

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

CRIMINAL APPEAL NO. 21 OF 1982

Between:

DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

- and -

REDDY CONSTRUCTION COMPANY AND  
FLETCHER ORGANISATION FIJI LTD.

RESPONDENTS

D.J. Thorley for the appellant

B.C. Patel for the respondents

Date of Hearing: 8th July, 1982

Delivery of Judgment: 23 7. 1982.

JUDGMENT OF THE COURT

Spring, J.A.

This appeal is brought by the Director of Public Prosecutions against the quashing by the Supreme Court of Fiji on 12th March 1982 of a conviction entered against the respondent companies by the Magistrate's Court sitting at Labasa on the 23rd February, 1981. This appeal is confined to questions of law by virtue of the provisions of section 22(1) Court of Appeal Act (Cap.12). The facts are as follows.

The respondents are construction companies engaged in construction work in Fiji and at the material time were

trading as Reddy Fletcher Contractors engaged in the erection of a large bin at the Fiji Sugar Company's mill at Labasa. The bin was about ninety feet in diameter and about sixty feet in depth and had a flat roof which had been completed at the time of the accident.

Mohammed Haroon Buksh (hereafter called the deceased) was employed by appellants; he was aged 15 years and 10 months at the time of his death. A subcontractor, employed by respondents was engaged in placing sprinkler pipes under the roof of the bin which was effected by removing the sheets of roofing iron; fitting the sprinkler pipes and replacing the iron sheets. The deceased and a fellow worker, Sita Ram, were employed in removing these sheets of iron from the roof. When the sheets of iron were removed large gaps were left in the roof; electric screw drivers were used by the deceased and his fellow employee to remove the sheets of roofing iron. On 27th May 1980 the deceased after removing a sheet of roofing iron fell through the resulting gap in the roof to his death - a distance of about 60 feet. The charge as amended brought against appellant reads :

"Amended Charge

(Complaint by Public Officer)

Statement of Offence (a)

Employing a young person in a dangerous situation contrary to section 61(1) and (4) and section 98 of the Employment Act Cap. 75.

Particulars of Offence (b)

Reddy Construction Co. Ltd. and Fletcher Organisation of Fiji Ltd. trading as Reddy Fletcher Contractors at Labasa in the Northern Division did on 27/5/80 employ a young person namely Mohammed

Haroon Buksh s/o Rasul Buksh in a dangerous situation, having regard to the lack of safety precaution relative to the said employee's age and experience and the altitude, place and type of work the said employee was required to do."

The respondents called no evidence. The learned Magistrate after hearing the prosecution witnesses convicted the respondents and fined each of them the sum of \$100. The respondents appealed to the Supreme Court against these convictions upon the grounds (inter alio) that the learned Magistrate had failed to consider and interpret sections 61(1) and 61(4) of the Employment Act; that there was no evidence that the opinion of the proper authority, as required under the Employment Act, to the effect that the deceased was employed in a dangerous situation had been notified to the respondents.

The appeal to the Supreme Court and this Court turned on the correct interpretation of section 61 of the Employment Act (Cap.92) and it will be convenient to set out the relative provisions.

"61(1) No child or young person shall be employed in any employment which in the opinion of the proper authority is injurious to health, dangerous, or is otherwise unsuitable.

(2) No person shall, after being notified in writing by the proper authority that the kind of work upon which a child or young person is employed is injurious to his health, dangerous, or otherwise unsuitable, continue so to employ him. Such notification may be made generally or in any particular case.

(3) Where any employment is discontinued under the provisions of subsection (2), such discontinuance shall be without prejudice to the right of the child or young person to be paid such wages as he may have earned up to the date of such discontinuance under the terms of the contract of service.

(4) Any person who employs any child or young person in any employment which is injurious to health,

dangerous, or is otherwise unsuitable, or who continues to employ any young person in any work concerning which he has been notified by the proper authority that it is injurious to health, dangerous, or otherwise unsuitable, shall commit an offence against this Act."

The Supreme Court in allowing the appeal, quashing the convictions and remitting the fines stated that the "proper authority" constituted under the Employment Act was charged with the responsibility of inspecting the construction works at the Fiji Sugar Co. mill; and further that its written opinion that the work the deceased was doing at the time of his death was dangerous and unsuitable for young persons should have been communicated to the respondents before the accident occurred. An extract from the judgment of the Supreme Court reads :

"It seems to me and here I would agree with counsel for appellants that the statutory prohibitions concerning the employment of young persons in dangerous or unsuitable work under section 61 could only become the subject of criminal charges if the proper authority had notified the appellants beforehand of its opinion that the work they were doing at the F.S.C. Mill was dangerous and unsuitable for the employment of young persons..... Under section 61 and having regard to the definition of proper authority, the officials comprising the proper authority were meant to play a fully active role in implementing and enforcing the various provisions of the Employment Act. All this leads me to the conclusion that under the scheme of the Act it is the proper authority who are charged with the responsibility to inspect construction works amongst other types of work and to decide whether it would be dangerous for young persons to work in them or not..... For the reasons I have given I am of the opinion that before any charges could be laid and prosecuted under section 61(4) it must first be shown that the proper authority had declared and notified the employers concerned that a particular work or class of work was dangerous for the purpose of employing young persons."

The Director of Public Prosecutions now appeals to this Court upon the following grounds :

- "1. The learned Judge erred in law in coming to the opinion that - "before any charges could be laid and prosecuted under section 61(4) it must first be shown that the proper authority had declared and notified the employers concerned that a particular work or class of work was dangerous for the purpose of employing young persons".
2. The learned Judge erred in law in failing to fully and/or properly consider the plain wording of section 61 of the Employment Act Cap. 92.
3. The learned Judge erred in law in failing to apply properly or at all any rules of statutory interpretation and construction."

Mr. Thorley for the Crown submitted :

- (a) That the wording of section 61 of the Employment Act was clear and unambiguous and that subsections (1) and (2) of section 61 were separate and that each subsection was independent of the other.
- (b) That subsection 61(4) created 2 separate offences; that the respondents were properly charged and convicted under the first limb of subsection (4) of section 61.
- (c) That the Supreme Court was in error in concluding that the respondents could only become the subject of criminal charges if the proper authority had notified the respondents prior to the accident of his opinion that the work was dangerous.

Mr. Patel for respondents submitted :

- (1) That the prosecution was brought under section 61(1) - the section specifically referred to in

the charge; and that section 61(4) was the penalty section.

- (2) That if the prosecution was to succeed on the charge as laid it was incumbent upon the prosecution to prove that the proper authority had previously declared and notified the respondents that the work was dangerous; this was a condition precedent before the legal sanctions could be invoked against the respondents.

The learned Magistrate after hearing evidence from the prosecution witnesses and viewing the scene of the accident found that the conditions under which the deceased was working were extremely dangerous.

It is necessary to examine the provisions of the Employment Act (Cap.92.)

The preamble to the Act reads :

"An Act to provide for the control of conditions of employment."

The Act is divided into 13 parts; Part VIII comprising sections 57 to 73 (both inclusive) deals with the employment of women, young persons and children.

A "child" is defined as a person who has not attained the age of 15 years.

A "young person" is defined as a person of or over the age of 15 and under the age of 18 years.

Section 59 provides (inter alia) that no children under the age of 12 years shall be employed in any capacity. Section 63 provides that no child shall be employed in any industrial undertaking - the latter term being defined as

including mines, quarries, factories, reduction mills and other works for the winning of minerals from the sea, rivers, etc., the definition is lengthy and includes very many other types of industry and public utilities. Section 67 contains a prohibition against employing a young person in an underground mine without a medical certificate. Section 64 sets out the hours of work for children and young persons. Section 62 prohibits children and young persons being employed against the wishes of the parent or guardian. Section 65 imposes restrictions on employment of women and young persons on night work.

The Act defines "Proper Authority as - the Permanent Secretary or any other person or persons appointed by him for the carrying into effect of this Act or any Part or provision thereof".

An examination of the Act discloses that sections 44, 61(1), 61(2), 61(4), 82, 84 and 85 appear to be the only sections which impose duties and confer powers upon the "proper authority".

In construing a statute it is necessary to ascertain the intentions of Parliament. Lord Rodcliffe in Attorney-General for Canada v. Hallett & Corey Ltd. [1952] A.C. 427 at p. 449 said :

" There are many so-called rules of construction that courts of law have resorted to in their interpretation of statutes but the paramount rule remains that every statute is to be expounded according to its manifest and expressed intention.

Sir Raymond Evershed M.R. in Prince Ernest of Hanover v. Attorney-General [1956] Ch.188, at p. 201 said :

'As is stated in the first sentence of Maxwell on the Interpretation of Statutes.... the fundamental rule of interpretation to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it'."

Bearing these principles in mind we turn to consider section 61 of the Act.

It is clear section 61(4) creates two offences. The first limb of section 61(4) creates an offence where any person employs any child or young person in any employment which is injurious to health, dangerous or is otherwise unsuitable. The second limb of section 61(4) creates an offence where a person continues to employ any young person in any work concerning which he has been notified by the proper authority that it is injurious to health, dangerous or otherwise unsuitable. It is to be noted that under the second limb the Court does not make its own assessment of danger - the offence is proved by proving disregard of the notification.

The requirement of notification by the proper authority is omitted from the offence created under the first limb of section 61(4); the question arises whether a Court can determine the issue whether the employment is dangerous or is otherwise unsuitable notwithstanding the omission of the words "in the opinion of the proper authority", or whether the opinion of the proper authority is essential for the success of the prosecution.

Section 61(1) is declaratory and authorises the proper authority to prohibit the employment of children and young persons in such occupations which in its opinion may be injurious to health, dangerous or otherwise unsuitable.



This subsection contemplates that the proper authority may declare this prohibition in respect of employment presently available or which may be available in the future.

The subsection, however, is left without an exact offence provision.

Section 61(2) empowers the proper authority in a particular case to issue a specific prohibition in any particular case directing an employer that he shall no longer continue to employ a young person in the kind of work that he is so engaged upon which in the opinion of the proper authority is dangerous. The second limb of section 61(4) contains the offence provision in respect of section 61(2). When the sections are analysed it is apparent that they are quite independent of each other and in our view their independence must be maintained as they contain separate and distinct prohibitions. We do not agree that there is any conflict between section 61(1) and section 61(2) as submitted by Mr. Patel.

We reject the argument advanced by Mr. Patel that in a prosecution under the first limb of section 61(4) it must first be shown as a condition precedent that the proper authority had declared and notified the employers concerned that the employment of a child or young person therein was dangerous.

Section 61(4) clearly contains two separate offence provisions.

Section 61(4) is not the penal section as Mr. Patel submitted; the penal section is section 99.

Sections 59, 60, 63, 64 and 65 of the Act relate to the employment of children and young persons and impose various restrictions as to hours and times of employment and each section has an

offence provision expressed in the following terms:

"Any person who employs any child or young person in contravention of the provisions of this section shall commit an offence against the Act."

Section 61(4) does not provide that it is an offence for a person to act in contravention of the provisions of section 61(1) or section 61(2); the draftsman has spelt out in section 61(4) in clear and unequivocal language two separate offences. The words "in contravention of the provisions of this section" do not appear - nor do the words "in the opinion of the proper authority" appear in relation to the offence created by the first limb of section 61(4); in our opinion this omission is deliberate. If such words had been included then the "proper authority" would be vested with the power of deciding whether an employment was dangerous rather than the matter being left to the Court to decide in an objective manner upon the evidence. In our view this wording accords with justice and common sense. One could conjure up many sets of circumstances where it would be quite wrong for the opinion of the proper authority to be the sole criterion as to the commission of an offence against the first limb of section 61(4). If the Legislature had intended that the words "in the opinion of the proper authority" should be imported into the first limb of section 61(4) then it would have been a simple matter for the Legislature to have said so. The question as to whether an offence is committed under the first limb of section 61(4) must, in our view, be left to the Court to decide.

Further, if Mr. Patel's argument was correct then the wording of section 61(4) is superfluous, verbose and

unnecessarily complicated and sections 61(1) and 61(2) in their present form would be unnecessary. The sections are separate and distinct and this construction accords with the proposition that Parliament must be intended to mean every word of what has been written.

In Canada Sugar Refining Co. v. Reginom [1898] A.C. 735 at p.741 Lord Davey said :

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter."

If one seeks to discern a legislative purpose underlying section 61 one is driven to conclude that the mischief, at which Part VIII of the Act is aimed is clearly to ensure the proper and adequate control and supervision of the employment of children and young persons in the changing pattern of industry and commerce.

The offence of which the respondents were convicted flowed from the first limb of section 61(4) and we respectfully differ from the judgment of the Supreme Court when it stated :

"For the reasons I have given I am of the opinion that before any charges could be laid and prosecuted under section 61(4) it must first be shown that the proper authority had declared and notified the employers concerned that a particular work or class of work was dangerous for the purpose of employing young persons. In the present case no such declaration or notification to the appellants was made by the proper authority and consequently I am bound to hold that the conviction of the appellants under section 61(4) of the Act was misconceived and could not be sustained."

We can see no room for applying the restrictive interpretation urged upon us by Mr. Potel so as to cut down the plain meaning of the language in the first limb of section 61(4) to make it accord with the supposedly limited legislative intent sought by him.

The charge upon which respondents were convicted in the Magistrate's Court refers to section 61(1) and section 61(4) of the Employment Act; this was obviously a slip on the part of the draftsman. No embarrassment or prejudice was caused to the respondents by reference to section 61(1) in the amended charge nor could such a claim be made; the particulars of the offence which accompanied the statement of offence showed clearly that the charge, the respondents had to meet, was an offence under the first limb of section 61(4).

Accordingly, we allow the appeal, affirm the convictions and impose the same fines as were entered in the Magistrate's Court at Lobasa but order that reference to section 61(1) of the Employment Act be deleted from the particulars of the conviction recorded against the respondents.

*Andreasact*  
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(Judge of Appeal)

*Mr. [Signature]*  
.....  
(Judge of Appeal)

*[Signature]*  
.....  
(Judge of Appeal)