

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIAMISC 19110BETWEEN: POLICEInformantA N D: TUPE LEMALU PUIAIDefendant

Counsel: T.K. Enari for Appellant  
K. Latu for Respondent

Hearing: 16th June 1994

Decision: 20th June 1994

DECISION OF SAPOLU, CJ

This is an appeal against a sentence of six(6) months imprisonment imposed on the appellant by the Magistrates Court.

The appellant was charged under the Post Office Act 1972 with having unlawfully opened a letter in the mail whilst she was an employee of the Post Office. The facts show that at the material time the appellant was in charge of the Post Office agency at Lefaga and responsible for the delivery of the mail that came to that postal agency. In January this year, which must be during the school holidays as the appellant is also a school teacher, the appellant received at the agency in the postal mail a letter from New Zealand addressed to the complainant's father. The appellant kept this letter for quite sometime and then opened it, read its contents and then photocopied the letter and distributed copies of the letter to certain people in the village including school teachers at a teachers meeting.

The letter was also, contrary to correct procedures, given in a bus to a youth of the village of Lefaga who is a non-employee of the Post Office to be delivered to the addressee of the letter, the complainant's father. When interviewed by the Police, the appellant says that she did these acts to the letter in question as she was disappointed because her husband had eloped with a daughter of the complainant's father. It appears what happened was that the appellant's husband eloped with the complainant and that disappointed the appellant who then opened the letter addressed to the complainant's father, photocopied it and distributed it to certain people in her village.

The appellant pleaded guilty to the charge and a formal apology was also made on behalf of the appellant the night before sentencing, and was accepted. The appellant is also a first offender. Her personal circumstances seems to have been adequately covered in the prosecutions summary of facts and in the appellant's probation report and testimonials attached to her probation report.

Essentially, the appellant is 39 years of age with two children and is also employed as a school teacher. Her testimonials show she is a good school teacher. She earns a salary of \$284.00 per fortnight. She is living with her quite elderly parents who depend on her and she is the breadwinner of her family. Counsel for the applicant submits that the appellant perhaps did not stress enough to the Court her role in her family and household. He says that the appellant was unrepresented at the lower Court and counsel stressed that the presence of the appellant in the household gives the household stability especially as the appellant's parents are quite elderly. Counsel for the appellant also submitted that the lower Court placed more

emphasis on the motive for this offence and perhaps did not give due consideration to the personal circumstances of the appellant.

Counsel for the respondent emphasised the manner in which the appellant committed this offence, not only was the mail letter opened but it was also distributed to certain people. He also referred to the position of responsibility occupied by the appellant at the time of the offence. He further submitted that the appellant's personal circumstances were before the Court and must have been taken into account by the Magistrate.

In reply to these submissions by counsel for the respondent, counsel for the appellant says that the appellant's cautioned statement says that the appellant gave a photocopy of the letter she opened to only one person. However, the appellant did not deny the prosecution's summary of facts in the lower Court and no evidence was called in this Court to prove that a photocopy of the letter was given to only one person even though the practice has been in this Court that if a defendant disputes the prosecution's summary of facts for sentencing then evidence ought to be called to disprove that part of the prosecution's summary of facts which the defendant disputes.

It is clear from the Magistrates sentencing notes that he took into account matters contained in the appellant's probation report and testimonials which cover the appellant's personal circumstances. The Magistrate also took into account the formal apology made on the appellant's behalf, her plea of guilty and the fact she is a first offender. His Worship also referred to the circumstances surrounding the commission of this offence and the importance of a citizen's right to receive his mail without inter-

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and the dependence of so many people on overseas remittances coming the mail.

It is that as it may, it is in my view important that the privacy and confidentiality of letters sent through the mail must be protected. The public will lose confidence in the privacy of the mail as a vehicle for communication if employees of the Post Office are to tamper with the mail. There is evidence by Post Office employees with letters sent through the mail is an uncommon experience and has happened before on a number of occasions. If it is true that the appellant had a grievance against the complainant because the appellant's husband had eloped with the complainant, the letter here was not addressed to the complainant but to her father.

Even if this Court accepts that a photocopy of the letter was given by the appellant to only one person of the village, why should that be necessary if the letter was not addressed to the complainant but to her father.

No guarantee was there that the person to whom the photocopy of the letter was given would not disseminate the letter to others or spread the information in the letter to others. It is this serious infringement of

the right to privacy of information contained in a letter sent through the mail that causes serious concern to this Court apart from the other factors considered of concern to the Magistrates Court. I must also add at this point

that the appellant did not just open the letter. She took the trouble of reading the letter. There is no guarantee that she would not tell other people of her village about what she read in the letter and make the information contained in the letter the subject of gossip in the village. However the appellant was entrusted with the confidentiality of the mail and the duty to deliver the mail safely.

Having regard to all the circumstances of this case including the personal circumstances of the appellant, the sentence of six(6) months imprisonment may not be lenient but I also do not regard it as manifestly excessive. In my view deterrence is also warranted in this case. The appeal is therefore dismissed. The number of days that the appellant has already served in custody is to be deducted from the term of her sentence.

*J.F.M. Saparito*  
CHIEF JUSTICE