[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

IACOVOS LYTRIDES,

Appellant,

v.

MUNICIPALITY OF FAMAGUSTA

Respondents.

(*Criminal Appeal No.* 3439).

Criminal Procedure—Plea—Plea of guilty—Plea in mitigation inconsistent with plea of guilty—Conviction on basis of such plea set aside—Retrial ordered—But Appellant has to pay the costs of this appeal.

Plea of guilty—Plea in mitigation inconsistent with guilt—Conviction on that basis set aside—Retrial ordered.

Appeal against conviction on a plea of guilty—See supra.

Criminal appeal—Costs—Retrial—See supra.

The Appellant has taken this appeal against both his conviction and sentence on a charge that he has constructed structures in a public road contrary to section 3(a) of the Public Roads Law, Cap. 83. At his trial, the Appellant pleaded guilty to the charge but unfortunately the trial Judge allowed counsel for the Appellant—then accused—to make allegations, during his plea in mitigation, which were inconsistent with guilt.

Allowing the appeal and ordering a new trial, the Supreme Court:-

Held, (1). The trial Judge should have asked counsel whether he insisted on these allegations (inconsistent with guilt) and, in the affirmative, he should have ordered a plea of not guilty to be entered and should have proceeded to try the case on that basis.

(2) In the circumstances and in the light of our case-law which is referred to, *inter alia,* in *Kefalos* v. *The Police* (1972) 2 C.L.R. 1, we have to order a retrial before another Judge.

The Appellant has however to pay the costs of this appeal. (£40).

Appeal allowed. Retrial ordered. Order for costs as above.

Cases referred to:

Kefalos v. *The Police* (1972) 2 C.L.R. 1.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Iacovos Lytrides who was convicted on the 22nd March, 1973 at the District Court of Famagusta (Criminal Case No. 6848/72) on one count of the offence of constructing structures in a public road contrary to section 3(a) of the Public Roads Law, Cap. 83 and was sentenced by S. Demetriou, D.J. to pay a fine of £10.- with £15.- costs, and he was further ordered to remove the said structures within 14 days.

G. Tornaritis, for the Appellant.

M. Papas, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant has appealed against both his conviction and sentence, though before the trial Court he had pleaded guilty to the offence with which he was charged, namely that he had constructed structures in a public road, contrary to section 3(a) of the Public Roads Law, Cap. 83.

It appears from the record before us that the Appellant, who was represented before the trial Court by counsel (other than the one who has appeared before us) changed his originally entered plea of not guilty to one of guilty, on the advice of his counsel; and, after this had been done, the Court allowed, unfortunately, counsel for the Appellant—then the accused—to make allegations, during his plea in mitigation, which were inconsistent with guilt.

We are of the view that the trial Court should have ascertained whether counsel insisted on these allegations and if he was found to do so the Court should have ordered a plea of not guilty to be entered and should have proceeded to try the case on that basis.

In the circumstances, and in the light of our relevant previous case-law, which is referred to in, *inter alia, Kefalos* v. *The Police* (1972) 2 C.L.R. 1, we have to order a retrial before another Judge.

The Appellant has, however, to pay the costs of this appeal—in view of the way his case was conducted before the Court below—as well as the costs of an adjournment of his case before this Court, which was granted on his application in order to have time to instruct counsel; in all such costs amount to £40.

Appeal allowed; retrial ordered; order for costs as above.