

1963  
Feb. 22

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AHMED  
MEHMED EMIN  
v.  
TURKISH BANK  
OF NICOSIA  
LTD.  
AND OTHERS

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

AHMED MEHMED EMIN OF FOTTA,  
*Appellant-Plaintiff,*  
v.  
TURKISH BANK OF NICOSIA LTD. AND OTHERS,  
*Respondents-Defendants.*

(Civil Appeal No. 4397).

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*Administration of Estates—No person may represent the estate of a deceased person except the personal representative—The Administration of Estates Law, Cap. 189, section 34 (7)—Therefore a judgment creditor of a deceased person has no status to bring an action for an order of the Court directing the heirs and a Bank to lodge with the President of the District Court under section 26 (1) of Cap. 189 (supra) certain amounts standing at the Bank to the credit of the deceased at the time of his death.*

The appellant was a judgment creditor of *A* under a judgment dated April 25, 1961. On May 23, 1961, *A* died intestate. *A* was a subscriber to the provident fund with his employers, the Turkish Bank of Nicosia, Ltd., and the sum of £900 stood to his credit at the time of his death. On June 3, 1961, the Bank paid the said sum of £900 to the legal heirs of the deceased in accordance with the terms of the agreement regarding the aforementioned provident fund. The judgment creditor (appellant), after various unsuccessful steps of execution, brought an action against the heirs of the deceased, *A* (the judgment-debtor) and the Turkish Bank of Nicosia Ltd., claiming an order of the Court directing all the defendants or any one of them to lodge with the President of the district Court of Nicosia the sum of £900, or any sum which the Bank had on the date of the death of the deceased in its possession and which was withdrawn after the *A*'s death. He based his claim on section 26 (1) of the Administration of Estates Law, Cap. 189.

Alleging that as the deceased *A* died intestate his estate rested in the President of the District Court. The action failed on the ground that the plaintiff (judgment-creditor) has no status to bring this action in view of section 34 (7) of Cap. 189 (*supra*) which provides that "... no person may represent the estate of a deceased person except the personal representative".

The plaintiff appealed against that judgment and the High Court in dismissing the appeal :—

*Held*, (1) many points have been argued on behalf of the plaintiff-appellant but we are of the opinion that there is an insurmountable obstacle, namely, that the plaintiff has no status to bring this action.

He is endeavouring to carry out the duties of the administrator of the estate but section 34, sub-section (7) of the Administration of Estates Law, Cap. 189, effectively bars him. I will read only the relevant portion : “ . . . no person may represent the estate of a deceased person except the persona representative ”. This, in short, precludes the action taken by the plaintiff to obtain the repayment of the money to the President of the District Court.

(2) In delivering this judgment we are of course not passing any opinion upon the right of the plaintiff to be paid nor are we expressing any views in respect of any of the transactions or proceedings, other than this action, which have taken place since the death of the deceased.

*Appeal dismissed with costs.*

#### **Appeal.**

Appeal against the judgment of the District Court of Nicosia dated the 21.9.61 (action No. 2854/61) dismissing the plaintiff's claim for an order directing the defendants to lodge certain moneys with the President of the District Court of Nicosia under section 26 (1) of Cap. 189.

*A. Berberoglou* for the appellant.

*Ali Dana* for the respondents.

WILSON, P. : We think it is unnecessary to call on you Mr. Dana.

This is an appeal from the judgment of the District Court of Nicosia dismissing the plaintiff's action with costs.

The judgment was given on September 21st, 1962. The plaintiff is a judgment creditor of the defendant under a judgment dated April 25, 1961 which directed payment by instalments, the first of which was due on June 1st,

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1961, with a period of five days grace granted in respect of each payment if made promptly, with the proviso that if there was default in making any payment the whole amount owing under the judgment would become due and payable.

On May 23, 1961, the latter died. He was employed by the co-defendant, the Turkish Bank of Nicosia Ltd., and he was a subscriber to a provident fund in which there was standing to his credit as of the date of his death the sum of £900.

On May 24, 1961, the day after his death the plaintiff made an application for an attachment of the funds in the Bank returnable on a date fixed for hearing, namely, June 1st. Only the Bank was served in connection with this application and it appeared by counsel. The Court dismissed the application on the ground that no payment by the deceased was due at that time. The plaintiff thereupon took no further proceedings except those mentioned herein. On June 2, 1961, the widow applied to the Bank for payment to her of the amount standing to her late husband's credit and submitted certain documents which the Bank accepted as sufficient to prove that she and her infant children were the heirs of the deceased. According to the evidence given on behalf of the Turkish Bank, Nicosia, in case of death the money is paid to the legal heirs.

On June 3rd, the following day, the Bank paid the money over to the widow's advocate, Mr. Ali Dana, who paid back to the Bank £195.420 mils in settlement of the debt of the deceased to it.

On June 7, 1961, the plaintiff filed a second application to attach the funds and this time served not only the Bank but the heirs as well. On the date fixed for hearing, June 16, 1961, the Bank and the heirs were represented by counsel and the heirs informed the Court that the money had been paid over to the heirs. The Court dismissed that application and then the plaintiff brought this action claiming an order directing all the defendants or any one of them to lodge in the name of the President of the District Court, Nicosia, the sum of £900, or any sum which the Bank had on the date of the death of the deceased in its possession and which was withdrawn from his estate, after his death, and any other sum which was unlawfully withdrawn from the deceased's estate. He based his claim upon section 26 (1) of the Administration of Estates Law,

Cap. 189, alleging that the deceased died intestate and that his estate vested in the President of the District Court of Nicosia.

The action came on for trial in the District Court of Nicosia and judgment was reserved on February 5, 1962. On September 21, 1962, the action was dismissed for the reasons given by the learned Judges of the trial Court.

Many points have been argued on behalf of the plaintiff-appellant but we are of the opinion that there is an insurmountable obstacle, namely, that the plaintiff has no status to bring this action. He is endeavouring to carry out the duties of the administrator of the estate but section 34, sub-section (7) of the Administration of Estates Law, Cap. 189, effectively bars him. I will read only the relevant portion : “ no person may represent the estate of a deceased person except the personal representative ”. This, in short, precludes the action taken by the plaintiff to obtain the repayment of the money to the President of the District Court.

In delivering this judgment we are of course not passing any opinion upon the right of the plaintiff to be paid nor are we expressing any views in respect of any of the transactions or proceedings, other than this action, which have taken place since the death of the deceased.

For this reason the appeal is dismissed with costs.

*Appeal dismissed with costs.*

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