

1956 Present : K. D. de Silva, J., and Sansoni, J.

N. VETTIVELU, Petitioner, and B. A. WIJEYERATNE, Respondent

S. C. 175—Application in revision in D. C. Vavuniya, 1,281

Crown Counsel—Right of audience in Courts—Competency to represent parties in private litigation—Evidence Ordinance, s. 57 (12)—Civil Procedure Code, ss. 461, 463—Courts Ordinance, ss. 16, 59.

A Crown Counsel, being an Advocate, is not unqualified to appear in Courts and represent parties in private litigation. Accordingly, the fact that the Attorney-General has not made an application under section 463 of the Civil Procedure Code does not disentitle him from assigning a Crown Counsel to appear for a defendant who is a public officer.

APPPLICATION to revise an order of the District Court, Vavuniya.

M. Tiruchelvam, Deputy Solicitor-General, with *J. R. M. Perera*, Crown Counsel, for the petitioner.

No appearance for the respondent.

Cur. adv. vult.

July 11, 1956. DE SILVA, J.—

The petitioner who is the village headman of Omantai is the defendant in D. C. Vavuniya Case No. 1281. The plaintiff in that case who is the respondent to this application sued the defendant to recover a sum of Rs. 2,000 as damages alleging that on July 9, 1955, the defendant had demolished his house and caused damage to his furniture. In his answer the defendant admitted that he had demolished the house in question on the orders of the Government Agent, Vavuniya, as it was an unauthorised structure built on a vacant Crown land but denied that he had caused damage to any furniture. He further averred that the plaintiff could not maintain the action because (a) the plaint did not disclose a cause of action against him and (b) due notice of the action had not been given to him in terms of section 461 of the Civil Procedure Code. When the case came up for trial on 28.4.56 Mr. H. L. de Silva, Crown Counsel, moved to appear for the defendant instructed by Mr. Swaminather, proctor. Mr. Amirthalingam, the proctor for plaintiff objected to the appearance of Mr. de Silva on the ground that no application had been made by the Attorney-General to undertake the defence in terms of section 463 of the Civil Procedure Code. The learned District Judge upheld this objection.

Thereupon Mr. de Silva moved to appear for the defendant in his capacity as an advocate of the Supreme Court. The learned District Judge then made the following order :—

“ I have already been informed by Mr. de Silva that he was appearing as Crown Counsel in this case. The 2nd application to appear merely as advocate of the Supreme Court is in my opinion irregular in view of the earlier application. I therefore disallow the 2nd application also.”

The defendant now applies to this Court in Revision to set aside the orders made by the District Judge. The orders are clearly irregular and illegal. Section 16 of the Courts Ordinance (Cap. 6) empowers the Supreme Court to admit and enrol a person as an advocate of that Court provided certain conditions are satisfied. Section 59 (Cap. 6) provides that an advocate who is entitled to practise in the Supreme Court is also entitled to practise in any District Court, Court of Requests or Magistrate's Court. That Mr. de Silva is an advocate of this Court is not denied. According to section 57 sub-section 12 of the Evidence Ordinance (Cap. 11) the Court is bound to take judicial notice of the name of the advocate authorised to appear before it. An advocate has the right of audience in any Court in which he has a right to appear. That right is in no way affected by reason of the fact that he happens to be an officer of the Attorney-General's Department. In *Perera v. White*¹ Bonser C. J. stated :—

“ It is said that the Acting Attorney-General thought it advisable not to act for either party in view of his being a Law Officer of the Crown. I do not quite see how his being a Law Officer of the Crown is an impediment to his appearing in this case.”

It is true that Law Officers and Crown Counsel do not generally represent parties in private litigation. But that is not for the reason that they are unqualified to appear in those cases but because of the conditions of service binding on them. The right of an advocate to appear in our Courts and being heard is an unqualified one. The learned District Judge was wrong in preventing Mr. de Silva, a qualified advocate, from exercising his right to appear in Court. The fact that the Attorney General had not made an application under section 463 of the Civil Procedure Code does not disentitle him from assigning a Crown Counsel to appear for the defendant who is a public officer. The learned Deputy Solicitor-General stated from the Bar that when public officers are sued in tort the Crown does not take up their defence but the Attorney-General instructs a Crown Counsel to appear for them. No objection can be taken to that practice. I therefore allow the application and set aside both the orders made by the District Judge. The respondent will pay the costs of this application to the petitioner.

SANSONI, J.—I agree.

Application allowed.

¹ (1900) 4 N. L. R. 209.