1979 November 12

[SAVVIDES, J.]

INTERNATIONAL BONDED STORES LTD.,

Plaintiffs,

v.

MINERVA INSURANCE CO. LTD.,

Defendants.

(*Admiralty Action No.* 507/77).

Practice—Trial of action—Plaintiff's counsel retained for the defence of a criminal case before the District Court—Application to adjourn trial to enable him to attend—Discretion of the Court—Principles on which it should be exercised—Action pending for a year and neither party moved the Court to have it fixed for hearing—No injustice will be caused to defendants which cannot be compensated in costs—Party who will suffer more injustice the plaintiffs if adjournment refused—Application granted.

Practice—Trial of action—Adjournment—Counsel appearing before two Courts at the same time—Procedure for obtaining adjournment—Practice direction of the Supreme Court to the District Courts of the 28th December, 1965.

This was an oral application by counsel for the plaintiffs for the adjournment of the hearing of this action, made on the day when it was fixed for hearing, on the ground that counsel was on such day retained to defend a police officer who was charged before the District Court of Nicosia on a number of counts for forgery and uttering forged documents. Counsel did on the 7th November, 1979, apply to the District Court for the adjournment of the criminal case but due to the urgency of the case his application was refused; and as the time between the 7th November and the day of hearing of this action was short counsel did not have sufficient time to file an application for the adjournment of this action or instruct another advocate to study and conduct the hearing of this action on his behalf.

The action was filed on the 22nd December, 1977 and the pleadings were concluded in February, 1978. Thereafter the action remained pending and neither party moved the Court to have the case fixed for hearing; it was fixed for hearing on the 28th May, 1979, at the Registrar's instance, after the parties had for a period of one year failed to apply for a date of trial. The hearing of the 28th May was adjourned and finally fixed for November 12, 1979 upon an application by plaintiffs' counsel, who happened to be abroad at the time, and which was not opposed by counsel for the defendants.

Counsel for the defendants opposed the application on the ground that there would result undue delay in the trial if an adjournment was granted.

Held (1), that in considering an application for adjournment the Court is vested with powers, if it thinks it expedient, in the interests of justice, to postpone or adjourn a trial for such time and to such place and upon such terms, as it may think fit; that where the refusal of an adjournment would result in a serious injustice to the party requesting the adjournment, the adjournment should be refused only if that is the only way that justice can be done to the other party.

(2) That Counsel for defendants failed to persuade this Court that, by granting the application, defendants will be prejudicially affected or justice will not be done to them; that the party who will suffer more injustice if the adjournment is refused, are the plaintiffs who, on the one hand if the adjournment is refused, will lose their claim and, on the other hand, if the adjournment is granted they will delay in having a judgment and realizing it, if in their favour; that on the facts before this Court, and not overlooking the fact that for a period of one year the parties did not apply for a date of hearing, the application for adjournment is justified and no injustice will be caused to the defendants which cannot be compensated by the payment of costs; and that, accordingly, the application will be granted and the hearing will be adjourned to the 23rd January, 1980 (see, also, the principles enunciated by the Supreme Court in a line of cases beginning with *Tsiartas and Another* v. *Yiapana and Another*, 1962 C.L.R. 198).

Application granted.

Per curiam: Before concluding, I wish to point out that when counsel have to appear for hearing before two Courts at the

same time, they should make arrangements in time to instruct some other advocate to appear for them in one of the two cases, or where this is not possible, they may adopt the procedure set out in a practice direction of the Supreme Court to the District Courts of the 28th December, 1965, which reads as follows:

"No adjournments need be granted by District Courts or Assize Courts on the ground that counsel concerned has to appear before the Supreme Court, unless such counsel has contacted the Supreme Court through the Chief Registrar and the Supreme Court finds it proper to request a District Court or Assize Court to consider granting such counsel an adjournment for the purpose.

It is to be understood that this course will be adopted by the Supreme Court only on exceptional occasions as e.g. when an appeal before the Supreme Court continues unexpectedly into the following day".

Cases referred to:

Maxwell v. *Keun* [1928] 1 K.B. 645 at pp. 657, 659;

Walker v. *Walker* [1967] 1 All E.R. 412;

Charalambous v. *Charalambous and Another* (1971) 1 C.L.R. 284;

Tsiarta and Another v. *Yiapana and Another*, 1962 C.L.R. 198 at p. 208;

Nicola v. *Christofi and Another* (1965) 1 C.L.R. 324 at p. 338;

Hji Nicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421 at p. 431;

Athanassiou v. *The Attorney-General of the Republic* (1969) 1 C.L.R. 439 at p. 455;

Edwards v. *Edwards* [1968] 1 W.L.R. 149 at pp. 150, 151.

Application.

Application by plaintiffs for the adjournment of the hearing of the action.

E. Vrahimi, for *L. Papaphilippou*, for the plaintiffs.

E. Efstathiou, for the defendants.

SAVVIDES J. gave the following decision. On the day when this action was fixed for hearing, counsel for the plaintiffs

submitted an oral application for the adjournment of the hearing of the action. The grounds relied upon in support of his application are as follows:

Counsel was retained to defend a police officer who is charged before the District Court of Nicosia, on a number of different counts for forgery and uttering forged documents and which, due to its nature and urgency, was fixed for hearing by the District Court today. On the 7th November, 1979 when the date of the hearing of the criminal case was fixed, counsel for the plaintiffs informed the Court that he was engaged today before the Supreme Court in connection with the present action and applied for an adjournment of that case. Due to the urgency of the case, his application for adjournment was refused. As the time between the 7th November and today was short, counsel for plaintiffs did not have sufficient time to file an application for the adjournment of this action, or instruct another advocate to study and conduct the hearing of this action on his behalf.

Counsel for the defendants strongly opposed the application on the following grounds:

(a) This is an old action having been filed in 1977 and an adjournment has already been granted on a previous occasion on the application of counsel for the plaintiffs due to his absence abroad.

(b) The defendants being an Insurance Company, they keep a reserve fund for each claim pending against them, which, at the end of each year, they show as outstanding, carrying it forward for the next year, and they cannot keep such reserve fund outstanding indefinitely.

In considering an application for an adjournment the Court is vested with powers, if it thinks it expedient, in the interest of justice, to postpone or adjourn a trial for such time and to such place and upon such terms, as it may think fit. (Civil Procedure rules, Order 33, r. 6. Also, English Rules of the Supreme Court 1960, Order 36, rule 34 and Order 36, rule 10(3) which are applicable in Cyprus in Admiralty proceedings by virtue of rule 237 of our Admiralty Rules and also by section 19 and section 29(2)(a) of the Courts of Justice Law 14 of 1960 which

adopts the practice of the Admiralty Division of the High Court of Justice in England, in force on 15.8.1960).

Guidance in the exercise of the discretion is found in *Maxwell* v. *Keun* [1928] 1 K.B. 645, the underlying principle of which is that where the refusal of an adjournment would result in a serious injustice to the party requesting the adjournment, the adjournment should be refused only if that is the only way that justice can be done to the other party. Atkin L.J. is reported at p. 657, as having said the following:

> " The result of this seems to me to be that in the exercise of a proper judicial discretion no Judge ought to make such an order as would defeat the rights of a party and destroy them altogether, unless he is satisfied that he has been guilty of such conduct that justice can only properly be done to the other party by coming to that conclusion. I am very far from being satisfied that that is so in this case; on the other hand, I am quite satisfied that very substantial injustice would be done to the plaintiff by refusing the application that this case should be postponed, and that that is the result of the present order".

And on the question of prejudice to the other side in the same case at p. 659, Lawrence L.J. had this to add:

> " I have heard no word said on behalf of the defendants that they will in any way be prejudiced by the case being postponed until next term and there is no evidence whatever that they will be prejudicially affected by such postponement".

The principles set out in *Maxwell* v. *Keun* were reiterated and adopted in *Walker* v. *Walker* [1967] 1 All E.R. 412 and both these cases were cited with approval in *Charalambous* v. *Charalambous and another* (1971) 1 C.L.R. 284.

It has been repeatedly stressed by our Supreme Court in a number of cases that delays in the hearing of a case are highly undesirable and are to be deprecated and that adjournments should be avoided as far as possible. In *Tsiarta and another* v. *Yiapana and another*, 1962 C.L.R. 198 the following observations were made by Josephides, J. at page 208 concerning adjournments:

> " A further word needs to be said with respect to adjourn-

ments. They produce justifiable dissatisfaction by litigants and their witnesses, and statistical records of this Court confirm the opinion that there are far too many. If an action can proceed the first time it comes on for trial so much the better. When adjournments are necessary there should not be more than one or two. After that there should be no more adjournments except in unusual circumstances, as to which the Judge has to decide. Having made these comments it must be added these will be very unusual circumstances in which there may be many adjournments, but they should be few in number".

Such observations were reiterated in *Hji Erini Nicola* v. *Charalambos Christofi and another* (1965) 1 C.L.R. 324 by Vassiliades, P. at p. 338, as follows:-

" In a judgment delivered by the High Court some time prior to the hearing of this case by the trial Judge, observations were made by the High Court deprecating the piecemeal hearing of a case and the delays in the delivery of reserved judgments by trial Courts. Furthermore, the view was expressed that adjournments should, as far as possible, be avoided, except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion. (*Tsiarta and another* v. *Yiapana*, 1962 C.L.R. 198).

These observations of the High Court are based on the provisions of Article 30, paragraph 2, of the Constitution regarding the constitutional right of a citizen to a fair trial within a reasonable time. It cannot be too highly stressed that trial Courts should comply with these constitutional provisions with meticulous care".

And also in *Eleni Gr. Hji Nicolaou* v. *Mariccou Antoni Gavriel* and another (1965) 1 C.L.R. 421, by Zekia, P. at p. 431:

" Finally we desire to express once more our disapproval for the delays in the hearing of cases. In a recent judgment (*Nicola* v. *Christofi and Another*, reported in this vol. at p. 324) we had occasion to reiterate our previous observations deprecating the piecemeal hearing of cases and the delays in the delivery of reserved judgments. We also expressed the view that adjournments should, as far as

possible, be avoided except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion (see also *Tsiartas and another* v. *Yiapana*, 1962 C.L.R., 198 at p. 207).

In *Athanassiou* v. *The Attorney-General of the Republic* (1969) 1 C.L.R. p. 439, at p. 455, Josephides, J. reiterated what was said by Sir Jocelyn Simon, P. in *Edwards* v. *Edwards* [1968] 1 W.L.R. 149 at pages 150, 151:

> " It is desirable that disputes within society should be brought to an end as soon as reasonably practical and should not be allowed to drag festeringly on for an indefinite period. That last principle finds expression in a maxim which English Law took over from the Roman Law: It is in the public interest that there should be some end to litigation .....
> .....
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> As long ago as Magna Carta, King John was made to promise not only that justice should not be denied but also that it should not be delayed; and there have been times in our history when various Courts have come under severe criticism for their procedural delays".

With the above principles in mind I come now to consider whether this application should be granted or refused. In considering the grounds relied upon by counsel for the defendants in opposing this application, I find it necessary to go back to the history of this action. The writ of summons was issued on 22nd December, 1977 and the pleadings were concluded in February, 1978. Thereafter the action remained pending in the Registry of the Court and neither party moved the Court to have the case fixed for hearing. It was at the Registrar's instance, after parties had for a period of one year failed to apply for a date of trial, that the case was fixed for hearing. The hearing was fixed on 28.5.1979 when on an application on behalf of plaintiffs' counsel who happened to be abroad at the time and which was not opposed by counsel for the defendants, the hearing was adjourned and finally fixed for today.

Turning now to the argument of counsel of defendants that

undue delay in the trial of this action will result if an adjournment is granted taking into consideration the fact that this is an old action and also in view of the fact that an adjournment has already been granted as well as all other arguments advanced by him, I have no hesitation in saying that he failed to persuade me that, by granting the application, defendants will be prejudicially affected or justice will not be done to them. It is true that an adjournment has already been granted to plaintiffs; there was no objection, however, to such adjournment by counsel for the defendants at that time, who, on the contrary, consented to the adjournment and claimed no costs. On the question of delay in the hearing of this action, the fact that for a period of one year the parties did not apply for a date of hearing, cannot be overlooked. If the defendants, as they allege, were in such a hurry to have this case concluded, they could, in view of the failure of the plaintiffs to apply for a date of trial, either apply for a date of trial or move the Court to dismiss the action for want of prosecution by the plaintiffs. No such step was taken and defendants left the case pending for a long time.

In considering as to whether injustice will be caused to either party by granting or refusing the adjournment, I find that the party who will suffer more injustice if the adjournment is refused, are the plaintiffs who, on the one hand if the adjournment is refused, will lose their claim and, on the other hand, if the adjournment is granted they will delay in having a judgment and realizing it, if in their favour.

On the facts before me I am satisfied that the application for adjournment is justified and that no injustice will be caused to the defendants which cannot be compensated by the payment of costs. In the result, I grant the application and I adjourn the hearing to the 23rd January, 1980 at 9.30 a.m. with today's costs in favour of the defendants.

Before concluding, I wish to point out that when counsel have to appear for hearing before two Courts at the same time, they should make arrangements in time to instruct some other advocate to appear for them in one of the two cases, or where this is not possible, they may adopt the procedure set out in a practice direction of the Supreme Court to the District Courts of the 28th December, 1965, which reads as follows:

" No adjournments need be granted by District Courts or

Assize Courts on the ground that counsel concerned has to appear before the Supreme Court, unless such counsel has contacted the Supreme Court through the Chief Registrar and the Supreme Court finds it proper to request a District Court or Assize Court to consider granting such counsel an adjournment for the purpose.

It is to be understood that this course will be adopted by the Supreme Court only on exceptional occasions as e.g. when an appeal before the Supreme Court continues unexpectedly into the following day".

Application granted.