

LEONIDAS KYRIAKIDES,

Appellant-Plaintiff,

v.

ANTONIS KYRIAKIDES,

Respondent-Defendant.

(Application in Civil Appeal No. 4799).

Practice—Appeal—Civil appeal—Notice of appeal with no grounds due to the non-availability of the judgment appealed against—Application for leave to amend grounds of appeal—Not conceivable in the complete absence of grounds of appeal—The Civil Procedure Rules, Order 35, rule 4—Application treated as one for enlargement of the time within which to appeal—Order for such enlargement granted—Original notice of appeal together with the grounds already filed to be treated as constituting together the notice of appeal in this case.

The facts sufficiently appear in the ruling of the Court.

Application.

Application for leave to amend the grounds of appeal in a notice of appeal against the judgment of the District Court of Nicosia (Ioannides Ag. P.D.C. and Kourris D.J.), given on the 31st January, 1969, (Action No. 413/68) dismissing plaintiff's claim for an order of the Court, *inter alia*, directing defendant to supply the plaintiff with the quantity of water necessary for the purposes of plaintiff's lime industry.

J. Mavronicolas, for the appellant.

S. Sofocleous (Miss) for the respondent.

The following ruling was delivered by:

TRIANTAFYLIDIS, J.: In this case the appellant has applied for leave to amend the grounds of appeal; counsel for respondent has not raised any objection.

The background of the matter is as follows:—

1969
June 12
—
LEONIDAS
KYRIAKIDES
v.
ANTONIS
KYRIAKIDES

The trial Court delivered its judgment – which is appealed against – on the 31st January, 1969, but, most unfortunately, it did not make available to the parties copies of such judgment until the time for appealing was due to expire, viz. on the 14th March, 1969.

On the same date a notice of appeal was filed stating that “Full grounds will be given on receipt of the record of the proceedings”.

So, in effect, no proper notice of appeal was filed because according to Order 35, rule 4, of the Civil Procedure Rules a notice of appeal should state “all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated.”

The proper course for appellant was to have applied on the 14th March, 1969, at the latest, for an order enlarging the time within which to appeal.

This was not done, and instead a notice of appeal, as described earlier, was filed on the 14th March, 1969. On that date not only a copy of the judgment was supplied to the appellant, but, also a copy of the record of the proceedings before the trial Court. Yet, and though the present application for leave to amend the grounds of appeal was filed on the 2nd April, 1969, a statement of the full grounds of appeal was not filed until the 10th May, 1969; the delay occurred – according to what we have been told today – because of the fact that new counsel, who had not appeared in the Court below, had to be briefed for the purposes of the appeal.

We do not think that this is really a case for allowing an amendment of the notice of appeal, as there exists no notice of appeal containing any grounds of appeal, at all, to be amended. What we have now to decide is, in fact, whether or not to extend the time for appealing, so as to permit the filing of proper grounds of appeal.

In the light of all relevant considerations, and bearing in mind both the delay in making available to the appellant a copy of the judgment of the trial Court and the fact that there is no objection by the respondent to the application which is before us today, we have decided to treat this application as one for the enlargement of the time within which to appeal and to order that such time be enlarged so as to allow the appellant to file proper grounds of appeal; his original notice

of appeal and the statement of the grounds of appeal filed on the 10th May, 1969, to be treated as constituting together the notice of appeal in this case.

There shall be no order as to the costs of the present application.

Order accordingly.

1969
June 12
—
LEONIDAS
KYRIAKIDES
v.
ANTONIS
KYRIAKIDES