

1954
April 13

[GRIFFITH WILLIAMS, J., AND ZEKIA, J.]
(April 13, 1954)

POLICE
v.
PANAYIOTIS
CONSTANDAS
AND ANOTHER.

POLICE, *Appellants,*
v.

1. PANAYIOTIS CONSTANDAS
2. FRANK WILLIAM KUKULA *Respondents.*

(Case Stated No. 90)

Motor Car Regulations, 1951 and 1953—Regulation 2: “road” does not include private road—Regulations 6 and 17: registration and licence for motor car necessary when driven or used anywhere in Cyprus.

The respondents drove a motor lorry on a road to which the public had no access. They were charged with using or driving an unregistered and unlicensed motor vehicle contrary to regulations 6 and 17 of the Motor Car Regulations, 1951 and 1953. The Magistrate acquitted the respondents holding that the regulations only applied when a motor car was driven on a “road” as defined in regulation 2 and this does not include a private road.

Upon a case stated to the Supreme Court,

Held: (i) the definition of “road” in regulation 2 did not include a private road;

(ii) the application of regulations 6 and 17 is not limited to motor cars driven on a “road” but require that a motor car driven anywhere in Cyprus be registered and licensed.

Case remitted to District Court with direction to convict and impose appropriate sentence.

Appeal from the decision of the District Court of Limassol (Case No. 10071/53).

R. R. Denktash, Crown Counsel, for the appellants.

J. Eliades for the respondents.

Judgment was delivered by:

GRIFFITH WILLIAMS, J.: This is an appeal on the part of the Attorney-General by way of case stated from the decision of the District Court of Limassol in a prosecution under the Motor Car Regulations, 1951 and 1953. The facts briefly were as follows:—

Respondent 2 is the Managing Director of the Cyprus Asbestos Co. Ltd. of Amiandos and respondent 1 is a motor car driver in the employment of the said company. The company has a mining lease from the Cyprus Government of a considerable area of land at Amiandos, and on this land it has constructed private roads for the purpose of its business. On one of these roads leading to one of the company’s mills, it operated a lorry which was driven and used by respondent 1

for the removal of earth. This lorry was neither registered nor licensed under the Motor Car Regulations, 1951 and 1953, and the respondents were prosecuted in the District Court of Limassol for an offence against regulations 6 and 17 of the Motor Car Regulations, 1951 and 1953.

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The respondents in their defence relied on the fact that the said lorry was only used on one of the company's private roads and that such road was not within the definition of "road" in regulation 2 of the Motor Car Regulations, 1951 and 1953. They contended that unless the lorry were used as defined in the regulation there was no need for it to be registered or licensed.

The District Judge held that the road on which respondents were using the lorry was not a road as defined in regulation 2. He also found that the enacting part of regulation 6 by omitting after the word "driven" such words as "at any part of the Island" or "on any road", created an ambiguity, and that this ambiguity might be clarified by reference to the proviso in which the words "driven on a road" occur. In this he relied on the principle stated by Lord Russell of Killowen in the case of *Jennings and another v. Kelley*, 4 A.E.L.R. 1939 at p. 471 as follows:—

"That is frequently the very function of a proviso—namely, to include within the scope of the preceding words something which *prima facie* would not fall within it, or to exclude something which *prima facie* would so fall. Although a proviso may well be incapable of putting upon preceding words a construction which they cannot possibly bear, it may without doubt operate to explain which of two or more possible meanings is the right one to attribute to them."

The learned District Judge in applying this principle decided that regulation 6—and in the same way regulation 17—could only apply to a car used on a road; and that the respondents' private road not being a "road" within the definition in regulation 2, the necessity for having the said lorry registered and licensed did not arise. He therefore acquitted both of the respondents on all counts.

The appellant has asked us to reserve the decision of the trial Court on two grounds:—

(1) That the definition of "road" in regulation 2 of the Motor Car Regulations, 1951 and 1953, covered all roads in Cyprus to which the public has access including the roads within the mining area of Amiandos.

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(2) That regulation 6 provides that all cars to be used or driven in Cyprus must be registered irrespective of whether or not they are driven on a road as defined in regulation 2.

The definition of "road" in regulation 2 is as follows:—

" 'road' means any road, street, square, pathway, open place and space to which the public has access and includes any bridge, culvert, ditch, embankment, drain, causeway or supporting wall used in connection with a road but does not include a parking place."

The prosecution in asking us to hold that the private road of the Cyprus Asbestos Co. Ltd. is a "road" as defined above is asking us to hold that it is a road to which the public has access. But there is a finding of fact by the learned District Judge, founded on the evidence adduced, that this road "could not be used by any person other than persons wishing to go to the P.I. (a mill of the company) on business". This could not be said to be a road to which the public had access; and as public access is an essential characteristic of a "road" as defined, we are unable to hold that the said lorry was being used on a road. No doubt this definition of "road" was intended to give it only a restricted meaning, so as to meet the requirements of other regulations—such as the ones dealing with driving licences and careful driving.

The second ground of appeal is more general, viz. that all motor cars used in Cyprus must be registered and licensed. Indeed there is no mention of the word "road" in the enacting part of regulation 6, and it is only by bringing in the proviso to correct a supposed ambiguity that its scope can be restricted to motor cars used on roads. This regulation is as follows:—

" 6. No person shall use or drive a motor car or shall suffer or permit a motor car to be used or driven unless such car is registered under the provisions of these regulations :

Provided that an unregistered motor car may be driven on a road for the purpose of its being registered".

We have heard a lot of argument regarding the similarity of our Motor Car Regulations, 1951 and 1953, to those of Nyasaland, on which they are alleged to have been based, and with particular reference to the significant omissions of the words "on a road" in the enacting parts of regulations 6 and 17. It is not however open to the Court to inquire into the Legal Department's methods of drafting legislation; we may of course compare the regulations made in Nyasaland with those in Cyprus, if the latter are the same in form and

draw our own conclusions as to omissions; but we may not accept counsel's statement that the one set of regulations was taken from the other and certain parts intentionally omitted.

Now, according to the District Judge, he found an ambiguity in regulation 6 because it did not exactly specify where the motor car requiring registration was to be used. The absence of limiting words may be an omission intentional or otherwise; but the absence of such limiting words as "used on a road" does not give rise to any ambiguity.

Throughout the hearing no reference was made by either side to the Motor Car Regulations, 1930, which were replaced by the ones now in use. Indeed the Motor Car Regulations, 1951 and 1953, have been treated as if they were some entirely new piece of legislation of a kind never before in force in the Colony. In actual fact there is a long history of motor car regulations, one set being superseded by another when it had got out of date. Thus the regulations of 1951 replaced the regulations of 1930, which had replaced those of 1923 and so on.

In order therefore to obtain an idea of the scope and meaning of regulation 6 of the present regulations and see whether the enacting part of it does in fact contain any ambiguity we will consider first the relative regulation in the Motor Car Regulations, 1930. If there is no conspicuous alteration on the face of it, it can be assumed that whatever the earlier regulation was interpreted to mean the same meaning should be given to the later one. But any fundamental differences in principle introduced by the later regulation should be couched in the clearest and most unambiguous language. The relative regulation in the Motor Car Regulations, 1930, is regulation 4 which dealt with both registration and licensing of motor cars—now our regulations 6 and 17. It is as follows:

"4.—(a) Every motor car used in Cyprus shall be registered at the office of the Registrar.

(b) The owner of every motor car shall take out a yearly licence in respect thereof.

Such licence shall expire at the end of the calendar year in which it is issued."

In this earlier regulation the words "at any part of the island" or "on any road" do not occur, nor does it contain a proviso which can be used to explain any ambiguity therein. But, as far as we are able to see, there is no ambiguity in this regulation, which states perfectly clearly that every motor car used in Cyprus shall be registered, and that the owner of every motor car shall take out a yearly licence in

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respect thereof. There is no proviso, and the necessity for registration and licensing is not restricted to those motor cars used on roads. Indeed the only mention of roads in these regulations concerns the duties of drivers on public thoroughfares, or roads, etc.—in regulations 23-33, and in regulation 34. In the latter, regulations 23-33 are made to apply, as though it were a public thoroughfare, to the case of a roadway to which the public are granted access, apparently for a particular purpose on some special occasion. It is quite clear to us that registration and licensing of this company's lorry would have been necessary under the Motor Car Regulations, 1930, and that being the case we are quite unable to see how the learned District Judge found any ambiguity in the enacting part of regulation 6 of the present regulations, because they did not contain limiting words.

To make the matter even clearer we can go to the Motor Car Regulations, 1923, where the forerunner to our present regulation 6, namely regulation 3, was as follows :

“ Every motor car used in Cyprus shall be registered at the office of the Registrar, and the owner shall take out a licence in respect thereof.”

Here again the only limitation on the necessity of every motor car in Cyprus being registered was that it must be “ used ”—if not being used it need not be registered. There is nothing to say that it need not be registered if not used on a road.

The law to-day contained in regulations 6 and 17 is the same as it has been for the last 30 years—namely, that every car used in Cyprus must be both registered and licensed.

For these reasons the appeal must be allowed and the case remitted to the District Court with a direction to convict, and to impose such sentence as the circumstances may require.