

IN THE SEYCHELLES COURT OF APPEAL

JESNER DENIS & OR

Appellant

VERSUS

JAMES LARUE

Respondent

Civil Appeal No: 6 of 1996

[Before: Ayoola, P., Pillay & Matadeen, J.J.A]

.....

Mr. A. Juliette for the Appellant
Mr. P. Boulle for the Respondent

JUDGMENT OF THE COURT

(Delivered by Pillay, J.)



The appellants were convicted by the trial Court for contempt of Court by obstructing land surveyor Mr. D. G. Lebon, a Court Officer assigned to perform official functions entrusted to him by the Court to demarcate a three-metre access road and sentenced to pay each a fine of SR7,000/-, of which a sum of SR2,500/- was to be paid to the respondent by way of compensation. The Court expressly stated that it imposed the sentence on the basis that there were no mitigatory circumstances to take into consideration.

The appellants are now appealing against the sentence passed by the Court on the ground that it is manifestly harsh and excessive.

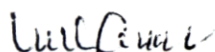
We consider that this appeal must succeed for the following reasons:-

- (1) The Order made by the Court on 19th February 1997 whereby surveyor Lebon was directed to place markers on both sides

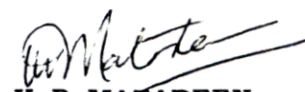
of the right of way in accordance with his plan (exhibit P2) had already been complied with by both appellants before the latter were convicted on 10th December 1998 for contempt of Court by obstructing the land surveyor, Mr. Lebon, as conceded by the learned Counsel for the respondent himself.

- (2) The learned Judge should have taken into account that the order made by him on 19th February 1997 had already been complied with by both appellants at the time of sentencing. This factor was clearly a strong mitigating circumstance in favour of the appellants.
- (3) The learned Judge had therefore erred in holding the view that there were no mitigatory circumstances. What he should at most have done in the circumstances was to give the appellant a warning, the more so as they were old persons.
- (4) There was no warrant for the Court ordering payment out of the fine imposed in the sum of SR2,500/- as compensation to the respondent since, in terms of Section 30 of the Penal Code, compensation may be either "in addition to, or in substitution for, any other punishment." There is no provision for payment of compensation out of a fine.

For all the reasons we have given, we allow the appeal and quash the sentence passed by the trial Court.


E. O AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 15th. day of December 1999.