

IOANNIS STYLIANOU SAVVA KLONAROU,

Appellant,

v.

THE DISTRICT OFFICER, FAMAGUSTA,

Respondent.

IOANNIS
STYLIANOU
SAVVA
KLONAROU
v.
THE DISTRICT
OFFICER
FAMAGUSTA

(*Criminal Appeal No. 2630*)

Criminal Procedure—Conviction on a plea of guilty—Appeal against such conviction—Conviction may be set aside on the grounds stated in the Criminal Procedure Law, Cap. 155, section 135 (b)—Or, on any of the grounds set out in Archbold, 35th edition, paragraph 926, p. 386.

Appeal against conviction.

The appellant was convicted on the 7th March, 1963, at the District Court of Famagusta (Cr. Case No. 2890/62) on one count of the offence of encroaching upon the public road, contrary to s. 3 (*f*) and 5 (1) (*a*) and (*b*) of the Public Roads (Protection) Law, Cap. 83, and was bound over by Kourris, D.J., in the sum of £15 to come up for judgment.

Appeal dismissed.

L. Clerides for the appellant.

S. Georghiades for the respondent.

The facts sufficiently appear in the judgment of the Court delivered by VASSILIADES, J.

WILSON, P. : Mr. Justice Vassiliades will deliver the judgment of the Court.

VASSILIADES, J. : This is an appeal against a conviction by the District Court of Famagusta, upon a plea of guilty to a charge for encroaching upon a public road, preferred under sections 3 (*f*) and 5 (1) (*a*) and (*b*) of the Public Roads (Protection) Law, Cap. 83.

Counsel for the appellant argued that the statement made by the appellant through his counsel, immediately after appellant's plea of guilty, amounts in effect to a plea of not guilty.

We are unanimously of opinion that counsel has not been able to substantiate this contention.

1963
May 9

—
IOANNIS
STYLIANOU
SAVVA
KLONAROI
v

THE DISTRICT
OFFICER
FAMAGUSTA

The charge against the appellant was that during April, 1962, he encroached upon the public road described in the charge, by cultivating it. The facts alleged in this charge are clear ; and they certainly amount to an offence against the statutory provisions under which the charge was preferred.

When charged before the District Court, the appellant pleaded not guilty. After several adjournments, the case came before the Court for trial, when evidence was called, in appellant's presence in support of the prosecution. Upon the conclusion of the evidence of the first witness, a Land Registry Clerk, whom counsel for the accused, cross-examined in due course, an application was made, to the trial Judge on behalf of the accused as it appears at page 3 of the record which reads :

“ Mr. Marathovouniotis applies for leave to change the plea of not guilty into one of guilty.

COURT : Leave granted.

Accused pleads guilty.”

Counsel then made a submission in mitigation, whereupon the Court disposed of the case by binding over the accused in the sum of £15 for six months to come up for judgment, apparently under the provisions of section 33 of the Criminal Code.

After this proceeding, appellant apparently consulted another advocate, who advised him that in order to pursue a claim upon the strip of land described in the charge as a public road, the appellant would have to remove the conviction in this case. The present appeal was then filed.

We do not purport to deal, in this appeal with appellant's alleged claim on the strip of land in question. What we have before us is the conviction in the case in hand—a conviction based, as I have already said, upon the plea of guilty, entered in the circumstances I have just stated. A conviction of this nature can be set aside on the grounds stated in section 135 of the Criminal Procedure Law paragraph (b) which provides that a person who has been convicted on a plea of guilty shall be entitled to appeal “against conviction on the ground that the facts alleged in the charge or information to which he pleaded guilty did not disclose any offence”. Obviously the appellant cannot bring his case within this section.

Counsel for the appellant contended that as the law stands at present, a wider range is open to an appellant to attack a conviction based upon a plea of guilty. He could contend, for instance, that he did not understand the nature of his plea ; or that upon the admitted facts he could not, under the law, have been convicted of the offence charged. (Archbold, 35th edition, paragraph 926, at page 386). It is clear in this case that upon the facts admitted in the trial Court, an appeal could not be based on either of these grounds.

In these circumstances, the appeal must fail and be dismissed.

It will be for the appellant now to consider his position as regards his alleged civil claim, such as it may be, and pursue his civil remedy as he may be advised.

Appeal dismissed.

1963
May 9
—
IOANNIS
STYLIANOU
SAVVA
KLONAROU
v.
THE DISTRICT
OFFICER
FAMAGUSTA