

CITATION: *Police v Birritj Knox* [2014] NTMC 013

PARTIES: Police
v
Birritj Knox

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO: 21235279

DELIVERED ON: 30 May 2014

DELIVERED AT: Darwin

HEARING DATES: 6 May and 30 May 2014

JUDGMENT OF: JMR Neill

CATCHWORDS: *Costs - interaction between Court of Summary Jurisdiction and Local Court; implied power of CSJ to clarify operation of its orders; implied power CSJ to delegate assessments of its costs; definition of clerk of CSJ.*

REPRESENTATION:

Counsel:

Prosecution: Usher
Defendant: Cowley

Solicitors:

Prosecution: DPP
Defendant: Robert Welfare & Associates

Judgment category classification: C
Judgment ID number: 013
Number of paragraphs: 25

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21235279

BETWEEN:

Police
Plaintiff

AND:

Birritj Knox
Defendant

REASONS FOR JUDGMENT

(Delivered 30 May 2014)

Mr Neill SM:

Decision

1. On 17 May 2013 I made a costs order in favour of the Defendant in these proceedings. I made that order after hearing detailed submissions from counsel for the parties specifically on the questions of costs. The order was:

“The prosecution pay 75% of the Defendant’s costs of and incidental to all of the proceedings and charges after 25 January 2013, to be taxed in default of agreement at 100% of the Supreme Court scale, certified fit for counsel”.
2. I did not specify who was to tax the Defendant’s costs in default of agreement nor did I specify any procedure for any such taxation of costs.
3. There was no appeal from this order however the prosecution on 6 May 2014, nearly 12 months after the date of the costs order, sought to re-list the proceedings pursuant to Practice Direction No. 22 of 2012. It identified

the issue requiring the Court's attention as a challenge to the proposed manner of taxation of the Defendant's costs. I re-listed the proceedings before me at 2:00pm that same day, 6 May 2014.

4. I was informed the Defendant had utilised the *Local Court Rules* procedures for taxations of costs and had filed costs documents in that Court. The Local Court had listed the costs to be taxed before its Judicial Registrar on 6 May 2014 at 2:00pm. That taxation was vacated to await my ruling on the prosecution's challenge to this procedure.
5. I heard submissions on 6 May 2014 and again on 30 May 2014. On that later date I made the following rulings and orders:
 - “1. I rule that the Local Court Act and Local Court Rules do not apply to an assessment of costs ordered in the Court of Summary Jurisdiction.
 2. I rule that the Judicial Registrar of the Local Court is also a Clerk of the Court of Summary Jurisdiction.
 3. I rule that the Clerk of the Court of Summary Jurisdiction may assess costs ordered payable by one party to another party in the Court of Summary Jurisdiction and that the procedure for such an assessment can be determined by the Clerk in the absence of any specific orders by the Court determining such procedure.
 4. I order that the Defendant's costs to be taxed in these proceedings include the costs of and incidental to this application determined by me today.
 5. I order that the Defendant's costs as ordered by me on 17 May 2013 and today, in default of agreement are to be assessed by the Clerk of Court of Summary Jurisdictions within 28 days of today according to such procedures as the Clerk may determine”.
6. I said that I would provide written reasons for my Decision and I now do so.

7. In making order 1 above I was assisted by and I respectfully adopted the approach taken by Dr Lowndes of this Court in *Howard Charles Bailey-Green v Chiquita Binsaris* (1999) NTMC 9 where he said at paragraph 22:

“Ms Davis submits that the repository of that power is to be found in the Local Court Rules, in particular Rule 38.03. The difficulty with that submission is that it is the Court of Summary Jurisdiction that presides over and hears and determines proceedings under the *Domestic Violence Act*, not the Local Court. The Local Court Costs Rules have no application to domestic violence proceedings”.

That is, the Court of Summary Jurisdiction is a separate and distinct Court from the Local Court and the proper procedures must be found within the powers of the former.

The Powers of the Court of Summary Jurisdiction

8. Section 41A of the *Justices Act* establishes the Court of Summary Jurisdiction.
9. Section 77(1) of the *Justices Act* provides:
- “(1) Subject to subsection (2) and section 77A, where the court finds a Defendant not guilty of any offence on a complaint or a complaint is withdrawn, it may order the complainant to pay the Defendant such costs as it thinks fit”.
10. Section 77C of the *Justices Act* provides:
- “The amount that the court may order for costs under section 77, 77A or 77B shall not exceed the amount calculated in accordance with the prescribed scale”.
11. Sub regulation 14(1) of the *Justices Regulations* provides:
- “Subject to sub regulation (2), for the purpose of section 77C of the Act, the amount that the court may order for costs shall not exceed:
- a) for the first day of hearing including preparation of the case for the hearing and counsel fee - \$710; and
 - b) For the second or subsequent day of the hearing - \$470”.

12. Sub regulation 14(2) identifies circumstances where the Court may order costs unconstrained by sub regulation (1) and that is what enabled me on 17 May 2013 to order costs in these proceedings in excess of the prescribed scale.
13. There is no express provision for any procedure to assess costs in the *Justices Act* or in the *Justices Regulations*. The prosecution on 6 May 2014 suggested this meant that the Court of Summary Jurisdiction when ordering costs whether constrained by sub regulation 14(1) or at large, should itself quantify the costs so ordered.
14. Any formal submission to this effect would have amounted to a challenge to part of my costs order made on 17 May 2013. Any such challenge could only be made by way of appeal from that order. No such appeal was made and therefore no formal response is required in this Decision. Nevertheless it will be helpful to the parties and perhaps others in the future if I set out here the legal basis for my ordering a taxation of costs rather than quantifying the costs at the time of making the order.
15. Section 77 of the *Justices Act* used to be in different terms from today. It still allowed costs to be ordered in criminal proceedings but it included a sub section 77(3) which specifically provided: "*The amount so allowed for costs shall in every case be specified in the conviction or order*". The whole of section 77 as it then stood, including sub section 77(3), was removed from the Act by section 3 of the *Justices Amendment Act (No. 2) 1991* which came into force on 1 January 1992 and which introduced sections 77 to 77C as they stand today. Neither the previous sub section 77(3) nor any equivalent was retained in the amended *Justices Act*, with the result there is no longer any statutory obligation on a magistrate sitting as the Court of Summary Jurisdiction to specify the amount of any costs order at the time of making the order, or at all.

16. Accordingly, while the Act contains no express provision for any procedure to tax costs nevertheless the legislature deliberately repealed the previous provision requiring that costs be specified at the time they were ordered. Where does this leave the question of the power of the Court to order costs to be taxed?
17. The Court of Summary Jurisdiction is created by the *Justices Act* and has no power or jurisdiction except as can be found in that Act. This includes powers implied under that Act.
18. Justice Dawson of the High Court of Australia said in *Grassby v The Queen* (1989) 168 CLR 1 at about point 8 in paragraph 21, as follows:

“However, notwithstanding that its powers may be defined, every court undoubtedly possesses jurisdiction arising by implication that a grant of power carries with it everything necessary for its exercise...”

Justice Dawson in that statement was considering the implied powers of a magistrate’s court.

19. In *Consolidated Press Holdings Limited v Wheeler* [1992] NTSC 102 Mildren J was considering the powers of the Work Health Court. At paragraph 13 he quoted Justice Dawson (above) with approval. He noted that the Work Health Court was a purely statutory court and he ruled it too had those implied powers.
20. In *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation* [1997] NTCA 78, Mildren J delivered the Decision of the Court of Appeal. He was again considering the implied powers of a statutory court. He said at page 21.8 as follows:

“Where, by an Act of Parliament, a right or a power is created, there must by implication carry with it the power to do everything which is indispensable for the purpose of exercising the right or power, or fairly incidental or consequential to the power itself...”

21. The request by the prosecution for clarification how the ordered taxation of costs might proceed, and before whom, does not amount to an appeal from the order of 17 May 2013.
22. The power in section 77(1) of the *Justices Act* for the Court of Summary Jurisdiction to order such costs as it sees fit necessarily carries with it the implied power to do everything fairly incidental or consequential to such a costs order, including ordering that those costs be taxed and determining an appropriate taxation procedure case by case and as in this matter, clarifying the operation of the order, and I so rule.
23. I am satisfied that implied power extends to delegating the assessment and its procedure to a statutory officer of the Court, and I so rule.

The Clerk of the Court

24. Section 42 of the *Justices Act* recognises the role of a Clerk of the Court of Summary Jurisdiction. Sub section 42(1) provides that a Registrar of the Local Court is a Clerk of the Court of Summary Jurisdiction. Section 3 of the *Local Court Act* defines a Registrar of the Local Court to include a Judicial Registrar.
25. I rule that a Judicial Registrar of the Local Court is concurrently a Clerk of the Court of Summary Jurisdiction.

Dated this 25th day of June 2014.



John Neill
STIPENDIARY MAGISTRATE