

IN THE COURT OF APPEAL

BETWEEN:

ELFORD STEPHENS

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before: The Honourable Mr. Justice Byron - President
The Honourable Mr. Justice Redhead J.A. (Ag.)
The Honourable Mr. Justice Matthew J.A. (Ag.)

Appearances: Mr. Mark Williams for the Appellant
Mr. Cottle (Crown Counsel) for the Respondent

1992: Apr. 10

BYRON, J. A.

The appellant was convicted under Section 26(1)(b) of the Crown Lands Ordinance, Chapter 77, for entering Crown Lands at Cumberland, on the 2nd of May 1990 without claim or title and erecting a building thereon.

The facts indicated that the appellant was in occupation of the said lands since 1986 or 1987. He had erected a building on the property which was used as a guest house. The appellant claimed that he had obtained permission to occupy the lands by letter from the Honourable Minister of Housing, Labour and Community Development, but he was unable to produce that letter in Court. He however produced a letter from the said Minister, addressed to the Secretary of the Physical, Planning and Development Board dated the 3rd of May 1989, recommending that planning permission be given to the appellant in relation to the development of the property.

Crown Counsel Cottle conceded that there was nothing in the Act to show that permission given by the Minister of Housing, Labour and Community Development to occupy the land in question could not be considered lawful authority to occupy.

Our review of the evidence has persuaded us that there was sufficient evidence on the record to have justified a finding by

the Magistrate that the Minister had given the appellant permission to occupy the land in question, and it is clear that Section 26(1)(b) of the Act was not intended to apply to entry under such circumstances.

On the other ground of appeal the complaint itself charged that the appellant did "unlawfully enter upon Crown Lands without claim or title and erect a building thereon, contrary to Section 26(1)(b) of the Crown Lands Ordinance Chapter 77". Now Section 26(1)(b) makes it an offence to "use or occupy without lawful authority any Crown Land," whereas Section 25(1) makes it an offence to "unlawfully enter Crown Lands without lawful claim or title". The appellant complained that the decision was erroneous in point of law in that he was charged and prosecuted under the wrong section of the relevant Act. It is clear that the complaint used the wording of Section 25(1), but made specific reference to section 26(1)(b).

Counsel for the respondent insisted that the proceedings were conducted under Section 26(1)(b). Perusal of the record including the reasons given by the Magistrate for his decision supports this contention. However, the decision of the Magistrate imposed a penalty which included delivery up of possession of the land in question. The power to make such an order was conferred by Section 25(3), and there is no jurisdiction to impose such a penalty under Section 26(1)(b) which provides only for monetary penalties.

Once the prosecution took place under Section 26(1)(b) the order of the Magistrate will have to be set aside as being without jurisdiction.

For the reasons given above, we allow the appeal.

C.M.D. BYRON,
Justice of Appeal

I concur.

A.J. REDHEAD
Justice of Appeal (Ag.)

I concur.

A.N.J. MATTHEW
Justice of Appeal (Ag.)