

PARTIES: LORD, John Bruce

v

PIKE, Gilbert Desmond

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL FROM COURT OF SUMMARY
JURISDICTION EXERCISING FEDERAL
JURISDICTION

FILE NO: JA15 of 1997

DELIVERED: 19 SEPTEMBER 1997

HEARING DATES: 11 August 1997

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

Procedure - Costs - General rule - Costs lie with party seeking
indulgence, discontinuing or withdrawing proceedings -

Justices Act (NT) 1928, ss165, 167, 171, 172 and 177(2)(e)
National Parks and Wildlife Regulations (Cth) 1977

Lawrie v Stokes (1951) NTJ 65, referred to.

*The Federal Commissioner of Taxation v Arnhem Aircraft Engineering
Pty Ltd* (1987) 47 NTR 8, referred to.

Golski v Kirk (1987) 72 ALR 443 at 457, followed.

REPRESENTATION:

Counsel:

Appellant: Mr P Costello
Respondent: Mr R Andruszko

Solicitors:

Appellant: Peter McQueen
Respondent: Australian Government Solicitor

Judgment category classification: C
Judgment ID Number: mar97043
Number of pages: 3

mar97043

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. JA15 of 1997

BETWEEN:

JOHN BRUCE LORD
Appellant

AND:

GILBERT DESMOND PIKE
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 19 September 1997)

Ruling as to costs. The appellant was convicted for committing offences under the *National Parks and Wildlife Regulations (Cth) 1977* and fines were imposed in respect of some of them. On the others he was released on a bond to be of good behaviour. He instructed his solicitor to appeal against his conviction in relation to matters where the charges had been defended and in relation to the penalties. A notice of appeal was filed within the time limited, but a copy was not served, nor did he enter into the required recognizance within time (*Justices Act (NT) 1928 ss167 171 and 172*). An application was

made under s165 of the Act to dispense with compliance with the conditions precedent to the right to appeal. The application was opposed. After receiving affidavits, sworn by the appellant and his solicitor, and hearing further evidence viva voce, I was satisfied that the appellant had done whatever was reasonably practicable to comply with the Act, and granted the application for reasons then given. However, that did not dispose of the preliminary matters.

There was but one notice of appeal, and it related to all of the contested convictions and sentences. It has long been held in this Court that a notice of appeal may only relate to one appeal (*Lawrie v Stokes* (1951) NTJ 65 as followed by Asche J. in *The Federal Commissioner of Taxation v Arnhem Aircraft Engineering Pty Ltd* (1987) 47 NTR 8). The Court may cause the notice to be forthwith amended, by restricting it to one appeal. That course was followed in *Lawrie v Stokes*, but did not fall to be considered by Asche J. The respondent applied to have the notice struck out. The appellant indicated that if I was inclined to grant that application he would apply to amend so as to restrict the notice to the appeals against the sentences. I considered that that course was not open, there would remain more than one appeal on the notice. Counsel for the appellant said that he did not seek an order to amend the notice. The consequence of adopting that course had been made clear, and the notice of appeal was struck out accordingly. No application was made which, if granted, could have permitted a separate appeal to be instituted in respect of each matter the applicant sought to raise.

The respondent applied for costs. Section 177(2)(e) of the Act enables the court to make such “... order as to costs ... as it thinks fit”. The question thereby being left to be considered in the unfettered discretion of the court exercised judicially.

The respondent submitted that costs followed the event, the respondent had prepared to resist all the appeals, they had not proceeded in the original or any other form, and he was thus entitled to his costs. For the appellant, it was submitted that each party should bear his own costs, the appellant succeeding on the contested application to dispense with the conditions precedent to the right of appeal, but being unsuccessful in relation to the appeals. The former matter took by far the greater period of time.

Prima facie, where a party seeks an indulgence he pays the costs, and likewise where the party discontinues or withdraws proceedings (see for example Supreme Court Rules (NT) 1987 r63.11.(5)(6) and (7)). Those Rules do not strictly apply to this case, but they reflect the more general position. In *Golski v Kirk* (1987) 72 ALR 443 at 457 Beaumont J. said: “... it is usual for a party seeking an indulgence to pay the costs of the application ...”. I acknowledge that the appellant did not discontinue the appeal or withdraw, but adopted instead a course whereby it must have failed, and in that regard the respondent was successful. Costs in that regard must follow the event.

Order that the appellant pay the respondent’s costs.
