

1962  
Oct. 5.

1. AGAMEMNON  
PAPAIOANNOU  
2. ELENI  
AGAMEMNONOS  
v.  
THE POLICE

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ]

1. AGAMEMNON PAPAIOANNOU,  
2. ELENI AGAMEMNONOS

*Appellants,*

v.  
THE POLICE

*Respondents.*

*(Criminal Appeals No. 2538 and 2538 (A)).*

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*Motor Traffic—Using and permitting to use a motor vehicle without a motor vehicle licence—The Motor Vehicles Regulations, 1959, regulations 18 and 66—Fee payable for such licence—No power conferred on the courts in sentencing the offender to order payment of the said fee.*

*Sentence.*

In this case the first appellant was convicted by the District Court of Nicosia sitting at Lefka, of (a) driving a diesel motor lorry without a motor vehicle licence and sentenced to pay a fine of £5 and (b) driving a motor vehicle without a certificate of road worthiness and sentenced to pay a fine of £5.

The second appellant, who is the wife of the first appellant, was convicted of permitting the aforesaid lorry to be used (a) without a licence and (b) without a certificate of road worthiness, and sentenced to pay a fine of £5 in respect of each count.

Both appellants were further ordered by the trial Court to pay the sum of £27.100 mils by way of fees which they failed to pay in respect of the quarter for which the lorry ought to have been licensed. They appealed against both conviction and sentence.

*Held* : (1) The appeal against conviction is dismissed.

(2) No power is conferred on a Judge either by the statute or the regulations made thereunder (the Motor Vehicles and Road Traffic Law, Cap. 332, as amended by Law 25 of 1959, and the Motor Vehicles Regulations, 1959) to make the appellants pay £27.100 mils fees, and consequently that part of the sentence cannot be supported and is accordingly set aside.

(3) (ZEKIA, J. dissenting). With regard to the fine of £5

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Imposed on the first appellant, for driving a diesel motor lorry without a motor vehicle licence, we would observe that the fees payable for such a lorry are £27.100 mils per quarter, and this Court will not allow him to take advantage of his failure to pay the fees which he was bound to pay under the law. In the circumstances of the case we are of the view that the fine of £5 imposed on him is manifestly inadequate and we, accordingly, raise the fine from £5 to £30 on count 1.

(4) As regards the fine of £5 imposed on the first appellant on count 2 and the fine of £5 imposed on the second appellant on count 3 and £5 on count 4, we are of opinion that in the circumstances of this case the fines are adequate and we do not propose to disturb the order of the trial Judge.

*Appeal against conviction dismissed. Order for the payment of £27.100 mils set aside. Fine imposed on 1st defendant increased from £5 to £30. All other fines to remain the same.*

#### **Appeal against conviction and sentence.**

The appellants were convicted on the 20.7.62 at the District Court of Nicosia, sitting at Lefka, (Cr. Case No. 850/62) on 2 counts each, of the following offences :

1. *Appellant No. 1* : (a) For driving a motor vehicle without a motor vehicle licence contrary to ss.18 and 66 of the Motor Vehicles Regulations 1959 and s.13 of the Motor Vehicles and Road Traffic Law Cap. 332 as amended by law No. 25/59.

b) For driving a motor vehicle without a certificate of road-worthiness, contrary to ss. 62(4) and 66 of the Motor Vehicles Regulations, 1959 and s. 13 of the Motor Vehicles and Road Traffic Law Cap. 332 as amended by Law No. 25/59.

2. *Appellant No. 2* : a) For permitting a motor vehicle to be used without a motor vehicle licence contrary to ss. 18 and 66 of the Motor Vehicles Regulations 1959 and s. 13 of the Motor Vehicles and road Traffic Law Cap. 332 as amended by Law No. 25/59.

b) For permitting a motor vehicle to be used without a

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certificate of road-worthiness contrary to ss. 62 and 66 of the Motor Vehicles Regulations 1959 and s. 13 of the Motor Vehicles and Road Traffic Law Cap. 332 as amended by Law No. 25/59, and were sentenced by Papaioannou D.J. to pay a fine of £5 each on each of the aforesaid counts and appellant No. 2 was furthermore ordered to pay the amount of £27.100 mils as fees.

*A. Papa Georghiou* for the appellants.

*V. Aziz* for the Respondents.

WILSON, P. : Mr. Justice Josephides will deliver the judgment of the majority of the Members of the Court, to be followed by Mr. Justice Zekia who will give his judgment.

JOSEPHIDES, J. : In this case the first appellant was convicted by the District Court of Nicosia sitting at Lefka, of (a) driving a diesel motor lorry without a motor vehicle licence and sentenced to pay a fine of £5, and (b) driving a motor vehicle without a certificate of road worthiness and sentenced to pay a fine of £5.

The second appellant, who is the wife of the first appellant, was convicted of permitting the aforesaid lorry to be used (a) without a licence and (b) without a certificate of road worthiness, and sentenced to pay a fine of £5 in respect of each count.

Both appellants were further ordered by the trial Court to pay the sum of £27.100 mils by way of fees which they failed to pay in respect of the quarter for which the lorry ought to have been licensed.

The appeal is both against conviction and sentence.

First as to conviction : The learned counsel for the appellants has today directed our attention to certain parts of the evidence adduced on behalf of the appellants which, he submitted, the trial judge ought to have accepted but which, in fact, he rejected. What the trial judge said in his judgment was that he did not believe the evidence adduced by the first appellant and his witnesses and that he considered the whole evidence adduced by the defence as fabricated.

Having heard the learned counsel for the appellants we are not satisfied that the finding of the trial judge is wrong and the appeal against conviction is, accordingly, dismissed.

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Now, as to the sentence imposed, the trial judge ordered both appellants to pay £27.100 mils fees. No such power is conferred on a judge either in the statute or the regulations made thereunder (the Motor Vehicles and Road Traffic Law, Cap.332, as amended by Law 25 of 1959, and the Motor Vehicles Regulations, 1959) and, consequently, that part of the sentence cannot be supported and it is accordingly set aside.

With regard to the fine of £5 imposed on the first appellant, for driving a diesel motor lorry without a motor vehicle licence, we would observe that the fees payable for such a lorry are £27.100 mils per quarter, and this Court will not allow him to take advantage of his failure to pay the fees which he was bound to pay under the law. In the circumstances of the case we are of the view that the fine of £5 imposed on him is manifestly inadequate and we, accordingly, raise the fine from £5 to £30 on count 1

As regards the fine of £5 imposed on the first appellant on count 2 and the fine of £5 imposed on the second appellant on count 3 and £5 on count 4, we are of opinion that in the circumstances of this case the fines are adequate and we do not propose to disturb the order of the trial judge.

The net result is that the order for the payment of the £27.100 mils is set aside. The fine imposed on the first appellant on count 1 is increased from £5 to £30. All other fines remain the same.

ZEKIA, J. : I agree with the majority of the Court as far as the dismissal of appeal against conviction is concerned and also the setting aside the order of payment of £27.100 mils fees, the order being in excess of jurisdiction. I disagree, however, as to the increase of the fine on count 1 against appellant 1. I am not satisfied that it is manifestly inadequate in the circumstances of the case, in view of the fact that there is no finding on the part of the Court that the appellant 1 has evaded payment of fees for the period in question, or that the vehicle constituted a danger on the road.

*Appeal against conviction dismissed. Order for the payment of £27.100 mils set aside. Fine imposed on 1st appellant increased from £5. to £30. All other fines to remain the same.*