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

IN THE MATTER OF POLYVIOS STYLIANOU THEODOSSIADES, LATE OF PORT SAID, EGYPT,

Deceased,

and

IN THE MATTER OF AN APPLICATION BY EMILIOS TAVERNARIS OF NICOSIA, ADMINISTRATOR OF THE ABOVE ESTATE,

Applicant (Appellant),

and

THE HEIRS OF THE SAID DECEASED,

Respondents.

(*Civil Appeal No.* 4870).

Administration of Estates—Remuneration of the administrator—In the absence of agreement between the parties, such remuneration should be found on reasonable and fair percentages on the amount realised regard being had to the circumstances of each particular case—Seven guiding principles laid down in rule 1 of the (English) Rules of the Supreme Court (Non-Contentious Probate Costs) 1956, applicable by virtue of section 58 of the Administration of Estates Law, Cap. 189 and the Rules of Court (Transitional Provisions) 1960.

Administrator—Remuneration—How fixed—Not in the way of a global sum—But on the basis of reasonable and fair percentages on the amount of the estate realised—See also supra.

In his capacity as administrator of the estate of the deceased P. Th. the appellant submitted in due course, *inter alia*, his bill for remuneration. But the heirs disputed the amount of the bill and eventually the matter came up for determination before the District Court of Nicosia. The District Court heard evidence on the issue and, in the absence of an agreement between the parties, decided the remuneration of the administrator (applicant), now appellant on a global basis. On appeal by the administrator, the Court:

Held, (1). Finding the remuneration of the administrator on the basis of a global sum was not the best way of dealing with the matter. A global sum has the appearance of an

arbitrary decision, not related to the size of the estate dealt with by the administrator and the responsibilities involved or the work done.

(2) We think that the administrator's services should be paid on percentages. But what may be a reasonable percentage in one case, may be too high or too low in the circumstances of another case.

(3) We think that in the absence of agreement between the parties these percentages should be found in the circumstances of each particular case, with the help of established guiding principles ; and as such we do not think that one can do better than refer to the seven points enumerated in the relative English Rules ; rule 1 of the Rules of the Supreme Court (Non-Contentious Probate Costs) 1956 (see the Supreme Court Practice 1970 volume 2 page 715) which is applicable by the Courts in Cyprus by virtue of the provisions of section 58 of the Administration of Estates Law, Cap. 189 and the Rules of Court (Transitional Provisions) 1960 made by the High Court of Justice of Cyprus, pursuant to the provisions of Article 163 of the Constitution (published in the Official *Gazette* of the 17th December, 1960 Supplement 2 page 11).

(4) In the circumstances of this case we came to the conclusion that the fair and reasonable remuneration of the appellant administrator should be found on the following percentages. For the first £5,000 of the amount realised 5% ; on the next £10,000, 2 1/2% and on the following £10,000 or over 1 1/2%.

Appeal allowed with costs from the estate here and below.

Appeal.

Appeal by the administrator against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. and Stylianides, D.J.) dated the 24th January, 1970, (Application No. 85/65) whereby the remuneration of the appellant as administrator of the Estate of the deceased P. Th. was decided on a global basis.

L. Clerides, for the appellant.

C. J. Myrianthis, for the respondent.

Cur. adv. vult.

The following judgments were delivered by :—

VASSILIADES, P. : The absence of rules upon which the remuneration of the administrator could be found in this case, and the absence of an agreement between the parties regarding such remuneration, gave considerable difficulty to all concerned. The parties can only blame themselves for failing to discuss this important question either at the time of engaging the services of the administrator or at any subsequent time in the course of the administration.

The late Polyvios Stylianou Theodossiades, the deceased herein, died intestate on November 26, 1947, at Port Said, Egypt, where he had his fixed place of abode. Part of his estate consisted of immovable property in Cyprus, within the jurisdiction of the District Court of Nicosia :— A house and a building site with some trees thereon, registered in the name of the deceased and situate at Ayii Omoloyitae quarter, Nicosia.

The heirs of the deceased, all of full age, lived mostly abroad. They had an uncle in Cyprus who was apparently taking care of their interests here; but when they decided to dispose of the property in Cyprus, in 1965, some 18 years after the death of the deceased, they preferred to have the appellant appointed as administrator of the estate for the purpose. The appellant is a lawyer of good standing and long experience, dealing with such matters. He was duly appointed as administrator of the estate of the deceased, by order of the District Court of Nicosia, dated May 12, 1965 ; and filed in due course his affidavit with an inventory of the estate on May 22. No agreement was made, however, regarding his remuneration ; and no provision in that connection was made in the Court proceedings for his appointment.

In his capacity as administrator, the appellant proceeded to realise the estate in his hands, by selling the property; which he did in consultation with the heirs either directly by correspondence, or through their uncle and agent in Cyprus. He eventually submitted his accounts and report, showing according to the affidavit filed on April 30, 1969, assets amounting to £25,637 ; and net amount for distribution to the heirs entitled thereto, £23,367. Together with his accounts, the administrator submitted his bill for expenses and for his remuneration, amounting to a total of £2,270 (including £1,847.—fees calculated on

the basis of percentages). But the heirs disputed the amount of the bill ; and eventually the matter came up for determination before the District Court.

The District Court heard evidence on the issue and decided the remuneration of the administrator on a global sum. We have no hesitation in taking the view, at this stage, that finding the remuneration of the administrator on the basis of a global sum was not the best way of dealing with the matter. A global sum has the appearance of an arbitrary decision, not related to the size of the estate dealt with by the administrator and the responsibilities involved or the work done. Unfortunately the Court did not receive from the parties sufficient assistance in the matter ; particularly regarding the determination of such remuneration in similar cases in the District Court of Nicosia.

Be that as it may, we think that the District Court were right in trying to find the remuneration according to the nature of the services rendered in this particular case, as specified in the administrator's bill ; but we think they went wrong in finding " the fair and reasonable remuneration " in a global sum. We think that such services should be paid on percentages. But what may be a reasonable percentage in one case, may be too high or too low in the circumstances of another case. We, therefore, do not think that it would be right to give here any indication as to rates of percentages to be used generally in all circumstances.

We think that in the absence of agreement between the parties, these percentages should be found in the circumstances of each particular case, with the help of established guiding principles ; and as such we do not think that one can do better than refer to the seven points enumerated in the relative English Rules ; rule 1 of the Rules of the Supreme Court (Non-Contentious Probate Costs) 1956, copy of which learned counsel for the appellant was diligent enough to bring out from England for the help of this Court.

Those seven rules are undoubtedly the fruit of practice and experience in a jurisdiction where such services are much more frequently and extensively rendered, than they are in this country. We may quote them here for easier reference :—

" 1. For work done in respect of business to which these Rules apply a solicitor shall be entitled to charge

and be paid such sum as may be fair and reasonable having regard to all the circumstances of the case and in particular to—

(1) the complexity of the matter or the difficulty or novelty of the questions raised ;

(2) the skill, labour, specialised knowledge and responsibility involved on the part of the solicitor ;

(3) the number and importance of the documents prepared or perused, without regard to length ;

(4) the place where and circumstances in which the business or any part thereof is transacted ;

(5) the time expended by the solicitor ;

(6) the nature and value of the property involved ;

(7) the importance of the matter to the client."

With these considerations in mind we have tried to find what would be reasonable percentages in the circumstances of this particular case, taking into account the services rendered by the administrator (the amount of work and time involved in realising and distributing the estate) together with the size of the estate and the responsibility of the administrator in carrying out his duties which are matters directly connected with the standing and experience of the advocate employed for such services. It is not only a matter of careful work ; it is also a matter of the confidence placed in the person entrusted with such delicate and responsible duties.

This particular case demonstrates what we mean by what has just been said. In this case, the heirs had at their disposal the services of a very able and well trusted relative of theirs ; their uncle and agent in Cyprus. Nevertheless, for reasons which they know best, they (the heirs as well as their uncle, I suppose) thought that the matter should be placed in the hands of this particular administrator. Surely they must have had some good reason for doing so.

Now we come to finding the fair and reasonable percentages in the circumstances of this particular case. After giving the matter all due consideration (and I must here admit that we felt rather inclined to be on the lower side than on the higher) we came to the conclusion that the remuneration of the appellant should be found on the

following percentages. For the first £5,000 of the amount realised, 5% ; on the next £10,000, 2 1/2% ; and on the following £10,000 or over, 1 1/2%. These to be percentages on the gross amount collected. On the amounts distributed, we think that in the circumstances of this particular case, the percentage should be as low as possible in view of the little work involved in the division and distribution of the assets ; we fix the percentage on the amount distributed to 1 1/2%. The Registrar to find the precise figures, if necessary.

Coming now to the costs of the proceedings, including the costs of the appeal, we think that the administrator had no alternative to bringing the matter to Court ; and we also think that there was good reason for bringing the case to this Court on appeal. We therefore think that the appellant-plaintiff is entitled to his costs both here and in the District Court ; and that his costs should be paid out of the estate. Any amount still payable to the heirs after providing for the costs, to be paid through their advocate. He will then, naturally, deduct his costs before paying out the amount to his clients, whom he will, no doubt, present with his bill in due course.

JOSEPHIDES, J. : I agree and I would like to emphasize that the percentage fixed by us in this case, for obtaining a grant of representation and administering the estate, give a fair and reasonable remuneration to the appellant advocate in the circumstances of this particular case, having regard to the seven factors commonly known in England as the " seven pillars of wisdom ". These factors are laid down in rule 1 of the English Rules of the Supreme Court (Non-Contentious Probate Costs), 1956 (see The Supreme Court Practice 1970, volume 2, page 715), which are applicable by the Courts in Cyprus by virtue of the provisions of section 58 of the Administration of Estates Law, Cap. 189 and the Rules of Court (Transitional Provisions) 1960, made by the High Court of Justice of Cyprus, pursuant to the provisions of Article 163 of the Constitution (published in the Official *Gazette* of the 17th December, 1960, Supplement 2, page 11). Rule 1 of the English Rules referred to above is quoted in the judgment of the learned President and I need not quote it again.

For the information of the legal profession I think we should also place on record the following information which was kindly supplied to us by Mr. Clerides, counsel for the appellant in the course of his address.

With a view to assisting the profession in England in assessing charges for obtaining grants of representation and administering estates, the Council of the Law Society in October 1959 published certain " guide " figures, which, it was stated, were not intended to be used in any way as a scale, but simply for assistance in assessing a fair and reasonable charge in an average case (see the statement which was published in the November 1960 issue of The Law Society's *Gazette*, at pages 673–4). I quote below an extract from the Law Society's statement :—

" 2. The test in each case must be whether the charge is fair and reasonable having regard to all the seven factors mentioned in Schedule II. These notes, however, are intended to indicate what, in the Council's view, a solicitor should regard as the normal effect of the sixth of these factors, namely, the size of the estate.

3. Where, having regard to the size of estate, the work—

(*a*) is of normal complexity and is neither particularly difficult nor particularly easy and raises no difficult novel questions, and

(*b*) requires not more nor less than the normal amount of skill, labour, responsibility and specialised knowledge, and

(*c*) entails the preparation and perusal of neither an abnormally large, nor an abnormally small, number of documents which are of average importance, and

(*d*) is not required to be done away from the usual place of business or in unusual circumstances, and

(*e*) does not entail the expenditure of more or less than the normal amount of time, and

(*f*) is not of unusual importance to the client, it would be appropriate, on the basis of overhead costs as they are today, for a solicitor acting for personal representatives to charge for his work in obtaining a grant of representation and administering the estate :—

Gross estate (not including aggregable property)		*Solicitor's charges*
£2,000 and up to	£5,000	2 per cent on gross value.
£5,001 and up to	£20,000	2 per cent on first £5,000 and 1½ per cent on remainder.
£20,001 and up to	£100,000	2 per cent on first £5,000, 1½ per cent on next £15,000 and 1 per cent on remainder.

4. Where, however, any of the factors set out in paragraph 3 above are in any way abnormal the charges should be raised, or lowered, as may be appropriate."

It was stressed in the Law Society's statement that the figures given in paragraph 3 above were only intended as a guide to what may be an appropriate charge in respect of the sixth factor, namely, the size of the estate, where none of the other six factors were in any way exceptional ; and that such figures should, therefore, never be used as a " scale ".

It should, however, be added that the Law Society have also informed Mr. Clerides, by their letter dated the 14th May, 1970, that this " guide " is under review by the Council of the Law Society at the present time. The relevant extract from the Law Society's letter reads as follows:

> " I would, however, add a word of warning, in that these ' guide ' figures have now become out-of-date due to the very considerable increase in the overhead expenses in solicitors' offices in this country. Accordingly, our Council have this ' guide ' under review, but I cannot say at present what they might decide about the publication of a revised ' guide ' or when that may take place. In the meantime, solicitors here are advised that, if they wish to use the 1959 ' guide ' they should, in effect, increase it to take account of the increase in the overhead expenses in their office, but the Council have not suggested any particular rate of increase for this purpose. It may be that an increase in the region of 25%–35% would be appropriate, but I regret that I cannot be categorical on the matter."

To sum up, I am of the view that the test in each case must always be whether the charge is fair and reasonable, having regard to all the circumstances of the case and the seven factors mentioned above. Consequently, the percentages approved by this Court in the present case should never be used indiscriminately as a " scale ". What is a fair and reasonable charge must always depend on all the circumstances of the case having regard in particular to all the seven factors.

HADJIANASTASSIOU, J. : I also agree with both judgments and as to the result reached with regard to the percentages fixed by us in the particular facts of this case.

VASSILIADES, P. : In the result appeal allowed ; order for the administrator's remuneration accordingly.

Appeal allowed.