

[O' BRIAIN, P.; ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

ELENI IORDANI CHRISTODOULIDES,

Appellant (Plaintiff),

v.

THE MAYOR, DEPUTY MAYOR, COUNCILLORS
AND TOWNSMEN OF THE MUNICIPAL CORPORA-
TION OF FAMAGUSTA,

Respondents (Defendants).

(Civil Appeal No. 4325).

1961
March 17,
May 23

ELENI IORDANI
CHRISTODOULIDES

v.

THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

Streets and Buildings—Alignment—Hardship caused by street alignment—Compensation—The Streets and Buildings Regulation Law, Cap. 96, sections 12 and 13(1) proviso—Proviso operates independently of whether or not an appeal was made against the original plans under section 18.

By section 12 of the Streets and Buildings Regulation Law, Cap.96, it is provided:—

“(1) Notwithstanding anything contained in this Law, an appropriate authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.

(2) When any plans have been prepared under sub-section (1), the appropriate authority shall deposit such plans in its office and shall also cause a notice to be published in the Gazette and in one or more local newspapers to the effect that such plans have been prepared and deposited in its office and are open to inspection by the public and such plans shall be open to the public for inspection, at all reasonable times, for a period of three months from the date of the publication of the notice in the Gazette.

(3) At the expiration of the period set out in sub-section (2), the plans shall, subject to any decision by the Governor in Council on appeal as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans”.

Sub-section (1) of section 13 of Cap. 96, provides:

“Where a permit is granted by an appropriate authority

1961
March 17,
May 23

ELENI IORDANI
CHRISTODOULIDES

v.
THE MAYOR
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever.

PROVIDED that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case”.

The appellant-plaintiff appealed from the judgment of the Full District Court of Famagusta dismissing her action for damages for alleged hardship caused to her by the act of the Famagusta Municipal Council as the appropriate authority for issuing building permits, imposing on the plaintiff a condition that she should cede an area of about 3,500 sq. ft. of land affected by the street alignment scheme. The defendants admitted the facts but denied that any hardship was caused to the plaintiff and further raised several preliminary objections. The trial Court before hearing any evidence dealt with the preliminary objections and held that as the plaintiff did not avail herself of her rights under section 18 of Cap. 96 (*supra*) she cannot claim damages for the alleged hardship and they, accordingly, dismissed the action with costs.

The defendants-respondents cross-appealed claiming that the decision of the District Court should be varied, that is to say, that the Court below should add as an additional ground for the dismissal of the case that the action was prescribed under the Public Officers Protection Law, Cap. 313, section 2.

Held : allowing the appeal, —

(1) The plaintiff’s failure to appeal under the provisions of section 18 of Cap. 96 does not affect her rights to compensation under the provisions of sub-section (1) of section 13.

(2) The proviso to sub-section (1) of section 13 operates as an independent provision.

Held : dismissing the cross-appeal, —

(1) Actually the defendant corporation is not asking for the variation of the decision, but that the decision of the Court below should be affirmed on grounds other than those relied upon by the Court. We are of opinion that in a proper

case we have the power to affirm the decision of the lower Court on grounds other than those relied upon by that Court, but we do not feel that this is a proper case to exercise our power in defendants' favour.

(2) In the first place the issue of prescription is raised by way of defence and, normally, evidence would have to be heard before a trial Court would be in a position to come to any final conclusion. In the present case there was no evidence before the trial Court to enable it to determine that question. Not even the letters referred to in the statement of claim, exchanged between the parties, were produced as exhibits before the Court. We are, therefore, of opinion that that issue will have to be determined by the trial Court after receiving in evidence the letters exchanged between the parties as well as any other evidence of the course of negotiations, if any, as to the settlement of the plaintiff's claim for compensation, which the parties may wish to adduce.

Appeal allowed with costs. Cross-appeal dismissed. Case remitted to the District Court for hearing. The costs of the hearing to be costs in cause.

Appeal and Cross-Appeal.

Appeal against the judgment of the District Court of Famagusta (Attalides, Ag. P.D.C. and Kakathymis, Ag. D.J.) dated the 16th November, 1960, (Action No. 2096/59), dismissing an action for £2,000 damages for an alleged hardship caused to plaintiff by an act of the Famagusta Municipal Corporation, who, acting as the Appropriate Authority of the Town when issuing to her a building permit, put some special terms and conditions, on a preliminary objection taken by the defendants to wit, the plaintiff did not avail herself of the rights given to her by section 18 of Cap.96.

St. Pavlides with A. Michaelides for the appellants.

S. Marathovouniotis with Fr. Saveriades for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment read by :

1961
March 17,
May 23
—
ELENI IORDANI
CHRISTODOULIDES
v.
THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

1961
March 17,
May 23

ELENI IORDANI
CHRISTODOULIDES

v.

THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

JOSEPHIDES, J. : This is an appeal from the judgment of the Full District Court of Famagusta dismissing the plaintiff's action for damages for alleged hardship caused to her by the act of the Famagusta Municipal Corporation, as a licensing authority for issuing building permits, imposing on the plaintiff a condition that she should cede an area of about 3,500 sq. ft. of land affected by the street alignment scheme.

Plaintiff is the registered owner of a building site situate at Varosha, locality Stavros. The defendant Municipal Corporation, as the appropriate authority of the town, with the object of widening and straightening the streets of the town, exercised their powers under section 12 of the Streets and Buildings (Regulation) Law, Cap. 165, now Cap. 96, and in 1947 they prepared a plan for street alignment applicable to Livadhia Street, Varosha, where the plaintiff's building site is situate. The said plan was duly gazetted and, the other formalities having been complied with, it became binding as an approved plan for the townsmen of Famagusta, including the plaintiff. The plaintiff, as the owner of the said building site, applied for a permit from the defendant Municipal Corporation dated 26th August, 1959, for the erection of a house thereon and the said corporation, as a licensing authority for issuing building permits, issued the said permit subject to the following special terms and conditions embodied therein:

“(a) to cede the area affected by the said alignment; and

“(b) any building erected to be at a distance not less than 10 feet from the boundaries, and the distance of such building from the line of the town planning to be kept”. (Paragraph 3 of the Statement of Claim).

By virtue of the aforesaid terms and conditions the plaintiff contended that she was deprived of the use and/or ownership of an area of about 3,500 sq. ft., which was stated to be cut off from her building site between the old and new alignment, and thereby great hardship was caused to her. She accordingly instituted the present action claiming the sum of £2,000.- as damages under the proviso to sub-section (1) of section 13 of the Streets and Buildings Regulation Law, Cap. 96. That sub-section reads as follows:—

“Where a permit is granted by an appropriate authority and such permit entails a new alignment for any

street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever.

Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case”.

The defendant Municipal Corporation admitted the facts as pleaded by the plaintiff, but denied that any hardship was caused to her and furthermore raised the following preliminary objections in paragraph 1 of their statement of defence :—

- “(a) Plaintiff, when the publication of the intended alignment was published, did not object at all, neither did plaintiff act under the provisions of Cap. 165*, section 12(2) ;
- “(b) when the said permit was granted she did not appeal to the Governor as provided by law ;
- “(c) because the action ought to be brought within three months from the date of the issue of the permit to build and therefore the action is prescribed by law and barred”.

The District Court of Famagusta before hearing any evidence, heard arguments from both sides on the preliminary objections raised by the defendant corporation and decided that “as the plaintiff did not avail herself of the rights given to her by section 18 of Cap. 96, she cannot claim damages for such acts by action”, and they held that the action could not proceed and they dismissed it with costs.

With great respect to the trial court we fail to see how the failure of the plaintiff to appeal under the provisions of section 18 of the Law affects her right to compensation under the provisions of sub-section (1) of section 13. The plan was prepared in 1947 and became binding under section 12, and under section 13 the defendant corporation was bound to

1961
March 17,
May 23
—
ELENI IORDANI
CHRISTODOULIDES
v.
THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

* Now Cap. 96.

1961
March 17,
May 23

ELENI IORDANI
CHRISTODOULIDES

v.

THE MAYOR
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA

enforce the approved plan. The proviso to sub-section (1) of section 13 operates as an independent provision, and the test is whether the new alignment causes hardship to the person affected if no compensation were paid ; and if it is established that such hardship is caused, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case. There is no doubt whatsoever that the plaintiff in the present case has followed the proper course in instituting an action for damages against the defendant Municipal Corporation. It is, therefore, incumbent on the District Court to determine the issue raised before it as to hardship irrespective of whether the plaintiff availed herself of her rights under the provisions of section 18 of the said Law.

The defendant corporation cross-appealed claiming that the decision of the District Court should be varied, that is to say, that the court below should add as an additional ground for the dismissal of the case that the action was prescribed under the provisions of the Public Officers Protection Law, Cap. 313, section 2, as this defence was raised by the defendants in paragraph 1 (c) of the statement of defence.

Actually the defendant corporation is not asking for the variation of the decision, but that the decision of the court below should be affirmed on grounds other than those relied upon by that court. We are of opinion that in a proper case we have the power to affirm the decision of the lower court on grounds other than those relied upon by that court, but we do not feel that this is a proper case to exercise our power in defendant's favour.

In the first place the issue of prescription is raised by way of defence and, normally, evidence would have to be heard before a trial court would be in a position to come to any final conclusion. In the present case there was no evidence before the trial court to enable it to determine that question. Not even the letters referred to in the statement of claim, exchanged between the parties, were produced as exhibits before the court. We are, therefore, of opinion that that issue will have to be determined by the trial court after receiving in evidence the letters exchanged between the parties as well as any other evidence of the course of negotiations, if any, as to the settlement of the plaintiff's claim for compensation, which the parties may wish to adduce.

For all these reasons the appeal is allowed and the cross-appeal dismissed. The judgment of the District Court is set aside and the case remitted to that court for determination of the issues raised on the pleadings. The respondents (defendants) to pay to the appellant (plaintiff) the costs of this appeal. The costs of the hearing before the District Court to be costs in cause. Order accordingly.

Appeal allowed with costs.
Cross-appeal dismissed.
Case remitted to the District Court
for hearing. The costs of the hear-
ing to be costs in cause.

1961
March 17,
May 23

—
ELENI IORDANI
CHRISTODOULIDES
v.
THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS &
TOWNSMEN OF
THE MUNICIPAL
CORP. OF
FAMAGUSTA