

CASE SUMMARY

Complaint against the Judiciary - mistakenly given the complainant a copy of a written judgment and not concerning his application for leave to appeal against jurisdiction

The Complaint

The complainant was one of six appellants in a criminal appeal case who submitted an application for leave to appeal against his conviction in September 1994. After hearing his oral submission, the Court refused to grant him leave to appeal orally and no written judgment had been handed down. The Court then proceeded to deal with the appeal of other co-defendants.

2. The complainant wrote to request the Judiciary for a copy of the Court's written judgment dismissing his application in October 1994. In response, the Directional judge of Criminal Appeals directed that a copy of the judgment with the appeal case number quoted by the complainant be sent to him. As no written judgment had been given, the judgment only dealt with the appeal of other five appellants which was of the same appeal case number as the complainant. Upon receiving of the document, the complainant informed the Judiciary of the mistake and reiterated his request. He was then informed that his application was dismissed orally and no written judgment on his case would be provided. The complainant then lodged a complaint to this Office against the Judiciary for having mistakenly given him a copy of a written judgment not concerning his application for leave to appeal against jurisdiction.

Findings and Conclusion

3. This Office notes that the decision whether to hand down written judgment is a judicial decision of the Court and is not the focus of this investigation. As explained by the Judiciary Administrator (JA), appeals without merits were, on occasions, dismissed without the handing down of formal reasons, and that the Court of Appeal would have no obligation to provide written reasons or written judgment where the decision was announced at the time in open Court.

4. However, it is obvious that the complainant's sole intention was to obtain the written judgment concerning his application for his own purpose. The judiciary's response to the complainant's request was indicative that the other information in the letter of the complainant, namely that he was seeking a written judgment on his own application for leave, had been overlooked which had resulted in the supply to him of a copy of a written judgment not concerning to his application.

5. The subsequent request of the complainant had prompted the Judiciary to provide in its subsequent reply in November 1994 confirmation concerning the Court's order on his case. Such was indicative of the incompleteness of the Judiciary's initial response. Had the Judiciary staff noted more carefully what was being asked by the complainant, the latter could have been given an earlier explanation of the matter in the first reply and any inconvenience so caused could have been avoided.

6. In view of the above points, The Ombudsman concludes that the complaint is substantiated.

Recommendations

7. In the light of this complaint, The Ombudsman recommends that the JA should:

- (a) consider issuing an apology to the complainant for having sent him a written judgment not concerning his case and for the inconvenience so caused; and
- (b) remind its staff to exercise greater care in handling requests for written judgment, in order to ensure that only the requested and appropriate information or document would be issued.

Comments From the Judiciary

8. The JA did not agree with the findings and recommendations of this report, indicating that applications for access to Court records was a matter for the Court and did not come under her domain. It was explained that the complainant, being a party to the criminal appeal case in question, was entitled to have a copy of the judgment if there was a written judgment. The Court would only take into account his entitlement rather than his purpose in considering his application. The JA maintained that neither the Court nor the Court registry was in a proper position to screen the judgment and ascertain whether there were parts relevant to the complainant's purpose, and pointed out that the order to send him a copy of the judgment for the appeal case number quoted by the complainant was in fact made by the Directional Judge. The Court registry staff were only carrying out the order of the Court, such that they had neither the power nor discretion to act contrary to the order made by a Judge.

9. The JA further queried if the matter under investigation was within the jurisdiction of The Ombudsman.

Final Remarks

10. This Office notes the JA's jurisdictional concern. However, this Office wishes to make it clear that the focus of the present investigation is the administrative action of the Judiciary resulting in its failure to appropriately address the complainant's request for the written judgment on his application for leave, rather than the Court's decision whether to grant him access to the requested Court record.

11. It is not the intention of this Office to suggest that Court registry staff should take into account any stated purpose of applicants seeking access to Court records, or that they should screen the Court documents and decide whether there are parts relevant to the purpose of the applicant. In the present case, the situation was that although the complainant had specified clearly what he was seeking to obtain, the Judiciary had not taken heed of the details of his request and supplied him with the document he required, or otherwise explained to him the reasons why his request could not be entertained. If the requested Court record was not available, the Judiciary's initial action of sending out a copy of the judgment for the appeal case number quoted

by the complainant became apparent when it was seen against the situation that the complainant's repeated request was met with an additional response which suggested that there was in fact no written judgment whatever on his application. This should have been the substance of the Judiciary's initial response, had greater care been taken in handling his request. The mere fact that the Judiciary finally clarified the matter to the complainant suggested to this Office that there was no reason why such simple confirmation could not be made in the first instance, thus saving both parties' time.

12. What this Office is concerned, therefore, is whether the Court registry would consciously ascertain that the document to be sent out is exactly the material that the applicant has asked for, rather than that Judiciary staff should determine whatever would be necessary or appropriate to serve the applicant's purpose. Hence, although the decision to send the complainant a copy of the judgment for the appeal case in question was a decision of the Directional Judge, the process leading to the failure to address the complainant's request was strictly an administrative action. The Ombudsman therefore considers that the JA's disagreement with his findings in the present case on the basis of the considerations detailed in para. 8 is not acceptable, and concludes that the findings and recommendations of this report should stand.

13. The Ombudsman opines that the JA should see to it that the recommendations in para. 7 are duly and adequately acted upon. Otherwise, The Ombudsman may consider exercising the powers conferred to him by The Ombudsman Ordinance to pursue the matter in the event that this course of action becomes appropriate.

Office of The Ombudsman

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