

THE PEOPLE v MARONGO (1967) ZR 170 (HC)

HIGH COURT

MCCALL J

24th NOVEMBER 1967

Flynote and Headnote

[1] Criminal procedure - Prosecution's case - Costs levied on prosecution - Section 160 (2) of Criminal Procedure Code construed.

Pursuant to Criminal Procedure Code, section 160 (2), costs cannot be awarded against the prosecution if there were reasonable grounds for making the complaint; when the prosecution's case is withdrawn due to inability to call certain evidence, this has no connection to lack of reasonable grounds for complaint; moreover, a plea of not guilty to a sworn complaint reasonable on its face will not sufficiently show a lack of reasonable grounds for complaint.

Statute construed:

- (1) Criminal Procedure Code (1965, Cap. 7), s.160 (2).

Reilly, Senior State Advocate, for the appellant

Platt, for the respondent

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Judgment

Mccall J: The complaint in this prosecution was, it appears, sworn out on 20th February. This date, again it appears, was altered to 20th March. The summons was issued on 20th March and was for the appearance of the respondent in the subordinate court of the second class at Ndola at 9 a.m., on some indecipherable day of March, altered to May and finally altered to August. The complaint and summons were signed by a magistrate, and I am quite satisfied that he was not in any way responsible for the alterations I have mentioned. But whoever was responsible should be made to know that any unauthorised alterations of documents of this character is dangerous and wrong.

[1] The prosecution came on for hearing on 15th September. It was then withdrawn. The respondent was represented by counsel who applied for costs, and it was ordered that the prosecution should pay costs in the sum of "15 guineas Counsel's fee for preparation of defence including taking instructions, attendance of scene of alleged occurrence and preparation of plan and 10/- client's expenses." Just what this sum amounts to precisely I cannot say, but whatever it is the State has appealed against this order.

The only authority for an award of costs against the prosecution is to be found in section 160 (2) of the Criminal Procedure Code. This reads as follows:

"It shall be lawful for a Judge or a magistrate who acquits or discharges a person accused of an offence to order that such reasonable costs, as to such Judge or magistrate may seem fit, be paid to such person and such costs shall be paid where the prosecution was in the charge of a public prosecutor, from the general revenues of the Republic, and in any other case by the person by or on behalf of whom the prosecution was instituted:

Provided that no such order shall be made if the Judge or magistrate shall consider that there were reasonable grounds for making the complaint."

I am satisfied that the prohibition contained in the *proviso* applied here. It is quite clear that the decision of the learned magistrate was based on inability to call certain evidence. There was no connection whatsoever between this inability and reasonable grounds for complaint. In any event there was evidence in the form of the sworn complaint that it was on the face of it a reasonable one, and there was no evidence of any description to contradict it unless the plea of not guilty be taken into account, and that in my view is not sufficient contradiction. In my opinion, therefore, costs in this case were awarded against the prosecution not only for the wrong reason but for no good reason at all. It only remains for me to add that there can be no question of the facts being proved to any formal sense by the prosecution in all contested cases for the purpose of avoiding liability for costs. The

decision is one for the court's consideration on the facts which are already before it in its normal practice or procedure, assisted in some cases by argument for or against an order.
Appeal allowed.