

11th March, 1998

Judge:-

The Hon. Vincent DeGaetano LL.D.

The Police

versus

Kenneth McLeod

Correction in Summons - Prescription

In this case the accused's surname was originally stated in the summons as being "McCloud". When the prosecution requested that the surname be corrected to read "McLeod", the court acceded to the request and, moreover, the defence gave itself as notified of the said correction. The Court then declared the proceedings as time-barred. The Attorney General appealed on two grounds:

The person charged voluntarily and regularly appeared before that Court thereby answering to the summons in the name of "McCloud"; and

There was no need for the charge sheet as amended to be served again upon the accused as was implied in the judgement of the First Court.

The Court of Criminal Appeal allowed the Attorney General's appeal on both counts. The Court argued that it was clear that respondent knew from the very start that he was being summoned to appear before the Magistrates' Court, and not someone else; he also knew

exactly the charges which were being preferred against him. This is the whole purpose of section 360 (2) of the Criminal Code. Since no substantial change was made to the charges by the said correction there was no need for the charges to be served afresh upon the accused.

The Court:-

Having seen the charges preferred against Kenneth McLeod, to wit that on the 12th April, 1994 at about 4.00 p.m. at The Strand, Gzira, he drove car number X-0762: (1) in a negligent; and (2) dangerous manner; and (3) at an excessive speed; and moreover (4) driven the said car under the influence of drugs or alcoholic drinks; also (5) with having driven the said car when not in possession of a police driving licence; and thus (6) not covered by a policy of insurance regarding third party risks; also with having (7) through imprudence, negligence and non-observance of the regulations hit and knocked down to the ground Ronald Farrugia causing him involuntary slight injuries as certified by Dr. Jonathan Joslin M.D.;

Having seen the judgement of the Court of Magistrates (Malta) of the 30th June, 1997, whereby that Court acquitted the said Kenneth McLeod by declaring the proceedings time barred;

Having seen the appeal application of the Attorney General of the 7th July, 1997 whereby the said appellant requested the revocation of the said judgement;

Having seen the record of the case, having noted that respondent failed to appear at the last sitting of the 7th January, 1998 although duly notified; considers:

The facts of the case are quite simple. Respondent was

charged as above indicated. All the charges (except for charge number 3) refer to crimes, not contraventions, where the minimum prescriptive period is of two years. Although judgement was delivered by the First Court on the 30th June, 1997, prescription had been interrupted by the service of an act of the proceedings on at least five different occasions before the 30th June, 1997: on the 7/4/95, 23/10-/95, 2/2/96, 5/6/96 and 14/11/96 (there were at least another two instances of interruption of the prescriptive period after the judgement of the First Court and relative to the proceedings on appeal on the 12/8/97 and 21/10/97). From the record it appears that respondent's surname was originally stated in the summons as being "McCloud". On the 30th June, 1997, the prosecution requested that the said surname be corrected to read "McLeod". The Court acceded to the request. The judgement of the First Court continues as follows:

"The defence gives itself as notified of the said correction in the charge sheet. The Court declares the proceedings as time-barred";

The Attorney General's appeal from this decision is based on two arguments: the first is that respondent, as the person charged before the First Court, voluntarily and regularly appeared before that Court thereby answering to the summons in the name of "McCloud"; the second argument is that there was no need for the charge sheet as amended to be served again upon the accused as is implied in the judgement of the First Court;

The Attorney General's appeal is being allowed on both counts. The nature of the summons, before the Inferior Courts and the consequences, if any, of a wrong designation of the name or surname of the accused, have already been examined in detail by this Court in its judgements of the 25th July, 1994 and

3rd February, 1995 in the names **Il-Pulizija vs Joseph Buttigieg** and **Il-Pulizija vs Rose Jane Zammit**, respectively. Reference is being made to these judgements to avoid unnecessary repetition. In the present case, although respondent (accused) did not appear several times (he can hardly be said to have regularly appeared before the Inferior Court) so much so that warrants of escort were issued against him, he did however voluntarily submit himself to the jurisdiction of the First Court when, on the 20th June, 1995 he filed an application for an adjournment. In that application he gives his surname as "McCloud". It is clear therefore that from the very start respondent knew that he was being summoned to appear before the Magistrates Court, and not someone else; and he also knew exactly the charges which were being preferred against him. This, after all, is the whole purpose of subsection (2) of section 360 of the Criminal Code. With the correction in the surname effected on the 30th June, 1997 no substantial change was made to the charges and therefore there was no need for the charges to be served afresh upon the accused. The only charge in respect of which the action is time-barred is the third charge (excessive speed) since the incident allegedly occurred on the 12th April, 1994 whereas the summons was only issued on the 27th December of that year;

For these reasons the Court allows the appeal by the Attorney General and varies the judgement of the First Court by confirming it in so far as the action in respect of the third charge is time-barred, but revokes it in so far as it refers to all the other charges and orders that the record be transmitted forthwith back to the Court of Magistrates (Malta) for that Court to deal with the said other charges according to law.
