

ST. KITTS AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL APPEAL NO. 9 OF 1999

BETWEEN:

LAURA MALLALIEU

Appellant

and

LICENSING AUTHORITY

Respondent

Before:

The Hon. Mr. C.M. Dennis Byron
The Hon. Mr. Satrohan Singh
The Hon. Mr. Albert Redhead

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Mr. C. Wilkin Q.C. & Mr. Emile Ferdinand for the Appellant
Mr. D. Merchant, DPP for the Respondent

1999: September 27;
November 22.

JUDGMENT

- [1] **BYRON C.J.** : When we heard this appeal we allowed it with the concurrence of the learned DPP and promised to give our reasons in writing because of the peculiar conduct of the Magistrate, Mr. Haynes Blackman, in this case.
- [2] The appellant was charged for driving her motor car without due care and attention on 16th February, 1999 contrary to Section 53 of the Vehicles and Road Traffic Act Cap 270.

- [3] The matter came on for trial on 1st July 1999. The appellant pleaded not guilty and her counsel Mr. E. Ferdinand applied for an adjournment until 15th July 1999 on the grounds that the summons had been served just two days before. He needed to summon two witnesses and he was scheduled to be out of State on 8th July, 1999 the next date for Traffic Court. The application was refused. In his reasons for decision the Magistrate expressed the view that the alleged service effected two days earlier, and Counsel's appointment out of State, were not good reasons to grant an adjournment, and he did not believe that the idea of calling two witnesses was genuine.
- [4] Counsel applied for and obtained leave to withdraw from the case and left the court. The Magistrate then proceeded with the hearing despite the appellant's request for an opportunity to obtain legal representation. On that same day he convicted the appellant and fined her \$475.00 in fourteen days or one month in prison.
- [5] The appeal record showed a very brief examination in chief of the virtual complainant and no cross-examination. The evidence did not address the ingredients of the offence. The exact location of the collision was not identified, the condition of the road was not described, the manner of the driving of the appellant was not addressed. There was no evidence on which a court would normally be expected to act in adjudicating a complaint of careless driving.
- [6] The Magistrate wrote his reasons of decision which were dated 14th July 1999, some 14 days after the hearing. These reasons were directed to the Court of Appeal. Despite this a non-judicial attitude was clearly evinced. One paragraph of his reasons directed at Counsel demonstrates:
- " But then, the court was not too surprised over the position which Counsel had taken, in that, ever since his "coronation" as President of the St.Kitts/Nevis Bar Association, Counsel appears to be smarting under the indubitable delusion that the magistracy is probably part and parcel of his "kingdom" and that the court should not only "bend over backwards" to accommodate him, but should "break its back" in so doing."
- [7] In another section apparently aimed at the appellant personally, he opined:

"With respect to the ... Notice of Appeal, which she has every right to prosecute...the court notes that the word "Justice" has been used....Indeed, the court recognizes that there are several attributes associated with the dispensing of "Justice" and the greatest of these is that "Justice" is blind. That is to say, "Justice" should not ever see class, colour, creed, or even the "anointed" and/or the "enthroned" within these social groupings."

[8] On the legal principles that are applicable to an application for a reasonable opportunity to be heard the point is, very simply put, that someone accused of crime needs more than an opportunity to stand up in court and express himself or herself. The right must of necessity extend to a reasonable opportunity to prepare the case before it comes on for hearing. This is a well established principle. (See **R.v Thames** Magistrates' Court, ex parte **POLEMIS** (1974) 2 All E.R.1219.) The Magistrate was so full of emotion that he did not consider the principle. This case evinces an abuse of the judicial office to give effect to bias based on the social status that he attributed to the accused and her counsel. The matter was compounded by the fact that the record did not include evidence of conduct capable of supporting a conviction for careless driving. Conduct of this nature is inconsistent with the ethical standards expected from any level of our Judiciary.

[9] The appeal is allowed and the conviction and sentence set aside.

Dennis Byron
Chief Justice

I Concur

Satrohan Singh
Justice of Appeal

I Concur

Albert Redhead
Justice of Appeal