

1962  
June 1, 22  
THE ATTORNEY-  
GENERAL  
v.  
MEHMED HALIL  
IBRAHIM

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC

*Appellant,*

v.

MEHMED HALIL IBRAHIM,

*Respondent.*

*(Criminal Appeal No. 2497).*

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*Wells—Sinking a well contrary to sections 3 and 13 of the Wells Law,  
Cap. 351—Order for filling in the well—Section 13(2) and (3).*

*Sentence—Inadequacy—Appeal by the Attorney-General.*

The respondent was convicted for failing to comply with an order of the Court to fill in a well, contrary to section 13 of the Wells Law, Cap. 351 and was sentenced to pay a fine of 750 mils. On appeal by the Attorney-General against the inadequacy of the sentence :

*Held* : A fine of 750 mils was manifestly inadequate.

*Appeal against sentence by the Attorney-General of the Republic.*

The respondent was convicted on the 27.2.62 at the District Court of Kyrenia (Cr. Case No. 2060/61) on one count of the offence of failing to comply with the order of the Court given in Case No. 820/60 contrary to ss. 3 and 13 of the Wells Law, Cap. 351 and was sentenced by Avni, D.J. to pay a fine of £0.750 mils and £2.250 mils costs.

*V. Aziz* for the appellant.

Respondent in person.

The judgment of the Court was delivered by :—

JOSEPHIDES, J. : There is a provision in the Wells Law, Cap. 351, empowering the District Officer to have the well filled in at the expense of the respondent (Section 13(3)). The Law further provides that any costs incurred for the filling in of the well shall be recoverable from the respondent as a penalty under the provisions of the Criminal Procedure Law, Cap. 155. To put it in simpler language, the District Officer has the right to send his men to the garden of the respondent

to fill in the well and charge him with the cost ; and we are prepared to adjourn the case for 15 days to give the opportunity to the District Officer to send his men to do this. But the respondent will be bound to pay all the expenses incurred by the District Administration in having the well filled in, and if he fails to pay those expenses he will be sent to prison. Does the respondent understand that?

*Respondent* : Yes.

JOSEPHIDES, J. : We shall accordingly adjourn this case to the 15th of June, and we shall then consider what punishment to impose on the respondent for having failed to obey the order of the Court to fill in the well.

The fine of 750 mils imposed by the trial Judge is manifestly inadequate and that sentence is set aside. The question of punishment, as already stated, will be considered by this Court on the 15th of June, at 9.30 a.m.

I ought to add this : if the respondent will start filling in the well within the next 4 or 5 days then the District Officer will not proceed to do it himself and the respondent will not have to pay any expenses.

*Respondent* : I humbly pray that my case may be adjourned to the 25th or 26th of June so that I may be able to fill in the well myself.

WILSON, P. : You will fill it in by that time?

*Respondent* : Yes.

WILSON, P. : You understand now that you must have that well filled in?

*Respondent* : Yes.

JOSEPHIDES, J. : Case is accordingly adjourned to the 22nd of June, at 9.30 a.m.

22nd of June, 1962.

Counsel for the Republic informed the Court that the respondent had filled in the well.

WILSON, P. : We have considered the question of a

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further penalty in this case. You, the accused, defied the order of the trial court and it was only when the case came before us you finally complied with the direction that the well must be filled in. I hope you now realize you must do what the Court orders and to further impress this upon you we direct that you enter into a bond or recognizance in the sum of £50 to keep the law and be of good behaviour during 2 years from today. You must enter into this bond today before you go away.

We wish to emphasize that in making this condition we are dealing only with the particular facts of this case. We confirm the opinion expressed by Mr. Justice Josephides on the 1st of June that the fine imposed by the trial Judge in this case was inadequate. We recognize, of course, there can be no specific rule as to the amount of the penalty in any particular case but having said this we are of the opinion that the fines which we have sustained here recently, amounting to £50 and £73, in cases such as these, should be brought to the attention of the trial Judge.

*Appeal allowed. Sentence of fine set aside. Appellant bound over in his own recognizance in the sum of £50 to keep the peace for two years.*