

1961
Nov. 21

POLYXENI
DEMOU
KYRIACOU
v.
THE ESTATE
OF THE LATE
KATINA PETROU

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

POLYXENI DEMOU KYRIACOU,

Appellant (Plaintiff),

v.

THE ESTATE OF THE LATE KATINA PETROU,

Respondents (Defendants).

(Civil Appeal No. 4340).

Contract—Quasi contract—Services rendered where the person who rendered them did not intend to do so gratuitously—Compensation—The Contract Law, Cap. 149, section 70—Quantum meruit.

The appellant rendered services *gratis*, but expected to be benefited for such services in future. Section 70 of the Contract Law, Cap. 149 provides:

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”.

Held: In a claim based on a *quantum meruit* the intention of the recipient of services is not material but what is material is whether the person who does the services intends to render them gratuitously or not.

Since the appellant expected to be benefited from such services in future, it is sufficient to bring the appellant's case within section 70 of the contract Law Cap. 149.

Appeal allowed. Case remitted to the trial court to be dealt with accordingly.

Appeal.

Appeal against the judgment of the District Court of Famagusta (Attalides P.D.C. and Kourris D.J.), dated the 31.3.61 (Action No. 623/60) dismissing plaintiff's claim for £800 as damages or otherwise for services rendered and work done and food and materials supplied at the request of the defendant (deceased).

A. Ch. Pouyouros for the appellant

N. Antoniou for the respondent.

The judgment of the Court was read by:

ZEKIA, J.: The appellant-plaintiff in this case bases her claim for services rendered and provisions supplied to the deceased on two alternative grounds; (a) On express or implied agreement between herself and the deceased who agreed to pay her for her services and other expenses incurred by her. (b) On a *quantum meruit*.

The trial court found that the appellant failed to corroborate her evidence, as required by section 7 of the Evidence Law, Cap. 9, that there was an agreement between herself and the deceased and that the latter was to pay the former for the services rendered and provisions supplied. On the other hand, the trial court found that she, the appellant, rendered services to the deceased gratis but expected to be benefited for such services in the future.

In a claim based on *quantum meruit* the intention of the recipient of services is not material but what is material is whether the person who does the services intends to render them gratuitously or not.

The Court clearly found that the appellant expected to be benefited from such services in future and, in our view, that is sufficient to bring the appellant's case within section 70 of the Contract Law which reads:

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered".

In the circumstances we remit the case to the trial court for the purpose of (a) ascertaining the extent of the services rendered to the deceased and (b) awarding the appropriate amount of compensation in respect of such services. The parties to be at liberty to adduce further evidence, if they wish, on the points remitted. Appeal allowed in the above terms.

Costs of appeal to be paid out of the estate.

Appeal allowed in the above terms.

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