

ORHAN MEHMET EMIN,  
*Appellant-Defendant,*

—  
ORHAN  
MEHMET  
EMIN  
v.

v.

ARGYRIS CHARALAMBOUS KOMODROMOS  
AND ANOTHER,

ARGYRIS  
CHARALAMBOUS  
KOMODROMOS  
AND ANOTHER

*Respondents-Plaintiffs.*

*(Civil Appeal No. 4872).*

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*Contract—Oral contract—No finding by trial Court as to what was the contract—Court of Appeal will not make a finding on this issue especially when it depends on the issue of credibility of witnesses—It is for the trial Court to find the contract between the parties—Retrial ordered.*

The main complaint of appellant's counsel in this appeal was that the trial Judge failed to make a finding on the main issue in this action, namely what was the contract between the parties ; and he asked the Court of Appeal to proceed with the hearing of the appeal and make a finding on this issue from the evidence on record.

*Held, (1).* It is for the trial Court to find the contract between the parties ; especially when that issue appears to depend on the credibility of witnesses, this being a verbal contract.

(2). Appeal allowed and a new trial ordered before a different Judge.

*Appeal allowed ; retrial ordered.*

### **Appeal.**

Appeal by defendant against the judgment of the District Court of Paphos (Pitsillides, D.J.) given on the 23rd January, 1970 (Action No. 1184/68) whereby he was adjudged to pay to the plaintiffs the sum of £18.750 mils as remuneration for work done.

*C. J. Myrianthis*, for the appellant.

*N. Mavronicolas*, for the respondents.

1970  
Oct. 30

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ORHAN  
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KOMODROMOS  
AND ANOTHER

The judgment of the Court was delivered by :

VASSILIADES, P. : Counsel for the appellant opened his case before us this morning with the complaint that the trial Judge failed to make a finding on the main issue in this action, namely what was the contract between the parties. The pleadings show clearly that the plaintiff (respondent in the appeal) alleged one contract and the defendant (appellant) in his pleading alleged a different contract. The result of the action must, obviously, depend on the contract between the parties. On this fundamental issue, the trial Judge made no finding ; and yet the determination of an action depends on the findings of the trial Court on the issues arising from the pleadings.

Counsel for the appellant asked us to proceed with the hearing of the appeal and make a finding on this issue from the evidence on the record. He suggested that we can take the evidence as it stands ; and, if necessary, draw also inferences from the established facts, as they have been found by the trial Judge.

We take the view that this is not the proper course to follow in the matter before us. It is for the trial Court to find the contract between the parties ; especially when that issue appears to depend on the credibility of witnesses, this being a verbal contract.

We must allow this appeal and order a new trial before a different Judge (in view of the fact that matters of credibility have been considered in the abortive trial).

As regards costs, we think that the costs in the District Court should be costs in cause. The costs in the appeal to be also costs in cause, but in no case against the appellant.

*Appeal allowed ; retrial ordered ; order for costs as above.*