IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC 19111

IN THE MATTER of the Criminal Procedure Act 1972 and the Criminal Procedure Amendment Act 1992

BETWEEN: MOSE AFOA, Shop Manager of Falefa

Appellant

A N D: THE POLICE of Western Samoa

Respondent

Counsel: T. Malifa for Appellant
M. Edwards for Respondent

Hearing: 29th June 1994

Judgment: 4th July 1994

JUDGMENT OF SAPOLU, CJ

This is an appeal against both conviction and sentence. The appellant was charged in the Magistrates Court with having wilfully damaged the wind-screen of a taxi vehicle on 13 May 1994. He pleaded guilty to the charge.

This Court examined in its recent judgment in the case of **Commissioner of Inland Revenue v Derek Godinet** the circumstances where an appeal against conviction under section 144(2)(b) of the Criminal Procedure Act 1972 can succeed notwithstanding the entering of a plea of guilty to the charge. I need not repeat here all that was said in the case of **Commissioner of**

Inland Revenue v Derek Godinet. However the two grounds on which such an appeal against conviction may succeed notwithstanding that a plea of guilty had already being entered against a charge is where there has been a wrong decision on a question of law or where there has been a miscarriage of justice. Some of the instances where those two grounds may be found to exist are also mentioned in Commissioner of Inland Revenue v Derek Godinet.

In this appeal, the appellant, says that he was not served with a summons or an information setting out the charge against him. When he was remanded before a Deputy Registrar someone told him to appear before the Magistrates Court on 24 May 1994. He did appear on that day before the Magistrates Court and the charge was read out to him in Samoan as thus : "Did you throw a bottle from a taxi causing damage to the windscreen of a "car". He replied in Samoan "yes". That was apparently taken as a plea of guilty to the charge of wilful damage. On 27 May, the appellant was convicted and sentenced to five months imprisonment.

Now the appellant says that this was his first time in Court for any criminal proceedings. The first time the charge against him was purported to be read out to him was in the Magistrates Court as he had not been served with a summons or information containing the charge. He did not really understand what was going on in Court and he was also unrepresented. When the Deputy Registrar asked him in Samoan whether he threw a bottle from a taxi causing damage to the windscreen of a car he replied yes. However he did not realise that what he was doing was pleading guilty to the charge of wilful damage and not just damage caused to the windscreen of another car. He now seems to say that he did not wilfully throw a bottle to the windscreen of the other car causing damage.

Now evidence was called for the appellant and the respondent. The evidence for the respondent did not contradict what the appellant says that what was read out in Samoan to him was whether he threw a bottle from a taxi causing damage to another car and he replied yes. There is also no evidence whether the appellant confirmed the respondent's summary of facts read out to the Magistrates Court. As a consequence, this Court has to accept what the appellant says.

Counsel for the appellant referred this Court to section 48(1) of the Criminal Procedure Act 1972 which provides :

> "Before any charge is gone into, the defendant shall be called "by name and the charge shall be read to him and when the "Court is satisfied he understands it he shall be asked as "to how he pleads".

It is not clear on what basis the Court was satisfied that the appellant understood the charge read to him but I can quite understand the possibility that there might have been some misunderstanding because the charge was purported to be read out in Samoan and the appellant replied in Samoan. However, be that as it may, counsel for the appellant says that what was read out to the appellant was not the charge of wilful damage with which the appellant was actually charged but simply whether the appellant damaged the windscreen of the other car. That is contrary to section 48(1) which requires the charge to be read out to a defendant.

As I understand counsel for the appellant what he is saying is that the elements of the charge against the appellant included the element of "wilfulness" which is the mens rea requirement for the charge of wilful

damage. If what was read out to the appellant contained no reference to wilfulness then no charge of wilful damage was read to the appellant and therefore what the appellant said yes to was not a charge of wilfull damage or any other charge for that matter because simply causing damage without the necessary mens rea element is no offence. It follows that the appellant was not pleading guilty to a charge of wilful damage but to something read to him which does not constitute an offence.

After careful consideration I have decided to accept the argument for the appellant and allow the appeal. The conviction and sentence are set aside and the case is referred back to the Magistrates Court for the appellant to be recharged. It will be right to read out all the words of the charge to the appellant and he be asked as how he pleads. As the appellant seems to be more fluent in English than in Samoan perhaps this should be done in English.

T.F.M. Sapolu

CHIEF JUSTICE