[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

PETROS ANTONIOU OF LIMASSOL,
Appellant-Plaintiff,

v.

YASHAR ELMAZ AND ANOTHER
Respondents-Defendants.

(*Civil Appeal No.* 4566).

Practice—Appeal—Findings of fact made by trial Courts—Principles applicable when such findings are considered by the Appellate Court—Appeal on the ground that the reasoning behind the findings on which the judgment appealed from rests, is unsatisfactory Open to the trial Court to find as it did—No sufficent reasons shown for disturbing such findings—Prayer for a re-trial on the ground of undue delay in the delivery of judgment after the last hearing of the case—Very exceptional circumstances developed in the Island soon after the conclusion of the hearing Re-trial avoided in the particular circumstances of this case.

Practice Trial in civil cases Piecemeal hearings Delay in the hearing of cases Both highly undesirable—Litigant's right to a hearing of his case "within reasonable time" in the sense of paragraph 2 of Article 30 of the Constitution And within the notion of "due process" in American law Undue delay between closing of the hearing and delivery of judgment—Undesirable—Especially in cases turning on issues of fact.

Judgment—Reserved judgment—There should be no undue delay between the closing of the hearing and the delivery of judgment See, also, under Practice above.

Constitutional law—Speedy trial—Right of a litigant to a hearing of his case "within reasonable time"—Paragraph 2 of Article 30 of the Constitution—"Due process" in American law—Speedy trial is within the notion of "due process" as aforesaid.

American law—"Due process—See under Constitutional law above.

The subject matter of this appeal is a judgment of the District Court of Limassol in a civil action heard before a bench of two judges, challenged by the appellant on the ground that the reasoning behind the findings on which the

judgment rests is unsatisfactory. Another ground of appeal is that a period of over two years elapsed between the last hearing of the case and the delivery of the judgment, on this ground, the appellant prays for a re-hearing of the case.

In dismissing the appeal the Supreme Court.

Held: (1) (a) Regardless of what view we might take of the evidence in the first instance we think that it was open to the trial Judges to find as they did.

(b) The position regarding findings of fact by the trial Court when considered on appeal is now well settled in a number of cases, to which we need not specifically refer except for *Mamas* v. *The Irma Fires* (reported in this Part at p. 195 *ante*) where the matter was again raised.

The findings in this case present considerable difficulty, but eventually the view prevailed that on the evidence before the trial Court they could be made, and no sufficient reasons have been shown for disturbing them.

(2) (a) Regarding the irregularity of the proceedings this Court has repeatedly expressed its views on the question of the proper prosecution of trials. The litigant's right to a hearing of his case within reasonable time by the appropriate Court as declared by Article 30 of our Constitution and as protected by the *notion of due process* in American law is a very important right. And this Court has stressed its importance in several cases (see *Hji Nicolaou* v. *Gavriel and Another* (1965) 1 C.L.R. 421 at p. 431 and the cases quoted in that judgment *ibid*.)

Considering theproceedings in this case in the light of the above we had very great difficulty indeed, in avoiding a new trial. But in the particular circumstances of this case and the very exceptional conditions which developed in the Island soon after the conclusion of the hearing, when judgment was reserved, we eventually reached the decision to avoid a re-trial.

(c) But notwithstanding this, we must say how undesirable is such a big delay between the closing of the hearing and the delivery of judgment especially in cases which turn on issues of fact as in this case. And how the piecemeal hearing could have affected the findings of the trial Court, resting on evidence taken in such manner.

Appeal dismissed. No order as to costs.

Cases referred to :

Mamas v. *Arma Tyres* (reported in this Part at p. 158 *ante*);

Hji Nicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421 at p. 431 ;

Nicola v. *Christofi and Another* (1965) 1 C.L.R. 324 at p. 338;

Tsiartas and Another v. *Yiapana* 1962 C.L.R. 198, at p. 207.

Appeal.

Appeal against the judgment of the District Court of Limassol (Ilkay & Stavrinakis D.JJ.) dated the 3rd January, 1966 (Action No. 300/63) dismissing an action for damages for injuries in a traffic accident.

M. Houry with *M. Koumas* and *St. G. McBride*, for the appellant.

A. M. Berberoglou, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J. : We have carefully and exhaustively discussed the position arising in this appeal. The subject matter of the appeal is a judgment of the District Court of Limassol in a civil action heard before a bench of two Judges, challenged by the appellant on the ground that the reasoning behind the findings on which the judgment rests, is unsatisfactory. Another ground on which the appeal is taken, is that a period of over two years elapsed between the last hearing of the case and the delivery of judgment ; on this ground the appellant prays for a re-hearing " in the interests of justice ", as he put it.

The findings of the trial Court are crucial in this appeal, as the issue of liability is the main dispute ; and it turns on such findings. Our approach, as an appellate Court, at this stage of the case, must be to consider and determine the question whether it was open to the trial Court, on the evidence before them, to make the findings in question. Regardless of what view we might take of the evidence in the first instance, we think that it was open to the trial Judges to find as they did.

The next question raised by the appellant, is whether the reasoning behind the findings of the trial Court is unsatisfactory to the extent of justifying intervention by this Court.

The position regarding findings of fact by the trial Court, when considered on appeal, is now well settled in a number of cases, to which I need not specifically refer, except for *Mamas* v. *The Arma Tyres* (reported in this Part at p. 158 *ante*) where the matter was again raised.

The findings in the case under consideration, present considerable difficulty; they were discussed in the light of able argument on both sides; but eventually the view prevailed that on the evidence before the Court, they could be made, and no sufficient reasons have been shown for disturbing them.

The next matter which calls for consideration is the irregularity of the proceedings. This Court has repeatedly expressed its view regarding the proper prosecution of trials. The litigant's right to a hearing of his case "within a reasonable time", by the appropriate Court, as declared in Article 30 of our Constitution, and as protected by the notion of "due process" in American Law, is a very important right. And this Court has stressed its importance in several cases. I shall only refer here to *HjiNicolaou* v. *Gavriel and Another* (1965) 1 C.L.R. p. 421. The President of this Court, Mr. Justice Zekia, delivering the judgment of the Court had this to say, as reported at p. 431:

> "Finally we desire to express once more our disapproval for the delays in the hearing of cases. In a recent judgment (*Nicola* v. *Christofi and Another* (1965) 1 C.L.R. 324 at p. 338) we had occasion to reiterate our previous observations deprecating the piecemeal hearing of cases and the delays in the delivery of reserved judgments. We also expressed the view that adjournments should, as far as possible, be avoided except in unusual circumstances, and that once a trial was begun, it should proceed continuously day in and day out, where possible, until its conclusion, (see also *Tsiartas and Another* v. *Yiapana*, 1962 C.L.R. p. 198 at p. 207)".

Considering the proceedings in this case in the light of the above, we had very great difficulty indeed, in avoiding a new trial with the consequent further delay and expense. In the particular circumstances of this case, and the conditions which developed in the Island soon after the conclusion of the hearing, when judgment was reserved, we eventually reached the decision to avoid a re-trial. But I may say that the case

balanced a good deal on this question. And I repeat that it was with very great difficulty that we did not find ourselves compelled to order a re-trial.

I need not go into further detail ; a mere look at the record is sufficient to show how this trial proceeded, and how the piecemeal hearing must have affected the findings of the trial Court, resting on evidence taken in such manner. Very exceptional and unfortunate circumstances did take place in this Island soon after the conclusion of the trial, which probably are, in a way, the cause of the delay ; or at least part of the delay, in delivering the judgment of the trial Court. But, notwithstanding this, we must say that the case in hand is yet one more case showing how undesirable is such a big delay between the closing of the hearing and the delivery of the judgment ; especially in cases which turn on issues of fact as in this case. With all that in mind, however, we did, eventually, reach the conclusion that in the interests of justice a re-trial should be avoided ; and this litigation over an accident which occurred in October 1962, should at this long end come to a conclusion.

In the result the appeal fails ; and is dismissed. But, in the circumstances, we think we should make no order as to costs.

Appeal dismissed. No order as to costs.