

1954
June 25

[HALLINAN, C.J., AND ZEKIA, J.]
(June 25, 1954)

THE ELECTRICITY
AUTHORITY
OF CYPRUS
v.
NICOLAOS
KAIZER.

THE ELECTRICITY AUTHORITY OF CYPRUS,
Appellants,
v.
NICOLAOS KAIZER,
Respondent.
(Civil Appeal No. 4095)

Electricity Development Law, 1952—Contractual obligation of the former Nicosia Electric Co.—No transfer to Electricity Authority—Rights and obligations of consumers now statutory.

The respondent was supplied with electricity by the Nicosia Electric Company which concern was taken over by the appellants. The appellants, by a mistake, believed that the respondent had failed to pay for current on a second demand, and cut off the supply. The respondent sued for damages for breach of contract. The District Court awarded damages.

Upon appeal,

Held: Under the Electricity Development Law, 1952, the appellants were not liable for the contractual obligations of the former Nicosia Electric Company. It was very doubtful if the relation between that company and its consumers was contractual. The supply of electricity by the appellants to consumers now was regulated not by contract but by statutory rights and obligations.

Appeal allowed.

Appeal by defendants from the judgment of the District Court of Nicosia (Action No. 421/53) in favour of plaintiff.

G. *Cacoyannis* for the appellants.

A. *Emilianides* for the respondent.

Judgment was delivered by :

HALLINAN, C.J. : In this case the respondent was receiving as a consumer electrical current from the Electricity Authority established under the Electricity Development Law, No. 23 of 1952, which will be referred to in this judgment as the Law of 1952.

On the 19th January, 1953, he received a bill from the Electricity Authority which he paid on the same day. Through a mistake, the Electricity Authority did not credit the respondent's account, and in consequence a second bill was delivered to him informing him that the supply would be cut off if he did not settle his account within three days. The respondent does not appear to have informed the Electricity Authority of their mistake and on the 9th February the current was cut off. The respondent notified by telephone a clerk of the Electricity Authority that a mistake had been

made and that the current had been wrongly cut off. The clerk told the respondent that he should go to the Electricity Authority's office to settle the matter. The respondent did not do so and on the 12th February he issued the writ of summons in this action.

The trial Court found that the cutting off of the current by the appellants was a breach of a contract between the appellants and the respondent and awarded special damages of £2.12.0, general damages £5.0.0. and costs.

It is admitted by the respondent on this appeal that his claim is based on contract and that on his pleadings it is not open to him to base a claim on negligence either under section 18 of the Electricity Law (Chapter 82) or section 42 (3) of the Law of 1952. In our view this appeal can, therefore, be decided on the question whether there was any enforceable contract between the parties. Paragraphs 4 to 6 of the Statement of Claim set up a contract between the respondent and the Nicosia Electric Co. whose undertakings were taken over by the appellants, the Electricity Authority. The Statement of Defence denies that the contractual obligations of the Nicosia Electric Co. were taken over by the appellants but, through what may well be an oversight in the pleadings, the alleged contract between the Nicosia Electric Co. and the respondent was not specifically denied. It is extremely doubtful whether this alleged contract was anything more than a statutory right and obligation created and imposed under Chapter 82, but even if it is admitted that there was a contract between the Nicosia Electric Company and the respondent, I do not think that this contract is now enforceable against the Electricity Authority. There is nothing in the new Law of 1952 which provides that obligations under contracts of this nature should be taken over and be binding on the Electricity Authority. Moreover, under the new law it is clear that the relationship between the Electricity Authority and consumers is, in the absence of special agreement (such as those regarding the supply of power), regulated not by contractual agreement between the parties but by the Law. For example, if a consumer applies to the Electricity Authority and complies with the statutory provisions he is entitled as a statutory right to be supplied. And, furthermore, the charges which are made for the electricity so supplied are prescribed under section 23 and the regulations made under section 44.

For these reasons, in my opinion, the respondent cannot succeed in his claim based on contract, and the order of the trial Court as to damages and costs must be set aside. Each party will bear his own costs here and below.

ZEKIA, J. : I agree. The right and remedy of a consumer who has his current wrongfully cut off is, in the absence of any

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special agreement between him and the Electricity Authority conferring on him any additional rights over and above those prescribed by the statute, governed by the provisions of the Electricity Law of 1941 and of the Electricity Development Law, 1952; in particular by section 18 of the former and by section 42 of the latter law. *As the cause of action pleaded does not fall within the one or the other of these sections, the appeal ought to be allowed.*

1954
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ZENON
DJABRA
v.
THALIA Z.
DJABRA.

[HALLINAN, C.J., AND ZEKIA, J.]
(June 30, 1954)

ZENON DJABRA, *Appellant,*

v.

THALIA Z. DJABRA, *Respondent.*

(Civil Appeal No. 4092)

Guardianship—Jurisdiction of District Court—Pending proceedings before the Greek Ecclesiastical Tribunal.

The appellant was the husband of the respondent. The Greek Ecclesiastical Tribunal dismissed the respondent's petition for divorce and, while an appeal to a higher Ecclesiastical Tribunal was pending, the respondent applied to the District Court for the custody of the child of their marriage. The Court refused an order for custody but made an order giving the mother access. The husband appealed against the order for access.

Upon appeal,

Held: The question of whether as a matter of comity the District Court should make the order while proceedings between the parents of child are pending before an ecclesiastical tribunal is a matter which should be left to the discretion and good sense of the District Court; the Supreme Court will not lightly interfere with the exercise of that discretion.

Klosser v. Klosser, 1945, 2, All E.R. 708 followed.

Several reasons why a Magistrate in England should refuse to exercise jurisdiction pending High Court proceedings are not applicable in Cyprus as between the District Court and the Greek Ecclesiastical Tribunal.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Nicosia (Action No. 101/52) in favour of plaintiff.

G. Clerides for appellant.

C. Colocassides for respondent.

Judgment was delivered by :

HALLINAN, C.J. : This appeal arises out of an application