THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,

v.

ENIMEROTIS PUBLISHING CO. LTD. AND OTHERS,
Respondents.

(Criminal Appeal No. 2829)

Trial in criminal cases—Adjournment of criminal trial—Criminal Procedure Law, Cap. 155, sections 48 and 68 (2)—Proper and judicial exercise of relative discretionary powers—Adjournment in the hearing of criminal (and civil) cases highly undesirable—Judicial position reiterated—In the instant case there has been an adjournment of criminal trial without sufficient legal justification—Appeal—Grounds of adjournment, as stated on record, entirely inadequate—Case remitted to the trial Court for trial at the earliest possible day. See, also, under Criminal Procedure immediately hereafter.

Criminal Procedure—Trial in criminal cases—Order of adjournment of the trial—Appeal against that order—It would seem that another proper way of questioning the order of adjournment was by application for an order of mandamus—The power of a judge to adjourn a case is discretionary—And must be properly and judicially exercised, in the interest of justice—His decision in the matter must take due account of all relevant factors—Must be duly reasoned as required of all judicial decisions by Article 30, paragraph 2, of the Constitution—And is subject to appeal under section 25 (2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—Being a decision which may materially affect the course of justice and the interest of the parties.

Adjournment of trial in criminal cases—See above.

Practice—Criminal appeal—Notice of appeal—Notice of appeal containing matter not appearing on the record—On a preliminary objection the said matter was struck out and the notice of appeal amended accordingly.

Criminal Procedure—Appeal—Notice of appeal—Amendment etc.—See under Practice above.

Mandamus—Order of mandamus—Whether an order of mandamus is a proper way to question an order for adjournment made by the District Court.

Cases referred to :

Tsiarta v. *Yapana* (1962) C.L.R. 198 at p. 208, *followed* ;

Nicola v. *Christofi and another* (1965) 1 C.L.R. 324 *followed* ;

Eleni HjiNicolaou v. *Mariccou Gavriel and another* (1965) 1 C.L.R. 421 *followed* ;

Royal v. *Prestcott-Clarke and Another* [1966] 2 All E.R. 366, at p. 369, *reasoning adopted.*

Appeal.

Appeal by the Attorney-General of the Republic against the order made by the District Court of Nicosia (Demetriou, D.J.) on the 18th July, 1966, for the adjournment of the hearing of a criminal Case (No. 8487/66).

K. Talarides, Counsel of the Republic, for the appellant.

L. Papaphilippou, for the respondents.

The facts of the case sufficiently appear in the judgments delivered.

Mr. Papaphilippou raised preliminary objection to matter contained in the notice of appeal which did not appear on the record.

Mr. Talarides explained that his intention was to state in the notice what happened at the trial Court.

The following ruling of the Court was delivered by :

VASSILIADES, J.: The Court is unanimously of the opinion that this appeal should not be allowed to proceed to the stage of hearing on the merits, upon the notice on which it was taken as it stands at present. In its present form, the notice contains mostly material intended, apparently, to be informative ; and, perhaps, useful as such ; but hardly capable of constituting grounds for appeal.

Counsel for the appellant conceded, quite properly, we think, that the only ground upon which the order for adjournment is being challenged, is that the adjournment was granted without sufficient legal justification. As put in the notice in Greek : " Ἡ ἀπόφασις τοῦ Δικαστηρίου περὶ ἀναβολῆς τῆς ὑποθέσεως ἦτο νομικῶς ἀδικαιολόγητος . . . . . "

What follows this, consisting partly of statements based on the record, and mostly of allegations outside the record, and of argumentation on such matter, tends to create confusion and embarrassment ; and should, we think, be struck out.

Paragraph (*a*) for instance, is a statement of fact, appearing on the record, which, in our view, has nothing to do with the appeal. Same with para. (γ). Para. (δ) consists, mainly, of material which is not on the record ; and para. (ε) refers to a telephone conversation between a Judge and one of counsel in the case regarding the matter, which, we think, should have never taken place ; any such enquiry should be addressed to the Registrar ; and in any case it does not appear on the record.

Apart of other objection to it, such matter on the notice of appeal is likely to lead to unnecessary disputes during the hearing ; and to waste of time.

We, therefore, rule that the part of the notice commencing from para. (*a*) after the statement of the ground of appeal on page 1, and ending at sub-para. (ix) of para. (ζ) on page 3 of the notice, should be struck out. And we order that the notice be treated as amended accordingly.

Let the appeal proceed on the ground stated in the first two lines after the heading referring to the grounds of appeal.

Mr. Talarides was heard on the merits accordingly.

Mr. Papaphilippou was likewise heard, for the respondents.

Mr. Talarides was not called upon in reply.

The following judgments were delivered :

VASSILIADES, J.: This is an appeal against the decision and order of a District Judge for the adjournment of a criminal trial before him. It turns on the question whether the trial Judge, in granting the adjournment, exercised properly and judicially the discretionary powers given to him under section 48 of the Criminal Procedure Law (Cap. 155) to adjourn a case.

The facts which led to the adjournment appear sufficiently on the record ; and are not in dispute.

The defendants, who are the publishers of a daily newspaper circulating in Nicosia and other parts of the island, are prosecuted at the instance of the Attorney-General, on

a charge for (*a*) maliciously publishing on May 31, 1966, in their newspaper, items intended to disturb the discipline and good order in the National Guard (a Military Unit in the Government Security Forces) contrary to the provisions of section 44 (A) (1) of the Criminal Code (Cap. 154) ; and (*b*) publishing false reports likely to cause fear and alarm to the general public, and calculated to disturb the public peace, contrary to section 50 (1) of the Criminal Code.

The charge was filed in the District Court of Nicosia a few days after the publication in question, *i.e.* on June 4, 1966 ; and was fixed for hearing ten days later, on June 14. The summonses were duly served about a week prior to the hearing *viz.* on the June 7. That gave the defendants seven days to consider their plea, and prepare their defence.

On the day of the hearing, June 14, the defendants duly appeared before the Court with their advocate ; and pleaded not guilty to both counts in the charge. According to the procedure laid down in section 68 (2) of the Criminal Procedure Law (Cap. 155) " if the accused pleads not guilty to the charge the Court shall proceed with the hearing of the case in the manner in section 74 of this Law provided ". And this is that " the prosecutor or the advocate for the prosecution, shall proceed to call the witnesses, and adduce such other evidence as may be adduced in support of the case for the prosecution ".

Instead of following this procedure, as prescribed in the statute, the trial Judge adopted a practice of the courts in such cases, to adjourn the hearing to a future date for taking the evidence ; and heard counsel as to the date. Mr. Papaphilippou for the defendants, suggested a day after the 25th of July, for the reasons stated to Court, including the reason of time for preparing the defence.

Counsel of the Republic conducting the prosecution on behalf of the Attorney-General, objected to such a long date ; and, according to the record, both sides applied for time till the next day " to explore the possibilities of an early trial ".

The following day, June 15, the parties were again before the Court with their advocates, when, as the record shows, counsel for the prosecution agreed " to the suggested date of 18.7.66 ;" a date more than one month later. And the Court fixed the case for hearing on that date with a note that it was " to be continued on the 19th, and 20th of July,

1966". And then proceeded to grant bail to the defendants in the sum of £150 for each. This was, of course, done in the presence and to the full knowledge of all parties concerned.

In due course, summonses were issued to the witnesses to attend trial on the 18th July, including, we are told, four witnesses for the prosecution, and no less than fourteen witnesses for the defence, most of whom persons with various important responsibilities; and, presumably, not much time to waste. These citizens who either in obedience to the court-summons, or in obedience to their sense of public duty to assist the Court in the administration of justice, have made the necessary arrangements enabling them to attend Court, and did so attend, are entitled to full consideration from the Court. And should not have to come again unless for good cause shown, in a public hearing.

At the opening of the trial on the 18th July, counsel for the defendants applied for an adjournment on the ground that "main defence witnesses" (as the Judge's note reads) were not available in Court that date; and would not be available, as he said, till the 25th of August. "It is a proper case for granting an adjournment to secure a fair trial", counsel added, according to the record.

Counsel for the prosecution strongly objected to any adjournment at that stage for various reasons stated in Court; adding, however, in the end that if an application for adjournment came from the defence, after the conclusion of the case for the prosecution, he might, himself assist in the matter.

The learned trial Judge then proceeded to make and record his decision which reads as follows:

> "I do agree with learned Counsel for the Republic that no influence might be exerted by officers on soldier-witnesses; if such is the allegation of the defence, that cannot stand. However, the Court is of the view that an adjournment should be granted so as defence be given every chance to prepare their defence, and accordingly case adjourned to 26.8.66 for hearing. Same bail."

In making this decision and order for adjournment, the Judge was exercising his powers under section 48 of the Criminal Procedure Law (Cap. 155) which provides that every Court may "if it thinks fit", adjourn any case before it; and upon such adjournment may release the accused on such terms as it may consider reasonable, or remand him in custody.

The power of the Judge to adjourn a case, if he so thinks fit, is discretionary, and must be properly and judicially exercised, in the interest of justice His decision in the matter, must take due account of all relevant factors ; must be duly reasoned, as required of all judicial decisions by Article 30 2 of the Constitution , and is, in my opinion, subject to appeal as provided in section 25 (2) of the Courts of Justice Law, 1960, being a decision which may materially affect the course of justice, and the interest of the parties involved. It has been considered and discussed on appeal in a number of cases, both here and in England As a rule the party applying for an adjournment must satisfy the Court that there is good cause for such interruption of the proceedings, not due to his fault

This Court has repeatedly expressed its views regarding adjournments mostly in civil cases, where they more frequently occur ; but such views apply with equal force to criminal proceedings as well I shall only refer to three cases out of the numerous occasions on which this Court expressed themselves regarding adjournments In *Tsiarta* v *Yapana* (1962) C L R p 198, before concluding their judgment at page 208, the Court is reported to have said :—

> " A further word needs to be said with respect to adjournments They produce justifiable dissatisfaction to the litigants and their witnesses , and, statistically, records of the Courts confirm the opinion that there are far too many "

In *Nicola* v *Christofi and another* (1965) 1 C L R 324 at p 338 one reads .

> " Furthermore the view was expressed that adjournments should, as far as possible be avoided, except in unusual circumstances , and that once a trial was begun, it should be proceeded with continuously, day in and day out where possible, until its conclusion (*Tsiarta* v *Yapana*, *supra*) These observations are based on the provisions of Article 30 para 2 of the Constitution regarding the constitutional right of a citizen to a fair trial within a reasonable time. It cannot be too highly stressed that trial Courts should comply with these constitutional provisions with meticulous care "

That was a civil case, but such observations apply a *fortiori* to criminal matters A few months later, this Court had again occasion of dealing with repeated adjournments, in another civil action, *Eleni HjiNicolaou* v *Mariccou Gavriel*

and another (1965) 1 C.L.R. p. 421, where at p. 431 the President of the Court, Mr. Justice Zekia, had this to say :—

> " 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) 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."

And further down in the same case, the learned President said :—

> " These delays are highly undesirable and we are satisfied that it is possible for a Judge to have his work arranged at such a way as to avoid them altogether or reduce them to the very minimum. Piecemeal hearings and adjournments in a case make the task of the trial Judge who has to weigh the oral evidence, more difficult, and are to the prejudice of the fair administration of justice ; and, sometimes, they may amount to a complete denial of justice."

Reference is then made at the end of that judgment, to a number of cases supporting these observations.

In the present case, it is obvious that the trial Judge either did not have in mind these judicial statements, which are binding on him ; or he did not direct his mind to the matter before him, and failed to apply correctly the law. The grounds upon which he granted the adjournment at that early stage, as recorded in his notes, are entirely inadequate ; and the complaint of the appellant for being denied a hearing on that day, is perfectly justified. He was there, before the Court ready with his witnesses for a three-days trial, and was not given a chance to open it. We are unanimously of the opinion that this appeal should be allowed, with costs against the respondents, both here and in the District Court, where the case must be remitted forthwith for trial, as early as this may be arranged.

STAVRINIDES, AG. J.: While I agree as to the result, I think I should explain my reasons for doing so.

In my opinion the proper way of questioning the order of adjournment was by application for an order of mandamus.

However, since the point has not been taken in argument and is a purely procedural one, we are not on that account debarred from dealing with the substance of the matter.

The learned District Judge's record of what defending counsel said in applying for the adjournment is as follows :—

> " I apply for an adjournment as main defence witnesses are not available today in Court and will not be available till August 25, 1966. It is a proper case for granting an adjournment to secure a fair trial."

It is important to note that there is no suggestion that the record is incomplete. Now with regard to the statement that the defence witnesses were not available on the day the application was made, that was no reason for an immediate adjournment because for one thing they could not be called until after the close of the prosecution's case, in support of which at least three witnesses were due to be heard. As regards the statement that the defence witnesses would not be available until August, 25, no explanation was given. Thus the adjournment was not based on good and sufficient grounds and therefore it may be questioned.

HADJIANASTASSIOU, AG. J.: I am in full agreement with the judgement delivered by the learned President of this Court and, therefore, I find it unnecessary to deal with the circumstances which led to a charge being made against the respondents and, further, with the facts appearing on the record with regard to the granting of the adjournment.

Further, I desire to add with regard to the discretion of the learned Judge in this case, by quoting from the judgment of Queen's Bench Division in the case of *Royal* v. *Prestcott-Clarke and Another*, reported in [1966] 2 All E.R. p. 366, the reasoning of which I fully endorse and adopt.

Winn L. J., delivering the first judgment of the Court said *inter alia*, at p. 369 :

> " In my opinion, it was a matter for the discretion of the justices in this case, as in any other case where the circumstances are not very peculiar and special, whether or not to grant such application for an adjournment."

Here the application for the adjournment was made for the second time by counsel for the accused, and the record of the proceedings of the trial Court read that the learned Judge, in spite of the objection on behalf of Counsel appearing for the prosecution, granted the adjournment in order that the defence be given a chance to prepare their defence.

In this particular case, since nothing appears on the record, that the refusal of granting the adjournment would have caused grave potential prejudice to the accused the learned Judge wrongly exercised the discretion which was entrusted by law to him ; he should, in my view, in law, have refused to grant the adjournment in the particular circumstances of this case.

I am also in agreement with the judgment of my learned brother Judge Stavrinides. - I wish to add, however, that with regard to the question of mandamus, raised by him in his judgment, I am not prepared to express an opinion as this point has not been argued before us.

I would allow the appeal and therefore this case ought to be remitted to the District Court of Nicosia with a direction to the Registrar of the Court to fix it for hearing at the earliest possible date.

VASSILIADES, J.: In the result the appeal is allowed ; and the order for adjournment is set aside. With costs in the appeal, and all costs in District Court incidental to the adjournment. Case remitted to the District Court for trial according to law, on a day to be fixed by the Registrar, as early as it may be conveniently arranged. Judgment and order accordingly.

Appeal allowed with costs here and all costs in the Court below incidental to the adjournment. Order for adjournment set aside. Case remitted to the District Court for trial as early as it may be conveniently arranged.