

ROYAL COURT

153

19th October, 1990

Before: The Deputy Bailiff,  
Jurats Vint and Herbert

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Attorney General

- v -

Fiona Yvette Mackenzie

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Sentencing - Housing (Jersey) Law,  
1949, Article 14(1)(a) - specific  
lack of funds in this case  
sufficient to reduce fine of £5,000  
(which included an amount sufficient  
to remove all elements of "profit"  
from the illegal act) sought by  
Crown to a nominal fine of £1,000.

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Miss S.C. Nicolle, Crown Advocate.  
The accused appeared on her own behalf.

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JUDGMENT

DEPUTY BAILIFF: This is a very difficult and an exceptional case.  
Despite all that has been said by Crown Advocate Nicolle and properly  
said by her, we are going, nevertheless substantially to reduce the  
fine and impose what is almost a nominal fine in the circumstances.

We have had particular regard to two recent cases. On the 28th November, 1989, dealing with a housing case of Stacy Adams, Mr. Commissioner Hamon said: "Clearly this is a case where the fines must not be so high that the accused faces the alternative of imprisonment for non-payment. Nor must the fines, in our view, be so high that the accused cannot pay them out of her own money".

And the second case was on the 24th April of this year and concerned one Katherine Lorna McIntosh and again Mr. Commissioner Hamon was presiding, and he said and we repeat this in relation to this case: "Any breach of the Housing Law is serious in a situation which becomes more serious year by year. That the legislature has recognised this is shown by the fact that on the 10th February, 1989, the maximum fine for an offence of this nature was altered from £5,000 to an unlimited amount.

In that case Crown Advocate Mr. Whelan had asked for a fine of £3,000. Mr. Commissioner Hamon dealt with the facts and then he said: "We have listened very carefully to everything that Mr. Begg has said ...." (that's Mr. Begg for the defence) "...and we are prepared to accept on what he has told us that she did not fully understand the legal implications of what she was doing. Had we thought otherwise our feelings would not have been tempered with mercy. We can see the desperation that led her to set up this scheme". Now, Miss Mackenzie may not have acted out of desperation and she may have known what she was doing but nevertheless she obviously helped hard luck cases and also acted out of desperation with regard to meeting her own debts.

Mr. Hamon went on: "Our problem however is that we have looked very carefully through her affidavit; it cannot be the purpose of this law that if someone cannot possibly pay the fine that we impose there is no alternative but for them to go to prison and on the affidavit that we have received, we cannot see that there is any hope that Miss McIntosh can pay very much towards any fine that we are likely to impose. We view the matter as serious; we take on board exactly what the learned Crown Advocate has said and we sympathise with everything that he has said and this must in no way be taken as an encouragement

to anybody else that this Court is viewing infractions of the Housing Law with tolerance". That again applies fully in this case.

But because of the specific lack of funds of this particular accused we are going to make an exception and we are going to fine her £1,000.

We have seen medical evidence that leads us to believe that Miss Mackenzie may very well remain unemployed. If the house is sold for £105,000 then she may well end up, taking into account the affidavit of means, with very little; as she put it, next to nothing. The affidavit has no regard to legal fees and estate agents' commission and interest running on at high rates day by day.

We are going to impose a fine with the intent that it should be paid in full as a single payment out of the proceeds of sale. Therefore we impose a fine of £1,000 and provide as an alternative in default of payment that Miss Mackenzie will serve one month's imprisonment. Costs will be paid in the sum of £300. There will be three months to pay, but as we said that is with the intent that the amount should be paid in full out of the proceeds of sale.

Failing a sale being completed within the three months or failing that there is enough money in the kitty, so to speak, in order for the fine and costs to be paid in full, then Miss Mackenzie should make a further application to this Court before the end of three months for further time to pay.

Finally we would just add this that we would recommend to Miss Mackenzie that she might usefully attend at the Citizens Advice Bureau at 15 Broad Street for the purpose of debt counselling for the future.

Authorities cited:

AG -v- Adams (28th November, 1989) Jersey Unreported.

AG -v- McIntosh (24th April, 1990) Jersey Unreported.

R -v- Olliver (1989) Times, 20th January.