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IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA )

CORAM : MANN C.J.

App. No. 42 of 1967 (P)

IN THE MATTER of the District  
Courts Ordinance 1963-1965

and

IN THE MATTER of an Appeal from  
the District Court holden at Kerema

BETWEEN:

SUSUVE HAHARI Appellant

and

ALEXANDER WALLACE FYFE  
Respondent

*Magistrate  
District Court  
Kerema*

REASONS FOR JUDGMENT

1967  
October 11.  
Kerema.

This Appeal was brought on the grounds

- (1) That the Court had no jurisdiction and
- (2) The conviction was wrong at law.

Mr. Wilson raised a number of objections on behalf of the Appellant and argued that the Magistrate could not have dealt summarily with the case, because the charge did not come within the terms of Section 443(i)(d) of the Criminal Code, because the charge actually laid under Section 398(v) of the Code is not included in that sub-section. He argued that the money stolen was not the property of the Public Service which was his employer but was the property of the bank. He also argued that the money did not come into the possession of the accused on account of his employer but came into his possession on account of the bank.

The evidence before the Magistrate was clearly adequate to support <sup>a</sup> conviction for stealing and I can see no objection to his findings of fact on that evidence, or to the conviction or to the sentence imposed. The only valid objection is a matter of words.

It seems to me that there was no evidence before the Magistrate to show who was entitled to the money; the bank or the Public Service. The Administration appears to be operating an agency of the bank in the

name of the bank. One might imagine that the Appellant was accountable to his employer the Administration rather than to the bank because he was apparently working under the supervision of his senior officers in the Administration. The Magistrate handling the Case probably knew the circumstances well and it probably did not occur to him that evidence would be necessary. Moreover there is nothing to indicate that any such point was raised on the Hearing. Nevertheless it should appear on the face of the record that the Magistrate was acting within the jurisdiction expressly conferred on him, and that the case was one which could be dealt with summarily under Section 443. I think therefore that I should set aside the conviction and order and refer the case back to the District Court for re-hearing so that any formal defect can be remedied.

I think it will be necessary for the case to be heard again from the beginning so that the Appellant may be called upon to answer the charge and defend the case if he wishes. I express no view as to the substantial questions of fact involved. These have been fully dealt with by the Magistrate in his reasons and were not involved in the questions before me.

*8/11/67  
655/10/67*