THE STATE V. THE QUEEN

IN THE MATTER OF THE STATE AGAINST JOHN MOGO WONOM OF JIGI

On 19 September 1975 John Mogo Wonom pleaded guilty to a charge of breaking and entering on an indictment entitled "the State".[1] He was remanded for sentence while the question of the legal proprietary of the Public Prosecutor styling the indictment in this manner was referred to the Supreme Court.

The questions referred to the Supreme Court were:

1. Whether the indictment should be made in the name of "the Queen" or "the State" or otherwise?[2]
   To which the Court answered "The State."

2. Whether the learned prosecutor should be described as acting on behalf of the State or on behalf of the Queen or otherwise?
   To this question the Court answered "The State."

3. Whether the indictment as presented was a nulity and the proceedings therein void ab-nitio?
   The Court answered "No."

4. Whether the motion for arrest of judgement should be granted?
   To this also the Court answered "No."[3]

There can be no doubt that these answers represent a marked break from the past and a turning point in Papua New Guinea's legal history.

The decisions of the Court can be analysed by regarding them as having two parts.

---

1 Sup. Ct. (1975) No. 86.

2 One other option was "the People" but this was never seriously canvassed by either of the parties or the Court.

3 On 23 September 1975 at Mendi the Deputy Chief Justice Mr Justice Prentice sitting as a single judge, ruled in the case of *The State v. Koba Pumas*, National Court (1975) No. 857, that a similarly entitled indictment was valid and that the term "the State" could be used instead of the term "the Queen" at the head of an indictment.

1. *Statutary*

His Honor the Chief Justice took the view that the form of indictment set out in the Schedule to the Criminal Practice Rules of 1900 (Queensland adopted)[4] was still part of the law of Papua New Guinea,[5] and that the term "the Queen" appearing in the form, now had to be interpreted within the meaning assigned to that term by S.98(1) of Interpretation (Interim Provisions) Act 1975. The table attached to this section stipulates that the term "the King" shall be read as the term "the State". His Honour Mr Justice Raine took a different view on this point. He was of the opinion that the Table in S.98 was not intended as an interpretation provision, but was explanatory in nature only.

2. *Constitutional*

Their Honours were of the opinion that the autochthonous nature of the Papua New Guinean Constitution represented a departure from the English Common Law rules governing the exercise of the monarch's role as the fountain of justice and general conservator of the peace.[6] All power under the Papua New Guinean Constitution comes from the people,[7] which is exercised by the National Government,[8] comprising of the National Parliament, the National Executive and the National Judicial System.[9] Of these three the National Executive consisting of the Head of State and the National Executive Council[10] was concidered the most appropriate recepticle of the common law prerogative power if it had been received at all.[11] But In Papua New Guinea the Head of State must act on the advice at the National Executive Council by virtue of statute[12] and the prerogative powers have become "detached from the prerogative".[13] Therefore there is no constitutional

---

4 See Carters *Criminal Law* 4th Ed. P.720.

5 By virtue of the Constitution Sch. 2.6.

6 Blackstone Book 1, PP 253, 257-9.

7 See Preamble to PNG Constitution.

8 Section 99 (1) of the Constitution.

9 Section 99 (2) of the Constitution.

10 S. 139 of the Constitution.

11 Sch. 2.2(2) of the Constitution receives the Common Law Royal Prerogative, but the reception is qualified.

12 S.86(2) of the Constitution.

13 Quick and Gorran, *The Annotated Constitution of the Australian Commonwealth* p. 406.

basis to say that the power to prosecute offences stems from any prerogative vested in the Governer General. His Honour the Chief Justice concidered the power to prosecute as an executive function, residing in the Head of State acting in accordance with the advice of the National Executive Council. Although His Honour did not indicate in his judgement the authority for this proposition, it is undoubtedly S.176(3)(b) of the Constitution which allows the Head of State to direct the Public Prosecutor upon certain matters effecting the security, defence or international relations of Papua New Guinea.

The view that the prosecuting power is an executive function was preferred by His Honour to considering the power as a judicial function. Whether or not the power should be exercised in a quasi - judicial manner was not discussed in the judgement.

The Judgement of Mr Justice Williams was concerned with distinguishing the autochthonous nature of the Papua New Guinea Constitution from the Common Law derivation of the English prerogative powers of the monarch as the fountain of justice and keeper of the peace. Mr Justice Raine took a similar approach, but preferred to construe the function of S.98 of the Interpretations (Interim Provisions) Act 1975, in a some what narrower manner than the Chief Justice. Mr Justice Williams did not concider, in his judgement, the S.98 arguement.

- B.D. Brunton