

A

IN THE SUPREME COURT }
OF THE TERRITORY OF }
PAPUA AND NEW GUINEA }

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CORAM: OLLERENSHAW, A.J.
MONDAY,
17th MAY, 1954, at
2.00 p.m.

CIVIL JURISDICTION,

No. Appeals 10 of 1953.

AT PORT MORESBY

BETWEEN: DIRECTOR OF DISTRICT SERVICES Respondent
- and -
COCONUT PRODUCTS LTD. Appellant

J U D G M E N T

This is an appeal from the District Court at Madang against an order made by that Court on the 26th October, 1953, awarding One hundred pounds (£100.) compensation to be paid into Court by the appellant within one week from that date for payment out to the next-of-kin of the native labourer MAWION-SIAU.

MAWION died on the 18th September, 1953, and, although I have no evidence or admission before me, I gather that it is alleged that his death was due to a snakebite, suffered by him that day, at his place of employment with the appellant.

The order appealed against was made under Section 83 of the Native Labour Ordinance 1950-1953.

Mr. Kirke, who appeared for the appellant, in opening, referred to what he called a preliminary problem and submitted that there had been no legal proceedings upon which an order could be made.

It was only too clear from the material before me, to which I will refer, that there had been no such proceedings, and I pointed out to him that it appeared to be a case for correction by Writ of Certiorari to quash rather than an appeal.

I called on Mr. Johnson, who appeared for the respondent, upon this preliminary matter, and I was not surprised that he expressed his agreement that there had not been any proper proceedings in the District Court, and he informed me that he would not argue that the decision of that Court could be held on the informal material before the Court.

His interest, he stated, was to avoid a quashing of the decision of the District Court that would prevent the proper trial of the issue as to whether the injury that caused the death of the labourer arose out of and in the course of his employment.

He raised no objection to my dealing with the appeal

under Section 234C of the District Courts Ordinance 1924-1947, which includes the power to quash an order.

He did, however, draw my attention, without raising this as an objection, to the fact that the appeal, although instituted within time, had not been set down within forty days after its institution, as required by Section 233. - (1) of the District Courts Ordinance.

Counsel for the appellant stated that he had refrained from entering the appeal while he sought affidavits as to the happenings at the District Court, preceding the making of the order. He also stated that he required these affidavits because of the state of the records furnished to this Court, which ^{he} had inspected as Solicitor for the appellant.

I am inclined to think that it would strain the language of Section 234D too much to find in it power, in the circumstances, to dispense with the requirement that the appeal should be entered for hearing within forty days after its institution, although I fully appreciate the difficulty in which the appellant was placed.

I am inclined to think however, upon the proper construction of the provisions of Part XI of the Ordinance, regarding, particularly Section 234, that this Court is not deprived of the power to hear an appeal by the failure to enter it within time. Section 234, which follows immediately after the section as to the time for entering the appeal for hearing, provides that if an appellant does not enter an appeal within forty days the District Court ...

"... shall have the same authority to enforce the ... order ... as if it had not been appealed against."

If it had been intended that an appeal failed if entered out of time, it would have been a simple matter to say so, and I think that no more is intended than is said by that Section. Of course, if the order had been enforced before the appeal came on for hearing, this Court might very well decline, even if it had the power, to deal with an order that had already legally been enforced.

The order in this appeal has not been enforced and, in the absence of formal objection, I propose to deal with the appeal as still pending.

I do not propose to say very much about the occurrences - I cannot call them "proceedings" - at the District Court at Madang, upon which the order appealed against was based. I also find difficulty in using this title "District Court" because it would appear that the matter was dealt with in the District Office rather

than in the District Court.

There was no complaint made by the Director of District Services and no summons was issued by the District Court.

It has been claimed - not by Counsel for the respondent - that the absence of such process was cured by Section 241 of the District Courts Ordinance. That Section, however, applies only where the party against whom an order was made "... was present at the hearing of the case ..."

It is clear, and this was conceded by Counsel for the respondent, that there was no "hearing" and, in fact, there was no "case".

The Registrar of this Court has been informed that there was a "discussion", and this is all that took place, as is conceded by Counsel for the respondent.

It also appears that there are no records of the District Court, relating to the matter, other than a copy of a letter, dated the 29th October, 1953, and written by the "District Commissioner" to "The Manager, New Guinea Coy. Ltd., Madang", purporting to describe the "proceedings" of the "Court", recite its reasons and embody its decision and order. The author of this letter appears to have thought that the departure from proper procedure was redeemed by the note of supplication in the ultimate paragraph of his letter.

A copy of a letter is a strange document to constitute the records of a Court. I have not been able to discover in what capacity the District Commissioner wrote the letter, as I have had difficulty too in endeavouring to understand in what capacity he wrote to the Registrar of this Court from "District Office, Madang", on the 27th November, 1953, enclosing a copy of his letter to "The Manager, New Guinea Coy. Ltd.", as being a copy of the "adjudication relevant to the case", apart from which - to quote his letter to the Registrar - "... there are no other forms or processes as the matter was done informally".

I was inclined to think that such was the position of the appeal when it came before me, that there was nothing I could do but require the Clerk of the District Court at Madang to perform his duty under Section 232 of the District Courts Ordinance 1924-1947, in these terms:-

"232. The clerk of the court whose decision is appealed against shall forward to the Registrar of the Supreme Court a copy, certified by him to be a true copy of the conviction, order, or adjudication, the information of complaint, depositions, and other proceedings before the court."

However, the information that the copy letter of the 29th October, 1953, is the only record in the District Court is confirmed by Counsel for the respondent, and I observe that it is certified as a true copy by "W.J. Johnston J.P.", who, I have discovered, was the Justice who purported to act as the District Court in this matter. It refers to his decision and order, and I feel that I should act upon the material before me in order to put a speedy end to something that is, at least, masquerading as a judicial proceeding.

I order and adjudge that the Order in this matter of the District Court at Madang of the 26th October, 1953, be quashed.

This Order may be expressed to be without prejudice to any proceedings that hereafter may be instituted by, or on behalf of, the "dependants" of MAWION for compensation under Section 83 of the Native Labour Ordinance 1950-1953.

As to costs; I do not think that the respondent, or the dependants of the deceased, are responsible for the making of the Order in the District Court. It is unfortunate that the appellant has been put to the expense of this appeal. If its representative at the informal discussion had taken a firm objection, the official responsible may have been recalled to a proper sense of his judicial duty.

I make no order as to costs. I order that any moneys deposited by the appellant under Section 230 of the District Courts Ordinance be repaid to it.

In view of the confusion that appears to have existed at Madang, I should emphasize that the District Court is part of the judicial system of this Territory, and that the person constituting that Court, at any given time, is quite independent in the performance of his judicial duties, of any executive officer. It is important to the Administration, and it is important to the public, that there be not even the appearance of a departure from this principle.

Anyone in doubt about the establishment and constitution of District Courts should read the relevant provisions - Parts I, II and III - of the District Courts Ordinance 1924-1947.

Anyone who imagines that a District Commissioner, or any other executive officer, has any sort of power or control over a District Court - and I mean any person constituting the District Court, whatever his status in the Administration - should read Section 18 (1) of the Supreme Court Ordinance No. 2 of 1949-1952 in these terms: -

"18. (1) The Chief Judge of the Supreme Court may exercise general supervision over all inferior courts in the Territory, and shall have the right to inspect and call for the production of the records of any such court or to authorize an officer of the Administration to inspect the records of any such court and to report to him thereon."