

1985 July 3

[TRIANTAFYLIDIS, P., PIKIS, KOURRIS, JJ.]

XENIA A. KALIA,

Appellant,

v.

STELIOS LAMBROU AND ANOTHER,

Respondents.

(Criminal Appeal No. 4605).

Criminal Procedure—The Streets and Buildings Regulations Law, Cap. 96—Private prosecution—Right to bring—When the proprietary rights of an individual are directly encroached upon by a structure erected allegedly in contravention of Cap. 96 such individual has a right to institute private criminal proceedings—Respondents' garage allegedly affecting appellant's right of way over respondent's property—Above test satisfied.

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Respondents were charged by way of private prosecution with the offence of building a garage without a permit, contrary to ss.3(1)(b), 20(1)(a), 20(3)(a)(B) and 20(3A) of the Streets and Buildings Regulation Law, Cap. 96 and of the offence of possessing a garage without a certificate of approval having been issued contrary to ss. 3(1), 10, 20(a) and 20(3A) of the above Law.

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The trial Judge found that as the garage was built in respondent's land, the appellant was not deemed to be directly affected by the alleged violation of Cap. 96, and therefore, she was not entitled to bring a private criminal case against the respondent. Hence the present appeal.

Held, (1) when the proprietary rights of an individual are directly encroached upon by structures erected in contravention of the provisions of Cap. 96, he has a right to institute a private criminal prosecution, in respect of

such contravention. (*Ttofinis v. Theocharides* (1983) 2 C.L.R. 363 approved).

(2) In the present case the garage in question affects adversely the appellant's right of way over the property of the respondent and this constitutes a direct encroachment upon appellant's proprietary rights. To this extent a new trial would be ordered. 5

(3) Appellant cannot seek redress as regards other particulars of count 1 as such particulars do not constitute a direct encroachment of appellants proprietary rights. 10

Acquittal set aside and new trial ordered accordingly.

Cases referred to:

Ttofinis v. Theocharides (1983) 2 C.L.R. 363.

Appeal against acquittal. 15

Appeal by Xenia A. Kalia, with the sanction of the Attorney-General of the Republic, against the decision of the District Court of Nicosia (N. Nicolaou, D. J.) given on the 12th December, 1984 (Criminal Case No. 3646/84) whereby the respondent was acquitted of the offences of building a garage without a permit contrary to sections 3(1) (b), 20(1) (a), 20(3) (a) (b) and 20(3A) of the Streets and Buildings Regulation Law, Cap. 96 and of possessing a garage without a certificate of approval contrary to sections 3(1), 9, 10, 20(a) and 20(3A) of the above Law. 20
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G. Pittadjis, for the appellant.

A. Paschalides with *E. Hadjieftychiou*, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant has appealed against the acquittal of the respondents who are the accused in criminal case No. 3646/84 before the District Court of Nicosia. 30

The said case was filed by way of a private prosecution by the appellant as the complainant.

5 The trial Judge acquitted the respondents while giving judgment on preliminary objections which had been raised by counsel appearing for them.

10 By means of the first count in the charge both respondents had been charged with building a garage without a permit, contrary to the provisions of the Streets and Buildings Regulation Law, Cap. 96, and by means of the second count they had been charged with possessing the garage without a certificate of approval having been issued in respect of it by the appropriate authority.

15 The said garage has been built on property of the respondents and the trial Judge held that as it was common ground that the respondents had not built the garage on immovable property belonging to the appellant she could not be deemed to be a person whose rights were directly affected by any alleged violation of Cap. 96 and, therefore, she was not entitled to file the private criminal case in question against the respondents.

20 In accordance with the majority view in *Ttofinis v. Theodorides*, (1983) 2 C.L.R. 363, 369, 370, when proprietary rights of an individual are directly encroached upon by a structure erected allegedly in contravention of the provisions of Cap. 96 he has a right to institute a private criminal prosecution in respect of such contravention.

30 In the present instance it appears from the particulars of the first count that the garage in question allegedly affects adversely an existing right of way, over the property of the respondents, to which the appellant is beneficially entitled. If such allegation is correct then there could exist, in our view, a direct encroachment upon the appellant's proprietary rights entitling her to institute the present private criminal prosecution in accordance with the majority view in the *Ttofinis* case, supra. Consequently, the respondents could not have been acquitted in respect of the first count without the case against them having been heard and determined on its merits.

35 As regards other complaints of the appellant which

emerge from the particulars of the first count we do not think that, even if they were proved to be well founded, they could come within the notion of direct encroachment upon proprietary rights as expounded in the *Ttofinis* case, supra, and, therefore, in this connection, the appellant could not seek redress by means of a private prosecution for alleged contraventions of the provisions of Cap. 96. 5

In the light of all the foregoing the acquittal of the respondents has to be set aside in so far as counts 1 and 2 in the charge relate to a garage allegedly affecting adversely a right of way to which the appellant is beneficially entitled and we order that there should be, to that extent, a new trial of the present case before, necessarily, another Judge. 10

In every other respect this appeal fails and has to be dismissed; and, in the circumstances, we do not propose to make any order as to its costs. 15

*Appeal partly allowed.
New trial ordered.*