

KPANGAY v. REGINAM

WEST AFRICAN COURT OF APPEAL (Coussey, P., Luke, Ag. C.J.
(Sierra Leone) and Verity, Ag. J.A.): March 23rd, 1957
(W.A.C.A. Cr. App. No. 1/57)

- 5
- [1] Courts—magistrates' courts—judgment—contents of judgment—omission to record reasons for decision in summary conviction case not fatal where no failure of justice: Section 90, as amended, of the Criminal Procedure Ordinance (*cap.* 52), which requires a magistrate trying a summary conviction offence to record the reasons for his decision, is directory and not mandatory and omission to give reasons will not invalidate a conviction where no failure of justice has occurred (page 6, lines 3–12).
- 10
- [2] Criminal Procedure—appeals—appeals against conviction—omission to record reasons for decision in summary conviction case not fatal where no failure of justice: See [1] above.
- 15
- [3] Criminal Procedure—judgment—contents of judgment—reasons for decision—omission to record reasons in summary conviction case not fatal where no failure of justice: See [1] above.
- 20
- [4] Statutes — operation — mandatory and directory enactments — distinguished by weighing consequences of mandatory and directory constructions: In the absence of an express provision that failure to comply with a statute will invalidate the proceedings, the intention of the legislature as to whether an enactment is mandatory or directory is to be ascertained by weighing the consequences of holding it to be directory or imperative (page 6, lines 14–16).
- 25
- [5] Statutes—operation—mandatory and directory enactments—statutes creating public duties generally directory: In general, the provisions of statutes creating public duties are directory (page 6, lines 17–19).

30 The appellant was charged in the Police Magistrate's Court, Freetown with obtaining money by false pretences, contrary to s.12 of the Summary Conviction Offences Ordinance (*cap.* 225).

35 At the trial the appellant denied the charge but called no witnesses. The magistrate convicted him without giving reasons for his decision. The appellant appealed to the Supreme Court, contending that the magistrate's failure to record his reasons was fatal to the conviction. The judge on appeal called on the magistrate for his reasons then dismissed the appeal, being satisfied that the evidence supported the conviction.

40 On further appeal the appellant argued the same point, contending that the provisions of s.90 of the Criminal Procedure Ordinance (*cap.* 52) are mandatory.

Cases referred to:

- (1) *Caldow v. Pixell* (1877), 2 C.P.D. 562; 36 L.T. 469, applied.
- (2) *Middlesex JJ. v. R.* (1884), 9 App. Cas. 757; 51 L.T. 513, applied.

Legislation construed:

Appeals from Magistrates Ordinance (Laws of Sierra Leone, 1946, *cap.* 14), s.34:

The relevant terms of this section are set out at page 6, lines 24-28.

Criminal Procedure Ordinance (Laws of Sierra Leone, 1946, *cap.* 52), s.90, as amended by the Criminal Procedure (Amendment) Ordinance, 1946 (No. 28 of 1946), s.2:

The relevant terms of this section are set out at page 5, lines 26-30.

S.C.B. *Macaulay* for the appellant;
Smythe, Crown Counsel, for the Crown.

COUSSEY, P., delivering the judgment of the court:

The appellant was convicted by the Police Magistrate of Freetown of obtaining the sum of £1. 10s. 0d. from one Marie Bio by false pretences, contrary to s.12 of the Summary Conviction Offences Ordinance (*cap.* 225). The complainant and a special constable gave evidence for the prosecution. In answer to the charge, the appellant contented himself with a bare denial that he had taken any money from the complainant. He called no witnesses. In his judgment, the learned magistrate found the accused guilty but gave no reasons for his decision.

Section 90, as amended, of the Criminal Procedure Ordinance (*cap.* 52) provides that the court in a summary trial shall finally determine the case—"and shall cause an entry to be made in the Court Record Book of the point or points for determination, the decision therein and the reasons for the decision." It is the failure of the magistrate to record the reasons for the decision that has given occasion for this appeal.

The point was raised by the appellant on appeal to the Supreme Court when the learned judge, after calling upon the magistrate for the reasons for his decision, dismissed the appeal after considering the magistrate's reasons, being satisfied that the evidence which the magistrate believed supported the conviction.

The appellant was granted leave to appeal out of time to this court and the point has again been argued. It is contended for the appellant that it is a mandatory provision of s.90, as amended, of the Criminal Procedure Ordinance that reasons for the decisions

of the magistrate shall be given and that the conviction is incomplete without such reasons and therefore invalid.

5 The short answer to this point is that s.90, in so far as it provides that a magistrate shall give reasons for his decision, is coercive and directory but not mandatory. It is a condition subsequent to and not precedent to conviction and, however blameable it may be for the magistrate not to record his reasons, his failure to do so does not invalidate a conviction where, as in this case, the evidence clearly supports the charge, is unshaken and is only met by a bare denial. To hold otherwise in these circumstances would lead to an injustice in that a conviction based on the evidence would have to be set aside. In the absence of an express provision (that failure to record reasons shall invalidate a conviction on summary trial, and there is no such express provision in s.90) the intention of the legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative: see *Middlesex JJ. v. R.* (2)(9 App. Cas. at 778; 51 L.T. at 517). In *Caldow v. Pixell* (1) Denman, J. said (2 C.P.D. at 556; 36 L.T. at 470) that in general the provisions of statutes creating public duties are directory.

20 Further, in our view, it was irregular for the learned judge when the point was raised before him to call upon the magistrate for the reasons for his decision, for s.34 of the Appeals from Magistrates Ordinance (*cap.* 14) provides that:

25 “. . . no judgment, decision, order or sentence . . . shall be reversed or altered on appeal on account of any error, omission or irregularity in the . . . judgment or other proceedings before or during the trial, unless such error, omission or irregularity has in fact occasioned a failure of justice. . . .”

30 We were unable to hold that there has been a failure of justice and we therefore dismissed the appeal.

Appeal dismissed.

35

40