[TRIANTAFYLLIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

THEODORA IOANNIDOU,
Appellant-Plaintiff,

v.

CHARILAOS DIKEOS AND ANOTHER,
Respondents-Defendants.

(*Civil Appeal No.* 4695).

Civil Procedure—Appeal—Time—Enlargement of time within which to file an appeal—Civil Procedure Rules, Order 57, rule 2—Discretion of the Court to be exercised in the light of the circumstances of each individual case—Non-availability of the record and the fact that the appellant was acting without legal assistance, including the belatedness of the objection of the respondents that this appeal is out of time, are relevant considerations in the light of which the Court exercised its discretion in favour of the appellant—Extension of time granted.

Appeal—Time—Extension—See supra.

Interlocutory or final order—Striking out the statement of claim and consequent dismissal of the action—Whether for the purposes of appeal such order is final or interlocutory—Civil Procedure Rules, Order 35, rule 2—If final the time for appeal is six weeks—If interlocutory fourteen days only—Question not decided, inasmuch as the Court thought fit to enlarge the time within which the appeal ought to have been filed.

Cases referred to :

In re Page, Hill v. *Fladgate* [1910] 1 Ch. 489 ;

Hunt v. *Allied Bakeries, Ltd.* [1956] 3 All E.R. 513 ;

Gatti v. *Shoosmith* [1939] 3 All E.R. 916 at p. 920 per Sir Wilfrid Greene, (as he then was) M.R. ;

Pavlou v. *Cacoyiannis* (1963) 2 C.L.R. 405 ;

Georghiou v. *The Republic* (1968) 1 C.L.R. 411.

The facts sufficiently appear in the decision of the Court that the time for the filing of this appeal be enlarged so as to extend up to, and include, the 5th February 1968, when the appeal was filed.

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THEODORA
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AND ANOTHER

Application.

Application for extension of time within which to appeal against the judgment of the District Court of Larnaca (Georghiou, P.D.C. and A. Demetriou, D.J.) dated the 5th January, 1968 (Action No. 430/67) whereby plaintiffs' claim for damages emanating from a building contract was struck out.

A. Vassiliou (*Mrs.*), for the appellant.

G. Achilles, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J.: This appeal was filed by the appellant-plaintiff personally, without the benefit of the services of counsel, against the "judgment" (απόφασις) of a Full District Court in Larnaca, dated the 5th January, 1968, in civil action 430/67.

By virtue of this judgment the action, by which the appellant claims damages against the respondents-defendants (an architect and a building contractor) in connection with the construction of a house in Larnaca, was dismissed as being unfounded and as amounting to an abuse of the process of the Court ; as stated in such judgment, it was ordered in the exercise of the Court's "inherent jurisdiction", that the statement of claim in the action be struck out and the action dismissed.

This development was brought about, without a hearing of the action on its merits, because on the 22nd November, 1967, after counsel for the respondents had filed their statements of defence he applied for the striking out of the statement of claim and the dismissal of the action contending that in so far as respondent 1 was concerned the subject-matter was *res judicata* and that in so far as respondent 2 was concerned the action was an abuse of the process of the Court ; also, that, in any case, the action was frivolous and vexatious. Reference was made in counsel's application to Order 27, rule 3, of the Civil Procedure Rules—(which corresponds to Order 25, rule 4, of the Rules of the Supreme Court, 1883, in England)—and to the inherent jurisdiction of the Court.

To this application the appellant, who had been all along conducting her case in person, filed an opposition, on the 19th December, 1967, and the matter was heard by the

Court below on the 5th January, 1968, when the judgment appealed from was delivered. It was a relatively short hearing ; the Court record consists of only six pages, including the judgment which takes about half a page.

The appellant filed the present appeal on the 5th February, 1968, and it was first fixed for hearing before this Court on the 1st March, 1968. On that date the appellant appeared in person and counsel for the respondents—who has been the same all through the proceedings before the trial Court and before us—did not raise anything by way of a preliminary objection. The hearing of the appeal had to be adjourned to a date to be fixed later, after this Court would deliver its judgments in two related civil appeals (Nos. 4694 and 4655).

When, eventually this appeal came up for hearing, once again, before us, the appellant was, for the first time in these proceedings, represented by counsel.

As soon as the case was called, counsel for the respondents took the course of raising a preliminary objection that the appeal is out of time, under Order 35, rule 2, of the Civil Procedure Rules, in that the judgment appealed from is, allegedly, an interlocutory order and, therefore, an appeal against it, under the said rule 2, had to be made within fourteen days from the date when it was given. As counsel very fairly told this Court, he had not raised such an objection before because the point had only occurred to him after studying the case a few days earlier.

In view of the fact that counsel for appellant was taken by surprise, the case was adjourned to a later date for the hearing of arguments on this preliminary issue ; and we have reserved our decision thereon until today.

The question as to whether or not a Court order is of an interlocutory or of a final nature can occasionally be found to be a rather difficult one to answer as it appears from the judgments in *In re Page, Hill* v. *Fladgate* [1910] 1 Ch. 489 ; the Court of Appeal in England held, not without difficulty, and with some serious misgivings on the part of one of its members, Buckley, L.J., that an order dismissing an action as frivolous and vexatious, under Order 25, rule 4, was an interlocutory order (and see, too, *Hunt* v. *Allied Bakeries, Ltd.*, [1956] 3 All E.R. 513).

Had the position in the present appeal been as clearly defined as in the cases just cited, we might have been inclined to hold that the subject-matter of this appeal is, also, an order of an interlocutory nature.

As, however, the judgment of the Court below is framed it certainly cannot be said that the position is clear enough in order to enable us to decide, without considerable difficulty or hesitation, whether such judgment is of a final or of an interlocutory nature, especially when it is viewed in the light of the whole context of the proceedings.

We would, of course, nevertheless, not have avoided this task had we not thought that in the particular circumstances of this case it is not necessary for us to resolve the issue in question, because, even assuming, without deciding, that the subject-matter of the appeal is an interlocutory one, this is, in our opinion, a proper case in which we should grant an extension of time, under Order 57, rule 2, of the Civil Procedure Rules.

An application for such extension was filed by counsel for the appellant, after counsel for the respondents had raised, rather belatedly, the objection that the appeal was out of time.

In the affidavit in support of this application it is stated that the appellant, not being a lawyer, could not distinguish between an interlocutory and a final order. Of course, a litigant who chooses to appear and conduct proceedings without legal assistance cannot take advantage of this fact in order to evade the consequences of procedural errors made due to his or her ignorance ; but on this occasion we think that the fact that the appellant was acting without legal assistance is quite relevant to the question of the extension applied for, in view of the complicated nature of the issue as to whether the subject-matter of the appeal is an interlocutory or a final order.

It is further stated in the said affidavit, and it has not been disputed, that the record of the trial Court was not ready until the beginning of February, 1968, well after the period, within which an appeal against an interlocutory order could be made, had elapsed. Though the non-availability of the record might not, in other circumstances, have constituted a sufficient ground for granting an extension of time, we are of the view that this is a material consideration in the present case, where so much might depend on the way in which there has been framed the judgment appealed from.

The question of enlarging the time within which to file an appeal is a matter at the discretion of the Court and such discretion has to be exercised in the light of the circumstances

of each individual case. As stated, in this connection, in *Gatti* v. *Shoosmith* [1939] 3 All E.R. 916, by Sir Wilfrid Greene, M.R., (at p. 920) : " The discretion of the Court being, as I conceive it, a perfectly free one, the only question is whether, upon the facts of this particular case, that discretion should be exercised " (see, also, *Pavlou* v. *Cacoyiannis* (1963) 2 C.L.R. 405, and *Georghiou* v. *The Republic* (1968) 1 C.L.R. 411).

In the light of all the circumstances of this case, including the belatedness of the objection of the respondents that this appeal is out of time, we reached the already indicated view that our discretion should, in the interests of justice, be exercised in favour of the appellant and we, therefore, order that the time for the filing of this appeal be enlarged so as to extend up to, and include, the 5th February, 1968, when the appeal was filed.

We make no order as to costs regarding the proceedings related to this preliminary issue.

Order in terms.