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

CORAM : PRENTICE, J.

13th April, 1970.

Appeal No. 1 of 1967 (N.G.)
The Administration of the Territory of Papua and New Guinea
Appellant

Director of District Administration and the Mission of the Holy Ghost (New Guinea) Property Trust - Respondents

Appeal No. 7 of 1967 (N.G.)
The Mission of the Holy Ghost (New Guinea) Property Trust
Appellant

The Administration of the Territory of Papua and New Guinea and others - Respondents

Appeal No. 8 of 1967 (N.G.)
The Custodian of Expropriated Property - Appellant

The Director of District Administration and others -
Respondents

1970
April 1
Port Moresby
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Prentice, J.

On the 19th day of November, 1966, the Land Titles Commission handed down a decision in an application brought under Section 11 of the New Guinea Land Titles (Restoration) Ordinance 1951-63 by the Mission of the Holy Ghost (New Guinea) Property Trust for the issue of a freehold title in respect of a parcel of land at Rempi, Madang. By its decision the Commission rejected the application. In the proceedings before the Commission the applicant was represented by Rev. Father William Saiko; and the Director of District Administration appeared on behalf of the alleged native owners of the subject land. There was also an appearance by counsel on behalf of the Administration of the Territory of Papua and New Guinea. I am informed by the Counsel now appearing before me that the appearance on behalf of the Administration was ostensibly to redress the balance of representation; and to ensure that not only one of the contending parties was

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represented by counsel, and I am advised that no submission was subsequently made by the Counsel for the Administration other than that the title sought should be issued to the Mission. From the decision of the Commission appeals have been brought by each of the Administration, the Custodian of Expropriated Property and the unsuccessful claimant (the Mission Trust), being numbered Numbers 1, 8 and 7 (New Guinea) respectively.

Three notices of motion have been taken out on behalf of the Director of District Administration who is a respondent in the two first-named appeals and one of the three respondents in the last-named appeal. In the Appeals numbered 1 and 8 of 1967 (New Guinea), the applicant in the motions therein contends that the Appeals should be struck out. In Appeal No. 7 the applicant asks that the other two respondents to that Appeal be struck out as parties. If the three motions were successful, the result would be that one appeal only would remain in the list for hearing and the parties thereto would be only the unsuccessful claimant (the Mission Trust), and the Director on behalf of the native claimants.

The motions were taken seriatim before me and separate addresses were made as to the issues involved; but I think it is most convenient for me to proceed to give judgment in the three motions together.

The applicant grounded the motions on what he alleged was the factual situation, namely that neither the Administration nor the Custodian of Expropriated Property was a party to the proceedings before the Commission, and on what he alleged was the legal situation, namely that neither the Administration nor the Custodian

was a "person aggrieved" by the order of the Commission, within the meaning of the Land Titles Commission Ordinance 1962-68. It is quite clear that the Custodian was not a party to the proceedings before the Commission and did not appear therein; and it is said that though the Administration appeared therein in support of the Mission Trust, it was not in a real sense a "party".

The argument depends upon the consideration that the only appeal to the Supreme Court is the statutory one provided by Section 38 of the Land Titles Commission Ordinance 1962-1968 in favour of a "person aggrieved by a decision of the Commission". Mr. Casson for the Administration seeks to meet this argument firstly by pointing out that there have been cases in the past, notably the Varzin case, (Custodian of Expropriated Property against Tedep and others) which was taken to the High Court and is reported in Volume 113 C.L.R. at 318, in which the Administration's right to appear was not challenged. Secondly he asserts that the Administration would have an interest of a legal nature in the grant of a freehold title to the Mission Trust, in that such a grant would involve a reservation of minerals and of certain roads delineated on maps put in evidence in the hearing. I do not find myself impressed with this line of reasoning. The Administration asserts rights to minerals quite outside the question of reservations in titles; and it by no means appears that the Administration's rights as a potential encumbrancee of roads that might or might not exist and might or might not be delineated in any certificate that might issue, necessarily outweigh rights it might have if the particular title sought had not been granted. It might well be argued whether the Administration would be

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entitled to support one of two of its subjects in a contest to title of land within the Territory, beyond the extent of assisting to provide counsel for the purpose of ensuring just presentation of both sides of the dispute as was done in this case. Undoubtedly the Administration in the hearing below made no claim (in particular for an encumbrance), objection or application and gave no notice within the meaning of Section 14 of the Land Titles Restoration Ordinance.

The case law on the meaning of the much legislated and litigated phrase "person aggrieved" was fully argued before me. While the Australian cases do seem to show a broader approach than those in England they do not seem to me to go beyond the type of situation where it is held that a "person aggrieved" is a person who is aggrieved by the deprivation of something or by an adverse effect on the title to something (Ealing Borough Council against Jones) (1). The cases which carry the matter the furthest are in special categories such as trade marks, cases involving as they do commercial rights, or cases such as Eaves against O'Neal (2) - a hotel owner's right to appeal against the licensee's loss of licence though the owner had not been a party to the litigation. Another instance of a special category is that of A.G. Gambia v N'Jie (3) an Attorney General's right to appear in support of disbarment of a barrister. If it were necessary for my decision I would be disposed to find that the Administration in the circumstances of this case is not a "person aggrieved" by the Commission's decision.

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(1) (1959) 1 All E.R. 286 at 289
(2) (1966) Tas. S.R. 216
(3) (1961) Appeal Cases 634.

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In reply to the similar arguments advanced by the applicant against the Custodian in Appeal No. 8, Mr. Casson for the latter says that though the Custodian did not appear in the Commission's hearing he <u>is</u> a "person aggrieved" because he could be prejudicially affected by the refusal of a grant of title. This could result, he says, in the Custodian being exposed to a claim for compensation under Regulation 51B of the Treaty of Peace Regulations (4). If any such claim were not by now the subject of limitations I should have thought that any possible claim could only have been by the Mission Trust against the vendor to it, namely Mr. Solomons. The Custodian would seem to me to be prctected by Regulation 53 of the above-mentioned Regulations, which provides that "the title that shall issue to a purchaser of a property shall be the best title vested in the Custodian" and that if it were shown that title to purportedly expropriated property could not be given, that was a risk incident to that type of transaction. I would be of the opinion that the Custodian could not be held to be a "person aggrieved" by the Commission's decision within the meaning of the Ordinance.

In taking out the notices of motion in Appeals 1 and 8, Mr. O'Neill seeks to rely on Rule 12 of Order III of the Supreme Court rules which allows applications to "strike out a plaintiff or defendant before the hearing of a cause"; there being no rule in point under the Supreme Court Appeal (Land Titles Commission) Rules 1968. Under rule 13B of the latter a direction may be sought as to the practice or

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(4) Volume 4, Commonwealth Statutory Rules 1901-56 at 5057.

procedure to be followed in a matter relating to an appeal whether or not covered by these rules and thereupon the Judge may make such orders as he sees fit.

I am disposed to think that in relation to Appeals 1 and 8 of 1967 the procedure adopted could be regarded as appropriate and that orders could be made accordingly both of a procedural nature under the said Rule 13B and substantially. However, I am of the opinion that I should make no such order because of the situation in Appeal No. 7. In Appeal No. 7 the Director is one only of three respondents and seeks to have the other two respondents struck from the record. His application in that regard is resisted by the appellant (the Mission Trust) which for some reason best known to itself has seen fit to join these other two parties, the Administration and the Custodian, as respondents, as well as the Director of District Administration. Mr. O'Neill was able to point to no authority in support of such a radical kind of application. He cited the case of Sadlier against G.W.R. (5) a decision of the Court of Appeal; but this was a case of one of two defendants staying a plaintiff's action until one of the two defendants who were joined as co-defendants but who were separate tort feasors, should be struck out. This case does not seem to me to be analogous to the instant one.

The applicant in Appeal No. 7 seeks this relief solely on the ground that the costs with which he may possibly be visited in the event of the appeal

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(5) (1895) 2 Q.B. 688

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being successful would be greatly enlarged by the joinder of these additional respondents and their consequent representation at the hearing of the appeal. He urges a similar consideration as being the sole factual reasons for his motions in Appeals Numbered 1 and 8. There appears to be no warrant or precedent for the applicant's motion in Appeal No. 7 and I consider it would be straining the Court's rules to a possibly absurd extent to attempt to mould the provisions of Order III Rule 12 to fit the case. If an appellant unnecessarily joins parties to an appeal he can be appropriately mulcted as to costs. I have no doubt that the appellate court will look to this aspect and see that the applicant, if any order be made against him, be not prejudiced by any such inapt action of the appellant. Even if procedurally the applicant's motion in Appeal No. 7 could be grounded I consider it would be premature.

Being of the opinion that the applicant can not have the relief he seeks in Appeal No. 7 and that it would be therefore in any case fruitless and unnecessary to make orders of the kind sought in Appeals Numbered 1 and 8, I dismiss all three motions.

In Appeal No. 1/1967 I order that the applicant pay the costs of the motion of the Administration and of the Mission Trust. In Appeal No. 8/1967 I order the applicant to pay the costs of the motion of the Custodian and the Mission Trust. In Appeal No. 7/1967 I order the applicant to pay the costs of the motion of the Administration, the Custodian and the Mission Trust.