[2005] QSC 150

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State Reporting Bureau

Queensland Government
Department of Justice and Attorney-General

Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

REVISED COPIES ISSUED
State Reporting Bureau
Date: 24 May, 2005

Application No 39 of 2005

GREGORY JOHN TUDEHOPE	Applicant
and	
MAGISTRATE TOM BRAES	First Respondent
and	
SERGEANT MARK HARVEY REG NO 9197	Second Respondent
and	
KERRY JOHN DANIEL McFADDEN	Third Respondent
and	
THE COMMISSIONER OF THE QUEENSLAND POLICE SERVICE	Fourth Respondent
and	
THE ATTORNEY-GENERAL	Fifth Respondent

CAIRNS

..DATE 23/05/2005

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act* 1999, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: The applicant, Gregory John Tudehope, made a judicial review application on 31 January 2005. In it he sought relief against a Magistrate, a clerk of the court, a police sergeant, and the Commissioner of Police. In the course of those proceedings Justice Jones made an order on 14 March 2005 in which he gave a number of directions with a view to progressing the judicial review application.

The applicant has now brought another application filed 6 May 2005 in which he seeks to have the Crown Solicitor dealt with for contempt of Court. He also seeks relief in respect of a number of other matters to which I will come shortly. The claims in respect of contempt of Court are plainly ill-founded. The first of those claims is one for a declaration that the Crown Solicitor is in contempt of the orders of 14 March. The second is that the Crown Solicitor be dealt with for contempt; and the third claim is a response to the Attorney-General's claim for leave to intervene.

Getting back to the claim for contempt, the Crown Solicitor is not a party to the proceedings. He cannot breach the orders of Justice Jones and accordingly no contempt in the way it is framed can be made out against him. It is not even known if the Crown Solicitor had the carriage of this matter, but I raise that really as an aside.

The contempt seems to be the failure on the part of respondents to the judicial review application to serve affidavits in relation to a possible strike-out application.

That strike-out application, if it was to be made, was required by the order to be made on or before 28 March 2005.

...

HIS HONOUR: No such application was made. The consequence of that was that there was no scope for compliance with the following directions. They all related to what was to happen in respect of the strike-out application.

...

HIS HONOUR: Accordingly, it will be seen that this part of the application is groundless.

...

HIS HONOUR: I come now to the other grounds in the application filed 6 May. Ground 3 concerns the intervention of the Attorney-General. It seems to me that the Attorney probably already has been given leave to intervene. If he has not, I give any such leave as may be required. He is obviously a proper party to the proceedings. The Crown Solicitor is one of his officers, and allegations have been made against a Magistrate and a clerk of the Court. It is plain that it is appropriate for the Attorney to be a party to those proceedings.

Ground 4 concerns the entering of a plea by the learned Magistrate without the applicant's consent. It is a matter which is already addressed in the judicial review application. It is duplicitous and an abuse of process.

The same observations may be made of grounds 5, 6 and 7. Additionally, the ground raised in paragraph 7, if it were upheld, would result in an exercise in futility which could neither impede nor advance the applicant's case.

Ground 8 is the final ground. It seeks an order in the nature of prohibition against the fourth respondent, that is the Commissioner of Police and/or the employees and officers under the control and supervision of the Commissioner, preventing any action from being commenced or continued against the applicant or any of his family members until certain events transpire. The fourth respondent should not be restrained from performing his statutory duties and accordingly I decline to make any such order.

I order that the application filed 6 May 2005 be dismissed and that the applicant pay the respondents' costs of and incidental to that application to be assessed on a standard basis.

Now, that leaves the judicial review application. I direct that the respondents file and serve any affidavits to be relied on on the hearing of that application on or before 4 p.m. on Friday, 27th May 2005.

I direct that the respondents also serve on the applicant any outlines of submissions to be relied on by them on the hearing of the application on or before such time and deliver a copy of such outline to my associate.

I direct that any such affidavits and any such outlines may be served on the applicant by leaving them at the applicant's address for service.

Mr Tudehope, are you prepared to accept any of those affidavits here in Court?

...

HIS HONOUR: All right. Thank you.

...

HIS HONOUR: All right. Thank you.

...

HIS HONOUR: I propose to list this matter for directions on Monday morning at 10 o'clock.

...

HIS HONOUR: All right. With a view to exploring the possibilities of having the matter heard in the course of that week.

[2005] QSC 150

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Date: 16 June, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No 39 of 2005

GREGORY JOHN TUDEHOPE	Applicant
and	
MAGISTRATE TOM BRAES	First Respondent
and	
SERGEANT MARK HARVEY	Second Respondent
and	
CLERK OF THE COURT KERRY JOHN McFADDEN	Third Respondent
and	
THE COMMISSIONER OF QUEENSLAND POLICE SERVICE	Fourth Respondent

CAIRNS

..DATE 03/06/2005

JUDGMENT

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th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: This is an application to strike out an application for review filed 31 January 2005 by Gregory John Tudehope.

It seeks to review the conduct of the first respondent, the Magistrate Mr Braes, the second respondent, a police sergeant, Mr Harvey, the third respondent, the clerk of the Cairns Magistrates Court, and the fourth respondent, the Commissioner of the Queensland Police Service.

The events with which the applicant is concerned in his application are as follows: on 21 October 2004 the second respondent was in a queue at the Cairns Magistrates Court awaiting service by registry staff. He was in uniform. The applicant was ahead of him in the queue.

The applicant took exception to the second respondent's presence, objected to his carrying a weapon in the Court precincts, and created a disturbance. The second respondent arrested him for committing a public nuisance.

During the course of the arrest the applicant was uncooperative, he was found to be carrying a digital recorder, the digital recorder and the tapes which he'd contained were seized as evidence of the offence. He was subsequently charged with "obstruct police" and "public nuisance". Those proceedings are before the Cairns Magistrates Court. The digital recorder and tapes are held as exhibits for the

proceedings. The applicant has requested their return, but the request has been refused.

In so far as the first respondent and the third respondent are concerned, the Cairns City Council commenced proceedings in the Magistrates Court against the applicant to recover outstanding rates.

The claim and statement of claim were signed "McDonnells", but listed a Mr Cassetti of McDonnells as having carriage of the matter. The applicant claimed that the originating process did not confer jurisdiction on the Magistrates Court to determine the claim.

He pursued this argument before the Magistrate dealing with an application to set aside the Court judgment, and the matter was determined by the Magistrate who heard summary judgment applications in the proceedings.

Getting back to the registry contretemps with the police sergeant, the criminal charges were mentioned in the Magistrates Court at Cairns on 21 October 2004. Mr Tudehope conducted his own defence. The first respondent listed the charges for hearing, and granted Mr Tudehope bail on his own undertaking.

Mr Tudehope indicated he would not sign the bail acknowledge form whereupon the Magistrate stated that he would be detained

in custody until the trial. He then signed the bail acknowledgement form under what he asserted was duress.

He later went to the Magistrate requesting a statement of reasons in relation to his decision to enter a plea of not guilty on Mr Tudehope's behalf, and in relation to the requirement for Mr Tudehope to sign bail documents.

The first order sought on the application for review is an order under section 38.1 of the Judicial Review Act (the Act) that the first respondent comply with that request. The second order sought is an order in the nature of certiorari to quash the decision of the first Magistrate to enter a plea for and on behalf of the applicant.

Eight other grounds of review are requested. The ones which concern the first and third respondents for whom Mr Philp appears seem to be the ones I have just mentioned, and grounds 3, 4, 7, 8 - I will deal with those before addressing the others.

The claim against the third respondent is an injunction prohibiting him from administering, by virtue of his appointment as Registrar and or Clerk of the Cairns Magistrates Court, any further legal matters in which the applicant is a party. No such application could conceivably succeed in any such broad manner and no possible basis for injunctive relief has been put forward. The complaint against the unfortunate third respondent seems merely to be that he accepted some documents lodged at the counter.

Turning then to the complaints against the first respondent. The Magistrate's decision concerning bail is not one of an administrative character within the Act. If the applicant is

concerned about the validity of the bail acknowledgement, presumably he is free to rescind what he has done and present himself for return to custody. The injunctive relief against the first respondent is that he be prohibited from exercising further jurisdiction in this matter, or any matter where the applicant is named as a party. No ground for any such relief has been made out, but like most of the other matters with which I am concerned it is not relief which is appropriate to be claimed in an application for judicial review.

What the applicant has done, it would seem, in order to attempt to have the matter treated as a application for judicial review is to ask for reasons and to put forward a ground relating to the reasons in order to found his judicial review claim. I have already found that he is not entitled to those reasons and they are not reviewable under the Act.

In paragraph 2 of the application he seeks an order to quash the first respondent's decision to enter the plea. That does not come within the Act either and so the application, in so far as these respondents are concerned, must be struck out.

The balance of the document, as can be gleaned from what I have said thus far, is an exercise in folly and futility. It is a complete waste of time and resources and I do not propose

to dignify it by making any further extensive observations about it.

All of the other matters in respect of the other parties which are claimed are matters which are capable of being dealt with by other and more appropriate processes, for example, by applications under section 424 of the Police Powers and Responsibilities Act 2000, or make claims which ought be litigated under appropriately instituted proceedings.

Paragraph 11 seeks an order that the applicant be given leave to file and serve a civil claim for compensation, et cetera. The applicant, of course, subject to those provisions governing vexatious litigation and abuse of process can follow whatever course he thinks fit. There is no need for any leave to be given in proceedings such as this and in any event I would not contemplate giving any further consideration to the matter.

I dismiss the application for review and order that the applicant pay the costs of the Attorney-General and the second and fourth respondents of and incidental to the application, such costs to be assessed on the standard basis.
