

1984 October 9

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

MUNICIPALITY OF NICOSIA,

Appellant.

v.

1. ARTOS TILPIAN,
2. A.Y. TILPIAN & SONS LTD.,

Respondents.

(Criminal Appeal No. 4471).

Findings of fact—Are within the domain of the trial Judge—Principles on which Court of Appeal interferes with such findings—Acquittal of respondents of offence of causing an advertisement to be displayed—Doubts by trial Judge on issue whether person who placed advertisements acted in strict compliance and according to the instructions of the respondents—Said doubts reasonable and reasonably open to trial Judge to reach the conclusion which he reached on the facts before him—His findings were not wrong.

Display of Advertisements (Control) Law, Cap. 50 (as amended by Law 4/74)—Causing an advertisement to be displayed without a permit from the Municipality—Sections 4(b), 5 and 14 of the Law—“Point of sale advertisement”—Section 6 of the Law.

This was an appeal against the acquittal of the respondents of the offence of causing to be displayed an advertisement on their shop at Nicosia without a permit from the Municipality of Nicosia, contrary to sections 4(b), 5 and 14 of the Display of Advertisements (Control) Law, Cap. 50 (as amended by Law 4/74). The advertisement in question was painted by P.W. 5 a sign-writer; and the trial Judge found that as there was nothing before him proving beyond any reasonable doubt that the above witness acted in strict compliance and according to the instructions of the respondents or either of them in the carrying out of the work of the placing of the advertisement or the selection of its size the respondents could not be found guilty of the charge against them. The trial Judge further

found that the said advertisement was a "point of sale advertisement" within the meaning of section 6 of the above Law; and that no contravention would exist if such advertisement was placed in such a proper position outside the shop as to satisfy the prerequisite of section 6(1)(iii) of the Law. 5

Held, that findings of fact are within the domain of the trial Judge and this Court will only interfere if such findings are unwarranted by the evidence before the trial Court or the inferences drawn from such facts are manifestly wrong; that on the evidence before the trial Judge the doubts expressed by him were reasonable and that it was reasonably open to him to reach the conclusion which he reached on the facts of the case; and that, therefore, this Court has not been convinced that the findings of the trial Judge were wrong; that, further, in the absence of any evidence that such advertisement did not fall within the proviso to section 6(1) of Cap. 50, the trial Judge was entitled to reach the conclusion that he reached in this case; and that, accordingly, the appeal must be dismissed. 10 15

Appeal dismissed.

Appeal against acquittal. 20

Appeal by the Municipality of Nicosia against the judgment of the District Court of Nicosia (Klamvis, Ag. D. J.) given on the 17th September, 1983 (Criminal Case No. 9069/82) whereby the respondents were acquitted of the offences of displaying or causing to be displayed advertisements contrary to sections 4(b), 5 and 14 of the Display of Advertisements Law, Cap. 50 (as amended by Law 4/74). 25

N. Panayiotou, for the appellant.

X. Syllouris, for the respondents.

Cur. adv. vult. 30

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: The appellant is the Municipality of Nicosia and filed the present appeal with the sanction of the Attorney-General of the Republic under section 137(1)(a)(i)(iii) of the Criminal Procedure Law, Cap. 155 against the decision of the District Court of Nicosia in Criminal Case No. 9069/82, whereby the accused were acquitted. 35

Accused 2 is a limited company and accused 1 is a shareholder, Director and Secretary of accused 1. Both accused faced a charge before the District Court of Nicosia, containing two counts, the first one charging them that on a date unknown to the prosecution, between the years 1981 and 1982, unlawfully displayed two advertisements on the premises at Ledra Street 195 within the Municipal limits of Nicosia, without a licence from the Municipality of Nicosia, and the second that at the same time and place they did cause to be displayed an advertisement without a permit from the Municipality of Nicosia.

Both counts were based on sections 4(b), 5 and 14 of the Display of Advertisements (Control) Law, Cap. 50, as amended by Law 4/74.

Section 4 reads as follows:

“No person shall—

- (a)
- (b) display or cause to be displayed any advertisements to which this Law applies except (i) upon a hoarding lawfully erected in accordance with the provisions of section 5 or (ii) in accordance with the provisions of section 6”.

Section 5 provides for the erection, either by the Council of a Municipal Corporation or by any other person under the authority of the Council, of hoardings on which advertisements may be displayed under such conditions as may be imposed by the Council and section 6 provides for advertisements relating to business etc. and reads as follows:

“6. (1) It shall be lawful for any person, within the area of a municipal corporation with the approval of the Council, or elsewhere with the approval of the District Officer, or, within an Improvement Area of the Improvement Board, but not otherwise, to display upon his own land or upon any land in his occupation or use, or where he is working, whether upon a hoarding or otherwise, advertisements (hereinafter in this section referred to as ‘point of sale advertisements’) directly relating to any business, profession, trade or work carried on upon such land:

Provided that—

- (a) any point of sale advertisement so displayed shall not be suspended across a street;
- (b) any point of sale advertisement so displayed shall not be suspended or projected outwards into a street if the height of the lower portion of such advertisement is less than twelve feet above the level of the street; 5
- (c) any point of sale advertisement so displayed, the lower portion of which is not less than twelve feet above the level of the street, shall not be suspended or projected outwards into the street a distance of more than two feet. 10

(2) Subject to the provisions of section 9, the Council, the District Officer or the Improvement Board, as the case may be, may approve or refuse to approve the display of any point of sale advertisement under this section, and in approving the display of any such advertisement the Council, the District Officer or the Improvement Board, as the case may be, shall, without prejudice to any other powers conferred under this Law or any bye-laws or regulations made thereunder, have power to impose conditions relating to the display and proper maintenance of such point of sale advertisement. 15 20

(3) Notwithstanding anything contained in subsections (1) and (2) of this section, no approval of the Council or of the District Officer or of the Improvement Board shall be required in respect of the display of any point of sale advertisement which fulfils the requirements of paragraphs (a), (b) and (c) of the proviso to subsection (1) of this section if— 25 30

- (a) it is so displayed as to be directly attached to, or affixed on, any buildings belonging to, or in the occupation or use of, the person displaying the advertisement, or where he is working, and in which he carries on the business, profession, trade, or work to which the advertisement directly relates; and 35
- (b) it does not, by itself or along with one or more other point of sale advertisements, occupy an area more

than one-fifth of the overall area of the face of the building to which it is attached or on which it is affixed taken up to a height of fifteen feet from ground level, the area so occupied being computed as if the said advertisement or advertisements, howsoever attached or affixed, was or were displayed flat against the face of the building; and

(c) it is not more than fifteen feet above ground level".

Section 9 reference to which is made in section 6, provides for the control of advertisements to be exercised in the interests of amenity and public safety.

Section 14 provides for the sentence to be imposed in contravention of the law and has been amended by section 3 of Law 4/74 to the effect that the sentence provided in respect thereof has been increased.

It should be noted that by section 89 of Law 90/72 (The Town (and Country Planning Law), the provisions of the Display of Advertisements (Control) Law, Cap 50 will be deemed as repealed as from the date when any Regulations made under section 40 of the Law (which provides for the control of advertisements), come into operation unless provision to the contrary is made by the Regulations. Though certain provisions of Law 90/72 came into operation, no Regulations have been put into operation under the provisions of section 4 and, therefore, the provisions of Cap, 50 continue in force.

The trial Judge having heard the evidence called by the prosecution and on the submission of counsel for the appellants found that there was no prima facie case for calling the accused for their defence on count 1, and, as a result, acquitted and discharged them on such count. On the other hand, he found that there was prima facie case against both accused on count 2 and called upon them to make their defence. After the conclusion of the hearing, the Court, on the evidence before it, found both accused not guilty on count 2 and acquitted and discharged them accordingly.

The present appeal was originally directed against both the acquittal of accused on count 1 on the finding of the Court

that there was no prima facie case against them and their acquittal on count 2.

In the course of the hearing of this appeal, however, counsel for appellant withdrew his first ground of appeal against the acquittal of respondents on count 1 and pursued his second ground of appeal which was directed against the acquittal of the accused on count 2. Such ground was as follows:

“The trial Court wrongly found and/or wrongly came to the conclusion that the advertisement in question was ‘point of sale advertisement’ ”.

The facts of the case are briefly as follow:

On three different occasions during the period set out in the charge, P. W. 1 Andreas Papaioannou, a clerk in the employment of the Municipality of Nicosia, in charge of the Advertisements section, visited Ledra Street and outside the shop at No 195, which is a photographic shop known as “Photo Ledra”, noticed that on the front part of the shop there was exposed an advertisement on which the name of the shop was mentioned and at the corner there was a box in the shape of a film box on which the words “We sell Kodak films—cameras” was painted, in addition to the name of the photographic shop. Such part of the advertisement on which the box and the words appeared was painted in yellow and red. Similar advertisements were exposed also in a number of other shops in Ledra and Apollo Street. According to the evidence accepted by the trial Judge, such sign was painted by P.W. 5, Christoforos Londos who is a sign writer employed to paint advertisement signs for respondent 1, including that which was exposed outside the shop at 195 Ledra street which was painted by him on instructions received from respondent 1 and according to a design given to him by respondent 1 concerning the box and the letters appearing thereon, as well as the colours used. According to this witness he made similar signs for other photographic shops in Ledra and Apollo street which he described in his evidence. For the making and placing of this sign he was paid by respondent 1. The witness further added that as far as the name of the shop and the colours to be used for that purpose he received instructions from the owner of the shop.

The following two issues pose for consideration in this appeal:

The first issue is whether such sign was a point of sale advertisement falling within section 6(1) of the Law for which, under the proviso thereto, no permit was required from the appropriate authority for exposing it. The second issue is whether such
5 sign was placed there by the owner of the shop or by either accused.

The learned trial Judge in his judgment found the following:

10 "On the basis of the admitted real facts which concern the present case, I shall proceed to examine whether the accused or either of them caused to be exposed the said advertisement. If from such examination it emanates that the accused or either of them caused the said advertisement to be exposed, what remains to be examined is whether
15 the provisions of section 5 or section 6 of the Law and in particular the provisions of section 6(3) of the said Law can be applied in this case. Without any doubt, I find that the provisions of section 5 of the Law have no application and, therefore, I have to consider whether the provisions of section 6 have any application in this case".

20 For the purpose of determining such issue, the learned trial Judge after considering the evidence before him and in particular the evidence of P.W.5, said:

25 "On this point it should be said that I do not have before me any clear evidence on the point whether witness No. 5, Londos, when placing this sign he followed exactly any instructions of the accused or either of them, concerning the placing and the final position of the advertisement or whether he proceeded to such placing selecting himself its final position or whether the final position was selected
30 by D.W.1 Theocharides or P.W.5, Londos, or by both of them. P.W.5 Londos did not give any clear and concrete evidence in connection with this matter and in the absence of any persuasive and clear evidence, I have my doubts. I have also my doubts on the question of the
35 fixing of the size of the advertisement. The evidence which is before me in this respect is not positive though it may be presumed but not with all certainty, that the size of the sign was arranged by witness 5".

Then the trial Judge after he had dealt with all the facts

of the case, as emanating from the evidence accepted by him and after he had expounded on the interpretation of the relevant provisions of the Law and their application to the facts of the case, as found by him, came to the conclusion that the advertisement in question was "point of sale advertisement" within the meaning of the Law and concluded as follows: 5

"I have already found that the advertisement which is the subject matter of the present charge is a point of sale advertisement in the meaning of the law. As already mentioned, the position and size of the said advertisement together with all other prerequisites are material in connection with the issue as to whether the approval of the appropriate authority for the display or causing to be displayed of an advertisement is required. In short, no contravention would exist if this point of sale advertisement was placed in such a proper position outside the photographer's shop as to satisfy the prerequisites of section 6(1)(iii) of the Law. In fact, it is probable that the prerequisites of section 6(3) of the Law are satisfied and as a result no contravention has taken place in the present case, but there is no evidence before me about this. As there is nothing before me proving beyond any reasonable doubt that P.W.5 Londos acted in strict compliance and according to the instructions of the accused or either of them in the carrying out of the work of the placing of the advertisement or the selection of its size, I believe that the accused cannot be found guilty on the charge against them". 10
15
20
25

From what appears from the extracts of the judgment of the trial Judge to which reference has already been made, the whole issue turned on the question of fact as to whether this advertisement was placed by P.W.5 on the instructions of either accused or on the instructions of the owner of the shop. 30

As it has been repeatedly stressed by this Court, findings of fact are within the domain of the trial Judge and this Court will only interfere if such findings are unwarranted by the evidence before the trial Court or the inferences drawn from such facts are manifestly wrong. 35

Having considered the evidence before the trial Court, we find that the doubts expressed by him were reasonable and that

it was reasonably open to him to reach the conclusion which he reached on the facts of the case. We have not therefore been convinced that the findings of the trial Judge were wrong. In the absence of any evidence that such advertisement did not
5 fall within the proviso of section 6(1), he was entitled to reach the conclusion that he reached in this case.

In the result, this appeal fails and is hereby dismissed.

Appeal dismissed.