

MOUSTAFA IMAM,

Appellant-Defendant,

v.

COSTAS S. PAPACOSTAS,

Respondent-Plaintiff.

(Civil Appeal No. 4690).

MOUSTAFA
IMAM
v.
COSTAS S.
PAPACOSTAS

Appeals—Appeal turning on the credibility of witnesses—Principles on which the Court of Appeal will act in determining such appeals are well settled.

Findings of fact resting on credibility of witnesses—Principles on which appeals against such findings are determined—Principles restated.

Witness—Credibility—See above.

Credibility of witnesses—Appeals turning on credibility of witnesses—Principles applicable restated.

Practice—Pleadings—Particulars—Action for work done alleged to have been agreed for a specific amount—No application for further and better particulars—Only some reference to it—Correct procedure is to apply for further and better particulars under Order 19, rules 6 and 7, of the Civil Procedure Rules.

Particulars—Application—Correct procedure—See above.

This appeal turns on the credibility of witnesses. Dismissing the appeal, the Court restated the well settled principles on which such appeals are determined.

Cases referred to:

Mylonas and Others v. Kaili (1967) 1 C.L.R. 77;

Mavrovouniotis v. Estate of Chrystalleni Nicoluidou (1934)
14 C.L.R. 272;

Charalambous v. Demetriou (1961) C.L.R. 14, at p. 16; (see also the cases referred to at pp. 27-28 of the same report);

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Mamas v. The Firm "Arma" Tyres (1966) 1 C.L.R. 158
at p. 160.

Appeal.

Appeal by defendant against the judgment of the District Court of Paphos (Papadopoulos D.J.) dated the 14th December, 1967 (Action No. 197/67) whereby he was adjudged to pay to the plaintiff the sum of £95.- as agreed remuneration for work done.

Ural Djemil, for the appellant.

N. D. Mavronicolas, for the respondent.

The judgment of the Court was delivered by :-

JOSEPHIDES, J. : This appeal turns on the credibility of witnesses and the principles on which such appeals are determined are well settled.

In a recent appeal, that of *Kyriacos Alexandrou Mylonas and 2 Others v. Margarita Kaili* (1967) 1 C.L.R. 77 we said :-

“The principles on which this Court decides appeals on the credibility of witnesses are well settled and we need not enter into them in detail. It must be shown that the trial Judge was wrong and the onus is on the appellant to persuade this Court. Matters of credibility are within the province of the trial Judge and if, on the evidence before him, it was reasonably open to him to make the finding which he did, then this Court will not interfere with the judgment of the trial Court. Needless to say that this being a civil case it is decided on the balance of probabilities”.

In *Miltiades Mavrovouniotis v. Estate of Chrystalleni Ch. Nicolaidou* (1934), 14 Cyprus Law Reports, p. 272, it was held that -

“Where a judge’s findings of fact depend upon the credibility of witnesses an appellate court has power to set such findings aside where the trial judge has failed to take account of circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact”.

This statement of the law was referred to in the case of *Philippos Charalambous v. Sotiris Demetriou* (1961) C.L.R. 14, at page 16. Reference is also made to other cases at pages 27-28 of the same report.

In *Sofoclis Mamas v. The Firm "Arma" Tyres* (1966) 1 C.L.R. 158 at p. 160, Vassiliades, J. (as he then was) said:-

"The findings of the trial Court will not be disturbed on appeal, unless the appellant can satisfy this Court that the reasoning behind such findings is unsatisfactory, or that they are not warranted by the evidence when considered as a whole. There is no dispute in the present case, about the legal position".

Having heard learned counsel for the appellant (defendant) in this case, we are not satisfied that the reasoning behind the findings of the trial judge is unsatisfactory or that the findings are not warranted by the evidence. The trial judge had to consider the two versions before him. On the one hand, the version of the plaintiff and on the other that of the defendant. Having seen the parties in the witness box and having weighed their evidence, he decided, on the balance of probabilities, to prefer the version of the plaintiff rather than that of the defendant. Counsel for the appellant today has not been able to persuade us that the trial judge was wrong in that respect.

Before concluding we would like to refer to two points which cropped up in the course of the argument.

The first point was that, although the claim was for work done alleged to have been agreed upon for £95, counsel for the defendant—who was not the same counsel in the appeal today—did not ask for further and better particulars of the claim; but he only made some reference to it in the statement of defence. We are aware that this practice is followed sometimes but we are of the view that it is a wrong practice and that the correct procedure is to apply for further and better particulars, under the provisions of Order 19, rules 6 and 7, of the Civil Procedure Rules.

The second point on which we would like to comment is that it is unfortunate that the appellant-defendant was not legally represented at the hearing in the court below, although the case had been repeatedly adjourned and on the day of the hearing he was given an opportunity of applying for an

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adjournment if he so wished to retain another advocate. If he was legally represented, some of the points raised as to the kind of work agreed upon and the work done could have been clarified in the cross-examination.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs.