

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO 7/2016

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA**

NEILSON MCKENZIE v R

Appellant in person

Ms Andrea Martin-Swaby for the Crown

5 May 2017

BROOKS JA

[1] Mr Neilson McKenzie was convicted on 27 March 2016 for the offence of malicious consumption of electricity. He was sentenced on 13 April 2016 to pay a fine of \$300,000.00 or to serve three months imprisonment at hard labour in lieu of payment. This was in the Parish Court for the parish of Manchester. He has appealed that conviction and sentence.

[2] He asserts that the learned Parish Judge accepted evidence from the witnesses that was not credible. In essence, he asserts that the representative from the Jamaica Public Service Company Limited, which was the virtual complainant, was not speaking

the truth when he said that two wires were connected between the Jamaica Public Service's lines and his house, and that the learned Parish Judge was wrong to have so found. He also complained that the learned Parish Judge did not insist that the witness produce photographs and wires which Mr McKenzie said would have proved that the witness was lying. Mr McKenzie also said that the learned Parish Judge did not go far enough to ensure that all the evidence was produced.

[3] In this court, Mr McKenzie accepted that he did have one wire connected between his house and the Jamaica Public Service Company line. That connection, he said, had been made by someone, in order to assist him. He then used "innovation", to use his word, in order to get "current" to his house. The innovation involved using, as an electrical "ground", a connection to the telephone system. He insisted that that "current" was not electricity. There was no data, he said, to prove that a single line can transport electricity.

[4] The evidence before the learned Parish Judge was however clear and in this court was not contested by Mr McKenzie that when the police and the Jamaica Public Service Company representative attended on his house on 18 June 2013 there was an electric bulb on, as in illuminated, in the roof of his house and that an electric light came on when his refrigerator door was opened. This was against the background that his electricity supply had been previously disconnected and there was no electricity meter in the meter socket on the building.

[5] Based on that evidence, the learned Parish Judge was entitled to accept the evidence of the prosecution's witnesses that Mr McKenzie consumed electricity, which was the property of the Jamaica Public Service Company, without being entitled to do so. He was therefore properly convicted by the learned Parish Judge.

[6] Mr McKenzie also complained that the sentence was manifestly excessive.

[7] The learned Parish Judge said that the fine was imposed because the offence was one which is far too pervasive in Jamaica and that citizens who engaged in this type of offence do so almost with a sense that they should do so with impunity. The learned Parish Judge also went on to say that Mr McKenzie had taken it to an even higher level by almost saying, in the social enquiry report that was produced, that he was entitled to take the electricity from Jamaica Public Service Company. That entitlement was due to what he considered to be the company's unlawful disconnection of his electricity supply. The learned Parish Judge also said that he gleaned from the social enquiry report that Mr McKenzie was unrepentant and had continued to use electricity despite his arrest for the offence.

[8] The sentence is therefore not unreasonable.

[9] Based on our finding the ruling is:

- (1) The appeal is dismissed.
- (2) The conviction and sentence are affirmed.
- (3) The sentence takes effect today, 5 May 2017.