

FUALA'AU (MISIFOSA) v FUAMATU (POASA)

Supreme Court Apia
3 July; 6 September 1974
Donne CJ

CRIMINAL LAW (Theft) - Appropriation of money - Defence of intention to repay: vide R v Feely [1973] 1 All ER 341.

(Practice and procedure) - Amendment of information pursuant to s 36 of the Criminal Procedure Act 1972 - Informations charging theft as a servant amended to charge forgery where prosecution had led evidence of accused's statement that he intended to repay the moneys appropriated from his employer: R v Feely [1973] 1 All ER 341 applied.

PRIVATE PROSECUTION

Epati for informant.
Stevenson for defendant.

Cur adv vult

DONNE CJ. The prosecution appears to have been misconceived. Here the prosecution has led evidence establishing that the accused said he intended to repay the moneys involved in the charges after advising the accountant of his Department of his having "carelessly handled money" and then repaying it. Presumably the prosecution had not had the benefit of viewing the decision of the English Court of Appeal in R v Feely [1973] 1 All E.R. 341 dealing with the defence in law for a person charged with theft to say that he intended to repay the money he appropriated.

The facts in this case so clearly support a charge of forgery that it is difficult to understand what motivated the laying of charges of theft as a servant, which, even if the above mentioned defence available to the accused were rejected, may still lead to failure if the argument adduced by his counsel were upheld.

I make no finding on the arguments adduced, since, as I have stated, the facts clearly add up to the charges of forgery. In such a case the duty of the Court is clear. Consequently, pursuant to Section 36 of the Criminal Procedure Act 1972 I propose to amend the following charges by substituting charges therefor:

Information 46/74:

At Savalalo between the 1st and 30th day of April 1973 the defendant did knowingly make a false document to wit a Pay Voucher No. 911 of the Government of Western Samoa by adding to item 36 thereof in the column "Payee's Signature" the words "Tele Tolio" thereby purporting the same to be the signature of one Tele Tolio with the intent that it should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

Information 49/74:

At Savalalo between the 1st and 31st May 1973 the defendant did knowingly make a false document to wit Pay Voucher No. 1138 of the Government of Western Samoa by adding to the item 72 thereof in the column "Payee's Signature" the words "Lemusu" thereby purporting the same to be the signature of one Lemusu with the intent that it should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

Information 50/74:

At Savalalo between the 1st and 31st May 1973 the defendant did knowingly make a false document to wit Pay Voucher No. 1138 of the Government of Western Samoa by adding to item 118 thereof in the column "Payee's Signature" the words "Leota F" thereby purporting the same to be the signature of one Leota F with the intent that the same should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

Information 52/74:

At Savalalo between the 1st and 30th April 1973 the defendant did knowingly make a false document to wit Pay Voucher No. 911 of the Government of Western Samoa by adding to the item 82 thereof in the column "Payee's Signature" the word "Tamoto" thereby purporting the same to be the signature of one Tamoto with the intent that it should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

Information 53/74:

At Savalalo between the 1st and 30th April 1973 the defendant did knowingly make a false document to wit Pay Voucher No. 911 of the Government of Western Samoa by adding to the item 81 thereof in the column "Payee's Signature" the word "Lemusu" thereby purporting the same to be the signature of one Lemusu with the intent that it should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

Information 54/74:

At Savalalo between the 1st and 30th April 1973 the defendant did knowingly make a false document to wit Pay Voucher No. 911 of the Government of Western Samoa by adding to the item 85 thereof in the column "Payee's Signature" the word "Aumoe" thereof, purporting the same to be the signature of one Aumoe with the intent that it should be acted upon as genuine thereby committing the crime of forgery - Crimes Ordinance 1961 Sec. 107.

I am satisfied there is no satisfactory evidence to support information No. 51/74 and the same is hereby dismissed.

The effect of these amendments is to reduce the charges from those of theft as a servant to forgery. The former carries a maximum term of imprisonment of seven years; the latter carries a maximum of five years. There is therefore no right of election. There does, however, flow from the substitution of the above charges the right of the accused further to plead and the right of either party to call additional evidence: see Section 36(3)(a)(b) of the Criminal Procedure Act 1972.

The case will stand adjourned for a further fixture to be made by the Registrar.