

IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.

Monday,

16th October 1972.

JOSEPH ASIA v. LEO EKO

Appeal 129 of 1972 (P)

1972

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MENDI

Prentice
J.

This is an appeal from a conviction for adultery, before the Local Court at Mendi. Three grounds of appeal were to be urged; firstly, that the information being invalidly laid - the conviction could not be sustained; secondly, that there was no marriage; thirdly, that the appellant was under a mistake of fact in relation to the charge.

It was outlined that a curious position had arisen in that the learned magistrate had held, despite allegation by the "husband" that \$30 of bride price had been paid, that no amount of money had in fact been paid; and he went on to hold in convicting the appellant, that there had been a marriage according to native custom between Leo Eko and the woman the subject of conflict. I understand that it is to be conceded now on the "husband's" behalf that according to Mendi district custom, no marriage occurs unless and until part of the bride price has been paid; though Eko still contends that \$30 was paid. In the event I heard only argument on the first ground of appeal as I was of the opinion that if I decided this in the appellant's favour - other argument would be otiose.

The information concerned, was typed out showing "Geoffrey Roscoe E. Vaki" as informant, and purportedly was signed by a Mr. Vaki, who I am informed is a police officer attached to Mendi station. On the photostat copy before me, the informant's name has been scored out and the words "Leo Eko" placed alongside. No explanation is offered for this alteration. Appellant's counsel submits that the complaint was not susceptible of amendment, even under Sec. 27 of the Local Courts Ordinance because it was not a "complaint" within the meaning of the Native Administration Regulations. Regulation 84(3) thereof provides: -

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"No complaint shall be brought against any native under the last two preceding sub-regulations (they relating to a charge of adultery) except by the native husband or wife of the woman or man with whom the offence was committed, or in the absence of such husband or wife, as the case may be, by his or her nearest relative."

It cannot be suggested, I understand, that the police officer Vaki was Leo Eko's "nearest relative".

Mr. Ryan, for the respondent, urges that I should construe the information as having been taken out by Vaki as agent for Leo Eko; but he was unable to cite any ordinance, law or authority that would allow this to be done.

As Jordan C.J. pointed out in Ex parte Lovell (1), the power of amendment given by a section such as Sec. 27 of the Local Courts Ordinance (and the comparable section there being construed by His Honour was Sec. 65 of the New South Wales Justices Act) is to be given a wide construction to facilitate rather than hinder the administration of the law. But I am of the opinion that the complaint here was not one allowed for by law, and no power in the magistrate of amendment could turn it at the hearing into one laid by "the native husband ... or in (his) absence his nearest relative".

No question appears to have arisen as to a substitute charge having been laid verbally against the appellant. Being therefore of the opinion that the complaint brought originally in the name of Vaki and signed by him, allegedly in respect of the adultery of the accused with the wife of one Leo Eko, is not a complaint within the meaning of Reg. 84(3) of the Native Administration Regulations; I am satisfied that there has been a substantial miscarriage of justice. I therefore allow the appeal, quash the conviction and dismiss the information.

Solicitor for the Appellant : W.A. Lalor, Public Solicitor
Solicitor for the Respondent: P.J. Clay, Crown Solicitor