

IN THE SUPREME COURT OF FIJI

Case Stated

Civil Appeal No. 27 of 1961

Between:

ROSEMARY JOAN JAMNADAS

Applicant

v.

LAYTON JAMES WILKINSON & ORS.

Objectors

Liquor Ordinance (Cap. 209) s. 47—Magistrates' Courts Ordinance (Cap. 5) s. 38—when Liquor Court can state case for opinion of Supreme Court.

The Licensing Court purported to state a case for the opinion of the Supreme Court before reaching any decision upon the application before it.

Held.—Under section 47 of the Liquor Ordinance, the Licensing Court was only empowered to state a case where (a) the Licensing Court has refused an application, and (b) the applicant desires to question such an order of refusal in point of law. Nor could this case stated be brought within the ambit of section 38 of the Magistrates' Courts Ordinance (Cap. 5).

Case remitted to Magistrate's Court for application to be heard and order made.

A. D. Patel for the Applicant.

A. D. Leys for the Objectors.

KNOX-MAWER, Ag. J. (21st August, 1961).

A preliminary point has arisen as to whether the Licensing Court is empowered by law to state this present case for the opinion of the Supreme Court.

Section 47 of the Liquor Ordinance (Cap. 209) provides:

"47. Save as hereinafter provided, no appeal shall lie to the Supreme Court from any order of a court made upon any application for the grant, renewal, transfer or removal of a licence to sell liquor, nor shall any such application be removed into the Supreme Court by certiorari or otherwise:

Provided that any applicant who desires to question any order of the court, refusing any such application on the ground that it is erroneous in point of law, may apply to the court to state a special case under the provisions of Part IX of the Criminal Procedure Code."

Under this section the Licensing Court is only empowered to state a case where (a) the Licensing Court has refused an application and (b) the applicant desires to question such an order of refusal in point of law. Here the Licensing Court has stated a case before reaching any decision upon the application. Of course, if the decision is given in favour of the applicant then no appeal lies either by way of case stated or otherwise.

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It remains to consider whether this case stated can be brought within the ambit of section 38 of the Magistrates' Courts Ordinance (Cap. 5). This provides:

"38. In addition to and without prejudice to the right of appeal conferred by this Ordinance, a magistrate may reserve for consideration by the Supreme Court, on a case to be stated by him, any question of law which may arise on the trial of any suit or matter, and may give any judgment or decision subject to the opinion of the Supreme Court, and the Supreme Court shall have power to determine, with or without hearing argument, every such question."

Not without some difficulty, I have finally concluded that it cannot. Section 38 relates to questions of law confronting a Magistrate in the exercise of his ordinary civil jurisdiction. I do not consider that a Licensing Court can state a case under this section.

Accordingly I direct that the Registrar do return the file to the Licensing Court, Lautoka, forthwith together with a copy of this ruling. The Licensing Court must hear the application and make an order.