[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ ]

1975
Oct. 27

ATHIENOU MUNICIPALITY

v.

CONSTANTIA VARDA AND ANOTHER

IN THE MATTER OF THE ESTATE OF CLEANTHES KOUMI,

*and*

IN THE MATTER OF AN APPLICATION BY ATHIENOU MUNICIPALITY,

*Appellant,*

*v.*

1. CONSTANTIA VARDA,
2. STAVROS K. SHIAKOU } as Administrators of the Estate of Cleanthes Koumi,

*Respondents.*

*(Civil Appeal No. 4930).*

---

*Will—Execution—Validity of—Will consisting of more than two sheets of paper—Requirements of section 23(d) of the Wills and Succession Law, Cap. 195—Initials of testator and witnesses appearing on each of the two sheets next to a correction—Requirements of said section duly fulfilled in a manner sufficiently achieving its object which is to authenticate that each sheet forms part of the will of the testator—Nothing can be discerned in such section as regards the need for the existence of a specific intent on the part of the testator or the attesting witnesses when signing or initialling each sheet of a will.*

*Wills and Succession Law, Cap. 195—Construction of section 23(d) of the Law.*

By a will, dated February 4, 1956 and executed in Elizabethville, the deceased Cleanthes Koumi bequeathed to the appellant Municipality immovable property at Athienou.

The will consists of two clipped together sheets of paper; at its end, on the second sheet, are the signatures of the deceased, as the testator, of two attesting witnesses and of a notary public.

In the margin of each of the two sheets there appears, next to a correction, a note in French (of which the

English translation is: "The word deleted Crids and replaced by Crits"); and under this note there are to be found, on each sheet, the initials of the testator, of the two attesting witnesses and of the notary public.

The trial Court found that the above correction was made simultaneously with the execution of the will; and that the said initials, were placed upon the two sheets in relation only to the correction. The will was, therefore, found to be void on the ground that it has not been executed in accordance with the provisions of s. 23(d) of the Wills and Succession Law, Cap. 195 which runs as follows:

"23. No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say —

(d) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses."

In reaching its above conclusion the trial Court took the view that, for the requirements of said paragraph (d) to have been complied with the initials of the testator and of the attesting witnesses should have been placed on each sheet with the intention of complying with such requirements; and in this respect reliance was placed on *In The Goods of John Walker*, 164 E.R. 1033 and to Halsbury's Laws of England, 3rd ed., vol. 39 paragraph 1326, p. 876.

*Held*, we cannot discern anything in paragraph (d) of section 23 as regards the need for the existence of a specific intent on the part of the testator or the attesting witnesses, when signing or initialling each sheet of a will; and by the sheer fact of the existence of their initials on both sheets of the will, the requirements of the said paragraph (d) have been duly fulfilled, in a manner sufficiently achieving the object of the said provision, which is to authenticate that each sheet forms part of the will of the testator.

*Appeal allowed.*

Cases referred to :

*Charalambous and Others* v. *Demetriou and Others*, 1961 C.L.R. 30;

*In the Goods of John Walker*, 164 E.R. 1033;

*Ewen* v. *Franklin and Others*, 164 E.R. 485;

*Sweetland* v. *Sweetland*, 164 E.R. 1416;

*In the Goods of Dilkes*, [1874] L.R. 3 P. & D. 164;

*Phipps and Biddell* v. *Hale and Others*, [1874] L.R. 3 P. & D. 166;

*In the Goods of Streatley* [1891] P. 172;

*In the Estate of Benjamin* [1934] All E.R. Rep. 359;

*Wright* v. *Sanderson* [1884] 9 P.D. 149.

**Appeal.**

Appeal by plaintiffs against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. and Stylianides, D.J.) dated the 26th June, 1970, (Action No. 49/68) dismissing plaintiffs' action for an order pronouncing the will of the late Cleanthes Koumenis (alias Koumi) valid for the purposes of administration of his estate in Cyprus.

*L. Papaphilippou*, for the appellant.

*C. Varda* in person as respondent No. 1, and for respondent No. 2.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court delivered by :-

TRIANTAFYLLIDES, P. : The appellant is the Athienou Municipality, representing the community of Athienou as a beneficiary under the will of the late Cleanthes Koumenis (alias Koumi) who died on November 22, 1957, in Zaire (known at the time as the Belgian Congo).

By his will, dated February 4, 1956, and executed in Elizabethville, he bequeathed to the appellant Municipality immovable property at Athienou, consisting of a house and an area of adjoining land (identified in his will as the property under registration No. 25956).

The respondents, who are the administrators of the estate of the deceased in so far as property found in Cyprus is concerned, were so appointed by an order dated March 6, 1968.

In proceedings concerning the validity of the said will of the deceased the will was found to be void on the ground that it has not been executed in accordance with the provisions of section 23(d) of the Wills and Succession Law, Cap. 195.

Section 23 reads as follows :-

"23. No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say —

(a) it shall be signed at the foot or end thereof by the tastator, or by some other person on his behalf, in his presence and by his direction; and

(b) such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(c) such witnesses shall attest and shall subscribe the will in the presence of the testator and in the presence of each other, but no form of attestation shall be necessary; and

(d) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses."

The will consists of two clipped together sheets of paper; at its end, on the second sheet, are the signatures of the deceased, as the testator, of two attesting witnesses and of a notary public.

In the margin of each of the two sheets there appears, next to a correction, a note in French (of which the English translation is: "The word deleted Crids and replaced by Crits"); and under this note there are to be found, on each sheet, the initials of the testator, of the two attesting witnesses and of the notary public.

It has been accepted by the trial court that this correction was made simultaneously with the execution of

the will; it was, further, found by the court, on evidence before it, that the said initials were placed upon the two sheets in relation only to the correction.

It is not in dispute that the validity of the execution of a will, in so far as it refers to immovables, is governed by the lex situs of the immovables concerned (see, in this respect, Cheshire's Private International Law, 9th ed., p. 514).

It has been held by the trial court that as the initialling of the correction on each sheet was made in relation only to such correction, the requirements of paragraph (d) of section 23 have not been satisfied and, thus, the will was found to be void for purposes of succession in Cyprus; in this connection the trial court referred to *Charalambous and Others* v. *Demetriou and Others*, 1961 C.L.R. 30, where it was held that compliance with all requirements of section 23 and, in particular, with paragraph (d), is imperative.

In reaching its above conclusion the trial court took the view that, for the requirements of paragraph (d) to have been complied with, the initials of the testator and of the attesting witnesses should have been placed on each sheet with the intention of complying with such requirements; and in this respect reliance was placed, *inter alia*, on *In the Goods of John Walker*, 164 E.R. 1033, as being an authority for the proposition that the signature must be intended by the testator as an act of execution; also, reference was made to the following passage from Halsbury's Laws of England, 3rd ed., vol. 39, para. 1326, p. 876 :-

> "The signature must have been made with the purpose of authenticating the instrument, and accordingly a signature intended merely to guard against other sheets being interpolated in a will is not sufficient."

Having perused the report of the case of *Walker*, *supra*, as well as case-law on which there appears to have been based the above passage from Halsbury's Laws of England, such as *Ewen* v. *Franklin and others*, 164 E.R. 485, *Sweetland* v. *Sweetland*, 164 E.R. 1416, *In the Goods of Dilkes* [1874] L.R. 3 P. & D. 164. *Phipps*

*and Biddell* v. *Hale and Others* [1874] L.R. 3 P. & D. 166, we are of the view that these cases cannot be treated as really relevant to the issue before us, and that they are distinguishable from the present case, because in them the intention of the testator had to be taken into account, in determining the validity of the execution of a will, on occasions when he had failed to execute his will by signing his name at the end thereof, whereas in the present case the situation is practically the opposite.

A more relevant—though not directly on the point—case is that of *In the Goods of Streatley* [1891] P. 172, where the facts were that the will was written on the first and second pages of a sheet of foolscap paper and the attesting witnesses had signed their names in the margin opposite an alteration on each page, but they had not signed their names under the attestation clause, which had been signed only by the testator; it was held that the will had been validly executed in the particular circumstances.

A later, and, also, quite relevant case is that of *In the Estate of Benjamin* [1934] All E.R. Rep. 359, in which (after referring to *Wright* v. *Sanderson* [1884] 9 P.D. 149) Langton, J. said the following (at p. 361):-

> "... so long as an attesting signature is in a proper position, and so long as the witness is well aware of the fact that he is signing a paper, especially where, as in the present case, it is certain that the witness would have signed and had a consenting mind, even if she had not been informed that it was the signature of a will that she was attesting, in those circumstances the attesting signature is sufficient for the purpose.

The Act is quite silent as to any materiality in the intention or mind of the witness.

In other words, the courts have said that, in spite of the fact that a testamentary paper is not in the proper form, if the attesting witnesses have certain intentions in their minds, those intentions will cure the defects of form. It

seems to me that it is a long step from that to say that, even assuming that the paper is in the proper form, you still have to look at the intention of the attesting witness in order to be satisfied that a will is a good one."

We cannot discern anything in paragraph (d) of section 23 as regards the need for the existence of a specific intent on the part of the testator or the attesting witnesses when signing or initialling each sheet of a will; and by the sheer fact of the existence of their initials on both sheets of the will, in the present case, the requirements of paragraph (d) of section 23 have, in our opinion, been duly fulfilled, in a manner sufficiently achieving the object of the said provision, which is to authenticate that each sheet forms part of the will of the testator.

We, therefore, set aside the judgment of the trial court and we substitute in its place an order pronouncing the will of the testator valid for the purposes of the administration of his estate in Cyprus. It follows that the appointment of the respondents as administrators has been correctly made; and they are hereby directed to proceed to implement the legacy in favour of the appellant Municipality for the benefit of the community of the village of Athienou.

In the result this appeal is allowed; and we order that the costs of both sides, both before the trial court and in this appeal, shall be borne out of the estate.

*Appeal allowed.*
*Order for costs as above.*