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**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' COURT CIVIL APPEAL NO: 17/07**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MRS. JUSTICE HARRIS, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A.(Ag)**

**CECIL MORGAN v R**

**Mr. Ernest Davis** instructed by **E.D. Davis & Associates** for the appellant

**Mrs. Simone Wolfe-Reece**, Assistant Director of Public Prosecutions (Ag.)  
and **Miss Dahlia Findlay**, Assistant Crown Counsel, (Ag.) for the Crown

**25<sup>th</sup> September, 2007**

**ORAL JUDGMENT**

**PANTON, P:**

In this matter the appellant, Mr. Cecil Morgan, pleaded guilty before her honour Miss Pusey, Resident Magistrate for the Corporate Area on the 4<sup>th</sup> day of July, 2007 to the unusual offence of attempting to obtain bail by false pretence. The particulars being, that he on the 20<sup>th</sup> of June this year:

" with intent to deceive, did unlawfully attempt to obtain Bail for a prisoner named Garnet Clarke at the Half Way Tree Courts office charged with the offence of larceny of motor vehicle and was offered Bail [sic] in the sum of \$300,000.00 with a surety, by VIRTUE [sic] of he using a land title in the name of Cecil Morgan and he falsely pretending to be the true land-owner named on the Land Title [sic] he knowing same to be untrue."

The allegations as recorded by the Learned Resident Magistrate are to the effect that the appellant presented documents including a driver's licence and a Certificate of Title registered at Volume 1200 Folio 913. He presented these documents to Mr. Ken Smith, Deputy Clerk of the Courts who perused them, noticed the date and the age of the applicant and that as a result the transfer to him would have had to be effected while he was only 12 years old. Mr. Smith questioned the applicant and was told that his father, also called Cecil Morgan, had given him the land but had not effected a transfer to it as yet. Mr. Smith made checks with the office of the Registrar of Titles as to who was the registered proprietor of the land.

Thereafter, there was an exchange between Mr. Smith and the appellant in which the appellant indicated and queried whether Mr. Smith thought that he the appellant, could not own land and he insisted on pursuing the application to be accepted as a surety with the said title based on the transfer which was to be done by his father. The matter was referred to the police who promptly, apparently without any further investigations, as happens frequently, arrested and charged the appellant with the offence mentioned before.

The accused man was brought before the court. There is no indication that he wished the presence of an attorney or that he was represented. He pleaded guilty to the charge and in making his mitigating plea he indicated that he already used the title to obtain bail

for someone in Spanish Town and did not believe that he could not use the title, because the title was for his land. He said in his plea that he did not accept the reasoning of the Deputy Clerk as to the need to effect a transfer before he could so use the title, as his name and his father's name are the same.

The Learned Resident Magistrate was clearly not impressed with the plea and, bearing in mind what she had noted on an earlier occasion at this court, that there had been persons presenting fictitious documents to obtain bail, she promptly sentenced him to three months imprisonment at hard labour. She stated that given the circumstances, that sentence was appropriate, as there "is a substantial amount of money going around in relation to obtaining bail for persons and so there is no deterrent in a non-custodial sentence. "

Mr. Ernest Davis for the appellant argued two grounds of appeal. The first one was that the Learned Resident Magistrate erred when she accepted a guilty plea from the defendant in the absence of his attorney-at-law. Secondly, that the defendant explained to the Court that the property and the title to the property were given to him by his father Cecil Morgan and that he honestly believed that he was entitled to use the said title to the property to secure bail.

In respect of the first ground there is no evidence that the appellant indicated any wish to be represented by an attorney-at-law and that wish had not been entertained. There is no basis for saying that the

Learned Resident Magistrate erred when she accepted his guilty plea. Every individual is entitled to represent himself, whether in a Criminal Court or in a Civil Court.

In respect of the second ground of appeal, we are concerned that the investigating authority did not investigate this matter. The minimum that would have been required in investigating this matter would have been to contact the title holder. There is nothing to indicate that the appellant was making any false statements. There is nothing to indicate that the document was fictitious. It is noted that in sentencing the appellant, the resident magistrate referred to the fact that the court is plagued with persons presenting fictitious documents to obtain bail. There is nothing to indicate that this document was fictitious. The appellant clearly indicated that he had an interest in the property and that his father had given him this document representing title to the property. The fact that it was not in his personal name as opposed to his father's personal name does not make it fictitious. In fact it appears that he was being truthful and honest in revealing all this information to Mr. Smith, the Deputy Clerk of the Courts.

No one ought to be convicted of an offence of this nature, unless it is shown that there is some dishonest intention. In this situation there is nothing to indicate the dishonesty that is alleged. The prosecution needed to go much further.

In the circumstances, the conviction ought not to be allowed to stand, so we are unanimous in allowing the appeal, quashing the conviction, setting aside the sentence and entering a judgment and verdict of acquittal.