

1962  
June 14  
—  
DEMETRIOS  
CONSTANTI  
v.  
DISTRICT  
OFFICER

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

DEMETRIOS CONSTANTI

*Appellant,*

v.

DISTRICT OFFICER, FAMAGUSTA

*Respondent.*

*(Criminal Appeal No. 2502).*

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*Buildings—Building a house without a permit—Contrary to section 3(1) (b) and (e) and section 20 (1) of the Streets and Buildings Regulation Law, Cap. 96—Penalty provided by section 20(3) discretionary not mandatory.*

*Constitutional Law,—Reasoned judgment—Article 30. 2 of the Constitution.*

The appellant applied for a building permit on 14th October 1961, but the building was already erected prior to securing permit. Appellant was the owner in undivided share of 8/14ths of the building site. As he could not obtain the consent of the other co-owners he proceeded to built without securing their consent and because he was an earthquake-victim. The trial Judge imposed a fine of £1,500 mils and ordered the demolition of the offending building.

Against this order the appellant appealed complaining.

- a) That the accused was not heard by the trial Court.
- b) That the Judge exercised his discretion wrongly and,
- c) that the Judgment was not a reasoned judgment within the provisions of article 30, paragraph 2, of the Constitution.

*Held* : (1) The penalty provided by section 20(3) of the Streets and Buildings Regulation Law, Cap.96 is discretionary and no longer mandatory and the judge proceeded on that line.

(2) The appellant had ample opportunity before the trial Court to adduce evidence in support of his submission that the demolltion order should not be made.

(3) The trial Judge exercised his discretion reasonably and

his judgment was reasoned enough within the provisions of article 30 paragraph 2 of the Constitution.

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*Appeal dismissed.*

**Appeal against sentence.**

The appellant was convicted on the 19/3/62 at the District Court of Famagusta (Cr. Case No. 194/62) on one count of the offence of erecting a house without a building permit contrary to ss.3(1)(b)(e) and 20(1) of the Streets and Buildings Regulation Law, Cap. 96 and was sentenced by Kourris, D.J. to pay a fine £1.500 mils and to demolish the erection referred to in the charge within two months.

*M. Papas* for the appellant.

*S. Georghiades* for the respondent.

The judgment of the Court was delivered by JOSEPHIDES, J.

WILSON, P. : We think it is unnecessary to call upon Counsel for the Respondent. Mr. Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J. : In this case the appellant was charged with erecting a house without a building permit contrary to section 3(1) (b) and (e) and section 20(1) of the Streets and Buildings Regulation Law, Chapter 96. He was represented by counsel and he pleaded guilty.

The facts were explained by the prosecution in the usual way and Mr. Papas, who appeared for the appellant, put forward facts in mitigation of punishment. The facts, as explained by the prosecution, take 5 1/2 typed lines, the submission on behalf of the appellant takes nearly five lines and the judgment of the Court takes five lines of the whole record.

The appellant to-day complained (a) that the accused was not heard by the trial Court, (b) that the Judge exercised his discretion wrongly and (c) that the judgment was not a reasoned judgment within the provisions of article 30, paragraph 2, of the Constitution.

With regard to the nature of the penalty provided by section 20(3) of the Streets and Buildings Regulation Law,

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Chapter 96, there is no doubt that that is discretionary and no longer mandatory and, in fact, the Judge proceeded on that footing.

The facts, as put forward by the prosecution, were that the appellant on the 14th October, 1961, applied for a building permit but that two days later, when the competent officer inspected the plot, he saw that the building had already been erected. The accused, according to the prosecution, is the owner of the 8/14ths of the said plot in undivided share. On behalf of the appellant it was contended that he is the owner of the 10/14ths and not the 8/14ths shares. It was further stated that he could not obtain a permit because the other co-owners did not give their consent and that he had to build because he is an earthquake-victim, and the Court was asked to exercise its leniency. The Judge then imposed a fine of £1,500 mls and went on to state that in exercising his discretion he was of the opinion that under the circumstances it would be reasonable to order the demolition of the offending building.

Having looked at the record and heard the argument put forward by the learned counsel for the appellant to-day we are satisfied that the appellant had ample opportunity before the trial Court to adduce evidence in support of his submission that the demolition order should not be made. Furthermore, on the material put before the trial Judge, we are satisfied that he exercised his discretion reasonably and, having regard to the shortness of that material, the judgment was reasoned enough within the provisions of article 30, paragraph 2, of the Constitution.

The appeal is accordingly dismissed.

*Appeal dismissed.*