

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

PHOTOS PHOTIADES & CO.,

Applicants,

v.

JADRANSKA SLOBODNA PLOVIDBA,

Respondents

(Application No. 1/1962)

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June 19
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PHOTOS
PHOTIADES
& CO.
v.
JADRANSKA
SLOBODNA
PLOVIDBA

Civil Procedure—Action—Transfer of actions—The Courts of Justice Law, 1960 (Law of the Republic No. 14/60) section 61—Power of the High Court of Justice discretionary—Action brought in the District Court, whereas, the case being an Admiralty one, it ought to have been brought in the High Court of Justice—Whether the High Court has power to transfer such an action.

The plaintiffs applied to the High Court of Justice for an order that the action be transferred from the District Court of Famagusta, in which it was commenced, to the High Court of Justice alleging that the case was an Admiralty case and that the District Court had no jurisdiction. The plaintiff relied on section 61 of the Courts of Justice Law, 1960 which reads as follows :

“Any action may at any time and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by the High Court from any Court to any other Court of competent jurisdiction; and such action may be transferred either entirely or in respect of any portion thereof or procedure required to be taken therein”.

Held : (1) Section 61 gives a discretionary power and not an absolute right on the part of the litigant to have the action transferred from one Court to another.

(2) (VASSILIADES, J. partly dissenting) The action in question having been instituted in the wrong Court, being an Admiralty action, the Court is not convinced that section 61 gives the power to transfer such an action. Without finally deciding the point and assuming we have such power we are of the opinion that in this case our discretion should not be exercised in favour of the plaintiff for the reason indicated in

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the preceding paragraph, namely there was no justification for the bringing of this action in the District Court.

(3) *Per VASSILIADES, J.* in his dissenting judgment. I do not share the doubts of other members of the Court as to the Court's power to make the order sought by this application. I am of the opinion that the object of that part of the Law under the heading "Transfer of Actions", which comprises sections 61, 62, 63 and 64, is to give power to the High Court to save time and expense put in litigation, which owing to some formal or technical defect, might ultimately prove abortive and have to be thrown away.

On the merits of each particular case, and on such terms as the Court may think fit, proceedings already commenced and pending before the wrong Court, can, I think, be removed to the right Court, without having to be commenced *de novo*. But I agree that in the present proceedings the applicant has failed to show sufficient cause for which this discretionary power should be exercised in his favour and that, on that ground, his application should fail.

Application dismissed.

Semble : There is no power in the High Court to order the transfer before it of an Admiralty action brought in a District Court.

Application.

Application by plaintiffs for an order that Action No. 1775/60 be transferred from the District Court of Famagusta, in which it was commenced to the High Court of Cyprus.

Chr. P. Mitsides for the applicants.

J. P. Potamitis for the respondents.

The judgment of the Court was delivered by :-

WILSON, P. : This is an application by the plaintiffs for an order that this action be transferred from the District Court of Famagusta, in which it was commenced, to the High Court of Cyprus.

The ground upon which the application is based is that the District Court of Famagusta has no jurisdiction to try the issues in this case. I need not go into the history of the proceedings at Famagusta, but I might mention, however, that the material required upon an application such as this was not as complete as it ought to have been. Except for statements made by counsel we would not otherwise have known the state of the action. It is important that in an application of this nature the High Court should be fully informed of the state of the proceedings by the material filed.

It appears from what we have been told by counsel there is really no justification for commencing this action in the District Court at Famagusta which undoubtedly has no jurisdiction in this, an Admiralty, case. Nevertheless, the plaintiffs ask that it be transferred to this Court and cite as authority section 61 of the Courts of Justice Law, 1960, which reads as follows :—

“Any action may at any time and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by the High Court from any court to any other court of competent jurisdiction; and such action may be transferred either entirely or in respect of any portion thereof or procedure required to be taken therein”.

Under that act the Court may — I emphasize the word “may” — transfer proceedings at any stage. This word implies a discretionary power and not an absolute right on the part of the litigant to have the action transferred from one Court to another.

However, after hearing counsel the majority of the Court are unconvinced the said section 61 gives the power to transfer such an action. Without finally deciding the point and assuming we have such power we are of the opinion that our discretion should not be exercised in the plaintiffs' favour, for the reason indicated in the preceding paragraph, namely there was no justification for the bringing of this action in the District Court.

The application will be dismissed with costs to the plaintiffs in any event. Mr. Justice Vassiliades has a different opinion with respect to the power of the Court under section 61 and I am going to ask him if he will be good enough to state it.

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VASSILIADES, J. : I agree with the ultimate result of this proceeding, *i.e.* that the transfer sought, should not be made. But I feel that I must state that I do not share the doubts of other members of the Court as to the power of the High Court to make the order sought by this application, where the circumstances of the case justify such course. I am of the opinion that the object of this part of the Law, the part under the heading "Transfer of Actions" which comprises sections 61, 62, 63 and 64 is to give power to this Court to save time and expense put in litigation, which, owing to some formal or technical defect, might ultimately prove abortive and have to be thrown away.

On the merits of each particular case, and on such terms as the Court may think fit, considering all matters involved, proceedings already commenced and pending before the wrong Court can, I think, be removed to the right Court or to another competent Court, where they can be more conveniently or more safely determined, without having to be commenced *de novo*.

I fully share the view that this power is discretionary ; and that it should be exercised by the Court on the merits and circumstances of each particular case. And I agree that in the present proceeding the applicant has failed to show sufficient cause for which this power should be exercised in his favour. On that ground I agree that the proceeding should fail.

The application will be dismissed with costs against the plaintiffs in any event.

Application dismissed.