1987 October 15

[A. LOIZOU, DEMETRIADES AND PIKIS, JJ.]

1. CHARALAMBOS TILEMACHOU PSARAS,
2. RAMEZ METANOS LICHA,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 4715 & 4718).

Search of premises — Employee's consent to the search by police of his employer's premises — Need to scrutinize factual basis of search — The question, whether the employee has authority to authorise the search is one of fact

Constitutional Law — Right to privacy — Constitution, Article 15.1 — Ambit of — Business premises are not a private domain — Business diary and telephone directory — They do not constitute inherently a personal record — Note referable to criminal conspiracy, kept in a business diary — It is not a private matter in the sense of Art. 15.1.

Constitutional Law — Right to privacy — Constitution, Art 15 1 — Comparison between the provisions of this Article and the provisions of the Fourth Amendment of the Constitution of U S.A. — Differences.

Confessions — Admissibility of — When a statement is considered as a voluntary.

Appeal — Evaluation of evidence by the trial Court — The approach of the Appellate Court.

Evidence — Accomplice — Corroboration — The question of corroboration arises only if his testimony is credible enough — What constitutes corroboration.

Evidence — Hostile witness — No rule of law that his testimony must be disregarded in its entirety.

Jurisdiction — Crimes committed at sea within the distance of twelve miles from the shores of Cyprus — Rebuttable presumption, which is a necessary concomitant of the sovereignty of the Republic of Cyprus, that Courts have jurisdiction — Presumption may be rebutted by evidence that the waters form part of the British Sovereign Base Areas.

Constitutional Law — Reasoning of judicial decisions — Constitution, Art 30 2 — The duty imposed and the right conferred thereby — The minimum requirements which should be observed — What constitutes due reasoning

On 20 7 85 the Police intercepted three boats east of Cape Pyla, sailing seemingly in a convoy parallel to the coast at a distance of between 9-10 nautical miles from the shores

It transpired that two of the three boats carried narcotics The third boat that headed the convoy carried no prohibited substances

The vessels were detained and their crew and passengers arrested, numbering 14 persons in all

The circle of arrests was completed by the detention later the same day of Boulos Finianos and Anton El-Achel, two Lebanese subjects at the Larnaca Hotel where they stayed and the subsequent arrest, within the next 2-3 days, of Costas Georghiou and Charalambos Psaras The only other person who according to the police, was involved in the conspiracy, and subsequent commission of the offence was a certain Englishman by the name of Brian Barker who escaped arrest He left the country on the very day of the arrest of his confederates

The Police investigations, which followed, led to the prosecution of the 18 arrestees before the Assize Court of Larnaca

The prosecution was discontinued against two of the eighteen accused, namely Georghiou and Eid with a view to calling them as prosecution witnesses

Except for the four persons named above, the remaining accused pleaded guilty to one or more of the charges raised against them and were at the end sentenced to varying terms of imprisonment The trial proceeded to the end against the remaining accused Finianos, Psaras and Licha were found guilty on two counts of conspiracy and the counts involving possession with a view to supplying them to third parties Accused El Achel was acquitted and discharged on all counts

The subject matter of these proceedings is the appeals against conviction of Psaras and Licha

The case of appellant Psaras (a) The note containing details of a position at sea seemingly identifying the point where the Lebanese importers would dispose of their illegal cargo, found by the Police in Psaras' office inside a diary telephone-directory, was wrongly admitted in evidence because the search leading to the seizure of the document was illegal, as it was carried out in breach of the right of the appellant to privacy safeguarded by Article 15 1 of the Constitution, and because, the notebook in which the note was found was a personal document in the private domain of the appellant and as such a private matter in the sense of Article 15 1

(b) Wrongful admission in evidence of the statement of the appellant

(c) Erroneous finding of the trial Court as to the date of the first meeting between Psaras and Barker Whereas counsel acknowledged that incriminating inferences could be drawn from the content of a telegram of Psaras to Finianos, if it had been sent after the meeting with Barker, the finding of the Court that such meeting did take place prior to the date of the telegram, was unjustified and contrary to the tenor of the evidence

(d) Shorn of the above evidence and inferences drawn therefrom, the evidence against Psaras and findings that could conceivably rest thereon were inconclusive to a degree incapable of founding the verdict

The case of appellant Licha (a) Erroneous acceptance of the evidence of Eid, a self-confessed accomplice, as sufficiently credible to warrant acting upon it, in face of corroboration The case for the appellant is that given the contradictoriness in his testimony and statements to the police, the Court ought to have wholly ignored it in the same way that a Court of law is apt disregard the evidence of a hostile witness

(b) Lack of evidence establishing the competence and territorial jurisdiction of the Court to try the case

(c) Failure on the part of the trial Court to reason its judgment in the manner ordained by Article 30 2 of the Constitution

Held, *dismissing the appeal of Psaras* (1)(a) The team of policemen who carried out the search did not invoke the warrant, which had been issued or the authority given thereby to carry out the search, but sought the permission of the employee of Psaras Shipping Agency Limited then in attendance and seemingly in control, to carry out a search of the premises including the office of Psaras, the Manager and the person having control of the company

The trial Court arrived at the conclusion that the consent was freely given The existence of authority on the part of an employee to authorise a search of the premises of his employers depend on a variety of factors and is, ultimately a question of fact

It is pertinent to scrutinize the background of the authority lest the search was carried out in abuse of police powers At common law the search of premises and seizure of documents therefrom being a species of police power that impinges upon liberty, is viewed with apprehension and must in every case be justified by reference to the authority claimed in justification of the search

In this case it appears that the Court properly directed itself to the need to scrutinize the factual premise of the search and adequately summed up the evidence on the subject

Supposing that appellant was entitled to the protection of Article 15 1 and, further, supposing that its interpretation is subject to the principles evolved by reference to the 4th Amendment of the American Constitution, the ruling of the Court on the admissibility of the note is reconcilable with them, establishing free and voluntary waiver of the freedom to shield the premises from a warrantless search

(b) The content of Article 15 1 of our Constitution is not the same as that of the 4th Amendment of the Constitution of the U S A

The 4th Amendment aims to entrench and regulate the principle of the common law that one's house is his castle Whereas Article 15 1 is modelled on the European Convention of Human Rights that proclaims a right to privacy as such in turn fashioned in the spirit of the 1948 U N Universal Declaration of Human Rights Of course, what is private in the sense of Article 15 1 may be immune from search and seizure

In *Enotiades and Another v The Police* (1986) 2 C L R 64 the Court held that business activity is not in itself a private matter By the same process of reasoning business premises are not a private domain in the sense of Article 15 1 The right to privacy extends to inherently private personal and family matters objectively identifiable as such, provided always that the beneficiary of the right has not by his own action exposed a private matter to public view

(c) The content of a business diary and a telephone directory is not of itself a document embodying an inherently personal record in the sense of Article 15 1 Nor did the appellant, by leaving it exposed on his desk and within reach of the personnel of the company, evince any expectation that its content and matters included therein should be kept private to himself

The claim to privacy in relation to the note collapses altogether upon reflection that it was no part of the diary and that it was merely kept or stored therein Certainly the content of the note, referable as it was to the details of a criminal conspiracy, it was not a private matter in the sense of Article 15 1

(2) Consideration of the record persuaded this Court that the trial Court did advert to every relevant part of the evidence illuminating the circumstances under which the statement had been made leaving this Court in no doubt as to the adequacy of the summing up The question of the admissibility of a statement must be resolved by the Judge in the same way as factual questions are determined by the jury Our Courts apply a stringent test to the admissibility of a statement in the interest of the efficacy of the rule of law and as a necessary safeguard against abuse of police power

However all rules evolved by the Courts relevant to the admissibility of a confession are designed to elicit the voluntariness of a statement, the basic issue in every case A statement is voluntary if it has not been obtained either by fear of prejudice or hope of advantage held out by a person in authority

In discerning the likelihood of prejudice resulting from fear, the Courts have increasingly laid stress on the element of oppression that may, in an indirect way, sap the free will of the maker. Voluntariness is basically a question of fact.

There is nothing before us justifying interference with the finding of voluntariness made by the trial Court.

(3) An appellate Court must never overlook that the trial Court, living through the drama of a case and following the unfolding of the rival contentions before it, is in a unique position to evaluate the evidence in its proper perspective. (A passage from *Papadopoulos v. Stavrou* (1982) 1 C.L.R. 321 adopted).

To justify the inference that the assessment made by the trial Court of the credibility of witnesses is wrong an appellate bench must be persuaded that the finding defies reason and common sense.

In this case there is no room for interfering with the findings of the trial Court.

Held, further *dismissing the appeal of Licha.* (1) Room for corroboration exists only, as the Court affirmed in *Zacharia v. The Republic*, if the evidence of the accomplice is in the first place credible enough, only then can a question of corroboration arise.

Corroborative evidence, need not take the form of evidence duplicating the testimony of the accomplice, it may be confined to evidence confirming the testimony of the accomplice in two material respects, that a crime had been committed and, further, that accused was implicated in the commission of that crime.

Questions of credibility of witnesses are par excellence, the province of the trial Court. There is no rule of law either, as explained in the case of *Georghiou v. The Republic* (1984) 2 C.L.R. 65 that the testimony of a hostile witness must necessarily be disregarded in its entirety.

In this case it was perfectly open to the trial Court after they had properly directed themselves to the implications of the evidence of an acomplice and had given due consideration to the relevant evidence, to accept the testimony of Eid as sufficiently credible to be acted upon after due confirmation by corroborative evidence.

(2)(a) Contrary to submissions raised before the Assize Court, counsel acknowledged that the territorial jurisdiction of criminal courts of the Republic extends to 12 miles from the low water mark in view of the provisions of s.2 of the Territorial Waters Law 1964 (45/64) and that section 5(1)(a) of the Criminal Code (as amended by Law 3/62) should be read and applied accordingly.

(b) No suggestion of lack of competence on the part of the Court to try the case was raised before the trial Court, nor was the competence of the Court

questioned On the other hand, the evidence before the trial Court did suggest that the police authorities of the Republic of Cyprus operated freely in the sea area where the interception took place and the arrests made.

There is a rebuttable presumption - a necessary concomitant of the sovereignty of the Republic of Cyprus - that Cyprus Courts can validly assume and exercise jurisdiction in respect of offences committed within 12 miles from the shores of the Republic of Cyprus. The presumption may be rebutted by evidence that the waters form part of the British Sovereign Base Areas

(3)(a) Failure to observe the constitutional requirement (Art. 30.2) for the reasoning of the Judgment renders the verdict of the Court, in the exercise of both its criminal and civil jurisdictions, a nullity A non-reasoned judgment is not a valid determination of the judicial cause. Not only Article 30.2 imposes a duty on the state to ensure compliance with the judicial standards set forth therein, it also confers a corresponding right on the litigant to have a judicial pronouncement affecting him, duly reasoned Reasoning is a constituent element of a valid judicial pronouncement

(b) The following are the minimum requirements to be observed for a judicial pronouncement in order to qualify as duly reasoned: The evidence must be analysed by reference to the matters in issue, and there must be a clear statement of the findings of the Court coupled with an unambiguous pronouncement of the outcome of a case In a criminal case the main issue is defined by the plea of the accused to the charge or arraignment.

(c) In this case, the judgment appealed from provides an example of a robustly reasoned judgment. The Court is not bound to reproduce the whole of the evidence in its evidential analysis, or refer to every detail of it The reasoning of a judgment may take a variety of forms. What is required of a Court of Law is that reasons should be given for its decision and those reasons should relate to the law applicable and be referable to the evidence given in the cause, so that it may appear that the verdict is not merely the reaction of the Court to the dispute but warranted by the law applicable and the evidence adduced.

Appeals dismissed.

Cases referred to

A-G of Gambia v. Momodou Jobe [1984] 3 W.L.R. 174;

Thornhill v. A-G of Trinidad and Tobago [1981] A.C. 61;

See v. Seattle, U.S.S.C R., 18 L Ed. 2d. 943;

Schneckloth v. Buntamante, 93 S. Ct. 2041, 2051 (1973),

U.S. v. Matlock, 39 L.Ed , 2nd. Series 242;

R v Heston Franscois [1984] 1 All E.R 785 (C.A.);

R. v. Watson [1980] 2 All E. R. 293;

Enotiades and Another v. The Police (1986) 2 C.L.R. 64;

Police v. Georghiades (1983) 2 C L.R 33;

Queiss v. The Republic (1987) 2 C.L.R. 49,

R. v. Rennie [1982] 1 All E R. 385;

Kokkinos v. The Police (1967) 2 C.L R. 217;

Petri v. The Police (1968) 2 C.L R 40;

Azinas and Another v. The Police (1981) 2 C.L R. 9;

Imbrahim v. R. [1914] A C. 599,

Fournides v. The Republic (1986) 2 C.L R. 73;

D.P.P. v. Ping Lin [1975] 3 All E.R 175;

Papadopoullos v. Stavrou (1982) 1 C.L.R. 321;

Liatsos v. The Police (1968) 2 C.L.R. 15;

Zachana v. The Republic, 1962 C.L.R 52,

D.P.P. v. Hester [1972] 3 All E.R. 1056,

D.P.P. v. Kilbourne [1973] 1 All E.R. 440;

Georghiou v. The Republic (1984) 2 C L R. 65;

Yollness and Others v. The Republic (1982) 2 C.L.R. 46;

Panayi v. The Police (1968) 2 C.L.R. 124,

Ioannides v. Dikeos (1969) 1 C.L.R 235,

Bell v. D.P.P. of Jamaica [1985] 2 All E R. 585;

Neophytou v. The Police (1981) 2 C I. R. 195,

Pioneer Candy Ltd. v. Tryfon and Sons (1981) 1 C.L.R. 540.

Appeals against conviction and sentence.

Appeals against conviction and sentence by Charalambos Telemachou Psaras and Another who were convicted on the 3rd December, 1985 at the Assize Court of Famagusta (Criminal Case No. 3455/85) on one count of the offence of conspiracy to commit a felony contrary to sections 5 and 371 of the Criminal Code, **Cap.** 154 and on one count of the offence of possessing controlled

drugs with intent to supply them to others contrary to sections 2, 6(3), 30, 31 and 38 of Part II of the First Schedule and the Third Schedule of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No 29 of 1977) and were sentenced by Papadopoullos, P D C , Constantinides S D J and Arestis, D J to four years' imprisonment on the first count and to eight years' imprisonment on the second count, the sentences to run concurrently

Chr Pourghoundes with *A Theofilou*, for appellant 1

L Clerides, for appellant 2

A Frangos, Senior Counsel of the Republic, for respondent

Cur adv vult

A LOIZOU J The judgment of the Court will be delivered by Pikis, J

PIKIS J A co-ordinated sea operation of the police and other authorities of the Republic led on 20th July, 1985 to the interception of three boats east of Cape Pyla, the arrest of their crew and passengers and the seizure of their cargo - 14 tons and 250 kgs of cannabis resin Information reaching the police alerted them to the impending importation of narcotics and caused them to make advance preparations to frustrate the venture and arrest the perpetrators of the conspiracy From about midnight the previous day a gunboat and a launch patrolled the sea area where the smugglers were anticipated to come, according to police information, in furtherance of a pre-arranged plan to deliver them at sea to buyers with a view to shipment abroad In that way, the police lay in waiting to confront the smugglers, foil their objects and cause their arrest And they were not long to come

At about 9 30 the following morning, 20th July, 1985, the three boats were spotted sailing seemingly in a convoy parallel to the coast at a distance of between 9-10 nautical miles from the shore When the smugglers realized they were under police surveillance and about to be apprehended, they began hastily discharging their cargo into the sea, in a last minute effort to avoid the consequences of their acts It transpired that only two of the three boats carried narcotics The third boat that headed the convoy carried no prohibited substances Appellant Licha who was a passenger in that boat claimed he had no knowledge of the nature

of the cargo carried by the other two vessels. In that he was contradicted by another passenger in that boat, namely Eid, a self-confessed accomplice who testified that not only Licha was in the know but was one of two persons who master-minded the operation and organized the crime from the Lebanese shores. The other was Boulos Finianos who arrived in Cyprus two days earlier and stayed at a Larnaca hotel in anticipation of their arrival.

Following their detection the three boats were chased and eventually intercepted. The vessels were detained and their crew and passengers arrested, numbering 14 persons in all. The cargo that was dumped and scattered at sea made up of many sacks containing cannabis resin was collected after a painstaking effort of many hours. The circle of arrests was completed by the detention later the same day of Boulos Finianos and Anton El-Achel, two Lebanese subjects at the Larnaca Hotel where they stayed and the subsequent arrest, within the next 2-3 days, of Costas Georghiou and Charalambos Psaras. The only other person who, according to the police, was involved in the conspiracy, and subsequent commission of the offence was a certain Englishman by the name of Brian Barker who escaped arrest. He left the country on the very day of the arrest of his confederates.

A vigorous police investigation followed that led to the prosecution of the 18 arrestees before the Assize Court of Larnaca. Four joint charges were preferred against all the accused involving possession of narcotics with a view to supplying them to third parties, the supply of narcotics to third parties, and offering to supply narcotics to third parties. Two additional charges were preferred against Finianos, Psaras, Licha and Achel regarded by the police as responsible for the planning of the commission of the offences the perpetrators of the importation of narcotics for the purpose of supplying them to customers off the shores of Cyprus. The two additional charges preferred against the prime culprits involved conspiracies to come into possession of narcotics with a view to supplying them to third parties.

The prosecution was discontinued against two of the eighteen accused, namely Georghiou and Eid with a view to calling them as prosecution witnesses. A nolle prosequi was filed, whereupon they were discharged, facilitating thereby the adduction of their evidence as prosecution witnesses.

Except for the four ring leaders, named above, the remaining accused pleaded guilty to one or more of the charges raised

against them and were at the end sentenced to varying terms of imprisonment The trial proceeded to the end against the remaining accused Finianos Psaras and Licha were found guilty on the two counts of conspiracy and the counts involving possession with a view to supplying them to third parties They were acquitted and discharged on the remaining two counts concerning the supply or offer to supply third parties with narcotics Accused El Achel was acquitted and discharged on all counts

The subject matter of these proceedings is the appeals against conviction of Psaras and Licha The case against Psaras was founded on circumstancial evidence establishing to the satisfaction of the Assize Court that he held a series of meetings with Finianos with a view to facilitating the latter and his confederates to import a considerable quantity of narcotics near the shores of Cyprus and then supply them to third parties for purposes of re-exportation One of his confederates was Licha who on one occasion accompanied Finianos on a visit to the office of the first appellant Furthermore the trial Court found again on circumstancial evidence that Psaras was responsible for introducing to Finianos, Brian Barker, a potential byer, and provided the ground for all three of them to meet and work out the details of the conspiracy the implementation of which was thwarted by the arrests made on the morning of 20th July, 1985

Two documents admitted in evidence, after overruling objections of the defence, added considerably to the cogency of the case for the prosecution against Psaras The first was a telegram despatched by Psaras to Finianos on 20th May, 1985 (exhibit 8) Its content couched in cryptic language suggested the existence of a conspiracy between them and possibly others to promote an illegal venture It read «PLS COME URGENT TO CYPRUS I HV VERY GOOD CUSTOMER FOR YR CARGO PAMBOS PSARAS» The trial Court found the telegram had been sent after Psaras met Brian Barker for the very purpose of bringing seller and buyer together Psaras admitted sending the telegram but maintained it had been sent for a purpose other than that found by the Court, notably to apprise Finianos of the existence of a customer for the purchase of olive oil in Greece The second document admitted in evidence after rejecting defence objections to its admissibility consisted of a note found at the office of Psaras inside a diary-telephone directory indicating a position at sea

coinciding with that recorded in a note to the same effect found in the possession of Eid. The trial Court inferred from the content of this document (exhibit 36) knowledge on the part of the appellant of what was contemplated to take place near the shores of Cyprus on 20th July, 1985, rendered abortive by the intervention of the police.

Another piece of evidence from which incriminating inferences were drawn was a statement, the third made by Psaras during the period of his detention, made about a month after his arrest.

In his defence, comprehensively articulated in a statement from the dock, Psaras acknowledged that he had surreptitious meetings with Finianos and Barker but maintained they were for a purpose unconnected with narcotics, namely for the exportation of cigarettes and whiskey from Cyprus to Lebanon. He disowned knowledge of exhibit 36 suggesting that one of his enemies - and he had many as he said - may have planted it in his office. The telegram addressed to Finianos was despatched before being introduced to Barker. Consequently, it was unrelated to whatever might have been jointly planned by Finianos, Barker and himself.

Psaras called two witnesses in his defence. The first an officer of the police, namely N. Stelikos, and the second an advocate of Limassol, M. Malachtou. As can be gathered, the object of Psaras in calling Stelikos was to bring to the notice of the Court that far from being an accomplice of Finianos, he collaborated with the police with a view to his arrest. Be that as it may, the evidence of Stelikos holed his defence by the disclosure that Psaras was aware that Finianos was in the illicit trade of narcotics, hardly compatible with the main line of his defence. The plan of Psaras, according to Stelikos, was to trap Finianos to the advantage of both. Psaras would reap a money benefit while Stelikos would score a success by arresting him. According to Stelikos, Psaras told him that the the interest of Finianos dried up at the end of March, 1985. Thereafter, Psaras was unable to give him further information despite his inquiries leaving him with the impression that the plan of Finianos had been dropped. Nonetheless, there was ample evidence that meetings between Psaras and Finianos continued throughout the ensuing period albeit for a different object according to Psaras, for the purpose of exporting cigarettes and whiskey to Lebanon.

The case against Licha rested primarily on the testimony of Eid, a self-confessed accomplice, and the corroboration provided by the details of the commission of the offence and the note found in the possession of Eid, earlier referred to and the inscription at the back thereof of the first name of Finianos and the room where he stayed at the Larnaca Hotel where he was found and arrested. Eid testified that Licha and Finianos approached him with a view to providing a boat to spearhead the other two vessels that would transport narcotics to Cyprus and that in fact Licha supervised the loading of narcotics and assumed control of the expedition to Cyprus.

The Appeal of Psaras.

The conviction of Psaras was mainly challenged on the following three counts :

(a) Wrongful reception of exhibit 36, the note containing details of a position at sea seemingly identifying the point where the Lebanese importers would dispose of their illegal cargo. The case for the appellant, depicting it as well as we can, is that the search leading to the seizure of the document was illegal because it was carried out in breach of the right of the appellant to privacy safeguarded by Article 15.1 of the Constitution. Furthermore, the notebook in which exhibit 36 was found was a personal document in the private domain of the appellant and as such a private matter in the sense of Article 15.1. For both or either of the aforementioned two reasons, the seizure and production in evidence of the incriminating note was impermissible and inadmissible in evidence.

(b) Wrongful admission in evidence of the statement of the appellant (exhibit 38). It is the case for the appellant that the trial Court erred in admitting the statement in evidence because of what had preceded and accompanied the making of the statement.

(c) Erroneous finding of the trial Court as to the date of the first meeting between Psaras and Barker. Whereas counsel acknowledged that incriminating inferences could be drawn from the content of the telegram of Psaras to Finianos, if it had been sent after the meeting with Barker, the finding of the Court that such meeting did take place prior to the date of the telegram, was unjustified and contrary to the tenor of the evidence.

Shorn of the above evidence and inferences drawn therefrom, the evidence against Psaras and findings that could conceivably rest thereon were inconclusive to a degree incapable of founding the verdict. Therefore, we were invited, provided we upheld the case for the appellant, to acquit and discharge him. No submission was made that the findings of the Court, recorded in the Judgment, could not support the verdict or that we should interfere with the Judgment of the trial Court on that account. Therefore, the appeal of Psaras turns primarily, if not exclusively, on the validity of the aforementioned grounds of appeal or any of them and if valid their impact on the verdict.

Below we shall deal with the appeal of Psaras taking the points raised in the order above outlined. Thereafter, we shall deal with the appeal of Licha.

The Right of Privacy Safeguarded by Article 15.1 of the Constitution.

Article 15.1 reads:

> «Every person has the right to respect for his private and family life.»

The right to privacy as defined above, is part of the fundamental human rights safeguarded by part II of the Constitution as the inalienable liberty of every human being. Article 35 binds every banch of the Cyprus State including the Judiciary to safeguard the efficient application of the rights entrenched in that part of the Constitution. By way of introduction to the interpretation of this and every other Article of the Constitution safeguarding fundamental human rights, we may note with approval the following passage from the Judgment of Lord Diplock in *A-G of Cambia v. Momodou Jobe,**

> «A Constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given generous and purposive construction.»

In order to appreciate and explore the arguments raised in connection with the right to privacy, it is necessary to refer to the factual background and circumstances of seizure of the exhibit in question.

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* *[1984] 3 W L R 174 at 183 See also Thornhill v. A-G of Trinidad and Tobago, [1981] A C. 61*

Although a search warrant for the search of the premises of the appellant was in existence, having been issued by a member of the District Court of Larnaca, the team of policemen who carried out the search did not invoke the warrant or the authority given thereby to carry out the search They sought the permission of the employees of Psaras Shipping Agency Limited then in attendance and seemingly in control, to carry out a search of the premises including the office of Psaras, the Manager and the person having control of the company Permission was given and the premises were subsequently searched As earlier indicated, the incriminating document recording a certain latitude and longitude at sea was found inside a diary/telephone directory of the appellant that was exposed on his desk

After sifting the evidence relevant to this issue, the trial Court concluded that consent was sought uncoercively and then freely given in circumstances that validated the search and made the document seized admissible in evidence They dismissed the suggestion that the search warrant was invalid though its existence was not the authority by reference to which the search was carried out

Responding to the submission that Article 15 1 confers an identical or a similar right to that safeguarded by the Fourth Amendment to the American Constitution, prohibiting the warrantless search of premises including offices, they ruled that assuming this is the effect of Article 15 1, the right had been waived by the consent given for the search of the premises

Counsel for the appellant raised a similar argument before us, and submitted that Article 15 1 bestows a right comparable to that conferred by the 4th Amendment to the American Constitution, that being the case it is reasonable that our Courts should be guided by the principles evolved by American Courts in the interpretation and application of Article 15 1 The 4th Amendment to the American Constitution specifically prohibits the warrantless search of, inter alia, houses and their effects It has been held that the protection extends to business premises and offices * The right given by the 4th Amendment can, as acknowledged by counsel, be waived with the consent of a person having it in his power to authorise a search of the premises, provided such consent is freely and voluntarily given Neither acquiescence nor consent induced

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* *See inter alia See v Seattle U S S C R 18 L Ed 2d 943*

by an indirect invocation of authority will suffice.* At the gist of the precepts emerging from American case law relevant to the application of the 4th Amendment, is the principle that the consent must have been given freely and voluntarily uninduced by coercion or disguised claim to authority. And the consent must be given by a person having it in his power to authorise the search and not by anyone who happens to be physically present in the premises.

An employee is not by virtue of his office necessarily invested with authority to authorise a search of the premises of his employer. The existence of such authority is dependent on a variety of factors including the position of the employee in the company, the instructions of his principal, and more importantly the access enjoyed to the various parts of the premises.** Ultimately, it is a question of fact for the trial Court whose findings will not be disturbed on appeal unless demonstrably wrong.

Irrespective of the validity of the submission respecting the applicability of the principles relevant to the 4th Amendment, once the consent of those physically in charge of the premises at the time provided the authority claimed by the police for the search of the premises, it is pertinent to scrutinize the background lest the search was carried out in abuse of police powers. At common law the search of premises and seizure of documents therefrom being a species of police power that impinges upon liberty, is viewed with apprehension and must in every case be justified by a reference to the authority claimed in justification of the search.***

On a review of the relevant part of the ruling of the trial Court leading to the admissibility of exhibit 36, it appears that the Court properly directed itself to the need to scrutinize the factual premise of the search and adequately summed up the evidence on the subject. The finding of the Court that the consent of the employees of Psaras Shipping Agency Ltd. was freely and voluntarily given cannot be faulted on appeal, nor does anything on record suggest

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* *The subject is extensively discussed in Search and Seizure by P Polyviou and is the subject of extensive analysis in, inter alia, the case of Schneckloth v Buntamante 93 S Ct 2041 2051 (1973) An interesting analysis of the law is also to be found in Search and Seizure by Wayne R LaFave Vol 3 pp 564 and 565 and Searches and Seizures Arrests and Confessions by W E Ringel p 638 et seq*

** *See inter alia, Polyviou (supra) pp 214, 215 - U.S v Matlock, 39 L ed 2nd series 242*

*** *See, inter alia, R v Heston Franscois [1984] 1 All E R 785 (C A)*

that it was induced by a disguised claim to authority. The employees of the agency then physically present had physical control of the premises and unhindered access to every part thereof. No directive of the company was cited or any other evidence whatever suggesting a limitation of the right of access to individual parts of the premises, particularly the office of the Manager, to which, according to the evidence, they had unimpeded access. Supposing that appellant was entitled to the protection of Article 15.1 and, further, supposing that its interpretation is subject to the principles evolved by reference to the 4th Amendment of the American Constitution, the ruling of the Court on the admissibility of exhibit 36 is reconcilable with them, establishing free and voluntary waiver of the freedom to shield the premises from a warrantless search.

Furthermore, the trial Court properly addressed itself to evidene adduced after the admission of exhibit 36 bearing on the circumstances surrounding the search and recovery of the incriminating note. In agreement with the trial Court, we find that such testimony did not alter the complexion of the evidence touching upon the subject of the admissibility of the exhibit. The trial Court in resolving the issue was properly directed by the principles approved in *R. v. Watson,** that were correctly applied to the facts of the case dismissing the suggestion that there was room for upsetting the ruling on the admissibility of the document. On the other hand, the findings on the factual background leading to the search rested on a judicial assessment of the evidence before the Court.

Next we shall address ourselves to the important question of the ambit of Article 15.1 with a view to determining first whether the protection given thereby extends to the search of business premises and, secondly, but equally importantly, whether the appellant had a valid claim to privacy under Article 15.1 to the content of the diary in which exhibit 36 was found or exhibit 36 in itself, for that matter. We shall begin our inquiry with a comparison of the provision of Article 15.1 with those of the 4th Amendment to the American Constitution with a view to deciding whether the compass of the two enactments is co-extensive or their effect similar or analogous, a necessary task in order to determine whether guidance may be derived from the case law built on the interpretation and application of the 4th Amendment.

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* *[1980] 2 All E.R. 293.*

The wording of the two constitutional provisions, the Cyprus and American one, is different. Article 15.1 protects specifically private and family matters, whereas the 4th Amendment is directed to regulating the search of premises and offices. Incontrovertibly, the content of the two constitutional enactments is different as well as their objects. The 4th Amendment aims to extend and regulate the principle of the common law that one's house is his castle. Whereas Article 15.1 is modelled on the European Convention of Human Rights* that proclaims a right to privacy as such, in turn fashioned in the spirit of the 1948 U.N. Universal Declaration of Human Rights.

Of course, what is private in the sense of Article 15.1 may be immune from search and seizure. In *Enotiates and Another v. The Police*,** the Court noticed the material differences between the content and aims of Article 15.1 and those of the 4th Amendment. The Court held that business activity is not in itself a private matter and by the same process of reasoning we hold in this case that business premises are not a private domain in the sense of Article 15.1.

The concept of privacy was debated at great length in *Police v. Georghiades****, a case in which important pronouncements were made on the importance of human rights and the duty of Courts of Law to uphold and apply them effectively as a necessary safeguard of the dignity of the individual and sustenance of a quality of life befitting a human society. We find it unnecessary to repeat any particular aspect of the Judgment given in that case or the tenor of the judgments delivered by individual members of the Court. We content with repeating that the right to privacy extends to inherently private personal and family matters objectively identifiable as such, provided always that the beneficiary of the right has not by his own action exposed a private matter to public view. Unlike Article 15.1, the object of the 4th Amendment is not to institutionalize a right to privacy but to protect from warrantless search the premises specified therein. No doubt the objects of the 4th Amendment hinge on the concept of privacy but are not identical with and in material respects differ from a self existent right to privacy. Article 15.1 safeguards a fundamental human right, aims to screen from public view and outside inquiry and the pressures associated therewith, inherently private matters, as a

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* Article 8.

** (1986) 2 C.L.R. 64.

*** (1983) 2 C.L.R. 33, 64.

necessary safeguard of the autonomy of the individual in that territory. We need not debate in this appeal, as it does not pose for decision whether the right to privacy safeguarded by Article 15.1 can be waived, and if so under what circumstances. We conclude this part of the Judgment with affirming that business premises are not, on account of the business activity carried out therein, immune from search by virtue of the provisions of Article 15.1.

Inclined as we are to accord every fundamental human right safeguarded by the Constitution a broad and liberal interpretation, we cannot extend their scope beyond the limits set by their wording as we were invited to do in this case in relation to Article 15.1. We remind that in a recent decision of this Bench, *Queiss v. The Republic*,* we decided that the notion of a dwelling house and the inviolability attaching thereto by virtue of Article 16.1 extends to a hotel room in the interest of the comprehensive protection of the right entrenched therein.

Lastly, the claim to privacy and sequentially the right claimed to shield from search the business diary and telephone directory found on the desk of the appellant in exercise of a right allegedly safeguarded by Article 15.1.

The submission made, as we perceived it, is that the diary found on the desk of the appellant in which the incriminating note was found concerned a personal matter in respect of which a right to privacy attached. The content of a business diary and a telephone directory is not of itself a document embodying an inherently personal record in the sense of Article 15.1. Nor did the appellant, by leaving it exposed on his desk and within reach of the personnel of the company, evince any expectation that its content and matters included therein should be kept private to himself.

The claim to privacy in relation to exhibit 36 collapses altogether upon reflection that it was no part of the diary and that it was merely kept or stored therein. Certainly the content of exhibit 36, referable as it was to the details of a criminal conspiracy, it was not a private matter in the sense of Article 15.1. In our Judgment, this aspect of the appeal fails. Exhibit 36 was properly admitted in evidence. Moreover, it was open to the trial Court to treat the content of exhibit 36 as evidence of complicity

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* *(1987) 2 C.L.R 49*

of the appellant in the conspiracy and criminal venture that followed, involving the importation of the narcotics, subject matter of the charges.

Admissibility of the Statement of Appellant.

The first statement of appellant made shortly after his arrest was rejected by the Court on the ground that it was obtained in suspicious circumstances, therefore, the Court found that the prosecution failed to lay the foundations for the admissibility of the statement, namely, a voluntary expression of the will of the appellant. The second statement made by the appellant to the police was not produced seemingly because the prosecution took the view that it was tainted by the same suspicion as the first statement and on that account refrained from producing it in evidence. The third statement, the subject matter of this ground of appeal was made about a month after the first statement of the appellant while he was still in custody. After a review of the evidence bearing on the circumstances of its making, the trial Court held that the ill-effects of the circumstances that rendered the first statement inadmissible had dissipated owing to the time that elapsed between the two statements and the meetings appellant had, in the meantime, with his counsel. In the statement itself appellant affirmed by his own signature that the statement had been voluntarily made and that he had been given every chance to make any corrections or alterations that he chose before authenticating it as correct. Counsel doubted the finding of the Court that the circumstances that rendered the first statement inadmissible had dissipated by the time the third statement had been made, and further submitted that the reception of the statement in evidence was at the least unsafe because of the conversation held between the appellant and his wife following contacts of the latter with members of the police and others associated in the investigation of the case

Consideration of the record persuades us that the trial Court did advert to every relevant part of the evidence illuminating the circumstances under which the statement had been made leaving us in no doubt as to the adequacy of the summing up. In *R. v. Rennie** it was emphasized that questions of fact pertaining to the

* *[1982] 1 All E.R. 385 (C.A.)*

admissibility of a statement must be resolved by the Judge in the same way as factual questions are determined by the jury. Guided by the principles relevant to admissibility and the spirit in which those principles should be applied, the Judge, it was said, must ultimately apply his own sense to the admissibility of a statement in the same way as the jury decides factual issues. Indeed, this is the road trodden by the trial Court. There is no suggestion that they misdirected themselves respecting the principles that should guide them in determining the issue; nor could such a submission be entertained.

In Criminal Procedure in Cyprus* it is noted on analysis of the Cyprus case law that our Courts apply a stringent test to the admissibility of a statement in the interest of the efficacy of the rule of law and as a necessary safeguard against abuse of police power.

The decisions of the Supreme Court in *Kokkinos v. The Police*** and *Petri v. The Police**** illustrate the unwillingness of the Courts to admit in evidence a statement unless the circumstances surrounding its making are freed from suspicion and every element of oppression. But as reaffirmed in *Azinas and Another v. The Police***** all rules evolved by the Courts relevant to the admissibility of a confession are designed to elicit the voluntariness of a statement, the basic issue in every case. In defining voluntariness, the Courts here and in England have consistently been guided by the definition of voluntariness of Lord Sumner in *Imbrahim v. R.****** A statement is voluntary if it has not been obtained either by fear of prejudice or hope of advantage held out by a person in authority. In discerning the likelihood of prejudice resulting from fear, the Courts have increasingly laid stress on the element of oppression that may, in an indirect way, sap the free will of the maker*******.

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* *By Loizou and Pikis*

** *(1967) 2 C.L.R. 217*

*** *(1968) 2 C.L.R. 40*

**** *(1981) 2 C.L.R. 9*

***** *[1914] A.C. 599, 609 - [1914-15] All E.R. Rep. 874, 877*

****** *See, inter alia, R. v. Rennie, [1982] 1 All E.R. 385 (C.A.) Azinas and Another v. The Police (1981) 2 C.L.R. 9*

In *Foumides v The Republic* * the Court reminded of what Lord Hailsham L C stressed in *D P P v Ping Lin*** that voluntariness is basically a question of fact and so it is There is nothing before us justifying interference with the finding of voluntariness made by the trial Court either on account of misdirection or any inadequacy in the summing up of the evidence This ground of appeal is dismissed too

Relevance of Telegram Exhibit 8 to the Conspiracy

Counsel acknowledged that given the findings of the Court with regard to what had preceded its despatch incriminating inferences could be derived from its content What we are asked to review on appeal are not those inferences but the factual background thereto, especially the finding of the Assize Court that the telegram had been sent after the first meeting between Psaras and Barker We agree with counsel that had the first meeting between the two taken place after the date on which the telegram had been sent, it would be unsafe to relate the telegram necessarily to the promotion of the objects of the conspiracy

In essence we are required to review a factual aspect of the case, more precisely, the finding of the Court, that the first meeting between Psaras and Barker took place before the 20th May, 1985 To establish the existence of room for interference with factual aspects of the case the appellant must climb an uphill road considering the uniqueness of the position of the trial Court to evaluate the individual parts of the evidence in the context of the case in its totality The following passage from *Papadopoullos v Stavrou**** is indicative of the position of the trial Court to bring judgment to bear on the facts of the case

> «In reviewing the findings and ultimate judgment of the trial court an appellate court must never overlook that the trial court, living through the drama of a case and following the unfolding of the rival contentions before it, is in a unique position to evaluate the evidence in its proper perspective The live atmosphere of the trial court is preeminently the forum for the elucidation of the evidence and the assessment of its impact »

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* (1986) 2 C L R 75
** [1975] 3 All E R 175
*** (1982) 1 C L R 321

To justify interference with the assessment made by the trial Court of the credibility of witnesses an appellate bench must be persuaded that the finding defies reason and common sense. (*Foumides* (supra)).* The person who introduced Psaras to Barker - witness Georghiou - as counsel pointed out, ultimately put the date on which he brought them together after 20th May, 1985. The trial Court noted this aspect of the evidence of the witness, a friend of Psaras, and the way he prevaricated in his recollection of the date on which the introduction had been made. Furthermore, they examined his evidence in the context of the case as a whole, a far reaching examination that leaves us persuaded that their finding is neither arbitrary nor in any sense a finding that was not open to them. The trial Court inferred, having regard to the evidence as a whole, that the telegram was solely intended to apprise Finianos of the fact that a customer had been found for the purchase of the narcotics, the sole venture in the contemplation of both Psaras and Finianos, namely to import near the shores of Cyprus narcotics for trading purposes.

Here again we remain unpersuaded of the existence of any room for interference with the findings of the trial Court. With the dismissal of this ground, the appeal collapses in its entirety. In our judgment, the findings of the Court warranted its verdict. In the absence of any room for interference with pertinent findings questioned on appeal, the appeal in its entirety must be dismissed and so we direct.

The Appeal of Licha

The following three grounds were propounded in support of the appeal of Licha:

(a) Erroneous acceptance of the evidence of Eid, a self-confessed accomplice, as sufficiently credible to warrant acting upon it, in face of corroboration. The case for the appellant is that given the contradictoriness in his testimony and statements to the police, the Court ought to have wholly ignored it in the same way that a Court of law is apt to disregard the evidence of a hostile witness. If the submission of counsel is upheld, necessarily we must quash the conviction, for the testimony of Eid laid the foundation of the case for the prosecution without which the case for the prosecution could not get off the ground.

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* (1986) 2 C.L.R. 73, 91.

(b) Lack of evidence establishing the competence and territorial jurisdiction of the Court to try the case. In the submission of counsel the case for the prosecution was, at its best, equivocal as to whether the area at sea where the boats were apprehended was within the territory of Cyprus and not that of the British Sovereign Base Area. Equally uncertain in the contention of counsel was evidence pertaining to the distance between the aforementioned spot and the low water mark. The case for the appellant was that the evidence did not establish that the spot was within the 12 mile territorial waters (Law 45/64) of the Republic of Cyprus.

(c) Failure on the part of the trial Court to reason its judgment in the manner ordained by Article 30.2 of the Constitution.

Credibility of Witness Eid.

Counsel submitted there were contradictions of such a magnitude between the testimony of the witness and statements made to the police, particularly with regard to the reasons for possession of (a) a money proof machine; and (b) an amount of 100,000 Lebanese pounds that the Court ought to have treated his evidence as no different from that of a hostile witness, and on that account disregard it as testimony deserving no credit whatever. As in the case of *Liatsos v. The Police** counsel submitted that the testimony of Eid should have been disregarded as evidence unworthy of any credit in which case no question of corroboration could have arisen.

Room for corroboration exists only, as the Court affirmed in *Zachana v. The Republic,***if the evidence of the accomplice is in the first place credible enough; only then can a question of corroboration arise.

If the finding of the Court on this issue is negative, there is nothing to reinforce by way of corroboration. Corroboration is looked for only if the evidence of the accomplice is, in the first place, regarded as creditworthy whereupon corroboration may be looked for to remove doubts as to the provenance of the evidence that necessarily affect the quality of the testimony of an

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* *(1968) 2 C L R 15*

** *1962 C.L R. 52*

accomplice. Corroborative evidence, we may remind, need not take the form of evidence duplicating the testimony of the accomplice, it may be confined to evidence confirming the testimony of the accomplice in two material respects, that a crime had been committed and, further, that accused was implicated in the commission of that crime.*

The trial Court made a thorough examination of the evidence of Eid and duly directed its mind to every point that could cast a shadow on the veracity and reliability of his testimony; duly warning itself in the process of the dangers of acting upon the uncorroborated evidence of an accomplice. They concluded that they were not prepared to act on the evidence of the witness without corroboration, but were ready to do so if duly corroborated. There was a mass of evidence that the crime had been committed. Counsel did not doubt the value of the evidence cited by the Court as corroborative of the fact that Licha was involved in the commission of the offences. Corroborative evidence was forthcoming from the content of the note in the possession of Eid inscribing the name of Finianos and informing of his room number at Aqua Marine Hotel, Larnaca; previous stay of Finianos and Licha at the same hotel and other evidence bearing on the association between the two. On any view of the evidence it provided ample corroboration of the evidence of Eid that Licha was implicated in the commission of the offences.

As earlier indicated, questions of credibility of witnesses are par excellence, the province of the trial Court. There is no rule of law either, as we explained in the case of *Georghiou v. The Republic*** that the testimony of a hostile witness must necessarily be disregarded in its entirety. In the case of a hostile witness too, the weight to be attached to his evidence is a matter for the Court as indeed it is the case with the evidence of an accomplice. In fact, the trial Court may, after warning itself of the danger of acting on the uncorroborated evidence of an accomplice, act on his testimony without corroboration. It was perfectly open to the trial Court after they had properly directed themselves on the implications of the evidence of an accomplice and had given due consideration to the

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* *See inter alia, Decision of the House of Lords in D P P v Hester [1972] 2 All E R 1056 and D P P v. Kilbourne [1973] 1 All E R 440*

** *(1984) 2 C L R 65, 93*

relevant evidence, to accept the testimony of Eid as sufficiently credible to be acted upon after due confirmation by corroborative evidence. This ground of appeal also fails.

Competence and Territorial Jurisdiction of the Assize Court of Larnaca to try the Case.

Contrary to submissions raised before the Assize Court, counsel acknowledged that the territorial jurisdiction of criminal courts of the Republic extends to 12 miles from the low water mark in view of the provisions of s. 2 of the Territorial Waters Law 1964 (45/64) and that section 5(1)(a) of the Criminal Code (as amended by Law 3/62) should be read and applied accordingly. (*Yollness and Others v. The Republic)**. Nonetheless, he raised two other points that affect the competence and territorial jurisdiction of the Court. The first is that the evidence did not conclusively establish that the area where the boats were intercepted and the narcotics dumped into the sea was within the territorial waters of Cyprus and not within those of the British Sovereign Base Area, foreign soil according to s. 5(1)(3) of the Criminal Code (as amended by Law 3/62). The area forming part of the S.B.A. is defined by Article 1 of the Treaty of Establishment. Consequently, the premise for assuming and exercising jurisdiction in a criminal cause or matter had not been laid and the accused ought, therefore, to have been discharged. No suggestion of lack of competence on the part of the Court to try the case was raised before the trial Court, nor was the competence of the Court questioned. On the other hand, the evidence before the trial Court did suggest that the police authorities of the Republic of Cyprus operated freely in the sea area where the interception took place and the arrests made. We can safely assume that Cyprus Courts can validly assume and exercise jurisdiction in respect of offences committed within 12 miles from the shores of the Republic of Cyprus in the absence of evidence that the waters form part of the British Sovereign Base Areas. This rebuttable presumption is a necessary concommitant of the sovereignty of the Republic of Cyprus. Nothing on record suggests the assumption of jurisdiction by the trial Court to try the accused was ill founded or unjustified. We find no merit in this ground of appeal.

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*(1972 2 C.L.R. 46

The second point affecting jurisdiction relates to the area where the narcotics were dumped into the sea. In the submission of counsel that sea territory was not the same as the spot where the boats were intercepted. Consequently, it was unsafe for the Court to conclude that the boats were at any time in possession of narcotics within the territorial waters of Cyprus.

The evidence before the trial Court established that the crew of the boats began dumping their illicit cargo into the sea as soon as they were spotted within a short distance from the area where the boats were stopped and their crew apprehended Considering the shortness of the distance between the two, and the fact that the boats were intercepted at a distance of between 9-10 nautical miles from the shore, the finding of the Court is not only compatible with the evidence, but virtually inevitable. The question was essentially one of fact, and, having regard to the findings of the Court, there is no room for interference on this ground of appeal either. Consequently, it is dismissed.

Reasoning of Judgment

Counsel argued that the Judgment of the Court is not duly reasoned and, therefore, it defies the provisions of s. 113(1) of the Criminal Procedure Law, Cap. 155 and, more importantly, breaches the mandatory requirements of Article 30.2 of the Constitution. The Judgment was faulted for failure to reason or reason adequately prominent findings affecting the evidence of the principal witness for the prosecution and the rejection of the version of the appellant articulated in a statement from the dock. We were referred to *Panayi v. The Police** and *Ioannides v. Dikeos*** as examples of judicial failure to reason the verdict in the manner ordained by the Constitution and in order to exemplify the implications of such failure, rendering the verdict of the Court abortive

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* *(1968) 2 C.L.R. 124, 126*
** *(1969) 1 C.L.R. 235*

Article 30.2 enumerates the attributes of the judicial process and postulates the requisites for the valid exercise of the judicial power. It is not sufficient for a Court of Law merely to pronounce its verdict indicating the outcome of a judicial cause. The reasoning of a Judgment is a concomitant of a valid judicial pronouncement.

Failure to observe the constitutional requirement for the reasoning of the Judgment renders the verdict of the Court, in the exercise of both its criminal and civil jurisdictions, a nullity. A non-reasoned Judgment is not a valid determination of the judicial cause. It is not necessary to debate in this case the order that the Court of Appeal may make upon setting aside the Judgment of a trial Court for failure to reason it as required by the Constitution. Article 30 is included in that part of the Constitution that entrenches fundamental rights and freedoms. The Judiciary must, no less, because of the specific provisions of Article 35, give effect to Article 30 and Courts of law must reason their judgments as a condition for their validity. Not only Article 30.2 imposes a duty on the State to ensure compliance with the judicial standards set forth therein; it also confers a corresponding right on the litigant to have a judicial pronouncement affecting him, duly reasoned. Reasoning is a constituent element of a valid judicial pronouncement. The implications from the breach of fundamental rights relevant to the attributes of the valid exercise of the judicial power were the subject of examination and analysis by the Privy Council in the case of *Bell v. D.P.P. of Jamaica.** The Court was concerned to interpret the provisions of s. 20(1) of the Constitution of Jamaica safeguarding a right to fair hearing within a reasonable time, a right which is likewise entrenched by Article 30.2 of our Constitution. It was held that the right safeguarded by s. 20(1) of the Jamaican Constitution is a positive right breach of which entitles the party denied his right to discontinuance of the proceedings. At common law too the Courts are not powerless, it was pointed out, to suppress unjustified delays and generally abuse of the judicial process.

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* *[1985] 2 All E.R. 585.*

A similar approach has been adopted by Cyprus Courts to the interpretation of Article 30 2 acknowledging a positive right to a litigant to demand observance of judicial standards specified therein as a condition precedent to the valid determination or adjustment of his rights through the judicial process The case of *Neophytou v The Police** is instructive on the nature of the right entrenched by Article 30 2 and the importance of reasoning for sustenance of the efficacy of the judicial process

> «The supply of proper reasoning for the deliberations of the Court, particularly the reasons for the conviction of the accused, is mandatorily warranted by the Constitution; notably Article 30 2, and constitutes at the same time a fundamental attribute of the judicial process In the longer run, faith in the judiciary of the State, and its mission, depends, to a very large extent, on the persuasiveness of the reasons given by the Courts in support of their decisions Any laxity in this area would inevitably undermine faith in the premises of justice The need for proper reasoning is not only warranted by the interests of the litigants but also by the interests of the general public in the proper administration of justice The impression of arbitrariness is the one element that must constantly be kept well outside the sphere of judicial deliberations »

In the above case the Supreme Court reaffirmed the principles adopted in *Pioneer Candy Ltd v Tryfon and Sons*** as to the minimum requirements to be observed for a judicial pronouncement in order to qualify as duly reasoned The evidence must be analysed by reference to the matters in issue In a criminal case the main issue is defined by the answer of the accused to the charge on arraignment Furthermore, there must be a clear statement of the findings of the Court coupled with an unambiguous pronouncement of the outcome of a case

Far from agreeing with counsel that the judgment of the trial Court is not duly reasoned, we are of the view it provides an example of a robustly reasoned judgment The requirement of due reasoning does not oblige the court to reproduce the whole of the evidence in its evidential analysis, or refer to every detail of it The reasoning of a judgment may take a variety of forms What is required of a Court of law is that reasons should be given for its

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* *(1981) 2 C L R 195*
** *(1981) 2 C L R 540*

decision and those reasons should relate to the law applicable and be referable to the evidence given in the cause, so that it may appear that the verdict is not merely the reaction of the Court to the dispute but warranted by the law applicable and the evidence adduced. We find no substance in this ground of appeal.

The appeals are dismissed. Orders accordingly.

Appeals dismissed.