

## POLICE v ALOFIA (UNOI)

Supreme Court Apia  
12, 17 October 1977  
Nicholson CJ

COURTS (Jurisdiction) - Jurisdiction of Magistrates' Courts delimited by Judicature Ordinance 1961 and subsequently re-enacted by the Magistrates' Courts Act 1969 - Jurisdiction unaffected by the 1975 Amendment to the Existing Law Adjustment Ordinance 1961 - Courts succeeding to jurisdiction formerly exercised by the Commissioners of the High Court, including jurisdiction in prosecutions under s 69 of the Land and Titles Protection Ordinance 1934 as amended.

STATUTORY OFFENCES - Contempt of court - Proceedings under s 69 of the Land and Titles Protection Ordinance 1934 as amended - Inherent power of courts to deal with contempt at common law compared: In re Tapu Leota [1960-1969] WSLR 106 referred to.

CASE STATED pursuant to s 111 of the Criminal Procedure Act 1972.  
Case remitted to Magistrate's Court for hearing.

Sapolu for informant.  
Kruse for defendant.

Cur adv vult

NICHOLSON CJ. This is a case stated by his Worship Mr Duggan, Magistrate presiding at Apia, in terms of Section 111 of the Criminal Procedure Act 1972. The learned Magistrate had before him a prosecution by the Police against the defendant under Sections 69 and 70 of the Land and Titles Protection Ordinance 1934 as amended. Section 69 provides that "Every person commits an offence and is liable to a fine of fifty pounds or to imprisonment for six months who, -"

- (a) Disobeys any judgment or order of the Land and Titles Court; or
- (b) Uses contemptuous behaviour in the presence of the Court; or
- (c) Assaults, resists or obstructs any Court officer; or
- (d) Obstructs the proper and orderly administration of justice in the Court; or
- (e) Fails to answer a summons; or
- (f) As a party to proceedings, fails to be present at a time appointed for a boundary survey in terms of Section 75 of the Ordinance.

Section 70 reads as follows:-

Proceedings in respect of every offence under the last preceding clause shall be taken in the High Court.

The question on the case is whether or not the Magistrate's Court has jurisdiction to hear prosecutions brought under Section 69. Mr Kruse

of counsel for the defence argues that by virtue of Section 70 the present jurisdiction for the hearing of offences under 69 is vested in the Supreme Court, while Mr Sapolu for the State argues that the Magistrates' Courts have the jurisdiction. Mr Kruse refers to Section 4(1)(a) of the Existing Law Adjustment Ordinance 1961 as amended by Section 35(1) of the Reprint of Statutes (Miscellaneous Provisions) Act 1975. This reads as follows:-

Application of existing law and documents to Western Samoa - (1) Unless inconsistent with the context, in any existing law, or in any contract, agreement, deed, instrument, application, licence, notice, or other document whatsoever existing at the commencement of this Ordinance -

- (a) References to any office, department, board or corporation [, or Court] shall, in relation to Western Samoa be read as references to the corresponding office, department board, or corporation in Western Samoa, or as the case may be, the Court constituted in Western Samoa, having appropriate jurisdiction: [The words in brackets were added by the 1975 Amendment].

Subsection (3), which was also added by the 1975 Amendment, reads:-

(3) Without limiting the provisions of subsection (1), and unless the context otherwise requires, -

- (a) Every reference in any enactment or in any document to the High Court or the High Court of Western Samoa shall hereafter be read as a reference to the Supreme Court or the Supreme Court of Western Samoa, as the case may be.

In addition, Mr Kruse referred to a decision in the Magistrate's Court on the 25th March, 1977, Police v. Talaifaga Ma'anaima, where the learned Magistrate presiding then found that he had jurisdiction to hear a similar information to the present one in terms of Section 36 of the Magistrates' Courts Act 1969, as amended by the Magistrates' Courts Amendment Act 1972. Section 36 reads:-

A Court presided over by a Magistrate shall have jurisdiction to hear, determine, and pronounce sentence in respect of any information relating to any offence which is punishable by a fine, penalty or forfeiture of any amount or by a term of imprisonment or by both, except any offence which is punishable by a term of imprisonment exceeding 5 years, whether or not also punishable by a fine, penalty or forfeiture.

Mr Kruse submitted that that decision was wrong in law and that the general words of Section 36 of the Magistrates' Courts Act 1969 cannot overcome the specific words of Section 70 of the Land and Titles Protection Ordinance 1934. Finally, Mr Kruse submitted that the nature of the offence as provided for by Section 69 is one of contempt and that the superior Court of the State would have inherent jurisdiction to deal with all matters of contempt at common law. He submitted that the jurisdiction provided for in Section 36 of the Magistrates' Courts Act 1969 must be for offences for which a person can be convicted and sentenced only after trial and in respect of which a right of appeal may lie. He submitted that the nature of contempt proceedings was such that they do not fall within this set of criteria. Mr Kruse submitted that Section 69 is declaratory of the common law and that the power of the Magistrates' Courts to deal with contempt is confined to contempt arising in their own jurisdiction.

Mr Sapolu for the State argues that the defence argument is based upon an assumption that the words "High Court" used in the 1934 Ordinance and "Supreme Court" as used in the Judicature Ordinance 1961

refer to the same Court. He submitted that the High Court was an entirely different structure in which the judicial officers included both Judges and Commissioners of the High Court, the Commissioners exercising a restricted criminal jurisdiction of up to 12 months' imprisonment. Therefore, prior to the Judicature Ordinance 1961, Commissioners of the High Court exercised the jurisdiction under Section 70 of the Land and Titles Protection Ordinance 1934. The Judicature Ordinance 1961 repealed Parts III and IV of the Samoa Act 1921, thereby effectively disestablishing the High Court and creating in its place the Supreme Court and the Magistrates' Courts. Section 13 provided for the limits of the Magistrates' criminal jurisdiction and Mr Sapolu submitted the Magistrates' Courts effectively took over the jurisdiction formerly exercised by the Commissioners of the High Court. The Magistrates' Courts Act 1969 simply replaces the provisions of the Judicature Ordinance 1961 as to Magistrates' Courts jurisdiction. Finally, Mr Sapolu submitted that it must be implied from the terms of the Judicature Ordinance 1961 which provides for the abolition of the High Court that necessarily Section 70 of the Land and Titles Protection Ordinance 1934 was effectively repealed, and the subsequent passing of the Existing Law Adjustment Ordinance 1961 and its Amendment can have no effect upon these proceedings. He emphasised that the first words of Section 4(1)(a) of the Existing Law Adjustment Ordinance 1961 are, "Unless inconsistent with the context".

I am of the view that Mr Sapolu's argument must prevail. I think that the crucial point in the history of the legislation in this matter is the Judicature Ordinance 1961, which by virtue of Section 66 brought the High Court to an end and simultaneously created two Courts to exercise jurisdiction in its place. The provisions for the Magistrates' Courts jurisdiction were subsequently re-enacted by the Magistrates' Courts Act 1969, but I think the inference is overwhelming that it was the intention of the Legislature that from 1961 onward all matters of a criminal nature carrying a liability to two years' imprisonment maximum penalty (and later five years' imprisonment maximum penalty) would be dealt with by the Magistrates' Courts. In addition, the Judicature Ordinance 1961 by Section 14 defined the civil jurisdiction of the Magistrates' Courts. Thus, in my view, until the 1975 Amendment to the Existing Law Adjustment Ordinance 1961, jurisdiction in this matter was clearly within the province of the Magistrates' Courts.

Mr Sapolu appeared to state in his argument that the 1975 Amendment is in fact meaningless, but it is not open to any Court to find that an Act of Parliament has no meaning. For Mr Sapolu's argument to succeed, it must be shown that since the Judicature Ordinance 1961 effectively disposed of criminal jurisdiction and civil jurisdiction (within certain limits in the case of the Magistrates' Courts), the 1975 Amendment to the Existing Law Adjustment Ordinance 1961 has application to the law in Western Samoa in other areas than strict matters of criminal and civil jurisdiction. Section 6 of the Banking Ordinance 1960, which deals with applications by parties to legal proceedings for Court orders to inspect bank records, provides one such area to which the 1975 Amendment would apply. No doubt there are others. I infer, therefore, that the 1975 Amendment was aimed at remedying the situation in areas outside the criminal and civil jurisdictions and that the Judicature Ordinance 1961 and the Magistrates' Courts Act 1969 as amended are the effective provisions in the areas of criminal and civil jurisdiction.

A more general argument supporting this view is that the Judicature Ordinance 1961 and the Magistrates' Courts Act 1969 are substantive provisions creating Court structures whereas the 1975 Amendment is clearly a piece of 'washing up' legislation designed to remedy a number of minor matters, and should not be construed as intending to override the substantive legislation so as to deprive the Magistrates' Courts a jurisdiction which they had enjoyed since 1961.

Turning to Mr Kruse's argument based upon the nature of contempt, I consider that he has overlooked the fact that offences under Section 69 of the Land and Titles Protection Ordinance 1934 as amended are created by statute, and are apart altogether from the inherent power of the court to deal with contempt at common law. An offence under Section

69 must be the subject of a trial, conviction, and sentence in a Court other than the Court before whom the contempt offence occurs. There is no question of offences under Section 69 being dealt with manu brevi, to use the expression of McGregor J. in In re Tapu Leota [1960-1969] W.S.L.R. 106. An appeal against conviction under Section 69 would lie to the Supreme Court.

For the reasons given, the question posed upon the case is answered in the affirmative, and the charge is remitted to the Magistrate's Court for hearing.