

THE DISTRICT OFFICER, NICOSIA, AS CHAIRMAN
FOR THE APPROPRIATE AUTHORITY FOR MORPHOL

THE DISTRICT
OFFICER,
NICOSIA
v
ELENI MICHAEL
PITTORDI

Appellant

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ELENI MICHAEL PITTORDI

Respondent.

(Criminal Appeal No 2890)

Criminal Law—Sentence The Streets and Buildings Regulation Law Cap 96 sections 10(1) and 20(5) Using a building without the required permit and disobeying a demolition order issued by the Court In assessing sentence due regard must be given to the human element But, though considerations of hardship must always be given due weight they cannot be allowed to override proper enforcement of the law—In the present case a sentence of fine is manifestly inadequate— And it must be substituted by a sentence of three months' imprisonment on each count to run concurrently

Criminal Procedure Appeal Sentence Appeal against sentence by the prosecuting public authority under section 25(2) of the Courts of Justice Law 1960 (Law of the Republic No 14 of 1960) with the sanction of the Attorney-General under section 137(1)(b) of the Criminal Procedure Law Cap 155 On the ground that the sentence imposed was manifestly inadequate Sentence increased See under Criminal Law, above

Streets and Buildings Demolition order issued by the Court Disobeying such order contrary to section 20(5) of the Streets and Buildings Regulation Law, Cap 96 Sentence -Appeal Sentence increased on appeal See above under Criminal Law Criminal Procedure

Sentence Appeal against sentence by the prosecuting public authority on the ground that it is manifestly inadequate--See above

Appeal Appeal against sentence See above

Demolition Order Issued by the Court -Disobeying such order contrary to section 20(5) of Cap 96, supra -See above

The respondent was prosecuted in 1962 for constructing a building without the required permit under Cap. 96 (*supra*) she was convicted and ordered on the 31st December, 1962,

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by the Court to demolish the said building within two months. The respondent failed to comply with the said demolition order : and about two years later, was prosecuted again in a fresh case for the disobedience of the order under section 20 (5) of the statute, Cap. 96 (*supra*). She was now bound over on June 24, 1964, in the sum of £50 to come up for judgment within a year, if called upon, for the offence of disobeying the demolition order made in December, 1962. Apparently, however, no steps for the demolition of the building were taken : and the respondent was prosecuted afresh by the public authority concerned, in 1966, for disobeying the said demolition order contrary to section 20 (5) of the statute and for using the said building without the required certificate of approval contrary to section 10 (1) of the same statute (*i.e.* Cap. 96, *supra*). On her plea she was convicted and sentenced to a fine totalling £2. It is against that sentence that the prosecuting authority now appeals, with the sanction of the Attorney-General under section 137 (1) (b) of the Criminal Procedure Law, Cap. 155, on the ground that the sentence imposed is manifestly inadequate.

The Supreme Court in allowing the appeal :

Held. (1) from a humane point of view this is a most pathetic case. The respondent is a married woman of the age of 52, the wife of a husband suffering of TB : and the mother of seven children.

(2) On the other hand, this is a case which presents a clear flouting of the law by persons apparently unable to realize the consequences of such conduct.

(3) Considerations of hardship and the human element must always be given due weight, but they cannot be allowed to override proper enforcement of the law.

(4) We fully appreciate the desire of the trial Judge reflected in the sentence which he has imposed to be kind to this woman ; but such desire should never have been allowed to interfere with his public duty to enforce adequately the law.

(5) The sentence of fine and costs shall be substituted by a sentence of three months' imprisonment from today on each count, to run concurrently.

Appeal allowed. Sentence of fine substituted as above. No order as to costs.

Appeal against sentence.

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Appeal by the prosecutor against the inadequacy of the sentence imposed on the respondent who was convicted on the 17th January, 1967, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 3292/66) on two counts of the offence of disobeying the order of the Court for the demolition of a building erected without the required permit, and for the offence of using such a building without a certificate of final approval contrary to sections 20 and 10(1), respectively, of the Streets and Buildings Regulation Law, Cap. 96, as amended by Laws 14/59, 67/63 and 6/64 and was sentenced by Pitsillides, D.J., to pay a fine of £1.500 mils on the first count and a fine of £0.500 mils on the second count and she was moreover ordered to pay £4.500 mils costs.

E. Odysseos, for the appellant.

E. Kassoulidou (Mrs.), for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against sentence taken by the prosecutor, a public authority, on the ground that the sentence imposed by the trial Court is "manifestly inadequate having regard to the seriousness of the offence". The appeal is taken under section 137 (1) (b) of the Criminal Procedure Law (Cap. 155) with the sanction of the Attorney-General.

The sentence complained of, is a fine totalling £2, imposed on two counts, with an order for the payment of £4.500 mils costs, made by the District Judge sitting at Morphou, against the respondent, for disobeying an order of the Court for the demolition of a building erected without the required permit, contrary to the Streets and Buildings Regulation Law (Cap. 96) ; and for the use of such a building without a certificate of final approval, as required by the statute. The fines were : £1.500 mils for disobeying the demolition order ; and £0.500 mils for using the building without the required certificate.

The prosecutor is the District Officer of Nicosia as Chairman of the appropriate authority, under the Streets and Buildings Regulation Law, for the area of Morphou, wherein the building in question was erected without a permit. The respondent in the appeal is the person prosecuted for the offence in question, a married woman of the age of 52, the wife of a husband suffering of TB ; and the mother of seven children. From a humane point of view, this is a most

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pathetic case. On the other hand it is a case which presents a clear flouting of the law by persons apparently unable to realise the consequences of such conduct.

For constructing the building in question (a small house for the family's residence) without the required statutory permit, the respondent was prosecuted in the District Court of Nicosia sitting at Morphou, in 1962 (Criminal Case 1780/62) ; was convicted ; and was ordered by the Court on December 31, 1962, to demolish the unlawfully constructed building within the two months period, prescribed by the law.

The respondent failed to comply with the demolition order ; and about two years later, was prosecuted again in a fresh case, for disobedience of the order. She was now bound over on June 24, 1964, in the sum of £50 to come up for judgment within a year, if called upon, for the offence of disobeying the demolition order made in December, 1962, in the original prosecution. Apparently, however, no steps for the demolition of the building were taken ; and the respondent was prosecuted afresh by the authority concerned, in 1966. This was the case where she was fined £2 and ordered to pay costs as above, on January 17, 1967, after conviction upon her own plea. She pleaded guilty to a count for disobeying the demolition order in November, 1966 ; and to another count, for using the building in question during the same period without the certificate of final approval, required by the statute.

Learned counsel for the prosecuting authority submitted, quite rightly, in our opinion, that with the order made in June, 1964, requiring the accused to come up for sentence if called upon ; and the sentence imposed in the proceeding under consideration, the provisions of the statute in question, have not been adequately enforced. The fact that the building is still there, with no indication whatever on the part of the respondent, that she intends to abandon or demolish it, is the most eloquent proof of the merit in the submission advanced on behalf of the prosecutor.

Learned counsel for the respondent put forward at the hearing before us, a very strong and able plea on the humane aspect of the case ; but, found no support whatever for her client's case on the statute in question, or any other part of the law.

This Court, in the circumstances, has no difficulty or hesitation in reaching the conclusion that the appeal must be allowed ; and the law be adequately enforced. The human

element in a case must always be taken into consideration by the Court, especially where it is as strong as in the case in hand. Law and justice lose all their substance if divorced from the human element. But the human element is presumably taken into account by the legislature as well, when they make the law. It is for the legislature to consider the effect of proposed legislation upon people, at the time of its enactment. When it becomes a law, the Courts must apply it as it comes to them. Their function is to *apply* the law. They have to do it upon human beings, it is true; but they must apply it with due regard to the purpose for which the law was made. Considerations of hardships, or consequences on the feelings of the persons concerned, must always be given due weight, but they cannot be allowed to override proper enforcement of the law.

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We fully appreciate the desire of the Judge—reflected in his sentence—to be kind to this woman; but such desire should never have been allowed to interfere with his public duty to enforce adequately the law.

Section 20 (5) of the Streets and Buildings Regulation Law under which the respondent was prosecuted for disobeying the demolition order, provides that—

“Any person against whom an order has been made under sub-section (2) who disobeys or fails to comply with such order shall, be guilty of an offence and shall be liable to imprisonment not exceeding three months or to a fine not exceeding £50 or to both such imprisonment and fine.”

The respondent has been disobeying such an order since 1962. She continued in disobedience even after she was prosecuted for it in June, 1964. The sentence of £1 500 mils fine imposed upon her in this case, is clearly and manifestly inadequate; and must be set aside together with the fine of £0 500 mils for using the building in question without a certificate, and the order for the payment of costs. The sentence imposed shall be substituted by a sentence of three months imprisonment from today on each count to run concurrently. There will be no order for the payment of costs. We have no doubt that the Welfare Services will do their duty in taking care of the human side of the case.

Appeal allowed. Sentence of the trial Court substituted as above. No order for costs.