IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMININAL DIVISION)

BETWEEN **THE MINISTRY OF FINAN FINANCE AND ECONOMIC MANAGEMENT** of Rarotonga, Government Department
Appellant

AND **RIA EMILE** of Nikao, Businessman
Respondent

Mr Mitchell for Appellant
No appearance for Respondent
26 June 2002

DECISION OF GREIG CJ

This is an appeal against the sentence imposed in the Court by a Justice of the Peace in a case brought against the Respondent under the Import Levy Act 1972. The Respondent did not appear although I am advised that he was given notice of this hearing. He should have appeared because the maximum penalty is a term of imprisonment not exceeding two years and so on an appeal he was at least technically liable to imprisonment.

The matter arose out of the discovery and later an investigation of a false declaration and other documents in importing a motor vehicle into the Cook Islands from New Zealand. The Respondent had put forward as the value the sum of $6750 and paid the appropriate import levy and VAT on that.

Investigations indicated that the vehicle had been purchased in what appears to have been a damaged condition for $7850, that purchase was made by a panel beating company in New Zealand. Repairs were then effected by that company and the vehicle was on-sold to the Respondent for $14990. If that figure had been shown as the correct figure there would have been an additional amount of $2715.75 payable. That was the amount that the Respondent evaded payment. That was the amount which later the Respondent paid on being confronted with the evidence that the department had obtained. The only explanation given by the Respondent was that he had received a faxed invoice of $6750. That explanation rather aggravates the offence because it appears that he then knowingly made use of what he must have known was false to support his claim on import of the vehicle.

The Respondent was charged under s.36 of the Act which is the offence of wilfully making false declarations. The maximum punishment for that offence is imprisonment for a term not exceeding two years. In any such event, the Court or the Justices are entitled to impose a fine in lieu of imprisonment.

In effect this Respondent defrauded the revenue and that is an offence under s. 32 of the Act which as I read it has a maximum penalty of either $200 or three times the value of the goods, whichever of those is the greater. I do not read that as meaning that there is a requirement of a mandatory minimum of three times the value if that is the greater sum. If that had been the maximum then it would have been in the vicinity of $45,000. It was put to the Justice of the Peace and repeated to me that the Appellant chose not to use that section because it was felt that the penalty in the circumstances even if treated as a maximum, was larger than ought to be invoked.

The Justice of the Peace sitting on this case was subject to a jurisdictional maximum of $1000 as the maximum penalty that could be imposed. In the submissions made to the Court Mr Mitchell who then as well as here appeared for the Appellant sought the imposition of that jurisdictional maximum. He did not and the Ministry did not seek imprisonment but did seek a deterrent penalty having regard to a number of factors including the type of offence, the difficulty of detecting it and the difficulty and expense of investigating and prosecuting. In the result the Justice of the Peace imposed the penalty of a fine of $100, ordered the Respondent to pay $200 towards the costs of the prosecution and $10 of Court costs. The amount of $200 was precisely the sum which Mr Mitchell in his submission had made on the matter.

Although the Appellant did appear on that occasion and pleaded guilty he made no submissions in mitigation or explanation although invited to do so. The only matter then in mitigation was the fact that the Respondent had pleaded guilty thus saving the time and expense of the proof of the prosecution.

This is clearly a case in which a deterrent penalty is required. The sum that was evaded $2715 is not an insignificant sum. Clearly one must assume that the Respondent hoped to get away with the offence and to save himself that amount.

To impose a small penalty merely creates a license for the commission of such offences. The legislature itself has imposed what is a substantial maximum of two years imprisonment for an offence of making a false declaration and if s. 32 is used then there maybe a penalty up to three times the value of the goods not just three times the value of the amount evaded.

Mr Mitchell has rightly said that in this Court before a judge there is no jurisdictional limit of a $1000 but as he accepts it would be unfair to widen the matter beyond the limit that applied when the Respondent first appeared in Court; that is perhaps particularly the case where the Respondent has failed to appear. In my judgment therefore there was an inadequacy in the penalty imposed and that this should be an amount which will be a deterrent and will be an appropriate punishment for such a offence. A $1000 is not beyond what is appropriate in the circumstances. The Justice of the Peace was invited and entitled to impose that penalty and I believe that that is the appropriate penalty. The Appellant does not challenge or question the other aspects of the penalty imposed.

In the result then the appeal is allowed, in lieu of the penalty of $100 there will be a fine of $1000. As was ordered before the Respondent is to pay $200 towards the cost of the prosecution and $10 towards Court costs. I make no order as to costs in this Court.

CHIEF JUSTICE