

BOVILL,
C.J.
&
TEMPLER.
ACTING J.
1892.
—
Jan. 12.

[BOVILL, C.J. AND TEMPLER, ACTING J.]

EMINE HANOUM MUSTAPHA *Plaintiff,*

v.

HAFUZ MEHMET EMIN *Defendant.*

SHERI COURT—JURISDICTION—SHERI COURT OF SANDJAK—SHERI COURT OF CAZA—RIGHT OF APPEAL—IMPERIAL FIRMAN OF 13 ZILKADE 1292 (LEG. OTT., VOL. V., P. 26).

The Cadi of a Sandjak has no jurisdiction to entertain appeals from the decisions of the Cadis of Cazas.

The plaintiff obtained a writ of execution from a District Court to enforce the judgment of the Sheri Court of a Caza. Subsequently the defendant applied for and obtained a stay of execution on the ground that the judgment had been set aside on appeal by the Cadi of Cyprus.

HELD (reversing the decision of the Court below): That the Cadi of Cyprus, being the Cadi of a Sandjak, had no jurisdiction to entertain the appeal and that the plaintiff was entitled to have execution of his judgment.

The District Courts, being charged with the duty of enforcing the decisions of Sheri Courts, are entitled to entertain questions raised as to the jurisdiction of the Court by which a judgment was given.

APPEAL from the order of the District Court of Nicosia.

The order appealed against was made under the following circumstances :

The plaintiff has obtained a judgment of the Cadi of Nicosia and Kyrenia ordering the defendant to pay the sum of £102.

On the 31st December, 1891, the plaintiff applied for and obtained from the District Court of Nicosia a writ ordering the sale of the defendant's immovable property in satisfaction of this judgment.

The defendant subsequently applied to the District Court to stay the execution, on the ground that he had appealed to the Cadi of Cyprus from the judgment of the Cadi of Nicosia and Kyrenia, and that the judgment against him had been set aside, and the case remitted to the Cadi of Nicosia and Kyrenia for further investigation.

On the 12th November, 1891, the District Court made an order staying the execution, and it was against this order that the plaintiff appealed.

Pascal Constantinides for the appellant: The Cadi of Cyprus has no jurisdiction to hear appeals from the Cadis of Cazas. The Cadi of Cyprus is the Cadi of a Sandjak, and I can find no law conferring upon the Cadi of a Sandjak an appellate jurisdiction over the Cadis of Cazas.

Lascelles for the respondent: The District Court has no right to go behind the judgment of the Cadi of Cyprus and enquire as to whether he acted without his jurisdiction. The District Court should leave the matter entirely to the decision of the Sheri Court, its duty being merely to give effect to the decisions of the Sheri Court. I know of no law which confers an appellate jurisdiction on the Cadi of Cyprus.

Judgment: The question for the decision of the Court in this case was whether the Cadi of Cyprus had jurisdiction to overrule the decisions of the Cadis of Cazas.

The facts on which this question arose are as follows:—

The Cadi of the District of Nicosia gave a judgment, which was referred to the District Court of Nicosia for execution, and a writ of execution was issued from the District Court. An application was afterwards made to the District Court to suspend or recall the writ on the ground that the judgment of the Cadi of Nicosia had been reversed by the Cadi of Cyprus. The creditor who originally obtained the writ of execution to be issued from the District Court, objects to the proceedings under the writ being in any way interfered with, contending that the Cadi of Cyprus has no appellate jurisdiction.

The power and authority of the Cadi of Cyprus depends on the law in force in the Ottoman Empire at the time of the British Occupation, nothing having been done since that event to alter his powers or jurisdiction.

The Cadi of Cyprus was the Cadi or Naib of a Liva or Sandjak, the other Cadis being Cadis or Naibs of Cazas.

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There is nothing in the Turkish Law, as it existed at the time of the British Occupation, which could give the Cadis or Naibs of Sandjaks any right to hear appeals against the decisions of Cadis or Naibs of Cazas.

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The District Court based their decision in this matter on certain regulations which are contained in the 3rd volume of the Destour at p. 173 and came to the conclusion that the Cadis or Naibs of Sandjaks had jurisdiction to entertain appeals against the decisions of the Cadis or Naibs of Cazas.

These regulations are issued under the authority of a firman dated 13 Zilkadé, 1292, a translation of which is contained in the 5th volume of the Legislation Ottomane at page 26, and they are, we believe, the latest authority which in any way bears upon the question now before us.

By the firman and regulations it is directed that Central Cadis are to look into the decisions of Naibs of Livas and Cazas, and a reference to the firman and regulations shows that the persons referred to as "Central Cadis" are the Cadis presiding over the Courts known as Diwani Temyiz, *i.e.*, the Central Courts of Villayets. The judges of the District Court appear to have understood that the expression "Central Cadis" meant the Cadis presiding over the Courts known as Medjlissi Temyiz, *i.e.*, the Central Courts of Sandjaks or Livas: but, in coming to this conclusion, they have overlooked the fact that the judges whose decisions are to be looked into by the Central Cadis, are the Cadis or Naibs of Livas, who are themselves the Cadis presiding over the Courts known as Medjlissi Temyiz.

The judges of the District Court appear to have been of opinion that but for the regulations already alluded to there was nothing in the Turkish Law to give Cadis or Naibs of Sandjaks appellate jurisdiction over the Cadis or Naibs of Cazas, and it is a novel proposition that the Cadis of Sandjaks have such a jurisdiction.

From what has been said of the contents of the firman of 13 Zilkadé, 1292, it will be seen that it is not only an authority to the effect that Cadis of Sandjaks have such jurisdiction, but it is an authority to the exactly

opposite effect, shewing that there is a class of Cadis who have such jurisdiction, and that it is not the Cadis of Sandjaks ; and we must hold that the Cadi of Cyprus has no right to entertain appeals against the decisions of Cadis of Cazas.

It is necessary for the ordinary civil courts to entertain this question, as the duty of putting the judgments of Cadis into execution is cast upon them by the Civil Procedure Amendment Law, 1885.

Appeal allowed.

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EMINE
HANOUH
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[BOVILL, C.J. AND SMITH, J.]

ANASTASIA M. CHAKALLI

Plaintiff,

v.

AHMET HOULOSSI, AS DELEGATE OF

EVKAF

Defendant.

BOVILL,
C.J.
&
SMITH, J.
1892.

March 18.

VAKOUF—MAZBUTA VAKOUF PROPERTY HELD BY IDJARETEIN
—EXTENSION OF INHERITANCE—LAW OF 4 REJEB, 1292—
REGULATION OF 2 ZILKADE, 1285.

M., the owner of a garden held by idjaretein and forming part of a Mazbuta Vakouf, died leaving issue who succeeded to the property. M. had never applied for or obtained an extension of the right of inheritance to this property. K., a daughter of the deceased, who had succeeded to a share in the property, died without issue, and the plaintiff, her mother, claimed K.'s share.

HELD: That inasmuch as M. had not obtained an extension of the right of inheritance, the plaintiff was not entitled to succeed to K.'s share as her heir, but that K.'s share had become Mahloul.

APPEAL from the District Court of Nicosia.

Action to restrain the defendant from selling a certain share in a Mulk property alleged by him to be Mahloul.