IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA.

CORAM : MANN C.J.

18th November, 1968.

THE ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA.

Appellant.

AND

THE DIRECTOR OF DISTRICT ADMINISTRATION.

Respondent.

R U L I N G

1968
November
12 and 18,
Pt Moresby
Mann C.J.

Some difficulty having arisen in the application of the Supreme Court Appeals (Land Titles Commission) Rules, 1968, to a number of appeals now pending, I have been asked to give a ruling for the guidance of the parties.

Rule 2(3) provides that where an appeal has been lodged before the date on which these Rules come into operation, the Notice of Appeal is, for the purpose of these Rules, deemed to have been filed on that date. The effect, therefore, of this sub-rule is that the provisions of the new Rules would thereupon apply to the pending appeal, including provisions as to form and procedural requirements.

One question that arises from this is as to the validity of a Notice given in a form which would comply with the requirements in force at the time that it was given, but fail to meet the requirements of the present Rules. Since the apparent purpose of the new Rules is to enable outstanding appeals to be dealt with under the new procedure, I would hesitate to read the Rules in such a way as to produce the result that an appeal became invalid for want of form or other procedural difficulty by operation of the Rules themselves. I would think that Rule 2(3) must be read as meaning that the original Notice of Appeal should be recognised as continuing to subsist, notwithstanding any difficulty which may appear on the face of it.

Administration of the Territory of Papua and New Guinea and The Director of District Administration.

Mann C.J.

There appears to be no express provision in the Rules for the amendment to the Notice of Appeal once given, but by Rule 2(2), the Rules of the Supreme Court are expressed to be applicable so far as is practicable. The wide range of powers of amendment normally exercisable in civil cases should be equally applicable, so far as procedure is concerned, in land cases and, in the absence of any expressed guidance, I would think that an application should be made to a Judge in Chambers for leave to amend the Notice of Appeal so that all grounds and particulars can be brought up to date.

One complication is that the Rules were intended to facilitate the application of a new Ordinance designed to widen the grounds available to an appellant by removing the restrictions provided in the Land Titles Commission Ordinance, 1963, Section 38. I understand that the Ordinance which was designed to widen the grounds of appeal has not yet been brought into force so that some delay in the hearing of appeals in which resort to the wider grounds is desired may be caused. When the Ordinance is brought into force, it is expected to apply to all appeals then pending, so that the appropriate course would be for appellants in pending appeals who wish to enlarge the grounds set out in their original Notice of Appeal, to amend the Notice to rely on these new grounds in anticipation that the Ordinance will, in the meantime, be brought into force.

I do not think that a new Notice of Appeal under the new Rules is required where an appeal is already pending for this would be contrary to the provisions of Rule 2(3). Therefore, it does not necessarily follow that the Notice of Appeal requires to be served again but if, as a matter of convenience, leave to amend is sought and the amendment is expressed in the form of an addendum to the original Notice, setting out the further material which may be required by the new Rules, then clearly the addendum should be served on all parties to the appeal.

It was suggested in argument that since Rule 11 provides for the next step to be taken, after Notices have been served on both sides, that all the

requirements of the Rules should be completed by the time that the appeal is due to be set down. Such a course would have the merit of enabling a complete set of documents to be filed at this time. Since, under Rule 13, a very wide discretion is left to a Judge in Chambers on questions of time, I do not think that I should attempt to lay down any particular point of time at which the new Notice of Appeal, including the grounds of appeal and particulars thereof, should be made available to the respondents. There may be cases of great difficulty where the only course is to take out a Chamber Summons and ask for an order for directions as to questions of time.

There are two major steps in an appeal, first, the Notice of Appeal itself which operates as a caveat so as to warn the respondents that the decision appealed from is under attack and, second, the hearing itself. The Notice of Appeal setting out the grounds is essential to enable the respondents to come to Court adequately prepared and so that amendments can be carried out and completed in ample time before the hearing. I can see no reason why a Judge should not make an order giving leave to amend or fix the time within which an amendment should be made and notice given to the other side. The provisions of Rule 11 seem to me to be a subsidiary matter and is apparently designed to accelerate the hearing of appeals. Should any problem arise owing to the difficulties involved in a particular case, I would think that there is ample provision for alleviating the situation under Rule 13.

One provision which might give rise to problems for the appellant in an appeal which is already outstanding is Rule 5(3). This affords a practical reason why it is likely to be essential for an appellant to seek leave to amend and, at the same time, leave to rely on the amended Notice at the hearing. Where this is carried out in plenty of time before the hearing there are not likely to be objections because the Rule appears to be designed to facilitate the consideration of the real and proper grounds of appeal, even if not included in the original Notice of Appeal.

It is possible that some issue might arise whether it is even possible to amend a Notice of Appeal once given, without statutory power to amend. If and when such an issue arises, the question may call for close examination and careful deliberation. I think it would be wrong of me to go into such an issue or express any view upon it at this stage on an application for directions. When we have more experience of the Rules operating in practice, the need for further provisions might well emerge. In the meantime, I think that we should proceed upon the assumption that when the enlarging Ordinance comes into force it will require some Notices of Appeal to be brought into line with the new Rules and new grounds of appeal in good time before the hearing, and that, should any direction be needed under Rules 11 and 13, the respondent will have the opportunity to have the matter dealt with.

It is possible that an express power to amend a Notice of Appeal given under the old procedure in order to enable it to comply with the new procedure could be created by Rules of Court but Section 64 of the Papua and New Guinea Act, as amended by Act No. 84 of 1966, does not afford much encouragement for this. The Judges have previously adverted to the difficulties involved in seeking to use a rule making power for the purpose of altering substantive rights created by statute in the appeals jurisdiction.

The complications may be further heightened in any particular appeal in which an old Notice is deemed to have been given upon, (and only upon)the date on which the new Rules come into force. If on that date the new Ordinance extending the available grounds of appeal were already in force, one might seek to spell out of the legislation the necessary intent that a power to amend should exist to enable the new Rules and the new Ordinance to operate in relation to pending appeals. Such an implication would not arise so readily in a situation in which on the date that the Notice of Appeal is to be deemed to be given, the enlarging Ordinance was not in operation. It may be necessary for representations to be made to the appropriate authorities to bring the Ordinance into force immediately so that it may

have its intended effect in its application to pending appeals.

As I see the matter at the present time, I do not think that the Rules could be amended to achieve this result.

Solicitor for the appellant : S. H. Johnson, Crown Solicitor.

Solicitor for the respondent: W. A. Lalor, Public Solicitor.
