

1983 September 21

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,

v.

PANICOS GEORGHIOU SCHIZAS,
Respondent.

(Criminal Appeal No. 4067).

Criminal Procedure—Appeal—Acquittal—The clearest terminology is required to give an appeal against acquittal—Sub-paragraph (iii) of paragraph (a) section 137(1) cannot give a right of appeal wide enough to cover a ground of appeal regarding the manner of exercise of discretion by trial Court in relation to amendment of a count—But such right may, in a proper case, be given by sub-paragraph (iv) of the same section. 5

In the course of the hearing of the appeal of the Attorney-General against the acquittal of the respondent of, inter alia, the offence of erecting a structure on the foreshore without a permit, counsel for the respondent raised the objection that the following ground of appeal was not covered by anyone of the provisions of section 137(1) of the Criminal Procedure Law, Cap. 155, which enables the Attorney-General to appeal against an acquittal by the District Court. 10 15

“The trial Court wrongly applied its discretion in not ordering the amendment of the second count in the charge”.

Counsel for the appellant contended that the above ground was covered by section 137(1)(a)(iii) and (iv)* of Cap. 155.

Held, that the clearest terminology is required to give an appeal against an acquittal; that paragraph (iii) of s.137(1)(a) cannot be interpreted in such a way so as to give a right of appeal wide enough to cover a ground such as the above; that, however, the 20

* Section 137(1)(a)(iii) and (iv) is quoted at p. 330 post.

manner of the exercise by a trial Court of a discretionary power in relation to a procedural matter may be found, in a proper case, to amount to, and result in, an irregularity of procedure in the sense of subparagraph (iv); that, therefore, counsel for the appellant will be allowed to argue ground No. 5, because, unless and until such ground has been argued and considered, this Court cannot really decide whether an irregularity of procedure in the sense of subparagraph (iv) has actually occurred; accordingly the objection will be overruled.

10 *Objection overruled.*

Cases referred to:

Attorney-General of the Republic v. Pouris (1979) 2 C.L.R. 15;
Xenophontos v. Churalambous, 1961 C.L.R. 122.

Appeal against acquittal.

15 Appeal by the Attorney-General of the Republic against the judgment of the District Court of Limassol (Artemis, D.J.) given on the 17th July, 1979 (Criminal Case No. 2466/79) whereby the respondent was acquitted of the offences of erecting a structure on the foreshore without a permit contrary to section
 20 5 of the Foreshore Protection Law, Cap. 59 (as amended by Law 17/64) and of using Government land without a grant or disposition contrary to section 3 of the Government Lands Law, Cap. 221 (as amended by Law 45/72).

25 *A. Frangos*, Senior Counsel of the Republic, for the appellant.

G. Cacoyiannis, for the respondent.

Cur. adv. vult.

30 TRIANTAFYLIDIS P. read the following decision of the Court. The respondent in this case was tried before the District Court of Limassol on a charge containing two counts, the first one in respect of the offence of erecting a structure on the foreshore without a permit, contrary to section 5 of the Foreshore Protection Law, Cap. 59, as amended by the Foreshore Protection (Amendment) Law, 1964 (Law 17/64), and the other one in
 35 respect of the offence of using Government land without a grant or disposition, contrary to sections 3 and 4(b) of the Government Lands Law, Cap. 221, as amended by the Government Lands (Amendment) Law, 1972 (Law 45/72).

The trial Court acquitted and discharged the respondent on both counts because it found that the structure which he had, allegedly, erected was not a "structure" in the sense of section 5 of Cap. 59, and, also, because the land on which that structure had been erected was not "land" in the sense of section 4(b) of Cap. 221. 5

In delivering its judgment the trial Court observed that though it had power to order an amendment, even at that stage, of the second count, it had decided against adopting such a course.

The Attorney-General of the Republic has appealed against the acquittal of the respondent and during the hearing of this appeal counsel appearing for the Attorney-General sought to argue ground No. 5 in the notice of appeal which reads as follows: "The trial Court wrongly applied its discretion in not ordering the amendment of the second count in the charge". 10 15

At that stage counsel appearing for the respondent objected that ground No. 5 was not covered by any one of the provisions of section 137(1) of the Criminal Procedure Law, Cap. 155, which enables the Attorney-General to appeal against an acquittal by a District Court. 20

Counsel for the appellant contended that the aforesaid ground No. 5 was covered by subparagraphs (iii) and (iv) of paragraph (a) of subsection (1) of section 137, which provide as follows:

"137.(1) The Attorney-General may—

(a) appeal or sanction an appeal from any judgment of acquittal by a District Court on any of the following grounds:— 25

(iii) that the law was wrongly applied to the facts;

(iv) that there has been some irregularity of procedure;

The approach to the construction of a statutory provision creating a right of appeal against an acquittal has been considered extensively in the judgments delivered in *The Attorney-General of the Republic v. Pouris*, (1979) 2 C.L.R. 15, where one of the cases which was referred to with approval was that of *Xenophontos v. Charalambous*, 1961 C.L.R. 122, in which 30 35

it was held (see p. 126 of the report of that case) that “_____the clearest terminology is required to give an appeal against an acquittal”.

5 We have approached, in the light of the above referred to case-law, the construction of subparagraphs (iii) and (iv) of paragraph (a) of subsection (1) of section 137 of Cap. 155.

10 We do not think that subparagraph (iii) can be interpreted in such a way so as to give a right of appeal wide enough to cover a ground such as ground No. 5 in the present case. On the other hand, we are of the opinion that the manner of the exercise by a trial Court of a discretionary power in relation to a procedural matter may be found, in a proper case, to amount to, and result in, an irregularity of procedure in the sense of subparagraph (iv) and, therefore, we have decided to allow
15 counsel for the appellant to argue ground No. 5, because, unless and until such ground has been argued and considered, we cannot really decide whether an irregularity of procedure in the sense of subparagraph (iv) has actually occurred.

20 For the foregoing reasons we, therefore, overrule the objection of counsel for the respondent that the said ground No. 5 is not covered by the provisions of section 137(1)(a)(iv) of Cap. 155 and the hearing of this appeal will continue in the light of this decision of ours.

Order accordingly.