

D.J. GRAPHICS LIMITED  
v.  
COMMISSIONER OF LANDS

High Court of Solomon Islands

(Palmer J.)

Civil Case No: 102 of 1995

Hearing : 4/4/95

Ruling : 5/4/95

F. Waleilia & ]  
G. J. Traczyk ] for Plaintiff

**PALMER J:** This is an ex parte application for leave to appear before this Court by Mr. Traczyk on behalf of D.J. Graphics Limited (the Applicant), in an application for leave to apply by way of Originating Summons or such other originating process as the Court may direct, for inter alia, orders for Certiorari and Mandamus directed against the Commissioner of Lands.

Mr Traczyk is a qualified lawyer and duly admitted to practise as a Barrister and Solicitor in the State of Victoria, Australia.

He was first admitted to practise as a Barrister and Solicitor in the High Court of Solomon Islands in 1992 in respect of Criminal Case No. 32 of 1992. Since then he has been admitted to practise as a Barrister and Solicitor in a number of other specific cases. It must be made quite clear that his admission had been expressly restricted to specified cases. This simply meant that for any new cases in which he seeks to appear as Barrister and Solicitor, he must first obtain a formal certificate of admission.

The admission of persons to practise as Barristers and Solicitors in this jurisdiction is covered by The Legal Practitioners Act 1987.

In the interpretation section (s.2), the term "*legal practitioner*" is defined as follows:

*"means a person who in terms of this Act has been admitted as a legal practitioner of the Court or is entitled to practise as a legal practitioner in pursuance of section 4, and includes a person*

*provisionally admitted but does not include a person whose name has been removed from the roll;"*

In contrast an "unqualified person" is defined as "a person who is not admitted to practise as a legal practitioner pursuant to this Act...."

Section 3 sets out the requirements on which an application for admission is to be made.

By Section 5, it is made expressly clear that only the Chief Justice had the power to admit legal practitioners. This is fine when the Chief Justice is available, but when he is not, then it causes difficulties for such intending applicants who may wish to appear on an urgent basis as a legal practitioner.

This is the difficulty that Mr Traczyk faces. He needs to be formally admitted as legal practitioner under the Act, in respect of this Civil Case No. 102 of 1995, and it would appear, also in Civil Case No. 40 of 1995, before he could appear on behalf of D.J. Graphics Limited. The Chief Justice unfortunately is not readily available. Though it is possible that he could be contacted after some delay and cost to the Applicant.

Mr Traczyk therefore seeks to submit that there is some inherent power of the Courts to entertain a person who is not admitted as a Barrister and Solicitor, to appear on behalf of an applicant before this Court.

He relied on the case of *Charles P. Kinnell & Co. v. Harding Wace & Co. [1918] I.K.B. 405*. The facts of that case briefly, involved a company registered under the Companies Act which took out an action against the defendant company, through the services of one of its own clerks, and not through a solicitor. The Defendants accordingly argue that the plaintiffs, being a limited company, could only validly commence and carry on proceedings in the county court, by a solicitor and not by an agent, and accordingly, the proceedings were null and void ab initio and should be set aside.

Mr Traczyk relied on the Statement of Swinfen Eady L.J. at page 413:

*"There remains, however, the question how such a body may appear in Court, either as plaintiff or defendant. This is provided for by the County Courts Act 1888, s.72. As from its nature a company cannot appear in person, not having as a legal entity any visible person, it must appear by counsel or solicitor, or by leave of the judge some other person may be allowed to appear instead of the company to*

*address the court, which includes the examination of the witnesses and generally conducting the case. There is no limit or restriction imposed on the judge as to the persons whom he may allow, or as to the nature of the cases in which he may allow some other person to address him instead of counsel or solicitor for the company. It is left to his discretion, but except under special circumstances he would doubtless only sanction some director or officer or regular employee of the company so appearing instead of the company, and would limit his permission to cases which he thought could properly be disposed of before him, without the assistance of either counsel or solicitor". (emphasis added).*

Also the statements of Warrington L.J. at page 415 was relied on:

*"In my opinion in the case of an ordinary person there is no ground for the suggestion that it would be illegal for an agent on his behalf to sign the praecipe or to attend on his behalf and file it or to send it by post to the Registrar. As to attending before the judge, there can be no possible question that an agent may lawfully appear and address the Court if the judge allows him to do so".*

First, it needs to be borne in mind what the reasons and purposes for which the Legal Practitioners Act was enacted. It was passed to regulate the admission and practise of Legal Practitioners. Mr Traczyk is not an employee of D.J. Graphics Ltd, neither is he a manager, a director or someone closely bound up on a day to day basis with the Company. He is a lawyer by profession, and has been engaged solely on that basis, for remuneration.

The case of *Charles P. Kinnell & Co. v. Harding Wace & Co. [1918] I.K.B. 405*, therefore could be distinguished on its facts alone. The crucial statements of Swinfen Eady L.J. are where he said:

*"It is left to his discretion, but except under special circumstances he would doubtless only sanction some director or officer or regular employee of the company so appearing instead of the company, and would limit his permission to cases which he thought could properly be disposed of before him, without the assistance of either counsel or solicitor".*

As pointed out, Mr Traczyk is not appearing as a director, officer, regular employee, or even as an agent, such that it could be said that the company is in fact in attendance.

His position and standing before this Court is caught on all fours by the clear and unambiguous provisions of the Legal Practitioners Act; in particular section 14(l). I quote:

*"No unqualified person shall act as a legal practitioner or as such sue out any writ or process or commence, carry on or defend any action, suit or other proceeding, in the name of any other person, in any court of civil or criminal jurisdiction or act as a legal practitioner in any cause or matter, civil or criminal, to be heard or determined before any court".*

I have already referred to the definition of an *'unqualified person'* earlier on, in the interpretation section. Mr Traczyk falls squarely within the category of an *'unqualified person'* for the purposes of the Legal Practitioners Act. It has nothing to do with his legal qualification and training and subsequent experience in another jurisdiction as a barrister and solicitor. He is *'unqualified'* for the simple reason that he has not yet been admitted by the Honourable Chief Justice and issued with a practising certificate under section 5 of the Legal Practitioners Act as at the date of hearing of this application.

By virtue of section 14(1) he is forbidden to participate in this proceedings. It is mandatory and there is no discretion involved. The Act is not silent, so that some inherent jurisdiction can be invoked. The inherent powers of a court as raised in *Charles P. Kinnell & Co.'s case* and the reference to Order 12 Rule 18 of the High Court Civil Procedure Rules also do not apply in those circumstances.

This is a simple matter of law which has arisen in unfortunate circumstances.

The Court sympathises with the plight of Mr Traczyk or any such intending Applicant, but it can do little to alleviate the problem in those circumstances.

Leave denied.

**ALBERT R. PALMER**

A.R. PALMER  
JUDGE