

SUPREME COURT OF QUEENSLAND

CITATION: *Mareeba Shire Council v Wiggins* [2002] QCA 437

PARTIES: **MAREEBA SHIRE COUNCIL**
(respondent)
v
ROBERT JAMES WIGGINS
(appellant/applicant)

FILE NO/S: CA No 138 of 2002
DC No 18 of 2001

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s118 DCA (Criminal)

ORIGINATING COURT: District Court at Cairns

DELIVERED EXTEMPORE ON: 17 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 17 October 2002

JUDGES: McPherson JA, Cullinane and Holmes JJ
Separate reasons for judgment of each member of the court, each concurring as to the orders made

ORDERS: **1. Application for leave refused.**
2. Appellant to pay the respondents costs of the application.

CATCHWORDS: LOCAL GOVERNMENT – POWERS, FUNCTIONS AND DUTIES OF COUNCILS GENERALLY – APPEALS – where appellant convicted of two offences under the local laws of the respondent council relating to the keeping of two unregistered dogs – where appellant instituted proceedings by way of appeal in the District Court against the Magistrates findings – whether appellant filed current application in a timely manner – where appellant’s chief grievance is that of the entrance and conduct on his property of the respondent’s primary witness against him – whether appellant has sufficient grounds to appeal the decision

Commonwealth Constitution ss 53 and 55

Von Shulz v Durrant [2000] QCA 235; Appeal No 1722 of 2000, 16 June 2000, considered

COUNSEL: The appellant/applicant appeared on his own behalf
BD Job for the respondent

SOLICITORS: The appellant appeared on his own behalf
King and Company as town agents for Marino Moller
Lawyers

CULLINANE J: The applicant seeks an extension of time within
which to apply for leave to appeal from a decision of the
District Court dismissing an appeal instituted by the
applicant pursuant to the Justices Act from a decision of the
Magistrates Court at Mareeba.

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The applicant was convicted of two offences under the local
laws of the respondent council relating to the keeping of a
dog which was not registered. The decision of the Magistrates
Court was given on the 11th May 2001 and the decision of the
District Court dismissing the applicant's appeal was delivered
on the 8th October 2001.

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The applicant did not file this application until the 7th May
2002. Whilst there is no prescribed time within which an
application for leave to appeal, of this kind, ought to be
made it is usually regarded as having been made in a timely
manner if it is made within the time limited for an appeal,
namely, 28 days. See Von Schulz v. Durrant [2000] QCA 235.

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The applicant, in fact, instituted proceedings in the Supreme
Court in Cairns by way of a purported appeal against a
decision of the District Court. These proceedings were
dismissed on the 3rd December 2001 and a further five months
elapsed before this application was made.

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In the notice of application for leave the applicant says that he had not had enough time to research the appeal and lodge it within the applicable time. He does not have the funds to obtain legal assistance. He says that he has been busy at work and attending to his family's affairs. He says that his intention to appeal was clear when he instituted proceedings in the Supreme Court.

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In the evidence before the Magistrates Court and in argument before the District Court the applicant made it clear that he acknowledged that he had kept the two dogs concerned and that they were not registered at the time. Throughout the proceedings in the Magistrates Court and in the District Court it seems clear that the chief grievance of the applicant centred on the respondent's primary witness against him, one Hunt, who according to the record was an appointed authorised person under the Local Government Act.

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The applicant complains about his conduct on entering the property and his conduct when on the property. As the learned District Court Judge pointed out these issues may have been relevant to an argument as to whether the Magistrates Court ought, in the exercise of its discretion, to have excluded Hunt's evidence. This, however, was not what occurred.

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It is obvious from the findings of the learned Stipendiary Magistrate that he accepted that Hunt had identified himself and he also said that the issue was not squarely raised before him but he did not see any evidence of unlawfulness on the

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part of Hunt in the manner in which he came on to the property and he went on to say that even if the applicant's evidence was accepted, "It could not taint the evidence to the extent that the complainant's case could be defeated."

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On the appeal which was by way of rehearing to the District Court the learned District Court Judge canvassed the various complaints which the applicant made about Hunt and rejected each of them. It seems to me that each of these findings were justified on the evidence before the District Court and there is no reason to believe that the applicant has any substantial prospects of overturning these findings.

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In an outline of argument before us the applicant has sought to again ventilate these issues and has raised a number of additional issues. These include complaints that the by-laws or at least the actions of the respondent enforcing the by-laws are in breach of a substantial number of sections of the Constitution. Before us today emphasis was placed upon sections 53 and 55 of the Constitution both of which, however, are concerned with taxation legislation introduced into the Commonwealth Parliament.

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In addition, there are a number of other allegations made in the outline of bias on the part of both the Stipendiary Magistrate and the District Court Judge and of perjury. None of these matters, in my view, can be regarded as raising issues of substance or issues in respect of which it can be

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said that the applicant would have reasonable or even reasonably arguable prospects of challenging his conviction.

Given the delays, the admissions of guilt of the applicant and what I regard as a lack of substance in any of the ground sought to be advanced the application for leave should be refused.

McPHERSON JA: I agree.

HOLMES J: I agree.

McPHERSON JA: I order that the applicant pay the respondent's costs of the application.
