[VASSILIADIS, P., JOSEPHIDES, LOIZOU, JJ.]

IMPROVEMENT BOARD OF KAIMAKLI,

Appellant,

v.

PELOPIDAS SEVASTIDES,

Respondent

(Criminal Appeal No. 2885)

Criminal Law—Sentence—Construction of a building without the required permit—The Streets and Buildings Regulation Law, Cap. 96 (as amended by Law No. 67 of 1963), section 3(b) and 20(1)(3)(a) and (5)—Proper enforcement of the Law—Demolition order—Judicial discretion—Wrong exercise in this case of such discretion by the trial Court in declining to make such order.

Criminal Procedure—Appeal—Appeal by the prosecuting Authority against sentence as being manifestly inadequate—In that the trial Court ought in this case to make the demolition order prescribed by section 20(3)(a) of Cap. 96, supra—Appeal taken under section 25(2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) With the sanction of the Attorney-General—Section 137(1)(b) of the Criminal Procedure Law, Cap. 155. See also, herebelow under trial in criminal cases.

Streets and Buildings—Construction of a building without the required permit—Proper enforcement of the Law—Demolition order ought not to have been refused—See above under Criminal Law.

Buildings—Construction of without the required permit—Penalties—Demolition order—Appeal—See above under Criminal Law, Criminal Procedure.

Trial in criminal cases—Adjournments of trial both in civil and criminal cases—Proper and judicial exercise of discretion—Principles reiterated—Unnecessary and unjustified adjournments—Strongly deprecated by the Supreme Court—Grave anxiety and concern of the Supreme Court expressed regarding such unwarranted adjournments—The Criminal Procedure Law, Cap. 155, sections 47, 68(1) and 77(3).

Demolition Order—See above under Criminal Law, Criminal Procedure.

Adjournments—Unnecessary and unjustified adjournments both in civil and in criminal cases, strongly deprecated—See above under trial in criminal cases.

This is an Appeal against sentence taken by the prosecuting Authority in a criminal case instituted under sections 3 (*b*) and 20 of the Streets and Buildings Regulation Law, Cap. 96 as amended by Law No. 67 of 1963, against the respondent, for the construction of a building without the required permit. It would seem that the building so erected without the required permit cost a considerable amount *viz.* about £6.000 and was a factory constructed to house a machinery of the value of twenty thousand pounds. The trial Judge imposed a fine of £20 but declined to issue a demolition order, now discretionary under section 20 (3) (*a*) of Cap. 96 (*supra*) as amended by Law No. 67 of 1963 on the ground that, in view of the cost of the building in question, a demolition order would lead to "catastrophy" of the accused-respondent; and the learned trial Judge concluded: "I find that the scales of justice lean against the issue of a demolition order. I would be inclined to issue a demolition order if that order was not rather a punishment but a means of enforcing the conformity of the buildings with the provisions of Cap. 96 (*supra*).

It is against this refusal to issue a demolition order that the prosecuting Authority took this appeal, exercising their right under section 25 (2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960), with the sanction of the Attorney-General under section 137 (1) (*b*) of the Criminal Procedure Law, Cap. 155.

It is to be noted that the accused in this case pleaded guilty on the 28th December, 1965, and after several adjournments sentence was passed on the 13th January, 1967.

It was strenuously argued by counsel on behalf of the respondent-accused that treating the demolition order as part of the punishment, leads to the unavoidable conclusion that the consequences of a demolition order in this particular case shall be a punishment disproportionate to the offence committed. No Court would impose a fine, counsel argued, to the extent of the loss and damage which a demolition order in this case, shall cause to the respondent.

The material parts of the relevant statutory provisions are set out in the judgment of the Court *post*.

The Supreme Court in allowing the appeal and in issuing a demolition order and strongly commenting on the unwarranted adjournments of the proceedings at the trial (*supra*) :—

Held (1) the fallacy in the argument put forward by learned counsel for the appellant (*supra*) can be seen at once from the fact that it leads to the position that the greater the violation of the law, the stronger is the case against its application by a demolition order

(2) It is true that the provision of the law in section 20(3)(*a*) for a demolition order was peremptory until 1963 when it was amended by Law No 67 of 1963 so as to bring the statute in conformity with Article 7 of the Constitution as interpreted in proceedings of such nature and was made discretionary But this change cannot be understood or applied in a manner frustrating the very purpose for which the law exists, and for which the provision about a demolition order is contained in the statute

(3) There may be cases where a demolition order need not be made where for instance, some condition in the permit has not been complied with, or there occurred infringement of minor importance But the present case is not one of such cases

(4) In the result, the appeal will be allowed The sentence of £20 fine will be altered so as to contain also a demolition order to be carried out within two months from today this period being the maximum allowed by section 20(3)(*a*) of the Streets and Buildings Regulation Law, Cap 96

Appeal allowed Sentence varied as above.

Per curiam This Court has time and time again, expressed concern regarding unnecessary and unjustified adjournments, both in civil and criminal cases In July last this Court had to deal with the question of such adjournments and made reference to several earlier cases (see *The Attorney-General v Numerotis Publishing Co Ltd and two others* (1966) 2 C L R 25) The case in hand leads us to one of two unavoidable conclusions Either the different Judges who dealt with the case in the course of a whole year, did not have in mind the statements made in this Court regarding the law pertaining to adjournments (*e g* see the statements in

the case just quoted above, *supra* at pp. 30–31) ; or, they did not feel that they should take guidance from such statements. Either alternative gives us considerable disappointment, anxiety and concern.

Cases referred to :

The Attorney-General v. *Enimerotis Publishing Co. Ltd. and two others* (1966) 2 C.L.R. 25. Dictum at pp. 30-31 *followed.*

Appeal against sentence.

Appeal by the prosecuting authority against the inadequacy of the sentence imposed on the respondent (the refusal of the trial Court to make a demolition order) who was convicted on the 7.2.67 at the District Court of Nicosia (Criminal Case No. 14754/65) on one count of the offence of constructing a building without the required permit, contrary to sections 3 (*b*) and 20 (1) (3) (*a*) and (5) of the Streets and Buildings Regulation Law, Cap. 96 and was sentenced by Stylianides, D. J. to pay a fine of £20.

K. Michaelides, for the appellant.

A. Triantafyllides with *C. Adamides*, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against sentence taken by the prosecuting authority in a criminal case instituted under sections 3 (*b*) and 20 of the Streets and Buildings Regulation Law, against the respondent, for the construction of a building without the required permit.

The appellants, who are the statutory authority for the issue of building permits in the area of Kaimakli, (one of the suburbs of Nicosia, where the respondent put up the building in question) instituted criminal proceedings against him on December 7, 1965, for extending the building of his factory during 1964, and for carrying out alterations and additions thereto, without the permit required by section 3 (*b*) of the Streets and Buildings Regulation Law (Cap. 96). The charge filed, contained four different counts ; but we are only concerned in this appeal, with the sentence on count 3, regarding the building described above.

On the hearing of the case in answer to the summons, on December 28, 1965, the accused (respondent in this appeal) pleaded guilty to counts 1 and 3 in the charge ;

whereupon, the prosecution offering no evidence on counts 2 and 4, the Court convicted the respondent according to his plea, and discharged him on the other counts

Presumably at the request of counsel for the accused, the case was then adjourned to February 8, 1966, pending the outcome of steps taken for a covering permit The Judge's note in this connection, reads :

> " As proceedings for a covering permit are still pending (case) adjourned to 8.2 1966."

The record does not show what did the other litigant have to say in the matter But one may assume that the adjournment was consented to, by the prosecution It may also be assumed that the learned trial Judge, after hearing the parties in this connection, was of the opinion that the period of about 40 days, for which he adjourned the case, would be sufficient for the purpose for which he granted the adjournment.

On February 8, 1966, both sides were again before the Court ; and according to the Judge's note, jointly applied for a further adjournment as " proceedings were still pending " for the issue of a covering permit We shall have to revert to these adjournments later in this judgment One after another, they were granted on no less than eight different occasions, before four different judges, over a period of about a year, until the 13th January, 1967, when the Court eventually heard counsel for the parties on the facts ; and again adjourned the case to February 7, 1967 (about three weeks later) for judgment

Nothing appears to have been said, as far as the record goes, regarding the covering permit for which this criminal case was kept pending with one adjournment after another, for over a year Apparently, no such permit was granted ; and the position was much the same, (excepting for the great delay in the application of the law, and considerable expense to the litigants) as on the day on which, a year earlier, the accused had pleaded guilty to the charge as stated earlier

After dealing with the facts and giving the reasons for his decision in a considered judgment, the last trial Judge proceeded to pass sentence On the first count, for disobedience to a demolition order, made in a previous criminal prosecution for the unlawful building of a shed in the same factory, the learned Judge imposed a fine of £2 as, accord-

ing to the relevant part of the judgment (page 5 D–E) " the accused after the filing of this case, did comply with the order, and the sentence to be imposed would be nothing but a nominal one ". We prefer to say nothing more regarding this part of the sentence, as it does not really form part of the present appeal. But we should not be taken as subscribing either to the view regarding the culpability attaching to the disobedience of a court-order, or to the sufficiency of a fine of £2 for such an offence.

On count 3, for the construction of a building which according to the judgment (page 4F) cost £6,000 and was erected to house machinery of the value of twenty thousand pounds, the learned trial Judge imposed a sentence of £20 fine ; and declined to make a demolition order, which was, apparently, the main object of the proceedings. In addition to the £20 fine, the Judge ordered the accused to pay £12 costs.

The reasons for which the learned Judge reached his decision regarding sentence, appear in the judgment. It may be observed, however, here, that in addition to other circumstances, a factor militating against the accused in this connection, was that the area in question was duly declared as a residential area as early as 1955, and a permit for the work done (the additions to the factory) could only be granted with the authority of the Council of Ministers, under the provisions of section 14 of the Law, a point which was in fact referred to by the trial Judge in his judgment. The Judge also rightly observed that " the Courts have a duty to discourage owners of land from putting up unauthorised buildings ", as he put it ; but he also expressed the view that the Court " has a duty to apply the law for the benefit of the community as a whole, but in such a way as not to cause catastrophy to the individual " as he said (page 7 D–E). Again here, we would rather avoid commenting on this rather unusual, as it seems to us, view of the application of the law, described as " catastrophic " when properly applied, as intended by the legislator.

" Weighing all the facts of this case ", the learned trial Judge says in the final part of his judgment, " I find that the scales of justice lean against the issue of a demolition order. I would be inclined to issue a demolition order if that order was not rather a punishment but a means of enforcing the conformity of the buildings with the provisions of Cap. 96 ".

It is against this view of the law, that the prosecuting authority in the present case, took this appeal, exercising

their right to do so under section 25 (2) of the Courts of Justice Law, 1960, with the sanction of the Attorney-General under section 137 (1) (*b*) of the Criminal Procedure Law (Cap. 155). The appeal is taken mainly on the ground that the sentence imposed is manifestly inadequate, in the circumstances of this case for the proper enforcement and application of the law. We have no difficulty or hesitation whatsoever, in allowing the appeal on that ground.

The provision of the law under which this prosecution was instituted, and on which count 3 was based, is quite clear, in our opinion, both regarding the purpose for which such legislation was enacted, and the terms in which the law was expressed. The material part of section 3 of the Streets and Buildings Regulation Law (Cap. 96) reads :

> "No person shall . . erect . . or allow to be erected a building . . without a permit in that behalf first obtained from the appropriate authority as in sub-section (2) provided."

A glance at the law is sufficient to show the purpose for which it was enacted. It has been in operation for many years ; it has been repeatedly amended from time to time, to make it fit changing conditions in the development of building operations ; and it has been discussed and considered in a number of cases before the Courts. There is no suggestion that the respondent, or the contractors who carried out on his behalf this building-operation, had any doubt in their mind as to the effect of the law ; or, the consequences of acting contrary to its provisions.

Section 20 (1) of the statute provides that

> "Any person who contravenes . . any of the provisions of section 3 . . of this law, or any regulations made thereunder, shall be guilty of an offence and shall be liable to a fine not exceeding £50 . . ."

Sub-section (3) of section 20, provides that

> "In addition to any other penalty prescribed by this section, the Court before which a person is convicted for any offence under subsection (1) may order . . that the building or any part thereof, as the case may be, in respect of which the offence has been committed, shall be pulled down or removed within such time as shall be specified in such order, but in any case not exceeding two months, unless a permit is obtained in respect thereof in the meantime from the appropriate authority."

Subsection (5) of the same section, provides that—

> " Any person . . . who disobeys or fails to comply with such order (for demolition) shall . . . , be guilty of an offence and shall be liable to imprisonment not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and fine."

It is significant in this connection, that the provision of the law in this section for a demolition order, was peremptory until 1963, when it was amended (by Law 67 of 1963) so as to bring the statue in conformity with the Constitution as interpreted in proceedings of such nature, and was made discretionary. But this change cannot be understood or applied in a manner frustrating the very purpose for which the law exists ; and for which the provision about a demolition order is contained in the statute. There may be cases where a demolition order need not be made ; where for instance, some condition in the permit has not been complied with, or there occurred an infringement of minor importance. But this is not one of such cases.

It has been strenuously argued by learned counsel on behalf of the respondent that treating the demolition order as part of the punishment, leads to the unavoidable conclusion that the consequences of a demolition order in this particular case shall be a punishment disproportionate to the offence committed. No Court would impose a fine, counsel argued, to the extent of the loss and damage which a demolition order in this case, shall cause to the respondent.

The fallacy in this argument can be seen at once from the fact that it leads to the position that the greater the violation of the law, the stronger is the case against its application by a demolition order. For a shed which cost £6, for instance, the Court may have no difficulty in making a demolition order ; for a building of the value of £60, there may be some difficulty ; for a bigger building of £600, the difficulty will be ten times bigger ; and for a building of six thousand pounds, or, say £600,000 a demolition order should be out of the question. Obviously, this is neither the object of the law ; nor the effect of its provisions.

It has also been argued on behalf of the respondent, that the appropriate public authority have failed in this case, to deal with his application for a building permit for over a year ; and that to this day, they have not informed him of their decision on his original application, or his subsequent applications for a covering permit. The respondent more-

over complains that although this matter has been dealt with by the Council of Ministers, and their decision has been communicated to the appellants nearly two months ago, the latter have not yet informed the respondent of the negative result of his petition to the Government. All these complaints, undisputed by the other side, and probably constituting a good ground for a grievance against the public authority concerned, cannot, in our opinion, constitute sufficient answer to the charge in this prosecution ; nor a sufficient reason for not effectively applying the law by making a demolition order.

We now come to the question of the adjournments in Court-proceedings which give us considerable concern and anxiety regarding the exercise of the discretionary power of the Court to adjourn the hearing of a case in the course of the trial ; particularly the exercise of such a power during the trial of a criminal case.

As already stated, the parties were before the Court in answer to the summons, on December 28, 1965. The respondent on that first hearing, pleaded to the counts in the charge ; he was convicted on his own plea on counts 1 and 3; and was acquitted and discharged on counts 2 and 4.

According to the usual practice, and as expressly provided in sections 47, 68 (1), and 77 (3) of the Criminal Procedure Law (Cap. 155) the Court should have then, proceeded to impose on the accused " such punishment as may be provided under the enactment under which he is convicted, and as the circumstances of the case may require ". Instead of doing so (and presumably for the purposes of sentence) the Court proceeded to adjourn the case to February 8, 1966. The relevant part of the Judge's note reads : " As proceedings for a covering permit are still pending adjourned to 8.2.66 ".

On February 8, 1966, the parties were again before the Court (the respondent together with his advocate) when the Judge made the following note : " Proceedings still pending. On the application of both parties adjourned to 30.3.66 ". This was more than seven weeks later. On that day (30.3.66) the Judge's note reads : " Plea : Proceedings for a covering permit are pending. Adjourned to 17.5.66 for mention ". The note leaves one with the impression that the Judge was not clear in his mind as to what the position was regarding plea, at this stage. Be that as it may, the case was then again adjourned to 30.6.66 (More than six weeks later) " for mention ".

In more or less the same manner, the case was again adjourned to the 29.7.66 ; then to the 2.9.66 ; then to 4.11.66; and finally to 6.12.66 " for facts and sentence ". " Last adjournment " according to the note of the Judge who was on that day dealing with this case for the first time. The case had been handled, so far, by four different Judges ; and now on 6.12.66 by a fifth Judge who again adjourned the case to 13.1.67 " for facts and sentence ".

It was on this last date, 13.1.67, that a Judge finally heard the facts of the case, more than 13 months after prosecution ; for an offence the material facts of which were never in dispute ; and more than a year after the accused had pleaded guilty.

We find it extremely difficult to comment in moderate terms on such a course, in a criminal case ; and we prefer to leave the matter at that. The facts speak for themselves.

In our opinion no counsel should have drawn a Court to such a course ; and no Judge should have permitted such a course to be followed. It is obvious on the record that the position was the same, as far as sentence was concerned, on January 13, 1967, as it was more than a year earlier, when the Court accepted respondent's plea of guilty. Moreover, in none of these eight different adjournments, does the record show what steps, if any, did the parties take for the purpose for which the adjournments were granted, one after another.

This Court has time and time again, expressed concern regarding unnecessary and unjustified adjournments, both in civil and in criminal cases. In July last, this Court had to deal with an appeal taken on behalf of the Attorney-General, against an order for adjournment in a criminal case (*Attorney-General* v. *Enimerotis Publishing Co. Ltd and Two Others*, (1966) 2 C.L.R. 25). In that appeal, this Court went again into the question of unnecessary adjournments, and made reference to several earlier cases regarding the same matter. The Court is reported to have said pp. 30–31 :

> " In the present case, it is obvious that the trial Judge either did not have in mind these judicial statements which are binding on him ; or, he did not direct his mind to the matter before him, and failed to apply correctly the law."

The appeal was allowed ; and the order for adjournment was set aside on the ground that the Judge's discretion in the matter, had not been properly exercised. The case was remitted to the District Court for trial as early as this could be arranged ; and the party responsible for the adjournment, was ordered to pay all costs incidental thereto, including costs in the appeal.

The case in hand leads us to one of two unavoidable conclusions : either the different Judges who dealt with the case in the course of a whole year, did not have in mind the statements made repeatedly in this Court regarding the law pertaining to adjournments ; or, they did not feel that they should take guidance from such statements. Either alternative gives us considerable disappointment, anxiety, and concern

Going now back to the substance of the appeal before us, we unanimously take the view that the prosecutor's appeal against sentence must be allowed ; and the sentence of £20 fine, imposed by the trial Court on count 3 in the charge, be altered so as to contain also a demolition order for the part of the building constructed without the necessary permit, in respect of which the respondent was prosecuted and convicted on count 3 *There will be Judgment and demolition order* accordingly, directing the respondent to demolish, pull down, or remove the said building within two months from today ; this period being the maximum allowed by section 20 (3) (*a*) of the Streets and Buildings Regulation Law (Cap 96) for carrying out a demolition order

As regards costs, we take the view that in the circumstances, we should allow no costs in the appeal ; and that the order for costs in the District Court should be discharged in view of the part taken by the appellants in connection with the adjournments

Appeal allowed Sentence and order for costs varied accordingly. No order for costs in the appeal

Appeal allowed. Sentence and order for costs of trial Court varied as above. No order for costs in the appeal.