

# SUPREME COURT OF QUEENSLAND

CITATION: *Mbuzi v A-G (Qld) & Favell* [2006] QCA 381

PARTIES: **JOSIYAS MBUZI**  
(applicant/applicant)  
v  
**ATTORNEY-GENERAL OF QUEENSLAND**  
(first respondent)  
**PAUL FAVELL**  
(second respondent/respondent)

FILE NO/S: Appeal No 4583 of 2006  
SC No 10610 of 2005

DIVISION: Court of Appeal

PROCEEDING: Application for Leave/Judicial Review

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 29 September 2006

DELIVERED AT: Brisbane

HEARING DATE: 8 September 2006

JUDGES: McMurdo P, Keane JA and Cullinane J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the orders made

ORDER: **1. Application dismissed**  
**2. Applicant to pay the respondent's costs**

CATCHWORDS: ADMINISTRATIVE LAW - JUDICIAL REVIEW  
LEGISLATION - JURISDICTION AND GENERALLY -  
'DECISION' WITHIN ACT'S APPLICATION - EXCLUDED  
DECISIONS - OTHER DECISIONS - respondent sued  
applicant for defamation - applicant aggrieved by directions  
made in the course of the defamation trial in District Court -  
applicant did not lodge an appeal against decision of District  
Court - applicant made an application to the Supreme Court  
seeking judicial review of District Court judge's directions -  
applicant seeks leave to appeal to this Court against summary  
dismissal of application - whether the *Judicial Review Act 1991*  
(Qld) applies to decisions of the District Court and whether  
leave should be granted

*Judicial Review Act 1991* (Qld), s 18, s 48(5)  
*Uniform Civil Procedure Rules 1999* (Qld), r 440

*Edgar v Freeman* [1915] VLR 16, cited  
*Mason v Ryan* (1884) 10 VLR, L 335, cited

*R v O'Neill* (1885) 6 NSWLR, L 43, cited  
*Stubberfield v Webster* [1995] 2 Qd R 211, considered

COUNSEL: The applicant appeared on his own behalf  
 R J Anderson for the respondent

SOLICITORS: The applicant appeared on his own behalf  
 Gail Malone & Associates for the respondent

- [1] **McMURDO P:** This application should be dismissed with costs for the reasons given by Keane JA.
- [2] **KEANE JA:** The applicant was sued for defamation by the respondent, Mr Favell. The action was resolved in favour of Mr Favell. The applicant was aggrieved by directions which he asserts were made in the course of the trial of that action in November 2005 by a judge of the District Court. These directions related to the sealing of a letter written by the applicant and an affidavit which he had filed on an earlier occasion in support of an application to set aside a judgment by default. It appears from the record that this material contained assertions which might be regarded as scandalising persons referred to in it. The record suggests that the directions in question may actually have been made by the District Court judge who heard the application to set aside the default judgment rather than the trial judge; but that does not matter for present purposes.
- [3] The applicant did not lodge an appeal against the judgment of the learned judge of the District Court. After the time for appeal against the judgment in the action had expired, the applicant made an application to the Supreme Court in which he sought judicial review of the District Court directions pursuant to the *Judicial Review Act 1991* (Qld) ("the JR Act"). The respondent cross-applied for the summary dismissal of that application. Judgment was given on 5 May 2006. The respondent's cross-application was successful; the application was dismissed.
- [4] The applicant now seeks leave to appeal to this Court against the summary dismissal of his application for judicial review. Leave is required by reason of s 48(5) of the JR Act. The applicant also seeks an order that he be at liberty to appeal against the orders of the District Court relating to the sealing of material in the course of the trial of the defamation action.
- [5] The JR Act has no application to decisions of the District Court. That this is so is made abundantly clear by s 18 of the JR Act which provides that the JR Act does not apply to decisions made under an enactment mentioned in Sch 1 Pt 2 of the JR Act. That schedule includes the *District Court of Queensland Act 1967* (Qld).
- [6] The applicant sought to rely on the decision of Thomas J (as his Honour then was) in *Stubberfield v Webster*<sup>1</sup> where his Honour pointed out that s 18 of the JR Act, as it was then framed, permitted the making of orders under Pt 5 of the JR Act in relation to decisions of the District Court. Not surprisingly, s 18 of the JR Act was subsequently amended to remove that possibility.
- [7] When the amendment to the JR Act was brought to his attention, the applicant then sought to argue that the District Court judge had no power to make the decision in

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<sup>1</sup> [1995] 2 Qd R 211 at 212 - 213.

question. It is clear, however, that r 440 of the *Uniform Civil Procedure Rules 1999* (Qld), and the long recognised power of an inferior court of record to preserve order and decency in the course of its own process, gave the District Court judge the requisite power.<sup>2</sup>

- [8] No further elaboration of the circumstances is necessary to demonstrate that the applicant's proceeding under the JR Act, and his appeal to this Court, are misconceived. No good reason is shown for the grant of leave for the purposes of s 48(5) of the JR Act.
- [9] The application for an order that the applicant be at liberty to appeal against the order for the sealing of material should also be dismissed. The time for any appeal expired long ago. There is no evident utility in any appeal against the directions by which he is aggrieved. Even if the applicant were to obtain the relief which he seeks, that would not have any impact on the final judgment which was given against him in the District Court. The only consequence would be that the documents which were sealed up would be unsealed. No legitimate interest of the applicant would be advanced by that result.
- [10] The application to this Court must be dismissed. The applicant must pay the respondent's costs.
- [11] **CULLINANE J:** I have read the reasons of Keane JA in this matter and agree with those reasons and the orders proposed.

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<sup>2</sup> *R v O'Neill* (1885) 6 NSWLR, L 43 at 45; *Mason v Ryan* (1884) 10 VLR, L 335 at 340; *Edgar v Freeman* [1915] VLR 16.