

1970
June 18

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

KATERINA
GEORGHIOU
PAOUROU
AND OTHERS
v.
ANDRIANI
PANAYI
KASPI

KATERINA GEORGHIOU PAOUROU AND OTHERS,
Applicants-Plaintiffs,

v.

ANDRIANI PANAYI KASPI,
Respondent-Defendant.

(Civil Application No. 8/70).

*Practice—Appeal—Extension of time within which to appeal—
Application for such extension of time should be made in the
first instance to the Court or Judge below—Civil Procedure
Rules, Order 35, rule 19 ; Cf. also rule 22 of that Order 35.*

Appeal—Extension of time—See supra.

Cases referred to :

Cropper v. Smith, 24 Ch. D. 305 ;
Hji Michael v. Karamichael and Others (1967) 1 C.L.R. 61 ;
Loizou v. Konteatis (1968) 1 C.L.R. 291 ;
Georghiou v. The Republic (1968) 1 C.L.R. 411 ;
Kyriakou v. Georghiadou (reported in this Part at p. 145 *ante*).

The facts sufficiently appear in the judgment of the Court dismissing the application for extension of the time within which to appeal.

Application.

Application for an order enlarging the time within which to file an appeal against the judgment of the District Court of Famagusta, given on the 22nd December, 1969, in Action No. 1510/67.

C. Colokassides, for the applicants.

S. Marathovouniotis, for the respondent.

The following judgment was delivered by :

VASSILIADES, P.: We find it unnecessary to call on Mr. Marathovouniotis. We take the view that this application should be disposed of under rule 19 of Order 35. The rule reads :—

“ Whenever under these rules an application may be made either to the Court below or to the Court of

Appeal, or to a Judge of either Court, it shall be made in the first instance to the Court or Judge below”.

This application for extension of time should have been made, we think, in the first instance to the District Court. A useful English case on the practice under a corresponding rule, which throws light on the history and application of our present rule, is *Cropper v. Smith*, 24 Ch. D. 305.

We do not wish to prejudice the issue in case of a proceeding before the District Court; and we prefer to avoid entering into the merits of the application. But we think it might be useful to the parties (and to the Court of first instance, if eventually called upon to deal with the matter) to refer to *Erini Costa Hji Michael v. Maria Karamichael and Others* (1967) 1 C.L.R. 61; and to *Andreas Loizou v. Panayiotis Konteatis* (1968) 1 C.L.R. 291.

The guiding principles in such matters have also been considered in *Niki Georghiou v. The Republic* (1968) 1 C.L.R. 411; and more recently in *Costas Kyriacou v. Yiannoula Georghiadou*, (reported in this Part at p. 145 *ante*), which however, is not precisely on the same point. That was a case where the appellant failed to comply with rule 22 of Order 35 within the prescribed period, his appeal stood dismissed and he applied for reinstatement. The application was dismissed with costs.

We think that this application must also fail and be dismissed with costs although under a different rule as already stated.

Application dismissed with costs.

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