

1962
May 29
—
SPYROS
STAVRINIDES
v.
THE
IMPROVEMENT
BOARD OF
PALLOURIOTISSA

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

SPYROS STAVRINIDES,

Appellant

v.

THE IMPROVEMENT BOARD OF PALLOURIOTISSA

Respondent,

(Criminal Appeal No. 2480).

Buildings—Erecting a building without permit contrary to the streets and Buildings Regulation Law, Cap.96, section 3(1) (b) and 20—Order of demolition under sub-section (3) of section 20 (supra) discretionary.

Appeal—Absence of evidence enabling trial judge to exercise his said discretion—New trial.

Practice—Authority of trial judges not to be undermined by arrangements between counsel.

On the last of the two adjournments the District Court of Nicosia had called the accused and his counsel but neither of them appeared. Thereafter the trial Judge proceeded in the absence of both counsel and accused and convicted the accused for erecting a building without a permit contrary to sections 3 (1) (b) and 20 of the Streets and Buildings Regulation Law, Cap. 96. The accused (appellant) appealed against conviction and sentence.

The grounds of appeal were as follows :—

“Against conviction:

“1. In deciding to proceed to hear evidence in the absence of both the accused and his counsel the Court, in view of the opening statement made to it by counsel for the prosecution and/or the nature of the case as being one in which demolition might be ordered, failed to exercise a judicial discretion.

“In the alternative:

“2. In so deciding the Court exercised its discretion on a wrong principle, viz, on the footing that an accused person, who has employed counsel for his defence, may, where his counsel does not appear, properly be tried in his absence completely undefended, regardless of the reasons for counsel's non-appearance.

"Against Sentence :

"1. The Court in ordering demolition misdirected itself by assuming that demolition was legally mandatory.

"In the alternative :

"2. In ordering demolition the Court misdirected itself by assuming that the use to which "part of the buildings" was put was relevant consideration in deciding whether demolition should be ordered".

Held : (1) As no substantial injustice was done as a result of the conviction, this should not be interfered with.

(2) As the trial Judge did not direct his mind to the point of law that demolition order is discretionary and because there is absence of evidence so as to enable him to exercise properly his discretion we order that the case be remitted to the trial Judge to take further evidence bearing upon whether or not a penalty be imposed and if imposed the extent of it.

Per Curiam : The Authority of the trial Judges should not be undermined by arrangements between counsel for their personal convenience.

*Appeal against conviction
dismissed.*

*Sentence set aside. Case
remitted, to the trial court
on the above terms. Costs of
appeal and in the court below
to be paid by the appellants.*

Appeal against conviction and sentence

The appellant was convicted on the 8/2/62 at the District Court of Nicosia (Cr. Case No. 16167/61 on one count of the offence of erecting a building without permit contrary to ss. 3(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96 and was sentenced by Georghiou, D.J. to pay a fine of £5.— and £4.— costs and in default one month's imprisonment. The Court further ordered the demolition of the buildings and erections described in the charge, unless the appellant obtained a covering permit within two months from the date of the order.

Lefkos N. Clerides for the appellant.

Ozer Beha for the respondent.

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The judgment of the Court was delivered by :

WILSON, P. : This is an appeal against a conviction and the sentence in the District Court of Nicosia on February 2nd, 1962, in which the Court convicted the accused of erecting a building without a permit contrary to section 3(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96. After two adjournments this came on for trial on February 8, 1962. The accused was called at several intervals but did not appear. Counsel for the private prosecutor informed the Court that counsel for the accused had informed him on the morning of that day that he had been briefed but he could not appear. Both counsel consented to an adjournment but to this adjournment the Court objected and proceeded in the absence of both accused and his counsel.

There was a second count upon which evidence was not given and the accused was discharged.

This case presents two problems — one, the question of whether or not the Court should proceed in the absence of the accused and, secondly, the question of the embarrassment caused to the Court by arrangements made by counsel without consulting it.

As to the first point, this Court is now, as it always has been, most concerned with the position of an accused person and that his rights must be protected. However, after reading the record and hearing what argument counsel made, we think that the conviction should not be interfered with. No substantial injustice is done or has been done as a result of making a conviction, and it may well have been the accused was deliberately trying to delay the trial.

However, with respect to the penalties that were imposed, it is our view that further evidence must be taken upon which the Court can decide whether demolition of the building should be ordered. The accused person will, of course, be permitted to give and to call witnesses to give evidence. According to the record the trial Judge did not direct his mind to the point of law that the order for demolition is a discretionary one. Moreover, it should be said there appears to be an absence of evidence upon which he could exercise properly a discretion as to whether or not a demolition should be ordered. For these reasons we think the conviction should stand, that the case should be remitted to the learned Judge to take

evidence bearing upon whether or not a penalty should be imposed and, if imposed, the extent of it.

We wish to add a word with regard to the position of the trial judges in circumstances such as those which exist in this case and undoubtedly exist in other cases with variations, as to time and place and other facts. We are of the opinion that the authority of trial Judges must be firmly maintained and that it must not be undermined by arrangements between counsel for their personal convenience or otherwise to put off cases that are coming up for trial. It is difficult to lay down any general principle, certainly the members of the Bar who are concerned with this practice will fully understand what is intended to be meant by these remarks and will govern themselves accordingly.

In the present case the judgment of the trial court will be varied by allowing the appeal as to sentence, setting it aside, and by remitting it for the taking of further evidence relating to the penalty, if any, to be imposed. Save as varied the judgment is affirmed.

On the question of costs, we think in any event that the costs of the proceedings and of this appeal should be paid by the appellant.

*Appeal against conviction dismissed.
Appeal against sentence allowed.
Sentence set aside. Case remitted
to trial Court on the above terms.
Appellant to pay the costs of the
appeal and of the proceedings in the
Court below.*

The grounds in full on which the appeal was founded were:—

“Against conviction :

“1. In deciding to proceed to hear evidence in the absence of both the accused and his counsel the Court, in view of the opening statement made to it by counsel for the prosecution and/or the nature of the case as being one in which demolition might be ordered, failed to exercise a judicial discretion

“In the alternative :

“2. In so deciding the Court exercised its discretion on

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“Against Sentence :

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