

ROBERT GOH -v- AUSTIN YAM

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 154 of 1989

Hearing: 19 March 1992

Judgment: 30 March 1992

J. C. Corrin for the Plaintiff

A. H. Nori for the Defendant

MURIA ACJ: The appellant applies for leave to appeal against the interlocutory judgment made against him on 9 August 1991, leave to apply for leave out of time having been granted on 31 January 1992.

Mr Nori suggested that the judgment appealed against may well be a peremptory order and as such leave is not required to appeal. If that be the case, Mr Nori says, the judge would not have the power to grant leave.

As I have already granted leave to apply out of time for leave to appeal in this case, I shall treat this matter as an application for leave to appeal against an interlocutory judgment of a judge of the High Court. On that basis I do have power to grant or refuse leave. The question whether the judgment of 9 August 1991 is a peremptory or interlocutory judgment is another matter altogether which in my view is a matter for the Court of Appeal to determine.

I accept that the application for leave had already been filed in October 1991 and the appropriate fee paid. What I must consider is whether the applicant has shown good grounds for giving him leave to appeal.

The power to grant leave is discretionary and under section 19(a) of the Court of Appeal Act 1978, the power of the Court to give leave to appeal may be exercised by a judge of the Court. In general leave would be granted only in exceptional circumstances where some substantial injustice to the applicant is manifest or the case is one involving a question of general importance to be determined by the Court.

I have seen the Notice of Appeal and one of the grounds of appeal is the allegation that the appellant has not had notice of the Order of the High Court requiring him to file affidavit of documents within seven days. It was the failure to comply with that order which resulted in the Interlocutory Judgement being entered against the appellant on 9 August 1991.

It is too obvious to mention the seriousness of the allegation raised by the appellant. It involves the consideration and application of the principle commonly known as the "*Audi Alteram partem*;" that a person must have reasonable notice of the case he has to meet. This principle of natural justice, when not properly observed, can work injustice to parties to a litigation. But not only that the breach of the rule can lead to grave concern to the individual affected, it is also the rule of law, the application of which is of public importance. In *Buckle -v- Holmes* [1926] 2 KB 125, I take it that, such was the reasoning for giving leave to appeal when Bankes LJ said at page 127:-

*"We gave leave to appeal in this case, not because there was any real doubt about the law, but because the question was one of general importance and one upon which further argument and a decision of this Court would be to the public advantage."*

The general importance of the issue raised by the appellant in his appeal is even more compelling on me to grant leave in the light of section 3(a) of the Constitution which guarantees the right to ".....the protection of the law" which is secured by the provisions of section 10 of the Constitution. It would seem to me that the principles of natural justice are part and parcel of the law the protection of which are guaranteed under section 3(a) of the Constitution and which are secured by the provisions of section 10.

The matters which I mentioned clearly give this case special gravity and in those circumstances I am bound to exercise the Court's discretion and grant the application for leave to appeal.

Leave to appeal granted.

(G.J.B. Muria)  
ACTING CHIEF JUSTICE