

1937

38287

CO 533/484
KENYA

38287

MR. CAMPBELL WHITE MCNEILL

ACTION AGAINST THE TANAMI SYNDICATE

Previous

Subsequent

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Rev.	27/2
R. 297	

C.I.
NOFORN
(D, Not T.)

R 297

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Group Captain G. Dean of the R.A.F. station at ^{Cranwell} ~~Chadwell~~ called this morning. His trouble was that his brother-in-law, one Mr. Campbell White McNeill had got into difficulties in Kenya. It was thus:-

Mr. McNeill was engaged by Bewick Moreing and Company to go out to Kenya to do some gold mining work for the Tanami Syndicate. The contract was for two years, but did not provide any means of termination. After working for part of the time with Tanami, and also with the Rosterman Syndicate, who were apparently closely associated with Tanami, Mr. McNeill received notice that his employment was terminated. No reason was assigned and he was only given twenty-four hours to get out.

He consulted a solicitor in Kenya, who sent him off to Messrs. Shapley Schwartz and Barrett in Nairobi, and they brought an action against Tanami for wrongful dismissal, claiming about £800. The case came on before Judge Webb nearly two years ago, and he awarded compensation against the defendant to the amount of £300. A stay of execution was, however, secured, and the proceedings had to be quashed because the copy of the summons sent to Bewick Moreing and Company (who had done the actual engaging) had not been signed by either the Judge or the Registrar of the Court. Since then, apparently, nothing has happened in the way of legal proceedings, and the solicitors have now advised Mr. McNeill to drop the case on the basis of each side paying its own costs.

Group Captain Dean is very angry about it, and says that he thinks something ought to be done. I explained that nothing could be done in the way of executive action to interfere with a case which was before

before the Courts, and that any attempt to do so would defeat its own ends and really be a most serious matter. He suggested that the District Commissioner might enquire into it, and I pointed out that the District Commissioner could not, nor would it have been proper for him to give legal advice to Mr. McNeill. I promised, however, that I would make semi-official enquiries as to what had happened and let him know the result. I explained that we had, of course, only Mr. McNeill's statements, which, coming as they did from a man who is not a lawyer, might easily have gone wrong and failed to understand the legal points involved. Group Captain Dean agreed, but said he had full confidence in his brother-in-law's integrity and good sense.

J. S. G. 29

31.12.1936

1. To A. de V. Wade (3/0) 1/4/37 31.12.36

MS

2. A. de V. Wade. (a.o.) 26th Jan. 37.

Has enquired about Mr. Campbell White McNeill's action for wrongful dismissal against the Tanami Gold Mining Syndicate, Ltd. and gives a resumé of the reasons which led to the reversal of the Court's first judgment.

Group Captain Dean was told that enquiries would be made semi-officially. So, if Mr Flood agrees, an extract of the Court's order can be sent to Group Captain Dean.

C. H. [unclear] -
157427.

3
Mr. Wade was asked for a statement in a form wh. cd. be passed on to Group Capt. Deane; I therefore per us have pending him a copy of 3.4.37.

J. S. G. 29
15/2

Mr. Duncan

This won't satisfy anyone but this is no case for Govt. interference. The solicitors should have seen the documents were in order but Govt. can't make them, nor can the fact that the Registrar is a Govt. official help.

J. S. G. 29
16.2.

Mr. Flood

I agree that this is not a matter in which we can intervene; and that we should proceed as suggested by Mr. Pashin.

19/2/37

A. H. Duncan.

Group Capt. Deane, called & after consulting Mr. Duncan I let him read this letter. He asked for a copy of the substance. He recognizes that there is nothing that the Co. can do, since by way of advice.

? what write to him on 18.2.

J. S. G. 29

J. S. G. 29
19/2

3

To front. Sept-4. Bean (as extract from 2) - 23/1/34

Rec'd ✓

~~111~~

~

C. O.

38207/37.

4

Mr. Packer 19/2

Mr. Flood 19/2

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.D.
R 19 FEB
D 22

O'Co for Mr. Flood's sig.

25 Feb 1937

Dear Army Capt. Dean.

Packer tells me that he has shown you the letter explaining the circumstances which led to the reversal of the Court's first judgment in your broken-in-law's case against the Tamami Gold Mining Syndicate. I now enclose the relevant extract from that letter.

As Packer told you, there is nothing that either the C.O. or the Govt. of Kenya can

DRAFT.

Group Capt. ^aDeane
R.A.F.

Cranwell
Lines.

Extract from ¹APL.
(pages 3, 4 & 5)

FURTHER ACTION

do to help your brother, ~~and~~
~~and he quite impossible for~~
~~to offer any advice on the~~
~~same~~ even in the way of advice.

It is an unfortunate case but the trouble
is between him & his lawyers and Govt.
I hope ^{we} can not interfere.

Yours sincerely

J. E. W. Flood

11 5

~~Spent~~

Extract from a letter from Mr. A. de V. Wade to Mr. Flood
dated 26th January, 1937.

x

x

x

When the action was originally filed, owing to some misunderstanding the impression was gained that Mr. McNeill's claim was against the Rosterman Gold Mines, Ltd., on whose behalf Mr. W.A. Shaw of Eldoret was acting. Apparently certain correspondence took place between Mr. McNeill's lawyers and Mr. Shaw before the former realised that the action to be filed should be against the Tanami Gold Mining Syndicate, Ltd., and not against Rostermans, and on the 26th October, 1935, they wrote a letter to Mr. Shaw to this effect. The plaintiff's lawyers then filed their plaint and set out in the second paragraph that "the defendants are a Limited Liability Company having their registered offices in London, and their address for service is care of W.A. Shaw Esq., Advocate, Eldoret". The plaint and summons were tendered for acceptance to Mr. Shaw and he refused to accept service on behalf of the Tanami Syndicate. The plaintiff's lawyers then obtained an order for service in London, but unfortunately by an oversight left paragraph 2, which I have already quoted, unaltered. This was not the only error in transmitting this document, however, as the summons to enter appearance was not signed, but only bore the name of the Registrar printed with a rubber stamp.

The Secretary of the Tanami Syndicate in London took no steps on receipt of this document, and subsequently in an affidavit explained that his reasons for doing nothing were that the summons appeared to be a copy and he assumed

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from paragraph 2 that, as the defendants had an address for service in Kenya, service had been duly effected. Further, since the copy sent to him, although purporting to be the original, had no signature, he assumed that it had been forwarded simply for information.

The trying Judge gave it as his opinion that since the duplicate summons served upon a defendant must be signed by the Judge or officer authorised in that behalf, there was no proper service in this case. The judgment based thereon, which was given against the defendants in default of appearance, was irregularly obtained and therefore must be set aside.

x x x

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RECEIVED
26 FEB 1937
REGY

127

COLONY & PROTECTORATE OF KENYA.

GOVERNMENT HOUSE,

NAIROBI.

KENYA.

26th January, 1937.

D/J.&L.17/1/II/14.

38287/37

Dear Flood,

1001

Many thanks for your letter of the 31st December and your good wishes for the year.

2. I have had enquiries made about Mr. Campbell White McNeill's action for wrongful dismissal against the Tanami Gold Mining Syndicate, Ltd., and have seen the ruling given in Civil Case No.198 of 1935. It is rather a lengthy one, however, so I will simply give you a resumé of the reasons which led to the reversal of the Court's first judgment. They are comparatively simple.

3 When the action was originally filed, owing to some misunderstanding the impression was gained that Mr. McNeill's claim was against the Rosterman Gold Mines, Ltd., on whose behalf Mr. W.A. Shaw of Eldoret was acting. Apparently certain correspondence took place between Mr. McNeill's lawyers and Mr. Shaw before the former realised that the action to be filed should be against the Tanami Gold Mining Syndicate, Ltd., and not against Rostermans, and on the 26th October, 1935 they wrote a letter to Mr. Shaw to this effect. The plaintiff's lawyers then filed their plaint and set out in the second paragraph that "the defendants are a Limited Liability Company having their registered offices in London, and their address for service is care of W.A. Shaw Esq., Advocate, Eldoret". The plaint and summons were tendered for acceptance to Mr. Shaw and he refused to accept service on behalf of the

Tanami...

J.E.W. FLOOD, ESQ., C.M.G.,
DOWLING STREET,
LONDON, S.W.1.

Exh. 1 to Flood's report of 9 Dec 37

43

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4 The Secretary of the Tanami Syndicate in London took no steps on receipt of this document, and subsequently in an affidavit explained that his reasons for doing nothing were that the summons appeared to be a copy and he assumed from paragraph 2 that, as the defendants had an address for service in Kenya, service had been duly effected. Further, since the copy sent to him, although purporting to be the original, had no signature, he assumed that it had been forwarded simply for information.

5 The trying Judge gave it as his opinion that since the duplicate summons served upon a defendant must be signed by the Judge or officer authorised in that behalf, there was no proper service in this case. The judgment based thereon, which was given against the defendants in default of appearance, was irregularly obtained and therefore must be set aside.

The whole matter is rather a technical one, but I hope that the explanation I have given will be sufficiently clear to Group Captain Dean.

Yours sincerely,

Am. White

Answer 2

19

DOWNING STREET.

31st December, 1936.

Dear Wade,

Best wishes for the year which opens tomorrow.

I have been told off to write to you on a rather ticklish matter, ticklish because it involves a case which has been before the Courts and may be again.

The case is that of one, Mr. Campbell White McNeill, who brought an action for wrongful dismissal or something against the Tanami Gold Syndicate, by which he was employed. They seem to have dismissed him and the case came on as No.198 of 1935 when, apparently, judgment was first given in his favour and then upset on some technical point with the intention of a new trial.

McNeill's brother-in-law, Group Captain Dean, called here and was very anxious that something should be done about it, but I had, of course, to explain that the matter being before a Court, no executive action could possibly be taken. I undertook, however, to ask whether

the

A.de V. WADE, ESQ., C.M.G., O.B.E.

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the facts could be ascertained, and hence this letter.
What I should like to have is a statement of the things
which happened and the reasons, if they can be explained
simply, which led to the reversal of the Court's first
judgment, in a form which can be passed on to Group Captain
Dean. I hope this will not be too much trouble.

Yours sincerely,