CASE NOTES

Court Of Appeal No. Ap6 Of 1999

Director Of Public Prosecutions Reference No. 1 Of 1999

Judgment of Mildren, Thomas and Bailey JJ delivered 11 September 2000

COSTS — STATED CASE — S. 162A JUSTICES ACT

A magistrate dismissed charges against "Y" ("the appellant") in 1998.At the request of the Director of Public Prosecutions ("the respondent") and pursuant to s. 162A of the Justices Act ("the Act"), the magistrate reserved questions of law for consideration by the Supreme Court.

From the subsequent decision of Martin CJ, the appellant unsuccessfully appealed to the Court of Appeal pursuant to s. 51 of the Supreme Court Act. The parties sought against each other costs on the appeal.

The appellant claimed an entitlement to costs on the basis of s. 162A(7) of the Act which provides :

> (ss7) The reasonable costs of legal representation of any person heard before the Supreme Court as provided in this section shall be paid by the Crown.

The respondent contended that s. 162A(7) :

(i) has no application to appeals from a case stated under that section; and

(ii) limits the Crown's obligation to pay costs to stated cases where, pursuant to s. 162A(6), the Crown has itself appointed counsel to act on behalf of the person charged in default of that person having himself having appointed representation.

HELD (unanimously)

1. The respondent's application for costs is dismissed.

2. The appellant is entitled to have his costs on the appeal paid for by the Crown.

Mildren J observed that the purpose of s. 162A(6) is to ensure that the Court has the benefit of a contradictor and, hence, the fullest arguments on both sides.It is "clearly a beneficial provision" and should therefore be construed so as to give the most complete remedy consistent with its language.

His Honour adopted the appellant's submission that since the Court of Appeal is not separately constituted under the Supreme Court Act, references to the "Supreme Court" in s. 162A include the Supreme Court exercising its appellate jurisdiction as the Court of Appeal.

Appearances

Appellant — Basten QC / Levy / Northern Land Council.

Respondent — Jackson QC / Fraser / Office of the Director of Public Prosecutions

Johnson v Johnson

High Court No. P60/1999

Judgment of Full Court delivered 7 September 2000

COURTS & JUDGES — REASONABLE APPREHENSION OF BIAS

The Family Court heard a property dispute between the parties, whose marriage had been dissolved in 1996. In early 1997 the trial concluded after 66 hearing days, most of which were spent examining whether the appellant husband held a beneficial interest in substantial offshore assets owned by other persons.

Anderson J awarded the respondent wife 40 per cent of what was described as an "asset pool" valued at about $30 million.

Prior to the appellant giving evidence His Honour declined, on application by the appellant, to disqualify himself for apparent bias. The appellant had already claimed that Anderson J's widening of the scope of discovery was turning the trial into a "Royal Commission".

His Honour remarked "...I will be certainly looking to the independent people and independent documents in the search for the truth in this matter" and " I will rely, principally, on witnesses other than the parties in this matter...".

Mark Hunter, barrister in Darwin

Anderson J denied having prejudged or rejected the credit of both parties.The Full Court of the Family Court dismissed an appeal.

HELD (unanimously)

1. Appeal dismissed with costs.

2. An apprehension that Anderson J had formed a concluded view on the credibility of witnesses would have been unwarranted and unreasonable.

per Kirby J (on non-jury trials) "Unless an adjudicator exposes the thread of his or her thinking, a party may be effectively denied justice because that party does not adduce evidence or present argument that could have settled the adjudicator's undisclosed concerns" (and) " In earlier times, great confidence was placed in the capacity of adjudicators to discern the truth on the basis of their impressions of witnesses. However, the trend of modern authority has cast doubts that supposed unique perceptiveness"

Appearances

Appellant — Griffiths QC and Ingleby (Lewis Blyth & Hooper)

Respondent — Jackson QC and Wilson (Kim Wilson and Co.)

Commentary

The High Court distinguished its decision in *R v Watson; Ex Parte Armstrong* (1976) 136 CLR 248. Kirby J recently made similar comments on the fallability of judicial evaluation of witness credibility - see *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liquidation) & Ors* unrep. HCA 9/2/99 (casenoted in *Balance* February/March 1999).