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ANDROULLA  
CHARILAOU  
MALLOUPA  
v  
ELENI ANTONI  
& ANOTHER

[ZUKIA P., TRIANAFYLIDIS & JOSEPHIDES JJ]

ANDROULLA CHARILAOU MALLOUPA,  
*Appellant-Plaintiff.*

ELENI ANTONI AND ANOTHER,  
*Respondents-Defendants*

(*Civil Appeal No. 4541*)

*Civil Wrongs Negligence Neighbouring land owners Damage by escaping chemical Claim for damages for the destruction of plaintiff's plantation by chemical (weed-killer) escaping from defendants neighbouring land - Burden on plaintiff to establish that destructive chemical escaped from defendants land Onus then shifts to defendants to disprove negligence - Civil Wrongs Law Cap 148, section 52*

*Practice Appeal Credibility of witness Reasons of trial Court for disbelieving witnesses Test of interference with such reasons by the Court of Appeal*

*Evidence Incomplete chain of evidence Expert evidence - Neighbouring land owners Damage by escaping chemical - Plaintiff's failure to adduce evidence showing that weeds in defendants field had been killed by the same weed killer that damaged his own plantation Witness - Credibility of - - v under Practice above*

### **Appeal.**

Appeal against the judgment of the District Court of Nicosia, (Demetriades, DJ) dated the 10th September, 1965 (Action No 2311/63) dismissing plaintiff's claim for damages, caused to her carrot plantation by weed killer which allegedly escaped from the neighbouring land of the defendants

*L. Clerides, for the appellant*

*A. Hiri Ioannou, for the respondents*

The judgment of the Court was delivered by -

ZUKIA, P We have considered the case in the light of the submissions made. The facts are briefly as follows .

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Some time in February, 1963, the carrot planted field of the plaintiff was found to be damaged by weed-killer, probably escaping from one of the neighbouring lands on which wheat crop was growing and herbicide was applied in order to kill the growing weeds in it. The possibility that such weed-killer was sprayed maliciously to the carrot plantation of the plaintiff is not excluded. The carrots were totally destroyed and the damage caused was assessed at £290.

By her statement of claim the plaintiff-appellant alleged that the weed-killer which destroyed her carrots, escaped from the defendants neighbouring field on which wheat was growing. A number of witnesses were called by the plaintiff whom the trial Judge did not believe.

In the first place it has to be established that the weed-killer which caused the destruction of the carrots of the plaintiff escaped when it was being applied to the cereals standing on the defendants' land. Once this was proved the defendants in order to escape liability had to satisfy the Court that they were not negligent in spraying the chemical.

The learned Judge found that the destruction of the carrots was caused by herbicide. Instead of then proceeding to examine whether such weed-killer or herbicide escaped from the field of the defendants, it appears, he considered whether the defendants were negligent for the escape of the chemical in question. However, in examining the issue of negligence together with it examined also the second issue, namely, whether there was an escape from the spraying of chemicals over the field of the defendant. Although he did not follow the correct and proper method of examining the issues involved in their appropriate order, it seems that, on the evidence adduced before him, assuming that he correctly made the assessment of such evidence, the conclusion he reached was not wrong.

On the second ground of appeal, the learned counsel for the appellant drew our attention to the reasons expressed by the Court for not believing the witnesses for the plaintiff. No doubt the criticisms directed against the weighing of the evidence by the trial Judge were properly made, but for this Court the test was whether, on the reasons given by the trial Judge for believing or disbelieving the witnesses, one could have said that he was plainly wrong. In other words whether in his reasoning he was so wrong or his reasoning so faulty

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as to make his finding plainly wrong. It was particularly stressed that Louvaris' evidence ought to have been accepted and the ground for rejecting his evidence was a meagre one. In examining the record, however, it appears that Louvaris could be considered a biased and interested witness. He was a close relation of the plaintiff and also had similar complaints to that of the plaintiff himself against the defendants.

It should also be observed that the appellant plaintiff failed to adduce expert evidence (as he did to prove that his carrot plants had been injured by weed-killer by calling an agricultural officer—plant pathologist), showing that the weeds in the respondents-defendants' field had been killed by the same weed killer that would have been an objective test against which the oral evidence of the other witnesses could have been weighed and it would have provided the missing link in the chain of evidence which was required to prove the escape of the weed-killer from the respondents into the appellant's field.

In applying the test we have already indicated, we are of the opinion that, in the circumstances of the case, we would not be justified in setting aside the judgment or sending back the case for re-trial. The appeal is, therefore, dismissed with costs.

*Appeal dismissed with costs*