

IN THE SUPREME COURT }  
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.  
Saturday,  
2nd December, 1972.

Appeal No. 161/72 (N.G.) - NAMP OPA

and

Appeal No. 193/72 (N.G.) - OLIK KOM

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The proceedings followed against both of these appellants who were of the Iamuga clan, were similar to those described in the appeals of Rumints Woie and others. The charges under Sec. 30(e) of the Police Offences Ordinance and Sec. 15(a) of the Public Order Ordinance were heard by Mr. Asmussen, the informations being laid at and heard in Ogelbeng. For the reasons given in the earlier appeals, these appeals also must be allowed.

Additional irregularities appear to have occurred in the hearing of the charges against these men; and were to have been argued as grounds of appeal. These were that the charges against these men were heard together with those against other men without the consent of the accused; that they do not appear according to the depositions even to have been arraigned on the Public Order charge. That no allocutus appears to have been administered. That the magistrate does not appear to have considered the defence of self defence that was obviously capable of being raised. These matters, in the event, have not been argued before me.

The Crown concedes that there was "little evidence" against Namp. To my mind there is none. Nevertheless, Councillor Namp, Vice President of the Mount Hagen Local Government Council, a man getting on in years, has been held in custody for 2½ months by the order of a magistrate sitting without jurisdiction.

As to Councillor Olik, Inspector Tiden's evidence is to the effect that he was armed with a spear and "encouraging his men to further fighting." Interpolating between witnesses the Councillor insisted that he was recovering the body of a dead man and his shield

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and spear. Inspector Beaton had seen him leave the area after police orders. He and his Iamugas were in position on and defending their land against an attack by large numbers of Jigas, who in the magistrate's impression were intent on completely wiping out the smaller Iamuga clan. The defence of self defence was obviously open to the appellant, but does not appear to have been considered except in extenuation on sentence.

I am satisfied these appellants have suffered a grave miscarriage of justice; indeed that they have been done an injustice.

I allow the appeals and quash the convictions of each appellant on both charges. I order their release from custody.

I consider the way in which the charges in this and the preceding appeals have been dealt with, very disturbing indeed; even making allowance for the grave state of emergency existing and the obvious need to make multiple arrests. I make no further comment.

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Solicitor for the Appellants: W.A. Lalor, Public  
Solicitor

Solicitor for the Respondents: P.J. Clay, Crown  
Solicitor