

I do not intend to repeat what has been said in those cases. It is abundantly clear in this case that an adequate summary of facts was not given to the learned Magistrate and the learned Magistrate did not make sufficient inquiry himself before imposing the fines. In the light of the principles in the cases are manifestly excessive. That is properly conceded by counsel for the Respondent.

With the agreement of both Counsel, I have been given details of the facts of this offending and heard submissions in mitigation. Rather than remit the case back to the Magistrate's court for sentence, I will impose the fines that ought to have been imposed in that Court.

I deal only with Counts 1 to 12. The Petition of Appeal is only in respect of those counts.

There are some relatively serious aspects to this case. The period of default is substantial. The appellant did not heed the warnings and default assessments. One return must have had some knowledge of his obligations. Significantly, that sole return although late, was for a refund of \$2,000.00 that was duly paid.

However, the business of the appellant is not substantial. Gross turnover is only in the region of \$37,000.00 per annum with net earnings being considerably less. The appellant had just commenced operating his first business. On average, his VAT payments are only \$100.00 per month. All tax had been paid prior to the appellant being sentenced. As is often the case, he blames his Accountant for not attending to the matter, but this does not absolve him of his responsibility.

In fixing the penalty, I agree with Lyons J in Commissioner of Inland Revenue and Bula Investments (Supra) that \$50.00 per month is generally a satisfactory starting point. However, each case must be determined on its own facts and consideration must be given be given appropriate for the total criminality represented by all offences. As Counsel for the Appellant said, the sentence must be to penalise and not financially cripple the offender.

The periods of default on the 12 charge range from 15 months on count 1 to 4 months on count 2. The default on these counts does not range from 13 months to 2 months as calculated by the learned Magistrate. Both Counsel agree that the default periods range from 15 months to 4 months.

I intend to impose a sentence on this basis which is an increase in the periods of default found by the learned Magistrate. These periods of default in each case are for the period from the day after the return was due (namely the first day of the appropriate month) until the filing of the information in the Magistrate's Court. It has not been argued or determined whether the period of default in this case should more appropriately be calculated until the actual filing of the returns in September 1994. That issue is left open.

Finally, on count 3, for which a return was filed in August 1993, the period of default should only be for 2 months.

Having regard to all the factor I have mentioned, the fines in this case must be substantially reduced. However, this persistent default over a long period must still attract a penalty that properly reflects the intention of the Legislature.

A fine of \$25.00 per month will be imposed for each month of default in respect of each charge. According to my calculation, that will reduce the total fine to \$2,575.00.

The costs awarded are quite substantial but I see no reason to interfere.

Accordingly, the appeal is allowed. The fines imposed in the Magistrate's court are quashed and in substitution therefore the following fines are imposed:

Count 1	\$ 375.00	
2		350.00
3		50.00
4		300.00
5		275.00
6		250.00
7		225.00
8		200.00
9		175.00
10		150.00
11		125.00
12		100.00

Total	\$2,575.00	

The order for payment of costs of \$180.00 is confirmed.

The costs of \$180.00 are to be paid within 14 days. The total fines of \$2,575.00 are to be paid by instalments of not less than \$430.00 per calender month, the first payment due in one month's time.

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JUSTICE D B PAIN