1979 September 25

[L. LOIZOU, HADJIANASTASSIOU, DEMETRIADES, JJ.]

THE MUNICIPALITY OF NICOSIA,

Appellant,

v.

MARIOS SAVVA,

Respondent.

(*Criminal Appeal No.* 4075).

Criminal Procedure—Record of proceedings—Adequacy of—Decision for absolute discharge—Record inadequate in that no reasoning was recorded for Court's decision—Court of Appeal unable to form view as to appropriate sentence or as to reasons that led Court to discharge respondent absolutely—Case referred back to District Court for sentence by another Judge—Section 113(1) *of the Criminal Procedure Law, Cap.* 155.

In dealing with the plea of guilty of the respondent to the offence of displaying an advertisement the Court made the following record:

"Date: 25.8.79
For Prosecution: Mr. Photiou
Accused 1 present. Accused 2 and 3 not served.
Plea: Guilty on Count 1.
Count 2 is withdrawn and dismissed.

Court: For service on 3.9.79. Facts explained with regard to accused 1 as per the charge.
Accused 1: I have nothing to say.

Court—Accused discharged because no material has been placed before me showing any seriousness of the offence".

Upon appeal by the prosecution against the inadequacy of the sentence of absolute discharge:

Held, (1) that the state of the record is so inadequate in the sense that there is no reasoning recorded for the Court's decision

that this Court finds itself quite unable to form any view as to the appropriate sentence or as to the reasons which led the Court to discharge the accused absolutely; that the way this record was kept is in direct contravention of section 113(1) of the Criminal Procedure Law, Cap. 155; that although it is open to this Court 5 to remedy the defect by calling upon the trial Court to furnish further information under the provisions of section 146(a) of the Criminal Procedure Law, having given the matter its best consideration, this Court thinks that in the interests of justice the better course would be to allow this appeal and order that 10 the case be referred back to the District Court to be dealt with for the purposes of sentence by another Judge (see *The Attorney-General* v. *Mavrommatis* (1967) 2 C L.R. 190 and *Panayi* v. *The Police* (1968) 2 C.L.R. 124).

Appeal allowed. 15

Per curiam:

We might add that we do not expect trial Judges especially when dealing with minor offences to keep over-elaborate records of the proceedings because this would be unrealistic and a luxury which the volume of work 20 hardly allows, but Judges are expected to comply with the provisions of the law in force.

Cases referred to:

Attorney-General v. *Mavrommatis* (1967) 2 C.L.R. 190;
Panayi v. *Police* (1968) 2 C.L.R. 124. 25

Appeal against sentence.

Appeal by Nicosia Municipality against the inadequacy of the sentence imposed on Marios Savva who was convicted on the 25th August, 1979 at the District Court of Nicosia (Criminal Case No. 17100/79) on one count of the offence of displaying 30 an advertisement contrary to sections 4(b), 5 and 14 of the Display of Advertisements (Control) Law, Cap. 50 and was discharged absolutely by Artemides, D.J.

K. Michaelides, for the appellant.

Respondent in person states that he does not require the 35 assistance of Counsel.

L. LOIZOU J. gave the following judgment of the Court. This is an appeal by the prosecutor, the Municipality of Nicosia, with the written sanction of the Attorney-General of the Republic,

against the sentence imposed by the District Court of Nicosia on the accused—respondent in these proceedings—in Criminal Case No. 17100/79.

The accused and two other persons were charged for offences contrary to sections 4(b), 5 and 14 of the Display of Advertisements (Control) Law, Cap. 50. The penalty provided by this law for the offences charged is £125.—fine and to a further fine not exceeding £25.—for every day during which the contravention is continued after his conviction thereof, where applicable.

The accused appeared before the Court on the 25th August, 1979, the other two accused not having been served, and pleaded guilty to count 1 and thereupon a second alternative count was withdrawn and he was acquitted and discharged on the second count. The record of the Court reads as follows:-

"Date: 25.8.79
For Prosecution: Mr. Photiou
Accused 1 present. Accused 2 and 3 not served.
Plea: Guilty on Count 1.
Count 2 is withdrawn and dismissed.

Court: For service on 3.9.79. Facts explained with regard to accused 1 as per the charge.
Accused 1: I have nothing to say.

Court—Accused discharged because no material has been placed before me showing any seriousness of the offence."

The present appeal was filed on the 7th September, 1979, and the ground of the appeal is that "having regard to the fact that the accused had pleaded guilty to the offence and in view of the facts of the case that were put before the Court as well as the fact that the illegal display of advertisements in Nicosia took extensive dimensions, the sentence of absolute discharge imposed by the Court on the accused is manifestly insufficient". In fact, the state of the record before us today is so inadequate in the sense that there is no reasoning recorded for the Court's decision that we find ourselves quite unable to form any view as to the appropriate sentence or as to the reasons which led the Court to discharge the accused absolutely. We might add that we do not expect trial Judges especially when dealing with minor offences to keep over-elaborate records of the proceedings because this would be

unrealistic and a luxury which the volume of work hardly allows, but Judges are expected to comply with the provisions of the law in force. It seems to us that the way this record was kept is in direct contravention of section 113(1) of the Criminal Procedure Law, Cap. 155. Although it is open to this Court to remedy the defect by calling upon the trial Court to furnish further information under the provisions of section 146(a) of the Criminal Procecure Law, having given the matter our best consideration, we think that in the interests of justice the better course would be to allow this appeal and order that the case be referred back to the District Court to be dealt with for the purposes of sentence by another Judge. This course was followed in the case of *The Attorney-General* v. *Mavrommatis* (1967) 2 C.L.R., 190. Relevant also is the case of *Anastassis Panayi* v. *The Police* (1968) 2 C.L.R., 124.

In the result this appeal is allowed, the sentence is set aside and the case is referred back to the District Court for sentence by another Judge.

Appeal allowed. Sentence set aside. Case referred back to District Court for sentence by another Judge.