

1975  
Jan. 27

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ATTORNEY -  
GENERAL  
OF THE  
REPUBLIC  
(No. 1)

v.

ADAMSA LTD.  
THROUGH ITS  
TRUSTEE  
PHANOS  
IONIDES

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]  
THE ATTORNEY-GENERAL OF THE REPUBLIC (No. 1),  
*Appellant-Defendant,*

v.

ADAMSA LTD., THROUGH ITS TRUSTEE  
PHANOS IONIDES,

*Respondents-Plaintiffs.*

(Civil Appeal No. 5144).

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*Civil Procedure—Appeal—Notice of Appeal—Amendment—  
Will not be allowed as a matter of course in every  
case—Within discretion of the Court—Application for  
leave to amend—Made after commencement of hearing  
of appeal—Proposed new ground seeking to extend  
considerably the basis on which judgment appealed  
from is challenged—Application refused on this ground  
and in the light of all the particular circumstances of  
the case—Civil Procedure Rules 0.35 r. 4.*

During the hearing of the appeal the appellant applied  
for leave to amend his notice of appeal by adding two  
new grounds of appeal namely, that the doctrine of  
unjust enrichment is not applicable at all in Cyprus  
and that even if it is applicable it ought not to be  
applied in the present case.

At the hearing before the Court below counsel for  
the respondents argued at some length that the doctrine  
of unjust enrichment was applicable to the case; but  
counsel for the appellant replied only in passing on  
this point. The trial Court applied this doctrine but by  
the notice of appeal appellant has not challenged at  
all the relevant part of the judgment.

*Held, 1.* Though under rule 4 of Order 35 of the  
Civil Procedure Rules this Court has an unfettered  
discretion as regards granting or refusing leave for the  
amendment of the notice of appeal at any stage it is  
not to be assumed that leave to amend will be granted  
as a matter of course in every case; because if that  
was so then there would be no need to exercise the

discretion; in each case such discretion has to be exercised judicially.

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2. In the light of all the particular circumstances of the present case and as it is quite clear that by the proposed amendment the appellant is seeking, at this very late stage, during the hearing of the appeal, to extend considerably the basis on which he challenges the judgment appealed from we have reached the conclusion that this is not a case in which our discretion should be exercised in favour of the appellant (see *Vassiades v. Michaelides* (1973) 1 C.L.R. 80, at pp. 81 - 82).

Observations of Josephides J. in *S.O.R.E.L. Ltd. v. Servos* (1968) 1 C.L.R. 123, at p. 126 regarding the need to file such applications well in advance and before the appeal is fixed for hearing and have copy served on the respondent, adopted.

*Application dismissed.*

Cases referred to :

*Vassiades v. Michaelides Bros.* (1973) 1 C.L.R. 80, at pp. 81 - 82;

*S.O.R.E.L. Ltd. v. Servos* (1968) 1 C.L.R. 123 at p. 126.

**Application.**

Application for leave to add two new grounds of appeal in an appeal against the judgment of the District Court of Nicosia (Ioannides, P.D.C. and Stylianides, Ag. P.D.C.) given on the 30th November, 1972 (Action No. 225/67) whereby the Republic was ordered to refund to the plaintiff company the sum of £13,956.195 mils received in the form of banderoles in respect of excise duty.

A. *Frangos*, Senior Counsel of the Republic with  
G. *Constantinou (Miss)*, for the appellant.

G. *Ladas*, for the respondents.

The ruling of the Court was delivered by :-

TRIANTAFYLLIDES, P. : During the hearing of this appeal and, practically, at the conclusion of the address of learned counsel for the appellant, we had to interrupt

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the proceedings because counsel for the appellant applied for an adjournment in order to be enabled to file an application for leave to amend his notice of appeal.

He filed in due course the said application and he sought thereby leave to add two new grounds of appeal, namely that the doctrine of unjust enrichment is not applicable at all in Cyprus and that even if it is applicable it ought not to be applied in the present case. This application has been opposed by counsel for the respondents.

Under rule 4 of Order 35 of the Civil Procedure Rules this Court has an unfettered discretion as regards granting or refusing leave for the amendment of the notice of appeal at any stage; it is not, however, to be assumed that leave to amend will be granted as a matter of course in every case where it is applied for; because if that was so then there would be no need to exercise the discretion in question; in each case such discretion has to be exercised judicially.

In exercising our discretion in the present case we have taken into account, *inter alia*, the following considerations :-

During the hearing of the case before the trial Court counsel for the respondents argued at some length that the doctrine of unjust enrichment was applicable to the case. Counsel for the appellant replied only in passing to this point, while addressing the trial Court regarding another aspect of the case.

From the judgment of the trial Court it appears very clearly that it applied the doctrine of unjust enrichment, but by the notice of appeal which was subsequently filed there was not challenged at all the relevant part of the judgment; one might have thought, *prima facie*, that there was no complaint by the appellant in this respect; but later, during the hearing of this appeal, there have taken place the procedural developments to which we have already referred at the beginning of this Ruling.

We reached the conclusion that this is not a case in which our discretion should be exercised in favour of the appellant. In *Vassiades v. Michaelides Bros.*, (1973) 1 C.L.R. 80, at pp. 81 - 82, in refusing leave to amend

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the notice of appeal during the hearing of the appeal  
this Court observed that: "It is quite clear that by the  
proposed new ground the appellant is seeking, at this  
very late stage, during the hearing of the appeal, to  
5 extend considerably the basis on which he challenges  
the judgment appealed from". It is on the same ground,  
and in the light of all the particular circumstances of  
the present case to which we have already referred, that  
we decided to refuse the leave applied for by the appel-  
10 lant.

We would like to add that we agree fully with the  
observation of Josephides J. in *S.O.R.E.L. Ltd. v.  
Servos*, (1968) 1 C.L.R. 123, at p. 126, "that applica-  
15 tions for the amendment of the grounds of appeal should  
normally be filed with the registry of this Court well in  
advance and before the appeal is fixed for hearing, and  
notice served on the respondent".

The costs of the respondents in respect of this appli-  
cation to be borne by the appellant.

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*Application dismissed with costs.*