

19
BIENVENU

V.

HUTCHISON

ORIGINAL

REASONS FOR JUDGMENT

Oral

Judgment delivered at Melbourne

on Tuesday 5th October 1971

BIENVENU

v.

R.B. HUTCHISON

ORDER

Motion dismissed with costs.

BIENVENU

v.

R.B. HUTCHISON

JUDGMENT
(ORAL)

BARWICK C.J.

BIENVENU

v.

R.B. HUTCHISON

The applicant by this motion seeks an order dismissing a notice of motion by the respondent, the Crown Solicitor of the Commonwealth, for an order pursuant to Order 63, Rule 6 of the Rules of this Court, that the present applicant shall not, without the leave of the court or a justice, begin any action, appeal or other proceeding in the court. The applicant bases her motion on seven grounds set out in the notice of motion.

The first ground is that there has been unwarranted delay by the Crown Solicitor in prosecuting his motion. In my opinion there is no substance in this ground and further there is no warrant for the assertions which have been made in support of it. The motion of the Crown Solicitor originally came before me on 23rd February last, and a date, the 11th March, was fixed for its hearing if a justice should then be available to hear it. In the course of the court's business during that sittings it was not possible to hear the motion. It was listed again on 5th May before me, at which time with the applicant's concurrence, and indeed at her request, it was not listed. This was done to enable her to deal with an application she was making in the Full Court. There is no reason whatever in my opinion for saying that there has been any delay by the Crown Solicitor in prosecuting the motion.

The applicant then says that the motion by the Crown

Solicitor is brought in order in some way to prevent her from prosecuting motions or applications which she already has on foot or to embarrass her in their prosecution.

It has been pointed out to her, more than once, that neither the making of the application by the Crown Solicitor nor the making of an order by the court, if the court should see fit to make such an order on that motion, will in any way interfere with her prosecution of the matters which are already on foot, nor will the making of the order in any way impinge upon the consideration of those matters on their merits. In my opinion there is no substance in the group of grounds that relate to that matter.

The applicant then raises the question of the validity of Order 63, Rule 6, sub-rule (1) of the Rules of this court. She does so in various ways in three separate grounds. In my opinion there is no substance in this challenge to the validity of the rule; indeed, the court would be able to protect itself in its inherent jurisdiction in any case if a litigant persistently brought applications before it which were vexatious and unmeritorious. The rule is made in pursuance of the rule-making power of the court which is ample to sustain it and not in conflict with any constitutional or statutory provision. In my opinion the rule is valid.

Lastly, the applicant has brought this motion, somewhat strangely, rather than wait until the substantive motion of the Crown Solicitor is listed for hearing, claiming that the application by the Crown Solicitor is not bona fide and that it lacks any material to support it whatever.

3.

First of all I would say for myself that this is not a proper ground upon which to bring an application to this court by a motion such as this that is to say a motion to the Full Court to dismiss for want of prosecution or for lack of material to support it the substantive motion before a single justice. These matters can be examined when the Crown Solicitor's motion comes before a justice in due course. Whether or not there is any material then to support it will be a matter for consideration by the justice who hears the application.

In my opinion the motion should be dismissed.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

JUDGMENT
(ORAL)

McTIERNAN J.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

I agree.

BIENVENU

v.

HUTCHISON

JUDGMENT
(ORAL)

MENZIES J.

BIENVENU

v.

HUTCHISON

I agree. In my opinion this motion is entirely
misconceived.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

JUDGMENT
(ORAL)

WINDEYER J.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

I agree that the application must
be dismissed.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

JUDGMENT
(ORAL)

OWEN J.

CONSTANCE MAY BIENVENU

v.

ROBERT BURNS HUTCHISON

I agree.