**Yusuf v Republic**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 26 November 1974

**Case Number:** 84/1974 (8/75)

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**Before:** Spry Ag P, Law Ag V-P and Musoke JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Kenya – Simpson and Kneller, J.J

*[1] Criminal Law – Jurisdiction – Act in Kenya – Whether act must be related to offence by showing*

*preparation or intent – Penal Code, s.* 6 (*K.*)*.*

**Editor’s Summary**

A servant of East African Airways Corporation was convicted in Nairobi of stealing money at Nairobi airport. The servant received the money at Nairobi airport in Tanzanian currency to hand over to the

E.A.C. accountant at Dar es Salaam. At Nairobi a receipt in duplicate was signed by the person who had given the servant the money and by the servant. The servant should then have had the receipt in duplicate and the money checked by a third official and should have returned one of the receipts to Mr. Okech.

This the servant failed to do. The servant went to Dar es Salaam and subsequently claimed expenses in

Nairobi for a journey to repatriate Tanzanian currency.

At his trial, the Dar es Salaam accountant testified the currency had not been received and the servant said that he had mislaid the duplicate receipt at his house.

The servant was convicted of the stealing by servant on the ground that he had received the money from Mr. Okech and had failed to deliver the money to the accountant at Dar es Salaam. On appeal to the High Court, a fresh point was taken that the offence had been committed in Tanzania and the Kenya court had no jurisdiction. The High Court found there was no overt act sufficient to found jurisdiction as required by *Morjaria v. Republic* (2) but under s. 6 of the Penal Code, an act, albeit innocent, was done in Kenya as part of a series of acts constituting the offence and the Kenya court had jurisdiction.

**Held –**

(i) (Law, Ag. V.-P. dissenting) an act or omission must be related to the offence by indicating preparation or guilty intent before it can found jurisdiction; (by Law, Ag. V.-P.) once it is shown that the relationship of master and servant existed in Kenya and the servant has done or omitted in Kenya one of the acts constituting the offence there is jurisdiction;

( ii) the failure to return the receipt in Kenya was by way of preparation for the offence and was an

overt act giving jurisdiction.

Appeal dismissed.

**Cases referred to Judgment:**

(1) *R. v. Hobson* (1803), 168 E.R. 681.

(2) *Morjaria v. Republic*, [1972] E.A. 10.