

SIMI SESEGA v TOMINIKO LESĀ

Supreme Court Apia
8, 12 June 1970
Donne ACJ

CRIMINAL LAW (Theft) - Charge of theft by Government employee of fee paid for forged document - Whether fee property of Government.

Defendant, a public servant, was charged with theft of one tālā (\$1) in money, the property of the Government of Western Samoa. The money was the fee paid for a birth certificate forged by defendant, with which offence he had been charged and pleaded guilty. It was argued for defendant that the birth certificate being a forged document, the fee paid was not the property of the Government.

Held: The defence was without merit. The money was paid to defendant for the issue of a valid birth certificate, and was received by him by virtue of his position as a Government employee. Accordingly, it came within the definition of "public money" in section 2 of the Public Money Act 1964 and was Government property by virtue of section 16(1) of that Act.

PROSECUTION for theft of Government money.

Inspector Schuster for Police.
Clarke for defendant.

Cur adv vult

DONNE ACJ. The defendant is charged that on an unknown date between the 24th and 25th March, 1970 at Apia he did steal one tālā (\$1) in money, the property of the Government of Western Samoa.

The evidence established that one Ilo Tolotea Aiomanu, desiring a certified copy of the Entry of her birth, commonly known as a Birth Certificate, from the Registrar-General's Office at Apia called on that office on the 24th March, 1970 producing her Baptismal Certificate. She was accompanied by her sister-in-law Tutulu, who appears to have been her spokesman. On a search of the records being made, it was discovered that although her birth appeared to have been registered, it was done so under another name and Ilo was advised by a responsible officer of the Department that before a certificate could be issued she would be required to get her father and mother or elder member of her family to identify her as the one and the same person described in the Registrar-General's records. Ilo and Tutulu then left the Registrar's office, which is a section of the Justice Department, and on passing the counter in an adjoining section of the Department, they were called by the defendant whom Tutulu knew through her Church associations. The defendant asked the two women what they had been doing. Tutulu handed him the Baptismal Certificate and told him what had happened and what was required by the Registrar-General's Office in order for a Birth

Certificate to be issued, at the same time advising him that both Ilo's parents were deceased. The defendant then asked Tutulu if she had a tālā. On obtaining one from Ilo, Tutulu handed it to the defendant, who said he "would fix it" for them, instructing Tutulu to see him the following day. No receipt for the money was issued by the defendant nor was any asked for. Next day, the women called at the Justice Department about 1 p.m. and were handed an envelope, which Tutulu took to her husband, another Government employee, who opened it obtaining thereout what purported to be a Birth Certificate. This certificate was in fact a forged one, and is the subject of a charge to which the defendant has pleaded guilty.

Mr Clarke submits that since the Birth Certificate is a forged one not issued by the Registrar-General, it is not a Government document and the Government of Western Samoa could not claim the right to the payment of \$1 therefor. Consequently, he says, although he may possibly have obtained this sum by way of a false pretence to the complainant, the defendant could not be charged with the theft of \$1 from the Government. On the other hand, Inspector Schuster submits that the defendant, a Government employee at the time the money was paid, received it on behalf of the Government and that such became "public money" within the meaning of section 46(1) of the Public Money Act 1964. It thus was the property of the Government.

It is necessary to study the transaction between Ilo and the defendant. I have had the benefit of hearing the evidence of Ilo and Tutulu and witnessing their demeanour and I have come to the conclusion that they both believed the transaction with Tominiko was a genuine one. Neither woman impressed me as being possessed of even average intelligence, and I have no doubt that the defendant by virtue of his position as a Government employee approaching them as he did behind the counter in his Department, would appear to them as a person in authority who could assist Ilo by the use of that authority to obtain her Birth Certificate. I believe both the women when they say they thought the certificate to be a genuine one. In the result, of course, it proved to be a false one, but I am satisfied that at the time the defendant was paid the tālā he was being so paid as a servant of the Government a fee for a Birth Certificate which he represented he could issue, and that neither woman was party to the scheme which resulted in the issue of the forged certificate. I am mindful that no receipt was asked for when the tālā was paid on the 24th March. The women were not asked why one had not been requested, but my assessment of their intellect is such that this omission on their part does not surprise me.

Since I am satisfied beyond doubt that the money paid to the defendant by Ilo through Tutulu was for the issue of a valid Birth Certificate, in my view such money was received by the defendant as an employee of the Government by virtue of his position as such, and is thus "public money" as defined by section 2 of the Public Money Act 1964 as follows:-

"Public money" means money, cheques, or securities of any kind (including public securities) for the payment of money received by, for or on account of, or payable to, or belonging to, or deposited with the Government or any Department or agency of the Government, or received by any employee of the Government by virtue of his position as such.
 [The underlining is mine].

The position would be otherwise were I satisfied that Ilo was a party to a fraudulent transaction. Now by section 16(1) of the Act, "All public money is the property of the Government", and is payable into the Public Account. The money, therefore, being Government money, and the defendant having unlawfully appropriated it to his own use, he is guilty of the charge as laid.