

1982 February 10

[TRIANTAFYLIDIS, P., DEMETRIADES AND LORIS, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Appellant.*

v.

ANDREAS PHIVOU ZANETTOU,

*Respondent.*

(Criminal Appeal No. 4265).

*Criminal Procedure—Appeal—Hearing—No personal service of notice of date of hearing on respondent—And no notice to his counsel at the trial—Court not satisfied in the particular circumstances of this case, that respondent has had notice in the sense of section 143(4) of the Criminal Procedure Law, Cap. 155—Adjournment of the appeal with directions that notice be given to respondent and his counsel.*

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On the day of hearing of the above appeal neither the respondent nor his counsel at the trial turned up. Notice of hearing of the appeal was given to the respondent by leaving it with his "sister and inmate" but no notice was given to his counsel.

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*Held*, that as counsel for the respondent has not been informed that his appeal was fixed for hearing today, and as the service of the notice of hearing on the respondent was not personal, and it is, thus possible that he may not have actually received it, this Court does not feel, in the particular circumstances of this case, satisfied that he has had notice that today is the date fixed for the hearing of this appeal, in the sense of section 143(4) of the Criminal Procedure Law, Cap. 155; that even though the service of the relevant notice on the respondent might have been considered to be, as effected good service for other purposes, the safest course, in order to pre-

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vent this appeal from being determined in the absence of the respondent even though he may intend to oppose it, is to adjourn it and allow it to be fixed in due course once again, so that both the respondent and his counsel will be duly notified accordingly.

*Order accordingly.*

### Decision.

Decision regarding the validity of the service of the notice of hearing of the appeal on the respondent, which was left with his sister and inmate.

*A. Frangos, Senior Counsel of the Republic, for the appellant.*

Respondent-accused absent. No appearance for him.

TRIANAFYLLIDES P. gave the following decision of the Court. This appeal against the acquittal of the respondent, by the District Court of Limassol, in criminal case No. 8458/81, was fixed for hearing today and a notice informing accordingly the respondent was left on January 14, 1982, with his "sister and inmate", as it appears from an affidavit of service which is before us. The service was effected through the District Court of Limassol.

Unfortunately, though the respondent was represented by counsel at the trial his counsel was not notified of this appeal.

Our relevant powers, in a situation such as the present one, are laid down by section 143(4) of the Criminal Procedure Law, Cap. 155, which reads as follows:

"(4) If, at the hearing of an appeal, the respondent or his advocate is not present, the Court shall not make any order to his prejudice, unless satisfied that he had notice of the date fixed for the hearing of the appeal."

As counsel for the respondent has not been informed that this appeal was fixed for hearing today, and as the service of the aforementioned notice on the respondent was not personal and it is, thus, possible that he may not have actually received it, we do not feel, in the particular circumstances of this case,

satisfied that he has had notice that today is the date fixed for the hearing of this appeal, in the sense of section 143(4), above.

Even though the service of the relevant notice on the appellant might have been considered to be, as effected, good service for other purposes, we do think that the safest course, in order to prevent this appeal from being determined in the absence of the respondent even though he may intend to oppose it, is to adjourn it and allow it to be fixed in due course once again, so that both the appellant and his counsel will be duly notified accordingly.

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*Order accordingly.*