

1974  
Jan 31

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

KATHLEEN  
(ALIAS ANDRÉ)  
HJI PANAYI

KATHLEEN (ALIAS ANDRÉ) HJI PANAYI,

*Applicant,*

v.

v.

PANOS G  
HJI PANAYI

PANOS G. HJI PANAGI,

*Respondent.*

(Application in Civil Appeal No. 5231).

---

*Civil Procedure—Appeal—Dismissed for want of prosecution—Order 35, rules 6, 21 and 22 of the Civil Procedure Rules—Reinstatement—Principles applicable—Discretion of the Court—No sufficient justification in the instant case for exercising such discretion in favour of the reinstatement applied for—Application dismissed.*

*Appeal—Want of prosecution—Dismissal—Reinstatement—Discretion—See supra.*

The facts sufficiently appear in the judgment of the Court, dismissing this application for reinstatement of a civil appeal dismissed for want of prosecution.

Cases referred to :

*Ibrahim v. Kasab* (1972) 1 C.L.R. 16;

*Kyriacou v. Georghiadou* (1970) 1 C.L.R. 145.

#### **Application.**

Application for the reinstatement of Civil Appeal No. 5231 which has been dismissed by virtue of the application of rule 22 of Order 35 of the Civil Procedure Rules.

*N. Zomenis*, for the applicant.

*C. Myrianthis* with *Ph. Clerides*, for the respondent.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : The applicant, who is the appellant in Civil Appeal No. 5231, which has been dismissed under rule 22 of Order 35 of the Civil Procedure Rules, seeks the reinstatement by us of such

appeal, in the exercise of our discretionary powers under the said rule.

Regarding the principles governing the exercise of these powers reference may be made, *inter alia*, to *Ibrahim v. Kasab* (1972) 1 C.L.R. 16, and *Kyriacou v. Georgiades* (1970) 1 C.L.R. 145.

The appeal was filed on September 3, 1973, after an extension of the time for appealing had been granted up to September 7, 1973; the judgment appealed from having been delivered on May 18, 1973.

On October 4, 1973, a notice was sent to one of the two counsel—(not the one appearing before us today)—who had signed the notice of appeal on behalf of the appellant, and whose office was the address for service for the purposes of this appeal, informing him of the requirement to comply with rules 6 and 21 of Order 35 of the Civil Procedure Rules. As nothing was done, in this respect, by counsel for the appellant, counsel on both sides were notified on December 5, 1973, that the appeal stood dismissed under the aforesaid rule 22.

We have found no sufficient justification for exercising our discretion in favour of the applicant, so as to reinstate the appeal. It has been stated today that, at present, the other of appellant's two counsel, whose office was the address for service, is, unfortunately, so ill that he cannot go to his office; but, there is nothing in the affidavit, filed in support of the application for reinstatement, which establishes that the said other counsel of the appellant was unable to attend sufficiently to matters concerning his practice (either in person or, at least, by suitable arrangements through a colleague) during the vital period between September 3, 1973, and December 5, 1973.

As a result, the present application has to be dismissed with costs.

*Application dismissed with costs.*

1974  
Jan. 31

KATHLEEN  
(ALIAS ANDRE)  
HJI PANAYI

v.

PANOS G.  
HJI PANAYI