

1967
Oct. 9

[JOSEPHIDES, J.]

EX PARTE
MODESTOS
SAVVA PITSILLOS

IN THE MATTER OF AN INTENDED APPEAL SOLELY
IN REGARD TO COSTS FROM A DECISION OF THE
DISTRICT COURT OF NICOSIA IN ACTION No. 967/66

Between :

MODESTOS SAVVA PITSILLOS,

Plaintiff.

and

PAVLOS XIOUTAS AND OTHERS,

Defendants.

EX PARTE MODESTOS SAVVA PITSILLOS

Applicant.

(Civil Application No. 7/67).

Costs—Appeal—Application for leave to appeal—Solely on the ground of a wrong direction in regard to costs—The Civil Procedure Rules, Order 35, rule 20.

Practice—Costs—Leave to appeal —See above.

Appeal—Costs—Leave to appeal against a decision solely on the ground of a wrong direction in regard to costs—See above.

Leave to appeal—See above.

This is an application for leave to appeal from a decision of the District Court of Nicosia solely on the ground of a wrong direction in regard to costs. It is based on the Civil Procedure Rules, Order 35, r. 20.

In dismissing the application the Court :

Held, (1) leave to appeal from a decision solely on the ground of a wrong direction in regard to costs can only be given if it is made to appear that the direction—

(a) was contrary to the provisions of any law or rule; or

(b) it was based on a misconception of fact; or

(c) it directed a party to pay costs incurred or occasioned without sufficient reason by the other party (Order 35, rule 20).

(2) The applicant has failed to bring himself within any of the above three cases and his application, therefore, fails.

Application dismissed. Order in terms.

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Ex Parte Application.

Ex parte application for leave to appeal from a decision solely on the ground of a wrong direction in regard to costs.

Applicant in person.

The following Judgment was delivered by :

JOSEPHIDES, J. : This is an application for leave to appeal from a decision of the District Court of Nicosia solely on the ground of a wrong direction in regard to costs. It is based on Order 35, rule 20, of the Civil Procedure Rules. The plaintiff's claim was dismissed with costs and the defendants' counsel submitted to the Court a bill with 12 items amounting to £42.175 mils. The trial Judge made deductions amounting to £6.175 mils and approved costs in favour of the defendants at £36. The plaintiff thereupon filed the present application before this Court, and he appeared before me in person today to address me in support of his application.

The first point taken by him was that the sum of £3.500 mils awarded as costs for counsel's appearance on the 26th May, 1966 should not have been awarded because the case was adjourned at 9.30 a.m. for want of time. The scale applicable shows that a sum between £2.500 mils and £6 may be awarded, subject to the direction of the Court. In this case the sum of £3.500 mils was allowed by the Court, which cannot be said to be unreasonable.

The other point taken by the applicant was that on the 29th November, 1966, and on another occasion counsel for the other side appeared some 45 minutes or one hour later than the time fixed for the hearing and this necessitated further adjournments and more appearances. No doubt the trial Judge took this into consideration in fixing the costs in the case.

In considering this matter it should be borne in mind that leave to appeal from a decision solely on the ground of a wrong direction in regard to costs can only be given if it is made to appear that the direction—

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- (a) was contrary to the provisions of any law or rule; or
- (b) it was based on a misconception of fact; or
- (c) it directed a party to pay costs incurred or occasioned without sufficient reason by the other party (Order 35, rule 20)

The applicant has failed to bring himself within any of the above three cases and his application must accordingly fail.

Application dismissed.

Order in terms.