

COURT OF APPEAL

McMURDO P  
MUIR J  
PHILIPPIDES J

Appeal No 11624 of 2001

GLENN ROBERT KETCHELL

Applicant (Appellant)

and

GARY EDWARD DONALD WYNCH

Respondent (Respondent)

and

OFFICIAL TRUSTEE IN BANKRUPTCY

Respondent (Respondent)

BRISBANE

..DATE 18/03/2002

ORDER

THE PRESIDENT: The applicant who is represented by counsel today, Mr Robert Butler, has requested an adjournment of this application for leave to appeal and has in a letter to the Registrar of 14 March 2002 foreshadowed that he will seek to file a new ground of appeal.

The Magistrates Court ordered the applicant to forfeit goods, namely a Scania truck and a refrigerator trailer, under the Excise Act 1901 Commonwealth, and that pursuant to section 9(2)(a) Crimes Act 1914 Commonwealth those articles be condemned.

After an aborted attempt to appeal from that decision to the Court of Appeal, the applicant appealed to the District Court at Townsville. The appeal was unsuccessful and was dismissed with an order that each party bear their own costs.

The applicant requires leave to appeal under section 118(3) District Courts Act 1967.

Mr Butler has today produced a medical certificate from Dr David Raine, a general practitioner in Caloundra, dated 14 March 2002 which states that Mr Butler's health is such that he will be unable to work efficiently for some months, and he has strongly advised him to cease work immediately. Until he responds to treatment he should abstain from work. He expects a full recovery but the time interval is indeterminable at this stage.

The application for leave to appeal has not been prepared because of Mr Butler's illness. The application is not in a proper state to proceed today. In the circumstances an adjournment must be granted today.

The applicant must understand, however, that if Mr Butler is not well enough to prepare and argue the application when it is next listed for hearing, then the application will proceed at that time, regardless of whether the applicant has legal representation. The adjournment is not an open-ended one. The matter must be relisted in a timely fashion.

In the circumstances I would order that this application be adjourned to a date to be fixed by the Registry. The parties are to follow the directions for the progression of this appeal given by the Acting Deputy Registrar Appeals, and the costs of today's hearing are reserved.

MUIR J: I agree.

PHILIPPIDES J: I agree.

THE PRESIDENT: Those are the orders of the Court.

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