CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports
Volume 1 (Civil)

1979 January 23

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

IOANNIS VRAHIMIS HJIHANNI,
Appellant–Defendant,

v.

ANTONIS P. ELIA,
Respondent–Plaintiff.

(*Civil Appeal No.* 5791).

Civil Procedure—Appeal—Notice of appeal—Amendment—Discretion of the Court—Order 35 *rule* 4 *of the Civil Procedure Rules—One of proposed grounds raising legal point not raised before trial Court—Could not be usefully argued on appeal without having regard to the factual premise which did not appear in the record and so inevitably would call for fresh evidence—Remaining grounds a precise and elaborate way of stating those already in the notice of appeal—Amendment not necessary as counsel could put forward in argument the contents of his new grounds—Application dismissed.*

Counsel for the appellant has applied for leave to amend the notice of appeal, which had been filed by the appellant in person, by the substitution of the grounds of appeal for five new grounds.

The first ground* raised a legal point which has not been raised before the trial Court namely that the trial Court could not, in accordance with Order 64 rule 14 of the old English Rules of the Supreme Court, which are applicable to this case, entertain the application for setting aside the arbitration award because such application was not made within six weeks from the award. The remaining grounds were, as described by counsel for the appellant, a more precise and elaborate way of stating what was already covered by the grounds in the notice of appeal.

Held, (1) that without pronouncing on the applicability of the English rule this Court has come to the conclusion that the first ground should not be added as it could not be usefully argued on appeal without having regard to the necessary factual premise which does not appear in the record or the file of the proceedings and so inevitably would call for fresh evidence to be adduced in this Court at such a late stage and without a just and satisfactory explanation for pursuing this course so late in the day.

(2) That though a precise and elaborate way of stating the grounds of appeal in a notice for that purpose is most desirable and helpful, both to counsel and to this Court, yet this Court does not consider it as necessary in the circumstances of this case and is not prepared to exercise its discretion in the matter in favour of granting leave to substitute them for those already in the notice of appeal, a perusal of which shows that they must have been prepared by a person with legal training and not just by a litigant non conversant with the law; that that being so, will not render an amendment of the notice of appeal necessary as counsel for the appellant can put forward in argument the contents of his new grounds; and that, accordingly, the application will be dismissed.

Application dismissed.

Cases referred to:

Subbar v. *Yusif* (1972) 1 C.L.R. p. 30;

Remzi alias Soyhan (No. 1) v. *Sencer alias Remzi* (1972) 1 C.L.R 33;

HjiSolomou (No. 1) v. *Manolis* (1972) 1 C.L.R. 37;

Attorney-General of the Republic v. *Adamsa Ltd.*, (1975) 1 C.L.R. 8 at p. 10.

* Quoted in full at p. 3 *post.*

Application.

Application by appellant–defendant for leave to amend the notice of appeal, filed by the appellant in person, by the substitution of the grounds of appeal for five new grounds.

C. Myrianthis, for the appellant.

E. Odysseos with *St. Karydes*, for the respondent.

A. LOIZOU J. gave the following ruling of the Court. By this application counsel for the appellant has applied for leave to amend the notice of appeal already filed by the appellant in person by the substitution of the grounds of appeal for five new grounds.

These new grounds may be grouped into two sets: The first ground to which I shall be referring verbatim, because of its nature and the circumstances connected with it, and to grounds 2–5 inclusive, which are as described by counsel for the appellant, a more precise and elaborate way of stating what is already covered by the grounds in the notice of appeal. It was pointed out that this was felt necessary by learned counsel for the applicant–appellant, who has now been engaged to appear in this appeal, whereas the original notice was filed by the appellant in person.

With regard to the first ground it has been conceded that a legal point is raised thereby which was not raised before the trial Court, namely, that:

> "The trial Court, in accordance with the English Rules of the Supreme Court (the old Rules) 0.64 r.14 which are applicable to this case, could not entertain the application for setting aside the award, dated 12.7.74, because such application was not made within 6 weeks from 4.12.74 when the award was filed in Court and published to the parties who, at any rate, then got notice and became aware that the award was completed and filed in Court, thus being an official document accessible to both of them.
>
> Consequently the trial Court had no power to proceed to deal with the application or adjudicate thereon and its adjudication thereon, is null and void and without any legal effect, and thus the award stands effective and proper to be entered as a judgment of the Court on the application of the parties or on the Court's own motion."

Order 64, rule 14, of the old English Rules (and I read from the Annual Practice of 1958) reads:-

> "An application to set aside or remit an award may be made at any time within six weeks after such award has been made and published to the parties. Provided that the Court or a Judge may by Order extend the said time either before or after the same has elapsed."

Without pronouncing on the applicability of the English rule providing for the time limit within which an application to set aside or remit an award may be made, and whether such rules may be invoked as supplementing Order 49 of our own Civil Procedure Rules which deals with "Arbitration" and lays down the rules of Court to govern the matter, we have come to the conclusion that this ground should not be added as it could not be usefully argued on appeal without having regard to the necessary factual premise which does not appear in the record or the file of the proceedings and so inevitably would call for fresh evidence to be adduced in this Court at such a late stage and without a just and satisfactory explanation for pursuing this course so late in the day.

With regard to the remaining grounds 2, 3, 4 and 5, we would like to say that though a precise and elaborate way of stating the grounds of appeal in a notice for that purpose is most desirable and helpful, both to counsel and to this Court, yet we do not consider it as necessary in the circumstances of this case and we are not prepared to exercise our discretion in the matter in favour of granting leave to substitute them for those already on the notice of appeal, a perusal of which shows that they must have been prepared by a person with legal training and not just by a litigant non conversant with the law; and being so will not render an amendment of the notice of appeal necessary as counsel for the appellant can put forward in argument the contents of his new grounds (See *Sabbar* v. *Yusuf* (1972) 1 C.L.R. p. 30).

This Court has consistently stated that Order 35, rule 4, of the Civil Procedure Rules gives it an unfettered discretion as regards granting or refusing leave for amendment of the notice of appeal at any stage (*Romzi, Ragibe, alias, Ragibe Soylan (No. 1)* v. *Ayten Sencer, alias, Ayten Remzi* (1972) 1

C.L.R. 33; *Maria HjiSolomou (No. 1) v. Georghios Manolis etc.* (1972) 1 C.L.R. p. 37; but as stated in the case of *The Attorney-General of the Republic No. 1 v. Adamsa Ltd. etc.*, (1975) 1 C.L.R. p. 8, at p. 10: "... 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".

For all the above reasons we dismiss this application with costs against the appellant.

Application dismissed with costs.