

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Applicant,

v.

PETROS DEMETRIOU HJI CONSTANTI,

Respondent.

THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
PETROS
DEMETRIOU
HJI CONSTANTI

(Criminal Application No. 2/68)

Criminal Procedure—Appeal—Extension of time to file appeal against acquittal—Discretion of the Supreme Court—Criminal Procedure Law, Cap. 155, sections 131 (1) (2), 137 (1) (a) and (2) and 134—“Good cause shown” in section 134 of the Law.

Appeal—Criminal appeal—Application in the name of the Attorney-General for extension of time to file appeal against acquittal—No “good cause shown” within section 134 of Cap. 155, supra—Application refused.

Time—Appeal—Criminal Appeal—Extension—See above.

This is an application under section 134 of the Criminal Procedure Law, Cap. 155, in the name of the Attorney-General for extension of time for the filing of an appeal against acquittal in a criminal proceeding.

The prosecution was conducted in the District Court by an officer of the Department of Agriculture who states in his affidavit that immediately after the acquittal of the accused by the District Judge on July 22, 1968, he applied immediately to the Registrar for a copy of the judgment and of the record of the trial, in order to consult the Attorney-General for an appeal. These were posted on August 3, and were received by the affiant on August 6, when he went on the same day to the office of the Attorney-General and brought the matter to his notice. The main ground of the proposed appeal is that the trial Judge wrongly held that he could not take judicial notice of the fact that the bitter-orange seedlings planted by the accused (herein respondent) were citrus trees within Law No. 45 of 1966.

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Section 134 of the Criminal Procedure Law Cap. 155, provides :

“Except in the case of a conviction involving sentence of death, the time within which notice of appeal or may be given, may, on good cause shown, be extended at any time by the Supreme Court”.

The time prescribed for an appeal in the present case is fourteen days of the date on which the judgment was delivered (see section 137 (2) of Cap. 155 quoted in the judgment, *post*).

Refusing the application by the Attorney-General for extension of time to appeal, the Court :

Held, (1)—(a) Generally speaking, where the legislator sets a period of time for the taking of a step in proceedings of a judicial character, such provision must be strictly enforced. It is connected with the public interest in the finality of litigation ; and it affects directly the parties' rights therein.

(b) Here the legislator not only made provision as to the time within which such an appeal can be taken but in giving power to the Supreme Court to extend the time so prescribed, he provided that such power shall only be exercised where “good cause” for extension has been shown.

(2) In the present case, we have no doubt that the material contained in the affidavit in support of the application is far too short of constituting “good cause” for the exercise of the Court's discretion under section 134 of the Criminal Procedure Law, Cap. 155 to extend the time for the filing of an appeal. Especially so, as the nature of the main ground of the proposed appeal is such that the prosecuting officer needed neither a copy of the judgment—which was pronounced in his presence—nor a copy of the record of the trial, in order to make up his mind to consult the Attorney-General at once, with a view to an appeal.

This application is, therefore, refused.

Order in terms.

Cases referred to :

Finch Frederick Peter v. The Police (1963) 1 C.L.R. 42 ;
Liassides v. The Police and *Stavrou v. The Police*. (Criminal Applications 1/65 and 2/65 (decided in June 1965) *unreported* ;

Djeredjian v. The Republic (1967) 2 C.L.R. 136.

Application.

Application for extension of time within which to file an appeal by the Attorney-General of the Republic against the acquittal of the respondent by the District Court of Kyrenia in Criminal Case No. 176/68.

K. Talarides, Senior Counsel of the Republic, for the applicant.

K. Christofides, for the respondent.

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The judgment of the Court was delivered by :

VASSILIADES, P. : This is an application in the name of the Attorney-General for extension of time to enable the filing of an appeal against acquittal in a criminal proceeding. The application is based on section 134 of the Criminal Procedure Law (Cap. 155) ; and is supported by an affidavit stating the facts put forward as the reason for which the appeal was not filed in time. Together with the application for extension of time, the intended notice of appeal is also found on the record, containing the grounds of the proposed appeal.

The material before us shows that the respondent herein, was prosecuted in criminal case 176/68, in the District Court of Kyrenia by the Government Department of Agriculture for making a citrus plantation on his land without the required permit under sections 7 and 8 of Law 45/1966.

According to the proposed notice of appeal, the respondent, a farmer of 55 years of age in the village of Karavas, planted " between February 1967 and February 1968, on a date unknown to the prosecution " citrus trees on his plot No. 390 without the required permit.

The prosecution was conducted by an officer of the Department of Agriculture who states in his affidavit that immediately after the dismissal of the case by the District Judge on July 22, 1968, applied to the Registrar for a copy of the judgment and of the record of the trial, in order to consult the Attorney-General for an appeal. These were posted, he adds, on August 3, and were received by the affiant on August 6, when he went on the same day to the office of the Attorney-General and brought the matter to his notice.

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The main grounds of the proposed appeal, according to the notice attached to the present application, is that the trial Judge wrongly held that he could not take judicial notice of the fact that the bitter-orange seedlings planted by the respondent were citrus trees ; and that the judge could have called an expert-witness on the point, if he felt any doubt about it, as the Attorney-General proposes to do under the provisions of section 25 (3) of the Courts of Justice Law, No. 14/1960, on appeal.

After hearing learned counsel in support of the application, both on the procedural aspect of the case, and the nature of the bitter-orange seedlings, as well as on the repercussions of the public interest from the acquittal of the defendant in this case, we found it unnecessary to call on the other side.

We are only concerned with the present application, and we should not be taken as deciding the legality of the respondent's plantation of bitter-orange seedlings. It is not for us to say what proceedings should have been taken, or may still be taken in the matter. All we have to decide is whether the application before us for extension of time, should be granted or refused.

An appeal in a prosecution such as the present case, where the defendant was charged and acquitted, is governed by the provisions of the Criminal Procedure Law (Cap. 155), section 131 of which reads :—

“ 131. (1) Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.

(2) There shall be no appeal from an acquittal except at the instance or with the written sanction of the Attorney-General, as in this Law provided ”

And section 137, as far as material to this case, reads :—

“ 137. (1) The Attorney-General may —

(a) appeal or sanction an appeal from any judgment of acquittal by a District Court on any of the following grounds :—

.
.. ..

(2) An appeal under this section shall be made by causing notice of appeal to be delivered to the Registrar of the District Court against the judgment of which the appeal is made within fourteen days of the date on which the judgment was delivered.”

Section 134, now dealing with the extension of time of notice of appeal, reads :—

“134. Except in the case of a conviction involving sentence of death, the time within which notice of appeal or application for leave to appeal may be given may, on good cause shown, be extended at any time by the Supreme Court.”

We shall by-pass the question whether in the prosecution against the respondent by the Department of Agriculture, the Attorney-General may “appeal”, or may only “sanction an appeal”, as we have not heard argument about it. We shall deal with the matter before us as if coming from the appropriate party. The result of the application must turn on the question whether the applicant has been able to show good cause for the extension of time sought.

Generally speaking, where the legislator sets a period of time for the taking of a step in proceedings of a judicial character, such provision must be strictly enforced. It is connected with the public interest in the finality of litigation ; and it affects directly the parties’ rights therein.

Here the legislator not only made provision as to the time within which such an appeal can be taken but in giving power to the Supreme Court to extend the time so prescribed, he provided that such power shall only be exercised where “good cause” for extension has been shown.

In *Finch Frederick Peter v. The Police* (1963) C.L.R. Part I. p. 42, the Court took the view that the hurried departure of appellant’s advocate for abroad was not good cause for extending the time under section 134 to enable the appeal to be filed after expiry of the time set by section 133 of the statute. An extract of the judgment at p. 43, reads :—

“The leave sought may be given only on good cause shown as required by section 134 of the Criminal Procedure Law, Cap. 155. It is our view that the convenience of counsel as a general rule is not a good cause for failure to take necessary steps in a legal proceeding and this has been held on more than one occasion in this Court.”

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In *Liassides v. The Police*, and in *Stavrou v. The Police* (Crim. Applications 1/65 and 2/65, unreported, decided in June 1965) the Court held that there must be real merit in the cause, to justify granting an extension. It was said in the latter case (Cr. Appl. 2/65) that :—

“ This Court has made it clear in judgments disposing of similar applications, that a lot more is required than the material contained in applicant’s affidavit, before an application of this nature can be justified, and a proceeding finalised under the provisions of the Criminal Procedure Law, regarding appeals, be reopened under an order extending the time provided by law for the filing of an appeal.”

In the *Djeredjian* case, two similar applications (Nos. 1/67 and 2/67) heard together were refused; (vide (1967) 2 C.L.R. 136).

In the present case, we have no doubt that the material contained in the affidavit of the prosecuting officer of the Department of Agriculture, filed in support of the application for extension of time, is far too short of constituting good cause for the exercise of the Court’s discretionary power to extend the time for the filing of an appeal. Especially so, as the nature of the main ground on which the appeal is sought to be based is such that the prosecuting officer needed neither a copy of the judgment—which was pronounced in his presence—nor a copy of the record of the trial, in order to make up his mind to consult the Attorney-General, at once, with a view to an appeal. This application is, therefore, refused.

Application refused.