

CHRISTAKIS CHRISTOFOROU TTOFAROS,
Appellant-Defendant No. 1,
v.

CHRISTAKIS
CHRISTOFOROU
TTOFAROS

1. NIKI E. VASSILIOU,
Respondent-Plaintiff,

v.
NIKI E.
VASSILIOU
AND OTHERS

2. IOANNIS MICHAEL,
Respondent-Defendant No. 2,

3. EFSTATHIOS KYRIAKOU & SONS LTD.,
Respondent-Defendant No. 3.

(Civil Appeal No. 4838).

Trial in civil cases—Adjournment—Application for adjournment of the hearing of a civil case due to counsel's absence abroad—Refused by the trial Court—Wide discretion of the Court—Appellant represented by another counsel—Notice of change of advocate filed—Appellant neither prejudiced nor his constitutional rights infringed—Article 30.3 of the Constitution—Discretion judicially exercised by trial Court—Appeal on this point dismissed.

Practice—Adjournment—Supra.

Adjournment—Refused—Discretion—Supra.

The facts of this appeal sufficiently appear in the judgment of the Court dismissing the appeal on the point that the trial Court erred in dismissing defendant's No. 1 (now appellant's) application for the adjournment of the further hearing of the case, as fixed before it for continuation on May 3, 1969.

Appeal.

Appeal by defendant No. 1 against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. and Stavri-nakis, D.J.) dated the 8th July, 1969 (Action No. 3552/67) dismissing his application for the adjournment of the further hearing of the case.

Chr. Mitsides with *X. Syllouris*, for appellant-defendant No. 1.

L. Papaphilippou, for respondent-plaintiff.

C. Indianos, for respondents-defendants No. 2 and No. 3.

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The decision of the Court was delivered by :—

TRIANAFYLLIDES, J.: We had to deal first, as a preliminary issue, with ground of appeal (e), whereby it is contended that the trial Court erred in dismissing an application for the adjournment of the further hearing of the case, as fixed before it for continuation on the 3rd May, 1969.

As a matter of fact, on the 30th April, 1969, Mr. Syllouris, who had been appearing till then, at the hearing, for the appellant, applied in writing for the adjournment of the hearing, as fixed, on the ground that he would be away from Cyprus. All counsel appearing, at the time, for the respondents countersigned the application for adjournment, stating that they had no objection thereto.

The matter was dealt with by the trial Court on the 1st May, 1969 ; and from the record before us it does not appear that counsel were heard for the purpose.

The ruling made on the 1st May, 1969, reads as follows :

“ We have considered this application and we find ourselves unable to accede to this request for adjournment. This case has been pending for a long time. It was adjourned repeatedly, and we would be doing injustice not only to the parties in this action but to other litigants, because, if we adjourn it on a day that there are no other cases fixed, this will have to be after the summer Court vacations and if we try to finish it before then it will mean the adjournment of other cases who are not to blame if Mr. Syllouris wishes to go abroad. It is a simple accident case and we are certain there are numerous advocates in Nicosia who are both competent and willing to facilitate their colleague during his absence abroad.”

As he has stated to us, counsel for appellant was informed of the refusal of the application for adjournment on the 1st May, 1969, just before he was about to leave Cyprus ; without having had an opportunity of consulting his client he proceeded to hand over this case to a colleague, Mr. Ch. Loizou, an advocate in Nicosia.

Up to that point all that had happened was that there had been a refusal of an application for an adjournment ; and had matters been left at that, we would have to examine whether such refusal had been decided upon in the proper exercise of the relevant discretionary powers—which are of quite a wide nature—and we might have had to consider, too, whether, because of the said refusal, there had occurred, in any way, a contravention of the rights of the appellant as laid down in Article 30.3 of the Constitution.

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Subsequent events, however, led to an altered situation, indeed : On the 3rd May, 1969, Mr. Ch. Loizou did appear at the resumed hearing of the case, but *not* on behalf of Mr. Syllouris ; he appeared as counsel appearing directly for the defendant (now appellant) ; and he, also, during the hearing on that date, filed a notice of change of advocate signed by his client and accompanied by the appropriate retainer.

On the 3rd May, 1969, Mr. Loizou did not make any effort to secure an adjournment pending the return of Mr. Syllouris. On the contrary, after he was given by the trial Court 15 minutes to receive instructions before the appellant would be called by him to give evidence, he said that he had received such instructions and the proceedings continued in the normal course.

The main difficulty of Mr. Loizou on that date was that one of his medical experts was absent. The case was adjourned until the 5th May, 1969, so that this expert could attend.

Again Mr. Loizou did not think fit to apply for a longer adjournment so as to enable Mr. Syllouris—who admittedly had appeared, earlier on, for the appellant for most of the duration of the case, and when very material medical evidence had been heard—to return from abroad. Further medical evidence was to have been heard but Mr. Loizou did not seem to think that the presence of Mr. Syllouris was necessary in the circumstances ; the reason for such an attitude being, most probably, that consequent upon the change of advocate Mr. Syllouris was no longer appearing for the appellant.

As a result the hearing of the case continued on the 5th and the 8th May, 1969, when it was concluded.

In these circumstances we cannot see how in any way appellant can be said to have been prejudiced, or his constitutional rights to have been infringed. He was represented after the refusal of the adjournment by new counsel, duly retained by him, and it was not thought necessary—and no effort was made accordingly—at any time to attempt to adjourn the proceedings so that counsel who had appeared earlier on for the major part of the case could also join in the defence of the appellant.

In our view, therefore, ground of appeal (*e*) fails and the hearing of this appeal should proceed on the other grounds of appeal.

Order accordingly.

Note : At the resumption of the hearing the parties declared a settlement and the order appealed against was varied accordingly.