

JOHN and ANOTHER v. ATTORNEY-GENERAL

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Smith, C.J.
 (Sierra Leone) and Coussey, J.A.): December 4th, 1952
 (W.A.C.A. Civ. App. No. 19/52)

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[1] Administrative Law—Crown proceedings—costs—discretion of court as to costs not applicable in Crown proceedings—application by Attorney-General for assessment of compensation for compulsory acquisition of property not Crown proceeding: While, under O.XLVIII, r.1(b) of the Supreme Court Rules, 1947, proceedings in which the Crown is a party or is interested are exempted from the operation of O.XLVI, which provides that costs are in the discretion of the court, an application by the Attorney-General for the court to assess the compensation which is appropriate for the compulsory acquisition of property is not a Crown proceeding within the meaning of O.XLVIII; and therefore costs in such a proceeding remain at the discretion of the court (page 268, lines 11–14).

[2] Civil Procedure—costs—Crown proceedings—discretion of court as to costs not applicable in Crown proceedings—application by Attorney-General for assessment of compensation for compulsory acquisition of property not Crown proceeding: See [1] above.

[3] Civil Procedure—costs—jurisdiction to award costs—courts have implied power to award costs—award discretionary in absence of contrary statement: Where a superior court has power to adjudicate on matters in dispute, it has an implied power to award costs; and while, under O.XLVI, r.1 of the Supreme Court Rules, 1947, the discretion of the court to make an award of costs is subject to the contrary provisions of any Ordinance or the Supreme Court Rules, such discretion remains unfettered where an Ordinance is silent on the matter of costs (page 268, lines 1–10).

[4] Land Use Planning—compulsory acquisition—compensation—disputed assessments—costs for application by Attorney-General for assessment by court in discretion of court: See [1] above.

The appellants applied to the Supreme Court to decide what compensation was appropriate for property compulsorily acquired.

The Supreme Court decided on a figure but made no order as to costs. These proceedings are reported in 1950–56 ALR S.L. at 211. On appeal, the appellants contended, *inter alia*, that the trial judge should have exercised his discretion and awarded them costs. The respondent maintained that, as the Public Lands Ordinance (*cap.* 193) was silent on the matter of costs, the trial judge had no jurisdiction to award them, and that in any event this was a Crown

proceeding within the meaning of O.XLVIII, r.1 of the Supreme Court Rules, 1947, and as such the Crown was exempted from paying costs.

Legislation construed:

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Supreme Court Rules, 1947 (P.N. No. 251 of 1947), O.XLVI, r.1:

“Subject to the provisions of any Ordinance and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court . . . Provided also that the costs shall follow the event unless the court shall, for good cause, otherwise order.”

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O.XLVIII, r.1: “Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:

...
(b) Proceedings in which the Crown is a party or is interested”

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Zizer for the appellants;
M.C. Marke for the respondent.

SMITH, C.J. (Sierra Leone):

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A number of points arise in this appeal and the first one is that the appellant complains that the learned judge who tried the issue ought to have awarded a larger amount of compensation for the land which was taken. It is quite clear to me that the learned judge took into consideration all the items of value in the property in arriving at the figure of £50 an acre. He included in it the fact that in the property was a large and apparently inexhaustible supply of syenite stone which is used for building purposes. The respondent has not appealed against the amount awarded, and for myself I consider that he is the only person who might complain about the amount awarded. Certainly the appellant has no cause for complaint and I would not upset the judge's finding on that point.

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The second main point is that the learned judge made no order as to costs. The appellant submits that he had power to make such an order and that he ought to have made an order in the appellant's favour. For the respondent Mr. Marke submits, first, that as the Public Lands Ordinance (*cap.* 193) is silent on the question of costs the judge had no jurisdiction to make any award of costs.

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Secondly, it is submitted that as this case was a Crown case the provisions of the Supreme Court Rules, O.XLVIII, r.1(b), which exempts the Crown from the provisions of O.XLVI relating to costs,

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applies and still further restricted the judge's jurisdiction. I am of the opinion that where a tribunal of this kind is given power to adjudicate on matters in dispute, it must follow that it has an implied power to award costs. A note in the *Annual Practice*, 69th ed., at 1379 (1952), on O.65, r.1 says this:

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“By J.A. [Judicature Act], 1925, s.50(1), the discretion given by this Rule [that is the rule about costs] is made further subject ‘to the express provisions of any Act.’ Where an Act is silent as to costs, the discretion as to costs is unfettered except by this Rule.”

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I therefore say that the learned judge did have a discretion as to costs. I further say that this was not a Crown proceeding within the meaning of O.XLVIII and is therefore not taken out of the general O.XLVI.

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Having decided that the learned judge had a discretion, did he exercise it correctly? The respondent brought the claimants to court—(a) to prove their title, which they succeeded in doing; and (b) to assess compensation. The Crown offered I think about £200. The judge awarded £1,338. 3s. 6d. It is true that claimant had claimed over £30,000, but so far as his opponent the Attorney-General was concerned he won quite handsomely on the question of compensation. In my opinion the learned judge ought to have exercised his discretion in the claimant's favour and made an order for costs. I would amend the judgment of the learned judge to that extent.

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COUSSEY, J.A. concurred.

FOSTER-SUTTON, J.:

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I concur. The appeal against the quantum of compensation awarded is dismissed. The appeal against failure to award claimant's costs is allowed and the judgment is hereby set aside to that extent, and we order that the appellants do receive their costs in the court below to be taxed. There will be no order as to costs on this appeal.

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Order accordingly.

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