[TRIANTAFYLLIDES, LOIZOU & HADJIANASTASSIOU JJ.]

THEODORA IOANNIDOU,

Appellant – Plaintiff,

v

CHARILAOS, DIKEOS,

Respondent – Defendant

(*Civil Appeal No* 4655)

Building Contract—Architect—Judgment dismissing claim against architect for professional neglect—Not "reasoned" in the sense of Article 30 2 *of the Constitution—New trial ordered—See also herebelow*

Constitutional Law — Reasoned judgment — Article 30.2 *of the Constitution—Provisions thereof governing the matter to be given effect to by ordering a new trial—Cf. Article* 35 *of the Constitution—Whether or not a judgment is "reasoned" depends on the circumstances of each case—Requirement that a judgment must be reasoned inherent in the very notion of the proper determination of a dispute inter partes—See also herebelow.*

Reasoned judgment—Apart from Article 30 2 *of the Constitution* (supra) *such requirement exists in relation to criminal proceedings by virtue of section* 113(1) *of the Criminal Procedure Law, Cap.* 155*—Regarding civil proceedings such a requirement (apart from the provisions of Article* 30 2 *of the Constitution) has to be taken as being inherent in the very notion of the proper determination of a dispute inter partes—See also above under Constitutional Law.*

Judgment—Must be reasoned—See above.

New trial—New trial ordered so that the requirement that a judgment must be reasoned may be given effect to—See also above.

This civil appeal was determined on the preliminary issue whether or not the judgment of the District Court appealed from was, in the light of the circumstances of the case, a reasoned judgment as required by Article 30 2 of the Constitution (which provides that the judgment of a Court in civil or criminal proceedings "shall be reasoned") Setting aside the judgment under appeal, the Supreme Court

Held, (1). Even prior to the coming into force of the Constitution such a requirement existed in relation to criminal proceedings, by virtue of section 113(1) of the Criminal Procedure Law, Cap. 155; and though no similar statutory provision exists in relation to civil proceedings, such a requirement (*viz.* that a judgment must be reasoned) has to be taken as being inherent in the very notion of the proper determination of a dispute *inter partes*.

(2) Whether or not a judgment is "reasoned", in the sense now, of Article 30.2 of the Constitution (*supra*), depends—as it has depended all along in relation to the aforementioned statutory provision applicable to criminal proceedings—on the circumstances of each case (see *Sava* v. *The Police*, XVIII C.L.R. 192; *Constanti* v. *The District Officer Famagusta*, 1962 C.L.R. 96; *Frixou* v. *The Police* (1963) 1 C.L.R. 83).

(3) In the present case we are forced to the conclusion that the judgment under appeal is not "reasoned" in the sense of Article 30.2 of the Constitution; in fact, such judgment, as pronounced, does not amount to a sufficient judicial determination of the dispute between the parties.

(4) Once this is so, we have to set aside the judgment of the trial Court and order a new trial. As stated by Vassiliades P. in *Panayi* v. *The Police* (1968) 2 C.L.R. 124 at p. 126; "We cannot give substance to the legal provisions"—in Article 30.2 and section 113(1) of the Criminal Procedure Law, Cap. 155—"governing the matter before us, by merely stating our views thereon. We must give effect to such provisions. We feel constrained to set aside the conviction based on the judgment before us; and in the interests of justice order a new trial".

(5) Such a course is also prescribed by Article 35 of the Constitution which lays down, *inter alia*, that the judicial authorities of the Republic "shall be bound to secure, within the limits of their competence, the efficient application of the provisions of this Part" one of such provisions being Article 30.2 of the Constitution.

(6) For all the above reasons we order that the judgment of the trial Court be set aside and that there should be a new trial of the action before another Bench. Costs of the first trial to be costs in the cause in the new trial; the same to

apply to the costs of this appeal, subject to such costs not becoming, in any event, costs agaist the appellant.

Appeal allowed; re-trial ordered in the above terms. Order for costs as aforesaid.

Cases referred to:

Papaellina v. *Epco (Cyprus) Ltd. and Lion Products Ltd.* (1967) 1 C.L.R. 338 at p. 362 per Stavrinides J. *followed;*

Sava v. *The Police,* XVIII C.L.R. 192;

Constanti v. *The District Officer Famagusta,* 1962 C.L.R. 96;

Frixou v. *The Police* (1963) 1 C.L.R. 83;

Panayi v. *The Police* (1968) 2 C.L.R. 124 at p. 126 per Vassiliades P. *applied.*

Appeal.

Appeal by plaintiff against the judgment of the District Court of Larnaca (Georghiou P.D.C. & A. Demetriou D.J.) dated the 26th June, 1967 (Action No. 1495/62) dismissing her claim for damages for professional neglect in the course of services rendered to her by the defendant as an architect.

L. Demetriades, for the appellant.

G. Achilles, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, J.: In this case the appellant-plaintiff appeals against the dismissal, on the 26th June, 1967, by the Full District Court of Larnaca, of civil action 1495/62, which she instituted against the respondent-defendant, claiming damages for professional neglect in the course of services rendered to the appellant by the respondent as an architect.

The judgment under appeal reads, in its entirety, as follows:-

"In the present case the plaintiff claims against the defendant, her architect, various sums amounting to £4,700.- which sums are divided into three categories:—

(a) £1,200.– arising from work not properly done to save money;

(b) £1,500.– loss of rents for three years; and,

(c) £2,000.– damage to the site, as the work was not properly done and so no second storey could be built on top of the building constructed.

Plaintiff's building concerned is situated at Larnaca at the corner of Markou Drakou and Phidiou Streets.

We may state from the beginning that the prayer of the statement of claim is not sufficiently pleaded nor is it supported by the evidence adduced by the plaintiff at the trial. There is no need for the Court to enter into detail as the short point of it is that there was no case made out for the plaintiff before the Court to sustain such claim which is accordingly dismissed with costs in favour of the defendant and to be assessed by the Registrar".

At the commencement of the hearing of the present appeal argument was heard on the preliminary issue as to whether or not the above judgment is, in the light of the circumstances of the case, a reasoned judgment as required by Article 30.2 of the Constitution; and we are now going to give our decision on such issue:

In the first place we would observe that claim (a) of the appellant, as presented in the already quoted judgment, does not convey exactly the substance of her said claim as pleaded; in effect, she was claiming damages for improper supervision by the respondent of the work which was being carried out by the building contractor, who was erecting the house in question of the appellant; and her claims (b) and (c) are consequential to claim (a).

Paragraph 2 of Article 30 of our Constitution provides that the judgment of a Court, in civil or criminal proceedings, "shall be reasoned".

Even prior to the coming into force of the Constitution such a requirement existed, in relation to criminal proceedings, by virtue of section 113(1) of the Criminal Procedure Law (Cap. 155); and though no similar statutory provision exists in relation to civil proceedings, such a requirement has to be taken as being inherent in the very notion of the proper deter-

mination of a dispute *inter partes*; in this respect Stavrinides, J. has observed in *Papaellina* v. *Epco (Cyprus) Ltd. and Lion Products Ltd.* (1967) 1 C.L.R. 338 at p. 362, that there is a "need for the trial Judge to formulate clearly in his judgment the specific issue or issues of fact arising between the parties and to state his finding on such issue or each one of such issues", and that "judges trying civil disputes should unfailingly" do so.

Of course, the answer to the question as to whether or not a judgment is "reasoned", in the sense, now, of Article 30.2 of the Constitution, depends – as it has depended all along in relation to the aforementioned statutory provision applicable to criminal proceedings – on the circumstances of each case (see *Sava* v. *The Police* XVIII C.L.R. 192, *Constanti* v. *The District Officer, Famagusta* 1962 C.L.R. 96 and *Frixou* v. *The Police* (1963) 1 C.L.R. 83).

In the present instance there can be no doubt that the appellant did adduce evidence, including expert evidence, in support of her claim; this is abundantly clear from the record before us and we cannot agree, in this connection, with the opposite view of the trial Court; nor can we agree with the trial Court's view that the claim of the appellant was not "sufficiently" pleaded.

The respondent gave evidence, himself, refuting the appellant's claim.

It was up to the trial Court to determine the issues which had, thus, arisen and to give its reasons for its determination; and it has completely failed to do so.

We are forced, therefore, to the conclusion that the judgment under appeal is not "reasoned" in the sense of Article 30.2 of the Constitution; in fact, such judgment, as pronounced, does not amount to a sufficient judicial determination of the dispute between the parties.

Once this is so we have to set it aside and order a new trial.

As stated by Vassiliades P. in *Panayi* v. *The Police* (1968) 2 C.L.R. 124 at p. 126: "We cannot give substance to the legal provisions" – in Article 30.2 of the Constitution and section 113(1) of Cap. 155 – "governing the matter before us, by merely stating our views thereon. We must give effect to

such provisions. We feel constrained to set aside the conviction based on the judgment before us; and in the interests of justice order a new trial".

Such a course is also prescribed by Article 35 of the Constitution which lays down, *inter alia*, that the judicial authorities of the Republic "shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part"; one of such provisions being Article 30.2.

For all the foregoing reasons we order that the judgment under appeal be set aside and that there should be a new trial of the action before another Bench.

The costs of the first trial to be costs in the cause in the new trial; the same to apply to the costs of this appeal, subject to such costs not becoming, in any event, costs against the appellant.

Appeal allowed; re-trial ordered in the above terms. Order for costs as aforesaid.