the designation of the judgment as *in presentia* is true, and the challenge brought in this regard is false.

As such, the entire appeal is baseless, and thus should be dismissed.

For the foregoing reasons

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