Lim Kopi Pte Ltd *v* Public Prosecutor
[2010] SGHC 4

Case Number : Magistrate's Appeal No. 133/2009/01

Decision Date : 06 January 2010

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Bala Chandran (Mallal & Namazie) for the appellant; Gillian Koh Tan (Attorney General's Chambers) for the respondent

Parties : Lim Kopi Pte Ltd — Public Prosecutor

CRIMINAL LAW – SENTENCING

6 January 2010

Chao Hick Tin JA:

Introduction

1 This was an appeal against the sentence imposed by the District Court in Ministry of Manpower (MOM) Summons No. 1804 - 1807/2009 and 1810 - 11/2009. The appellant, an incorporated company, had pleaded guilty to six charges for making false declarations to the Ministry of Manpower (MOM) in connection with its application for work passes for foreign workers under s 22(1)(d) of the Employment of Foreign Manpower Act (Cap 91A, 1997 Rev Ed)("the Act"). The appellant was sentenced to a fine of $10,000 for each of these offences (collectively referred hereafter as "the offences"), making a total fine of $60,000. Seven other similar charges under s 22(1)(d) of the Act were also taken into consideration for the purposes of sentencing. The court ordered the appellant to pay $20,000 of the fine forthwith, with the balance of $40,000 in instalments of $10,000 per month beginning 1 June 2009 and thereafter on or before the 1st of each subsequent month.

2 The appellant was untraced and had a clean record. The appellant was run by its sole shareholder and director, one Lim Chek Chee ("Lim") and Lim had earlier also been charged for the same offences as the appellant under s 22(1)(d) of the Act. Lim was sentenced to two months imprisonment per charge, with three of the six charges running concurrently for a total imprisonment term of six months. The written grounds of the District Judge in relation to the present appeal could be found in *Public Prosecutor v Lim Kopi Holdings Pte Ltd* [2009] SGDC 209 ("the GD").

3 Section 22(1)(d) of the Act provides as follows:

> **Offences**
>
> **22**. —(1) Any person who —
>
> (d) makes any statement or furnishes any information to the Controller or an employment inspector under this Act which he knows or ought reasonably to know is false in any material particular or is misleading by reason of the omission of any material particular;…
>
> shall be guilty of an offence and shall be liable —

(ii) in the case of an offence under paragraph (*d*), (*e*) or (*f*), on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 12 months or to both;…

4 After hearing the submissions of the appellant's counsel and the respondent, I reduced the fine imposed for each of the offences from $10,000 to $3,000, making a total fine of $18,000. I also ordered that the excess amount of fine already paid pursuant to the sentence of the District Court be refunded to the appellant. I now give the reasons for my decision.

The facts of the case

5 The appellant, Lim Kopi Holdings Pte Ltd, was in the business of operating coffee shops in Ang Mo Kio. Because the appellant and Lim were both inexperienced in running coffee shops, they hired one Patrick Boo ("Patrick"), whose company – Starworld Agency – advised the appellant and Lim in their coffee shop business. For the period between March 2008 to August 2008, the Central Provident Fund (CPF) Board records showed that the appellant was making CPF contributions in respect of some thirty local workers. I should explain here that the MOM determines the number of foreign workers a company is entitled to hire based on the size of the company's local workforce. Despite what were on the CPF records, more than half of the contributions made were fictitious. These bogus hires were in fact family members and relatives of Lim, who had agreed to let the appellant use their names as part of the scheme to inflate the number of local workers hired by the appellant so that the latter would be permitted to hire more foreign workers. In the two weeks from 24 June 2008 to 1 July 2008, the appellant made several applications for work passes to hire six foreign workers as kitchen assistants in its coffee shop. In so doing, it made the following declarations in its application forms to MOM (see GD at [3]):

(i) It was aware that the company's CPF accounts would be used by the Controller of Work Pass, MOM, to determine the strength of the defendant company's local workforce, and consequently its foreign worker entitlement; and

(ii) It certified that its CPF accounts only included contributions made to persons who are actively employed by it.

6 The reason why an applicant was required to make such declarations was explained by Ms Kwa Chin Bee, prosecutor from the MOM who informed the District Court that "CPF accounts are crucial in the MOM's process of determining foreign worker entitlements… [and because] it is difficult to examine each and every employment relationships, the Ministry places heavy reliance on the accuracy of the CPF records in its work permit approval process" [note: 1]. It is therefore an offence under s 22(1)(d) of the Act to furnish false or misleading information in relation to such an application. It was undisputed that MOM would *not* have approved the appellant's application for work passes for the foreign workers had it known that those bogus local workers in respect of whom CPF contributions were made were in fact never employed by the appellant.

The Decision Below

7 The District Judge, in his GD, emphasised the need to deter offences committed against public institutions and, by committing the six offences, the appellant had "frustrated the Government's efforts to effectively regulate and monitor the recruitment of foreign labour in Singapore" (GD at [11]). In his view, the approval process was an important "mechanism put in place by MOM in order to regulate the influx of foreign workers whilst protecting equal opportunities for local workers to secure employment", and because the appellant had intentionally deceived MOM, a substantial fine of

$10,000 per charge was warranted (see GD at [11] and [12]). I should add that the District Judge had merely summarised the mitigating factors tendered by the counsel for the appellant, without discussing them, or indicating whether he accepted them (see GD at [6]).

The Appeal

The parties' respective cases

Appellant's Case

8 Counsel for the appellant argued that the District Judge had failed to consider the mitigating factors in this case, resulting in the court imposing a deterrent sentence which was manifestly excessive and not commensurate with the moral culpability of the appellant. The salient mitigating factors relied on by the appellant could be summarised in the following manner. First, because the appellant and Lim were in essence the "same entity", the court should not in such a circumstance impose deterrent sentence twice over. [note: 2] Second, the appellant also argued that the actions of the appellant were not motivated by profit and a reduction of sentence was warranted as there were no victims in the present case and no financial loss was caused [note: 3]. Third, the hiring of fictitious local workers was essentially the idea of Patrick and not the appellant or Lim. The appellant had therefore committed the offence out of misguided trust in Patrick. [note: 4]

Respondent's Case

9 The respondent's case was, in broad strokes, identical to the one presented by Ms Kwa Chin Bee before the District Judge below (see [6] above). The respondent urged this court to take a stiff stand towards the appellant as the principle of deterrence was a "dominant consideration" in sentencing when deception of a public body was involved [note: 5]. In reply to the appellant's case, the respondent made the following arguments. First, even if the appellant and Lim were "the same entity", s 20 of the Act provides for the equal punishment of companies and persons alike for offences under the Act and the appellant was therefore not being punished *twice* by the fines imposed on it. [note: 6] Second, it was said that contrary to the appellant's argument that it did not profit from the offences, the scheme to make false CPF contributions to fictitious local workers stemmed from "Lim's concern that the coffee shop be a viable business". [note: 7] Accordingly, "it was wholly inaccurate to argue that the appellant had not intended to profit from the offences". Rather, the profit "was the continuing financial viability of the coffee shop business venture" [note: 8] and the "gain" was the appellant's hiring of the six foreign workers. [note: 9] It was also irrelevant that there were no victims or financial loss caused. This was because the very *raison d'être* of s 22(1)(d) of the Act was to "regulate and monitor the recruitment of foreign labour in Singapore" [note: 10] and the presence of victims or financial losses were not therefore preconditions to an infringement of s 22(1)(d). Third, the respondent rejected as without merits the appellant's argument that it had committed the offences under influence by Patrick because "it would have been clear to Lim that such a course of action was illegal or *at [the] least, improper*" [note: 11] (emphasis added).

My decision

10 This case throws up an interesting issue of how corporate offenders should be sentenced when the person managing the company has also been dealt with for the same, or substantially the same, infringements. Before we go further, I should add that at no time should it be doubted that an offence under s 22(1)(d) of the Act is a serious one, which ought to be dealt with swiftly and sternly by the

courts. Deterrence is therefore without dispute an important consideration for such offences; otherwise the very object of such a law would be flagrantly undermined. This much was clear from the second reading of the Employment of Foreign Workers (Amendment) Bill (see *Singapore Parliamentary Debates, Official Report* (22 May 2007) vol 83 at col 928 *per* the then Minister for Manpower, Dr Ng Eng Hen ("Dr Ng")). Notably, Dr Ng emphasised that offences of deception warrant *stiffer* penalties to "maintain the equilibrium" between the economic advantages of having access to foreign manpower and other social objectives such as enabling locals to compete for jobs with foreign workers (*id*, at col 928):

> The ability of our companies to access foreign manpower is a comparative advantage. But our foreign worker policy cannot be based on a *laissez-faire* approach, which will be detrimental to our overall progress…We constantly monitor the labour situation and make fine adjustments to maintain the equilibrium between our economic competitiveness and other social objectives, to enable locals to compete for jobs…. ***For Singapore, as a small island, we need to be vigilant and manage our foreign worker population well, to ensure that it continues to contribute positively to our economy. We need a robust system with effective laws, enforcement and safeguards against the illegal entry and employment of foreign workers*** …I will now highlight the significant provisions of the bill…
>
> …[O]ffences of deception. We have made work pass applications user-friendly by allowing submissions through fax, mail or electronically. Work pass criteria are also made known to companies so that they have greater certainty to plan for their manpower needs. ***Some, knowing these rules, which are now made explicit, may choose to work around the system through fraud*** … ***Accordingly, clause 22 increases the penalties for such offences, which include the provision of false information*** , the illegal trade and alteration of work passes and the possession of forged work passes, ***to be similar to those for illegal employment, which are a maximum fine of $15,000 or 12 months imprisonment or both*** .
>
> (Emphasis added)

11 Any deception of public institutions which frustrates the aims of the Act cannot be condoned and the District Judge was certainly justified to state that for such an offence a deterrent sentence is warranted, and expected by society (see GD at [11] where the District Judge relied on the cases of *Dong Guitian v Public Prosecutor* [2004] SGHC 92 and *Lim Mong Hong v Public Prosecutor* [2003] 3 SLR 88). However, it is also a trite principle, as well as an important precept of sentencing law, that "deterrence must always be *tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender*" (*Tan Kay Beng v Public Prosecutor* [2006] 4 SLR 10 at [31]; emphasis added). How then could this best be achieved, where a corporate offender was a small family business and the person behind it was also being dealt with by the law? Before proceeding further, I should state that deterrence is without doubt a concept applicable to companies, in the same way as it is applicable to individual offenders. This is because companies are often engaged in the taking of calculated risk, and the only means by which companies can therefore be deterred from engaging in wrongful conduct (companies being legal entities may not be sentenced to imprisonment), would be to ensure that the right forms of financial disincentives are applied. Thus, the following was observed by the New South Wales Law Reform Commission in *Sentencing Corporate Offenders* (Issues Paper No. 20, November 2001) ("*New South Wales Law Reform Commission Report")* at para 3.2:

> Deterrence is generally cited as the primary aim of and justification for sentencing corporate offenders. This is because, in theory at least, corporations can be deterred from committing wrongful conduct… ***They tend…to engage in wrongful conduct as a calculated risk, often***

economically motivated. They can be deterred if that conduct represents a risk that is not worth taking .

(Emphasis added)

12 Although deterrence may be a *predominant* sentencing aim for offences under the Act, especially where there is a deception of public institutions such as in the present case, this does not necessarily mean that *other* sentencing objectives cannot also apply to corporate offenders in an *appropriate* case where the facts so warranted. In each case, it is useful to bear in mind that "any judge who comes to sentence…ought to have…four classical principles [*viz*, rehabilitation, deterrence, retribution, and prevention] in mind and to apply them to the facts of the case to see which of them *has the greatest importance in the case with which he is dealing"* (*Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR 684 at [17], citing *R v Sargeant* (1974) 60 Cr App R 74 at [77]). Still, the court must temper the objective of deterrence, with the specific moral and legal culpability of the offender. In this regard, it would be apposite to revisit the words of Chan Sek Keong CJ in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2009] SGHC 250 ("*Kathleen Luong*") at [25]:

> Judges should not blindly apply any sentencing principle without considering all the circumstances of the case at hand, especially the culpability of the accused in that particular case. It cannot be overemphasised that the court must apply its mind to the facts of each case before it and determine the appropriate sentence accordingly.
>
> [Emphasis in original]

13 The following words of the Australian High Court in the case of *Veen v R (No 2)* (1988) 164 CLR 465 at 476, though basic, are useful reminders and indicate yet again that sentencing is fact-sensitive and depends on the object behind the law in question:

> …[S]entencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. ….The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.

14 In the recent decision of *Auston International Group v Public Prosecutor* [2008] 1 SLR 882 ("*AIG"*), Lee Seiu Kin J noted that three factors were particularly relevant in deciding the quantum of fine to be imposed on a corporate offender. The three factors are (i) the degree of contravention of the statute ("the first factor"); (ii) the intention or motivation of the offender ("the second factor"); and (iii) the steps taken by the company upon discovery of the breach or the degree of remorse shown by the offender ("the third factor") (see *AIG* at [13] to [18]). I have no doubt that Lee J did not mean to suggest that this list was in any sense exhaustive. I could envisage another three other factors which would also provide useful guidance to any court faced with the task of determining what a fair quantum of fine should be for a corporate offender. But before identifying the additional three factors, it would be expedient to examine how the facts of the present case stood up to the three factors set out in *AIG*.

15 In this case, although the degree of contravention of the Act was fairly extensive, there being six charges and a further seven taken into account by the lower court, the first factor was mitigated by the second and third *AIG* factors. To fully appreciate the interplay between the three factors in the instant case, it would be necessary and useful to first understand the working relationship vis-à-vis the appellant, Lim and Patrick. The plea of leniency made by Lim after he was arrested was

instructive for this purpose:

> Our company has committed an offence, and we have to be responsible for our act. However, on the other hand, we wish to plea for leniency, ***for the fact that we totally have no experience in setting up and running [a] coffee shop business*** , and we had to follow 100% the advices from our consultant, Starworld Agency. ***All headcounts that were not actively worked in our company had been removed by Sept 2008*** . We started business in June 2008…
>
> Also, after being asked to sign so many work pass applications, ***we felt uncomfortable and on 14th July 1008 [sic] , we asked Starworld Agency to sign a letter to declare if there was any rebate given to Starworld Agency from the worker's agent, our company has nothing to do with it*** .
>
> ***Last but not least, I have been 100% frank and co-operative since day 1 of investigations with MOM officers. We did not have intention to break the law.*** [note: 12]
>
> (Emphasis added)

16 This plea of leniency offered several insights into the present matter. First, it clearly showed that the appellant and Lim were remorseful after the incident; Lim's prompt cooperation with MOM and subsequent plea of guilt was a reflection of this. Second, it demonstrated that the appellant and Lim, who were novices in the coffee shop business, were both not entirely comfortable with the false employment scheme, so much so that by September 2008, they replaced the bogus local hires with workers actually employed by the company. This concern also prompted the appellant to seek a written declaration from Starworld Agency, stating that the latter was not receiving any illegal rebates for the hiring of foreign workers. The written declaration and letter of understanding dated 14th July 2008 reads as follows:

> "STARWORLD AGENCY SERVICES was engaged by LIM KOPI HOLDINGS PTE LTD as the Consultant for setting up operation, as well as management of daily operation of LIM KOPI HOLDINGS PTE LTD…As STARWORLD AGENCY is entrusted to handle hiring of foreign workers for our company, we expect STARWORLD AGENCY SERVICES ***to be aware of our expectation, as a management agency of our coffee shop. Hence, STARWORLD AGENCY SERVICES should bear all responsibilities of any illegal action committed by STARWORLD AGENCY, in respect to dealing with vendors and foreign worker agencies, and to the best of business ethic*** …" [note: 13]
>
> [Emphasis added]

17 While the Prosecution had correctly submitted that it was no excuse (as far as the commission of the offences were concerned) for the appellant to claim that it had entered into the scheme on the behest of Patrick as the appellant should have known – at the very least – that something *improper* was involved (see [9] above), this did not necessarily equal to the appellant having the *blatant* intention to defraud MOM. This was evident from the Appellant's discomfort with the employment scheme, and its concern that Starworld Agency might be taking illegal rebates. In this regard, it must be borne in mind that Starworld Agency was a consultant hired by the appellant and in relying on its advice, I do not think that it could fairly be said that the appellant had deliberately hatched this scheme with the purpose of undermining the object of the Act or defrauding MOM. Reverting to the second and third *AIG* factors, there was in the present case an absence of a *brazen* intention to deceive MOM and, instead, there was a clear display of remorse on both the part of both

Lim and the appellant as soon as investigations begun into the matter. Therefore, in my view, it would not be right to apply the principle of deterrence simpliciter, without making the necessary adjustment in the light of these mitigating circumstances.

18 At this juncture, it would be appropriate to discuss the further factors, referred to in [14] above, that may be relevant to the sentencing of a corporate offender. A fourth factor relevant to our case was the fact that the appellant was essentially the alter ego of Lim, since the latter was the former's sole shareholder and director. In these circumstances, it could be said that punishing the appellant with a substantial fine would be tantamount to penalizing Lim *in extenso*. Put in another way, deterrence should not be imposed *twice*, when the company was solely owned and managed by one individual. While s 20 of the Act, as cited by the respondent, states that a company is equally punishable as an individual for an offence under the Act, this related only to *liability*, and the quantum of fine or the level of sentence imposed was a matter to be decided separately. In cases involving closely held companies – such as the one before us – the subject of deterrence should rightly be the managers themselves and it is incumbent on the courts to ensure that the totality principle is not breached where the company and manager are in fact one and the same. A similar concern was noted in the *New South Wales Law Reform Commission Report* at para15.2:

> 15.2 If the owners of a corporation have been prosecuted and fined for the same offence, or if they are co-defendants with the corporation, an issue that arises is whether or not the fine imposed on the owners is relevant in determining the amount of fine to be imposed on the corporation. This issue is important in the context of a corporation owned by one director or by a relatively small number of people. In such instances, it may be argued that the corporation is the alter ego of its owners-managers and so an appropriate punishment may be achieved by offsetting the fine imposed on the corporation by the amount imposed on its owners. ***It may be argued that a failure to do so would result in the imposition of a double (and therefore excessive) penalty*** .
>
> [Emphasis added]

In the present case, the directing mind and will behind the appellant was indisputably Lim, who had already been given a deterrent sentence when he was given a custodial sentence of six months for the same offences. While it could not be denied that the appellant was also guilty of the same offences as Lim, to impose a deterrent fine on the appellant for exactly the same offences for which a deterrent sentence was already imposed on Lim, was to effectively impose double deterrent sentences for the same offences, thus rendering the fine imposed on the appellant manifestly excessive. In such circumstances where the company was effectively the alter ego of its controllers, there was no justification to impose double deterrent sentences. The object of the Act would be sufficiently achieved if a deterrent sentence was already imposed on the person controlling the company.

19 A fifth factor relevant here was the fact that the appellant was essentially a small family business with little resources. In sentencing a corporate offender, the quantum of fine imposed should not be oppressively such that it vastly exceeds the financial capacity of the company to pay. The fine specified under s 22(1)(d) of the Act is that it should not exceed $15,000 for each charge but when cumulatively added upon, the final quantum payable could become prohibitive for small companies culpable of multiple breaches of the Act. Courts should be slow to impose a manifestly excessive fine, replete with the consequences of running the company aground or out of business. A similar concern was also duly noted by Lee J in the *AIG* case when he said that it was "not clear…how imposing a severe punishment on the company would deter individuals who manage companies [and] *the courts must be careful not to impose overly onerous conditions on the corporate world simply to*

ensure compliance with regulatory provisions in a situation where the law can effectively be applied to deter individuals from committing such acts" (*AIG* at [19]; emphasis added). Thus, the corporate offender's ability to pay is a relevant consideration to be balanced against the need for deterrence and the aims of the other sentencing objectives (see *Chia Kah Boon v Public Prosecutor* [1999] 4 SLR 72). A similar thought was expressed by Scott Baker J in *R v F. Howe and Son (Engineers) Ltd* [1999] 2 Cr. App. R. (S.) 37, a case where the English Court of Appeal had to sentence a company for the infringement of environmental statutes (at 42 and 43):

> We are not persuaded that the size of the company and its lack of ability to provide its own specialist safety and electrical personnel mitigates[*sic*] these offences. ***The means of the company is, on the other hand a very material factor to the amount of the fine*** …. Other matters that may be relevant to sentence are the degree of risk and extent of the danger created by the offence; the extent of the breach or breaches, for example whether it was an isolated incident or continued over a period and, ***importantly, the defendant's resources and the effect of the fine on its business*** .
>
> [Emphasis added]

20 In this case, the appellant is a private company with a paid up capital of only one dollar. The appellant was also set up using money belonging to Lim and his family members. As pointed out by counsel for the appellant, and I noted this was not disputed by the Prosecution, "$250,000 had already been invested by Lim in this business to date, monies which came from his life savings, loans from relatives and bank loans". [note: 14] Business was also poor and "since the business started, it has only generated enough money to pay the monthly rental due on the lease of the premises and the renovation costs". [note: 15] Having regard to its financial state, a fine of $60,000 would also in my view, be an oppressive one, which could very well drive the appellant out of business, to the detriment of the family members who had lent Lim the money to set up the business in the first place.

21 Yet another relevant factor – which I would hasten to add was not one which was applicable in this case but which I thought I should make known nonetheless – would be the consideration of the community of interests which may be affected if a prohibitive fine is imposed on a company. These diverse interests belonging to shareholders, employees and creditors (when the company is in winding up) are relevant considerations particularly in the case of a large corporation, where the criminal conduct is attributable only to a select few managers or controlling minds. In these circumstances, imposing a hefty fine would only pass on the burden of the fine to these *other* innocent parties, and in an *appropriate* case, courts should exercise care in the weighing and balancing of this community of interests.

22 At this juncture, I will address one other argument raised by the appellant, namely, that the offending acts were not motivated by profit and that there were neither victims nor the causation of financial loss in the present case (see [8] above). There were two limbs in this argument. In my opinion, both these limbs were without merits and I could not accept them as valid mitigating factors. While the absence of personal gain may be a legitimate mitigating factor and even that is of "very little weight" (see *Lai Oei Mui Jenny v Public Prosecutor* [1993] SGHC 157 at [3]), it was clear, as the respondent had rightly pointed out, that the financial gain here was the wage differentials saved by the appellant from hiring the foreign workers (see [9] above). As for the argument premised on the absence of victims or financial loss, I would like to make two points in response to it. First, it is a trite principle of sentencing law that in some cases, intangible damage may be even more reprehensible and the absence of actual harm was of little relevance or importance. It may be noted that in *Public Prosecutor v Ng Tai Tee Janet* [2001] 1 SLR 343 the court stated (at [28]):

> In the proceedings before me, counsel for the respondents belaboured the point that no actual harm or loss was suffered by any party and that the respondents believed that they had not caused anyone to suffer. This argument was in my view, misconceived. ***When considerations of public interests were implicated, these factors were of less relevance or importance. The loss or damage sustained was of an intangible nature and the ultimate victim was the State*** . In any case, an act had in fact taken place in consequence of the abetment, the principal offence was not completed only due to the alertness of the SATS officer. The respondents were certainly not entitled to claim any credit for this.
>
> [Emphasis added]

Second, regulatory Acts are very often enacted to promote or advance social policies and it is imperative that their provisions should be strictly complied with in order to ensure that those policies would not be thwarted. In this case, the Act serves an important public policy of maintaining the equilibrium between the comparative advantages of having access to foreign manpower and other social objectives such as enabling locals to compete for jobs with foreign workers (see [10] above). Bearing in mind the public interests involved, I could *not* place any weight on the fact that no tangible loss or financial damage was caused. It cannot be emphasised enough that the courts take a stern view of any public deception of government bodies and an appropriate deterrent sentence must be imposed whenever an employer seeks to undermine the objectives of the Act, subject of course, in each instance, to the careful consideration of the legal and moral culpabilities of the offender: see *Kathleen Luong* at [12] above.

Conclusion

23 For all the above reasons, the District Judge should have taken into account the mitigating circumstances of this case, in particular the second and third *AIG* factors, as well as the additional factors I have examined above (see [18] to [20]). In the result, I agreed with counsel for the appellant that a fine of $10,000 for each charge, for a total fine of $60,000 was manifestly excessive. I accordingly reduced the fine to $3,000 per charge, for a total fine of $18,000. I also ordered that the balance amount of fine paid be refunded to the appellant.

[note: 1] See Record of Proceedings ("RP"), *Prosecution's Submissions on Sentence* dated 28th April 2009, paras 4 and 11.

[note: 2] Petition of Appeal ("POA") at para 3(l)

[note: 3] POA at paras 3(i) and 3(j)

[note: 4] Appellant's Case ("AC") at paras [5] and [6]

[note: 5] Respondent's Case ("RC") at paras [35] and [36]

[note: 6] RC at paras [37] to [46]

[note: 7] RC at para [20]

[note: 8] RC at para [21]

[note: 9] RC at paras [28] to [30]

[note: 10] RC at para [24]

[note: 11] RC at para [32]

[note: 12] Plea of Leniency in *RP*.

[note: 13] Letter of understanding dated 14th July 2008, in *RP*.

[note: 14] See RP, Mitigation Plea at [17] by Counsel for the appellant in the District Court below.

[note: 15] *Ibid* at [17].