

1961
March 23

LEFKIOS
RODOSTHENOUS
AND ANOTHER
v.
THE POLICE

[O. BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

LEFKIOS RODOSTHENOUS AND ANOTHER

Applicants,

v.

THE POLICE,

Respondents.

(*Criminal Application No. 20,61*).

Criminal Procedure—Bail—Appeal—Application for review of order as to bail must be by way of appeal—The Courts of Justice Law, 1960, (Law of the Republic No. 14/60), section 25 (2)—The Criminal Procedure Law, Cap. 155, sections 138 and 139.

Held : An application to the High Court for a review of the decision of a lower court as to bail is in fact an appeal under section 25 (2) of the Courts of Justice Law, 1960, (Law of the Republic No.14 of 1960), against such decision and the provisions, therefore, of sections 138 and 139 of the Criminal Procedure Law, Cap. 155, relating to appeals should be complied with.

Criminal Application.

Application against the refusal of the District Court of Nicosia (Loizou, D.J.) dated the 10.3.61 to release the applicants on bail pending their trial by the Assize Court on completion of their preliminary inquiry into charges of stealing and demanding money by menaces etc. in Criminal Case No. 2219/61, (against both applicants) and for possession of pistol (Cr. Case No.2220/61 against applicant No. 1 only).

St. Pavlides for applicant No. 1.

D. Liveras for applicant No. 2.

Cr. G. Tornaritis, Attorney-General of the Republic with *K.C. Talarides*, Counsel of the Republic, for the respondents.

The following judgment was read by :—

O' BRIAIN, P. : The Court has considered what to do in this matter which, unfortunately, is complicated by the fact that some decisions of the former Supreme Court have treated these applications in the nature of revisional applications

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without strictly defining them as appeals or as applications to the jurisdiction of the Court for bail. The matter is further complicated, or rather becomes so, by reason of the fact that the Court sitting to-day is dealing with the first such application since the Courts of Justice Law, 1960, and the Constitution were enacted, and has to consider carefully the question of setting a precedent. As we understood Mr. Pavlides, he has put this application to the Court as an application to review the decision of the learned District Judge and we take the view that that, in effect, means that that is an appeal against his order. We are satisfied, having considered this matter, that having regard to the terms of the Courts of Justice Law, section 25, we have jurisdiction to entertain such an appeal. Section 25(2) commences with the words "subject to the provisions of the Criminal Procedure Law" and the relevant provisions of the Criminal Procedure Law relating to appeals appear to be sections 138 and 139. It is clear that this application is not in compliance with sections 138 and 139. We are faced with the express provision of section 138 that no notice of appeal shall be valid unless it complies with the requirements of this section.

The Court has carefully considered the matter and, having made due allowance for the difficulty that the applicants found themselves in, by reason of the matters referred to and terminology of the language in some of the judgments, we think that the proper thing to do is to hold that this matter is not properly before the Court, as an appeal, by reason of not complying with the sections that I have mentioned.

The Court, however, having regard to the fact that it is a matter involving the liberty of the citizen, is prepared to give every facility to the parties to put the case in the list and to have it heard at the earliest possible moment after they lodge notices of appeal in a proper form setting out the grounds of appeal. We are prepared, however, to make no ruling on the present application.