

CASES

DECIDED BY

THE HIGH COURT OF JUSTICE OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE DISTRICT COURTS.

[O' BRIAIN, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

EFSTATHIOS KYRIACOU AND SONS LTD.,

Appellants-Defendants,

v.

STEPHANOS MOUZOURIDES,

Respondent-Plaintiff.

(Civil Appeal No. 4349)

1961

Nov. 24

EFSTATHIOS
KYRIACOU
& SONS LTD.,

v.

STEPHANOS
MOUZOURIDES

Practice—Adjournment of trial—Refusal of the trial Judge to adjourn the trial—Matter of discretion which has to be judicially exercised—The Appellate Court will not interfere with the exercise of such discretion unless it was not judicially exercised—And it is immaterial whether or not the Appellate Court agrees with the particular application of such discretion judicially exercised.

Appeal.

Appeal against the judgment of the District Court of Nicosia, dated the 18.6.1960, in Action No. 287/60.

Miss Rita Mangoian for the appellants.

A. Papa Georghiou for the respondent.

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

O' BRIAIN, P. : We have considered this appeal and the Court is unanimous as to what should be done. The first ground is that the trial Judge refused to adjourn the trial after the closing of the plaintiff's case and deprived the defendants of the right to adduce evidence. The second ground is that "the refusal of the trial Judge to grant the adjournment was not justified in the circumstances and thus a miscarriage has been occasioned at the trial and consequently the appellants pray for a new trial to be ordered". The allegation is that the Judge should have acceded to Mr. Clerides' application to adjourn the trial on the ground stated by him and that failure to do that was clearly an improper use of his judicial discretion.

There is no controversy about the fact that he did have in this matter a judicial discretion. Secondly we should be satisfied that he did use that discretion in a judicial manner as the law provides. Whether or not we agree with the particular application of it is not the issue.

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The Court is unanimously of the opinion that not merely did he have discretion and that he applied it after a careful and patient consideration of the whole matter but this Court agrees that what he did was the right course and it would have done the same thing in the same circumstances. There is no ground whatever for suggesting, as the defendants do in this Court, that they did not get a patient and proper judicial hearing from the learned trial Judge.

That brings us to the third ground which is stated as follows :

“Irrespective of the aforesaid the trial Judge on the evidence before him erroneously gave judgment for the plaintiff as per claim.”

That is slightly ambiguous, I must confess. We took it as meaning that judgment should not have been entered for the plaintiff at all but it now transpires that judgment was given for the full amount claimed overlooking the fact that there was evidence on record showing a payment of £10 to plaintiff. Respondent's counsel very properly conceded that it was an amount which should be corrected between the parties and accordingly what we propose to do in this Court is to affirm the order of the trial Court with a variation by deducting the sum of £10 leaving a net balance of £35. We allow the respondent's costs for this appeal which we assess at £6.

Appeal dismissed.

NOTE :

The grounds of appeal in this case were as follows :

“1. That the trial Judge erroneously refused to adjourn the trial after the close of plaintiff's case and thus deprived the defendants of their right to adduce their evidence.

The trial Judge refused to adjourn the case in spite of the fact that the case for the plaintiff closed at 2.15 p.m. on Saturday afternoon, the 18.6.60 and in spite of the fact that counsel for defendants requested an adjournment on the following grounds :—

- (a) that counsel was sick and could not carry on with the trial ;
- (b) that from the evidence adduced by the plaintiff it became necessary for the defendants to adduce the evidence of certain witnesses whose presence could not have been secured at that late hour.

2. That the refusal of the trial Judge to grant the adjournment was not justified in the circumstances and thus a miscarriage has been occasioned at the trial and consequently the appellants pray for a new trial to be ordered.

3. Irrespective of the aforesaid the trial Judge on the evidence before him erroneously gave judgment for the plaintiff as per claim.”