[VASSILIADES, MUNIR, JOSEPHIDES, JJ.]

ANDREAS HJI SAVVA AND ANOTHER,

Appellants.

v.

ANNA GEORGHIOU HJISAVVA,

Respondent.

(*Civil Appeal No.* 4520)

Administration of Estates—Administration of Estates Law, Cap. 189—*Appeal against order dismissing application for the appointment of a co-administrator of the estate of a deceased and trial Court's refusal to exercise its discretion in favour of appellant under section* 17 *of the Law.*

Constitutional Law—Constitution of Cyprus, Article 30—*Provision that every person is entitled to a fair and public hearing—Right should not be overlooked by those connected with the functioning of the Courts—Particularly by Judicial officers.*

Practice—Administration of Justice—Hearing in chambers—A hearing can only take place in chambers where the law or the rules provide so ; or when the Judge decides that for reasons stated in his notes, this exceptional course is necessary—In all other cases the hearing must take place in open Court.

The Court of Appeal, unanimously allowed the present appeal from a decision of the District Court of Larnaca and the Order made thereon, on the 26th March, 1965, in an application by the appellants filed on the 20th February, 1965, under the Administration of Estates Law, Cap. 189, for the appointment of a co-administrator in the estate of the deceased Georghios HjiSavva late of Larnaca, who died intestate within the jurisdiction of that Court, on the 25th March, 1963. His widow, the respondent herein, was appointed on the 11th June, 1963, as the sole administratrix of the estate, on her own application, supported by an affidavit sworn by her, to the effect that the value of the estate did not exceed £250 ; and that she was the only person who had an interest in the estate.

In her capacity as administratrix of the estate, the respondent instituted in 1964, civil proceedings in the District Court of Larnaca (Action No. 90/1964) claiming damages against the persons who, it is alleged, have caused the death of the

deceased. In view of that action, the appellants claiming to be the brother and sister of the deceased, applied to the District Court, in the administration-proceedings, for the appointment of one of them as co-administrator, to represent their interests in the estate and, by reflection, their interest in the action.

Exercising the Court's Probate Jurisdiction, one of the Judges of the District Court, took the application and adjourned it for further hearing and, apparently for trial of the main—if not the only—issue between the parties : whether the applicants were the brother and sister of the deceased, which the respondent-widow denied. The case was heard in chambers, where the trial Judge received evidence and heard counsel on the whole case.

Counsel for the respondent conceded that the personal status of the applicants *vis-a-vis* the deceased, *i.e.* the question whether they are his brother and sister, is an issue which on the day of the hearing appears to have been reserved exclusively to the jurisdiction of the Communal Courts. This question was never discussed in the District Court. The said Counsel, however, submitted that in any case the trial Judge went further than this issue, and decided the application for the appointment of a co-administrator, regardless and independently of the status of the applicants ; therefore, counsel submitted, the order made in the District Court should not be disturbed.

The Supreme Court rejected this view.

Held, (1) *on the merits :*

(1) We are unanimously of the opinion that the mind of the learned trial Judge, in deciding this application, must have been influenced by the view expressed earlier in his judgment on the issue of the personal status of the applicants. In the part of his judgment quoted earlier, it appears clearly that he entered into that question, took evidence thereon, heard counsel on the point, and purported to decide it.

(2) *On the ground that the hearing of the case took place in chambers :*

(*a*) This Court has repeatedly expressed its view on the point. A hearing can only take place in chambers where the law or the rules provide that this may be done ; or, where the Judge decides that, for reasons stated in his notes, this exceptional course is necessary. In all other cases the hearing must take place in open court. It has

already been said that a dispute may be the business of the parties ; but the application of the law and the administration of justice is a matter which concerns the general public, and *must be done in open court*. Article 30 of the Constitution, which is found in the part providing for the fundamental rights and liberties of the subject, expressly provides that in the determination of his rights and obligations every person is entitled to a fair *and public* hearing. And this constitutional right should not be overlooked by anybody connected with the functioning of the Courts ; particularly by judicial officers carrying the responsibility of sustaining and applying the law of the land. On this ground also, on the material before us, we would allow the appeal and set aside the order made in such circumstances.

(3) We, therefore, unanimously take the view that the appeal should be allowed ; and the judgment of the District Court of the 26th March, 1965, and the order made thereon, should be set aside. It will be seen that we do not purport to make any order in the application of the appellants for the appointment of a co-administrator, filed on the 20.2.1965. It is left on the record of the District Court ; and it is for the applicants and their advisers to decide whether they should pursue it further or abandon it ; and, in the latter case, what is the proper course to take in the circumstances.

(4) As regards costs, we feel that in all circumstances each party should bear its own costs here and in the District Court.

Appeal allowed. Each party to bear own costs throughout.

Appeal.

Appeal against the order of the District Court of Larnaca (Vassiliades, D.J.) dated the 26th March, 1963 (Application No. 22/63) whereby applicant's application, under the Administration of Estates Law, Cap. 189, for the appointment of a co-administrator in the estate of the deceased Georghios Hji Savva was refused.

A. Georghiades, for the appellants.

G. Nicolaides, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal from a decision of the District Court of Larnaca and the Order made thereon, on the 26th March, 1965, in an application by

the appellants filed on the 20th February, 1965, under the Administration of Estates Law, Cap. 189, for the appointment of a co-administrator in the estate of the deceased Georghios HjiSavva late of Larnaca, who died intestate within the jurisdiction of that Court, on the 25th March, 1963. His widow, the respondent herein, was appointed on the 11th June, 1963, as the sole administratrix of the estate, on her own application, supported by an affidavit sworn by her, to the effect that the value of the estate did not exceed £250 ; and that she was the only person who had an interest in the estate.

In her capacity as administratrix of the estate, the respondent instituted in 1964, civil proceedings in the District Court of Larnaca, (action No. 90/1964) claiming damages against the persons who, it is alleged, have caused the death of the deceased. In view of that action, the appellants claiming to be the brother and sister of the deceased, applied to the District Court, in the administration-proceedings, for the appointment of one of them as co-administrator, to represent their interests in the estate and, by reflection, their interest in the action. The record before us does not show the amount of the claim in the action ; and how does this compare with the value of the estate, according to the inventory filed.

Exercising the Court's Probate Jurisdiction, one of the Judges of the District Court, took the application and adjourned it for further hearing and, apparently for trial of the main—if not the only—issue between the parties : whether the applicants were the brother and sister of the deceased, which the respondent-widow denied. The case was heard in chambers, where the trial Judge received evidence and heard counsel on the whole case. In the second page of his judgment, as it reads at p. 22B of the record, the learned Judge says :—

> " I have considered all the evidence before me and the arguments advanced by counsel. First of all it has not been proved that the applicants are brother and sister of the deceased."

Further down the same paragraph reads :—

> " The applicants therefore have failed to show that they are persons ' interested in the estate ' so as to bring themselves within the provisions of section 17 of Cap. 189."

And the learned Judge proceeds—(p. 22D).

> " Even if they succeeded in this, I would again refuse to exercise the discretion conferred on me by the above section in their favour, as I find the reasons for which the applicants wish applicant 1 to be appointed as co-administrator, totally insufficient. The application is therefore dismissed with costs."

From this judgment and against the order made thereupon, the applicants took the present appeal.

Learned counsel for the respondent, on whom we called first this morning in view of the nature of the main issue involved, conceded, very properly in our opinion, that the personal status of the applicants *vis-a-vis* the deceased, *i.e.* the question whether they are his brother and sister, as claimed is an issue which on the day of the hearing appears to have been reserved exclusively to the jurisdiction of the Communal Courts. This question was never discussed in the District Court. Learned Counsel, however, submitted that in any case the trial Judge went further than this issue, and decided the application for the appointment of a co-administrator, regardless and independently of the status of the applicants ; therefore, counsel submitted, the order made in the District Court should not be disturbed.

We cannot accept that view. We are unanimously of the opinion that the mind of the learned trial Judge, in deciding this application, must have been influenced by the view expressed earlier in his judgment on the issue of the personal status of the applicants. In the part of his judgment quoted earlier, it appears clearly that he entered into that question, took evidence thereon, heard counsel on the point, and purported to decide it.

Although this is sufficient to dispose of this appeal, we feel that we must also deal in a way with ground (*c*) in the notice of appeal : that the hearing of the case took place in chambers. This Court has repeatedly expressed its view on the point. A hearing can only take place in chambers where the law or the rules provide that this may be done ; or, where the Judge decides that, for reasons stated in his notes, this exceptional course is necessary. In all other cases the hearing must take place in open court. It has already been said that a dispute may be the business of the parties ; but the application of the law and the administration of justice is a matter which concerns the general public, and *must be done in open court.* Article 30

of the Constitution, which is found in the part providing for the fundamental rights and liberties of the subject, expressly provides that in the determination of his rights and obligations every person is entitled to a fair *and public* hearing. And this constitutional right should not be overlooked by anybody connected with the functioning of the Courts ; particularly by judicial officers carrying the responsibility of sustaining and applying the law of the land. On this ground also, on the material before us, we would allow the appeal and set aside the order made in such circumstances.

We, therefore, unanimously take the view that the appeal should be allowed ; and the judgment of the District Court of the 26th March, 1965, and the order made thereon, should be set aside. It will be seen that we do not purport to make any order in the application of the appellants for the appointment of a co-administrator, filed on the 20.2.1965. It is left on the record of the District Court ; and it is for the applicants and their advisers to decide whether they should pursue it further or abandon it ; and, in the latter case, what is the proper course to take in the circumstances.

As regards costs, we feel that in all circumstances each party should bear its own costs here and in the District Court.

Appeal allowed. Each party to bear own costs throughout.