

1980 May 28

[SAVVIDES, J.]

MANOLIS KRANIDIOTIS,

Plaintiff,

v.

THE SHIP M/V AMOR,

Defendant.

(Admiralty Action No. 100/77).

*Practice—Trial of action—Adjournment—Discretion of the Court—
Principles applicable—Conduct of the parties a relevant considera-
tion—Application by defendant for adjournment because witness,
who had not been summoned, could not attend—Hearing previously
5 adjourned on the application of the plaintiffs—Plaintiff will not
be prejudicially affected taking into consideration his conduct so
far—Unfair and unequal treatment to the defendant if application
refused—Granted.*

10 This was an oral application by Counsel for the defendant
for the adjournment of the hearing of the action on the ground
that one of his main witnesses, whom he had not summoned
could not attend the Court. The application was strongly
opposed by Counsel for the plaintiff on the ground that there
will be unjust delay and that plaintiff will be financially pre-
15 judiced.

20 The plaintiff delayed for about seven months the filing of his
petition; and the hearing of the action had already been
adjourned, on the application of Counsel for the plaintiff, on
the ground that plaintiff was abroad and could not attend the
Court. At this earliest instance the hearing was adjourned
sine die to be fixed on the application of either party; and such
application was filed by the plaintiffs after seven months.

25 *Held, (after stating the principles which should guide the Court
in the exercise of its discretion in granting an adjournment—
vide p. 300 post) that the conduct of the parties has a bearing
in the consideration of an application for an adjournment;*

that in the present case it was the conduct of the plaintiff which has caused unnecessary delays and not that of the defendant at least in all proceedings up to the last hearing of the action; that by granting this adjournment the plaintiff will not be prejudicially affected taking into consideration the whole of his conduct so far; that though the ground put forward by counsel for the defendant might have not in a proper case be a ground for granting an adjournment, in view of the fact that the witness who was absent from the hearing, was not properly summoned to attend, once an adjournment was granted previously in favour of the plaintiff it will be an unfair and unequal treatment to the defendant if the application is refused; and that, accordingly, an adjournment will be granted. 5 10

Application granted.

Per curiam: If advocates do not wish to be treated unfairly by witnesses they should summon them in time to attend the Court so that in case of unjustified failure on their part to attend, then a warrant of arrest may be applied for. 15

Cases referred to: 20

Tsiarta and Another v. Yiapana and Another, 1962 C.L.R. 198;
Nicola v. Christofi and Another (1965) 1 C.L.R. 324;
HjiNicolaou v. Gavriel and Another (1965) 1 C.L.R. 421;
Athanassiou v. The Attorney-General of the Republic (1969) 1 C.L.R. 439; 25
Charalambous v. Charalambous and Another (1971) 1 C.L.R. 284;
International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd. (1979) 1 C.L.R. 557.

Application. 30

Application by the defendant for the adjournment of the trial of the action on the ground that a witness had to be summoned in the light of the evidence given by the plaintiff.

A. Mathikolonis, for the plaintiff.

Ph. Valiandis, for the defendant. 35

SAVVIDES J. gave the following judgment: This is an application for an adjournment of the hearing of the action, which was to be continued to-day.

The hearing of the action commenced on the 6th May, 1980 when plaintiff gave his evidence and concluded his case. The case for the defendant then commenced and after the evidence of one of the main witnesses for the defence was heard, counsel
5 for the defendant applied for an adjournment on the ground that a witness had to be summoned by the defendant in the light of the evidence already given by the plaintiff. The application, as a matter of fact, was made late in the day and was not objected to by the other side. As a result, the hearing was
10 adjourned for continuation to-day.

When the case came up for hearing to-day, counsel for the defendant applied orally for an adjournment and the reason advanced was that one of the main witnesses for the defence could not attend the Court to-day. Counsel admitted that he
15 did not issue a summons to this witness because the witness assured the owner of the defendant ship that he was coming to-day to give evidence and a summons was not necessary. This morning, the wife of the witness, informed counsel that the witness had to leave for Paphos for urgent unforeseen
20 reason for which no particulars could be given.

Counsel for the defendant submitted that refusal of his application for adjournment will cause injustice to the defendant and that plaintiff in any event will not be prejudiced by this adjournment, otherwise than in respect of costs and that the defendant
25 was ready to pay to-day's costs for the adjournment.

The application was strongly opposed by counsel appearing for the plaintiff who alleged that there will be unjust delay in the present action and that plaintiff will be financially prejudiced.

It has been repeatedly stressed by our Supreme Court in a
30 number of cases that delays in the hearing of a case are highly undesirable and that adjournments should be avoided as far as possible and that only in unusual circumstances they must be granted. The reason for this, is that it is in the public interest that there should be some end to litigation and, furthermore,
35 the right of a citizen to a fair trial within a reasonable time according to the Constitution and the Courts should comply with these constitutional provisions with meticulous care. The discretion of the Court in granting an adjournment should be exercised in a proper judicial manner and an order for

an adjournment should not be made if there is danger that the rights of a party before the Court will be prejudicially affected by such adjournment. (*Tsiarta and another v. Yiapana and another*, 1962 C.L.R. 198, *Hji Erini Nicola v. Charalambos Christofi and another* (1965) 1 C.L.R. 324, *Eleni Gr. Hji Nicolaou v. Mariccou Antoni Gavriel and another* (1965) 1 C.L.R. 421, *Athanassiou v. The Attorney-General of the Republic* (1969) 1 C.L.R. 439 and *Charalambous v. Charalambous and another* (1971) 1 C.L.R. 284. All these authorities and the underlying principles which should guide the Court in the exercise of its discretion in granting an adjournment were reviewed by me in the recent decision of this Court in *International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R. 551.)

The grounds put forward by counsel for the defendant in this case is that a witness whom he had not summoned did not attend the Court to-day. This, by itself, might have not been a sufficient ground for allowing this adjournment. The Court cannot be handled by witnesses at their caprice and thus time which is otherwise valuable for dealing with other cases which are pending before this Court be wasted to the detriment of such other cases.

Going through the history, however, of these proceedings, I cannot accept the argument of counsel for the plaintiff that the plaintiff will be prejudicially affected by any delay which may be caused as a result of an adjournment. On the 16th April, 1977 when this action came up before this Court for directions, plaintiff was ordered to file his petition within ten days. Instead of complying with such order in time, if the plaintiff was really in a hurry, his petition was filed on the 7th November 1977, that is, seven months later. The answer of the defendant was filed on the following day, the 8th November, 1977 and then the action was fixed for hearing on the 28th May, 1979 after a request that it was pending for a long time. On the date so fixed for hearing, neither plaintiff nor his advocate attended the Court but through another counsel who appeared on his behalf, counsel for plaintiff applied at the last moment for an adjournment on the ground that the plaintiff was abroad and could not attend the Court. No reason was given why such application was not made in time to avoid wasting the Court's time on that day. Counsel for the defendant, though

ready to proceed with the hearing, did not object to such adjournment and as a matter of fact he did not ask for the payment of his costs forthwith. The hearing was adjourned sine die to be fixed on the application of either party; such application was
5 filed by the plaintiff on the 11th December, 1979 that is, after seven months' delay.

The conduct of the parties has a bearing in the consideration of an application for an adjournment. In the present case, it was the conduct of the plaintiff which has caused unnecessary
10 delays and not that of the defendant at least in all proceedings up to the last hearing of the action.

I have taken seriously into consideration the conduct of the plaintiff and especially concerning the adjournment of the 28th May, 1979. I have not been satisfied that by granting this
15 adjournment the plaintiff will be prejudicially affected taking into consideration the whole of his conduct so far. There is no doubt, as I have already said, that the ground put forward by counsel for the defendant might have not in a proper case be a ground for granting an adjournment, in view of the fact
20 that the witness who was absent from the hearing, was not properly summoned to attend. If advocates do not wish to be treated unfairly by witnesses they should summon them in time to attend the Court so that in case of unjustified failure on their part to attend, then a warrant of arrest may be applied
25 for. Once, however, an adjournment was granted previously in favour of the plaintiff under the circumstances I have described, I find that it will be an unfair and unequal treatment to the defendant if I refuse the present application. Therefore, though with reluctance, I have decided to grant the adjournment
30 with costs in favour of the plaintiff.

I shall fix this case during the summer vacations but I wish to make it clear to both parties that no other adjournment will be granted on similar grounds. The hearing is fixed for continuation on the 24th July, 1980 at 9.30 a.m.

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Application granted.