IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1/2004

BETWEEN:

HERMINA GRIFFITH

Defendant/Appellant

- and –

GERALD NIEWENKIRK
Detective Sergeant No. 0751

Complainant/Respondent

BEFORE:

Hon. Madam Justice Desiree P. Bernard	**-**	**Chancellor**
Hon Madam Justice Claudette M.C. Singh	**-**	**Justice of Appeal**
Hon. Mr. Justice Nandram Kissoon	**-**	**Justice of Appeal**

Mr. Nigel Hughes for Appellant
Mrs. Shalimar Ali-Hack for Respondent

2004: April 2

RULING

BERNARD, C. delivered the judgment of the Court:

On 11th October, 1995 the Appellant was charged indictably with three counts of Embezzlement by a Public Officer contrary to Section 191 of the Criminal Law (Offences) Act, Cap. 8:01. The charges were later taken summarily and came on for hearing before a magistrate on several occasions. Finally on 8th June, 2001 the said magistrate found the Appellant guilty as charged, and imposed a two year non-custodial sentence. On 12th June, 2001 the Appellant filed a notice of appeal.

The learned magistrate has failed to write her reasons for decision and in fact has emigrated from Guyana. As a result the Appellant filed a motion to this Court for directions for the prosecution and hearing of the appeal.

Counsel for the Appellant at the hearing of the motion submitted that the failure of the learned magistrate to write her reasons for decision are grounds on which the appeal should be allowed, and made reference to the cases of **Forbes v. Maharaj (1997) 52 WIR, 487**, **Alexander v. Williams (1984) 34 WIR, 340,** and **Lewis and Others v. Attorney General and Another (1999) 57 WIR, 275.** He contended that the failure of the magistrate to furnish her reasons is a breach of the Appellant's right to due process and/or secure protection of the law. Further, even if the notes of evidence of the magistrate are available a Court sitting in appeal cannot decide whether there is sufficient evidence upon which the magistrate could have come to a decision.

Counsel for the Respondent relied on dicta of **Crane, C** in the case of **Latchman Outar v. The State (1982) 36 WIR, 228** to the effect that it is quite permissible to proceed to hear an appeal in the absence of both the transcript of evidence and the judge's summing-up if the interests of justice so demands. **Section 8** of the **Summary Jurisdiction (Appeals) Act, Cap. 3:04** which stipulates that upon receipt of a notice of appeal a magistrate shall draw up a formal conviction or order and a statement of the reasons for decision was not complied with. The Section also provides that the clerk shall within twenty-one days of the receipt of the statement of reasons, prepare a copy of the proceedings including the reasons for the decision and notify the Appellant in writing; this also was not complied with. Nevertheless, Counsel submitted that the Court of Appeal is quite competent to review the decision from an examination of the record of proceedings to

ascertain whether the magistrate had arrived at a correct conclusion, the absence of the reasons notwithstanding, in the interests of justice.

The first observation to be made in relation to the submissions of Counsel for the Respondent is that in the instant case there are no records which this Court can review to ascertain whether the magistrate had arrived at the right conclusion. Both her notes of evidence and reasons for decision are unavailable unlike the position in **Outar v. The State** (supra) where an official transcript of the judge's summing-up was available which would have given an adequate indication of how he had dealt with the issues raised at the trial and which the jury had to consider.

In the case of **Alexander v. Williams (1984) 34 WIR, 340** the conviction and sentence of an Appellant was quashed by the Court of Appeal of Trinidad and Tobago where the magistrate who had convicted the Appellant and imposed a sentence had failed to supply the reasons for decision. The Court held that it was a rule of law that in criminal proceedings a magistrate must provide his reasons when the defendant has lodged an appeal; furthermore, in cases involving the liberty of the subject, the furnishing of reasons by a magistrate in cases against which appeals had been lodged was an indispensable requirement of "due process" under the relevant section of the Constitution of Trinidad and Tobago.

A provision somewhat akin to that section, though not couched in exact terminology, is entrenched in the Constitution of Guyana in **Article 144 (3),** and is to this effect:

> "When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on

behalf of the court".

I submit that the record of proceedings referred to in **Article 144 (3)** would include the reasons for decision of a magistrate, and must be read in conjunction with **Section 8** of the **Summary Jurisdiction (Appeals) Act, Cap. 3:04,** referred to earlier and which obligates a magistrate to draw up a formal order and a statement of the reasons for decision when a notice of appeal against a conviction has been filed. Within twenty-one days of the receipt of the statement of reasons the magistrate's clerk must prepare a copy of the proceedings and notify the Appellant in writing. This is in conformity with **Article 144(3)** which is an Appellant's constitutional right.

The effect of failure of a magistrate to give reasons for a decision came up for consideration before the Privy Council from another decision of the Court of Appeal of Trinidad & Tobago in the case of **Forbes v. Chandrabhan Maharaj (1997) 52 WIR, 487**. It was held that the appeal be allowed, and even on the assumption that the failure of the magistrate to state his reasons in accordance with **Section 130 A of the Summary Courts Act** would not necessarily result in the decision being quashed, the approach of the Court of Appeal to the appeal placed too low a threshold on upholding the appeal. **Lord Clyde** who delivered the reasons of the Board made reference to **Alexander v. Williams** (supra), and expressed the view that "the judgments in that case clearly recognise the fundamental importance of the furnishing of reasons particularly in circumstances where the deprivation of liberty is at stake". **Lord Clyde** further stated that the question was debated whether failure to provide reasons would necessarily lead to a quashing of the decision or whether in some cases the failure would not be fatal. Their Lordships, however, did not consider that that case provided an appropriate occasion to resolve the question. It was felt that it was sufficient