

1981 March 20

[DEMETRIADES, J.]

ABDUL HAMID AL SAHI,

Plaintiff,

v.

THE SHIP "ALGAZERA",

Defendant.

(Admiralty Action No. 300/79).

Practice—Trial of action—Adjournment—Discretion of the Court—Principles applicable—Plaintiff a foreigner—Unable to attend Court because he was under arrest in his country—Whether pendency of an action in England, between the same parties, and alleged inability of plaintiff to pay the costs grounds for refusing the adjournment—Plaintiff has already given security for costs—Adjournment granted.

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On the day fixed for the continued hearing of the above action counsel for the plaintiff applied for an adjournment on the ground that the plaintiff, who was a foreigner, has found himself in the predicament of being arrested in his country and was still under arrest; and was, thus, unable to attend the Court for the continuation of the hearing of the action.

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The defendats opposed the application mainly on the grounds that no injustice will be caused to the plaintiff if the action is dismissed, because there is a pending action between the same parties in England and that their costs cannot reasonably be met by the plaintiff.

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Held, (after stating the principles governing the exercise of the Court's discretion in granting or refusing an adjournment—vide pp. 187–8 post) that the plaintiff cannot be deprived of his rights to prosecute his claim in Cyprus because, there is an action pending in England between the same parties; that the question of costs is not a ground that can persuade this Court to refuse the adjournment because the plaintiff has already filed a security for costs and if this is not sufficient to meet

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the costs that will be awarded in favour of the defendants, they can apply for further security for costs; that considering the facts of the present case and taking into account that the inability of the plaintiff to appear today is not due to his own
 5 volition or negligence, but to unusual circumstances this Court has decided to grant the adjournment applied for.

Application granted.

Cases referred to:

Kier (Cyprus) Ltd., v. Trengo Constructions Ltd. (1981) 1 C.L.R. 30;

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International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd., (1979) 1 C.L.R. 557;

Kranidiotis v. The Ship M/V Amor (1980) 1 C.L.R. 297 at pp. 299-300.

15 **Application.**

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

E. Psyllaki (Mrs.), for the plaintiff.

D. HadjiChambis with P. Panayi (Miss), for the defendants.

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Cur. adv. vult.

DEMETRIADES J. read the following ruling. The hearing of this action was fixed to continue today but counsel appearing for the plaintiff applied for an adjournment. Her application was hotly opposed by the defendants on a number of grounds.

25 In a very recent judgment of the Supreme Court (see *Kier (Cyprus) Ltd. v. Trengo Constructions Ltd.* (1981) 1 C.L.R. 30, the Court reviewed the principles that should govern the exercise of a Court's discretion in granting or refusing an adjournment and it adopted the principles set out in the case of *International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.*,
 30 (1979) 1 C.L.R. 557. These principles were reiterated in the case of *Kranidiotis v. The Ship M/V Amor*, (1980) 1 C.L.R. 297, where the following are stated (at pp. 299-300):-

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"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 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, 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".

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In the *Kier (Cyprus) Ltd.* case (*supra*), the Court unanimously held that:-

"The question whether an adjournment will be granted or not is undoubtedly a matter of judicial discretion. As such it has to be examined on the particular facts of each case and not in abstracto; whether an adjournment will be granted or not must always be considered in the light of the right to a hearing within a reasonable time as provided by Article 30, para. 2, of our Constitution and Article 6, para. 1 of The European Convention on Human Rights of 1950, ratified by The European Convention on Human Rights (Ratification) Law 1962 (Law No. 39 of 1962)".

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The facts of the present case are in effect undisputed. The adjournment was sought because the plaintiff has found himself in the predicament of being arrested in his country and is still under arrest and he was thus unable to attend the Court for the continuation of the hearing of the action.

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The defendants' grounds of opposition are that all along in these proceedings the plaintiff has acted in bad faith; that no injustice will be caused to him if the action is dismissed—because there is a pending action between the same parties in England—and that their costs cannot reasonably be met by the plaintiff.

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With regard to the first ground of the objection, I have not been persuaded by the defendants that the plaintiff has, at any time in these proceedings, been acting in bad faith. It is correct that on the 9th January, 1981, when this action was fixed for further hearing, the plaintiff did not turn up, but as it appears from the record, this was due to a misunderstanding between him and his counsel.

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With regard to the second ground, I do not think that the plaintiff should be deprived of his right to prosecute his claim in Cyprus because there is an action pending in England between the same parties.

- 5 As regards now the allegation of the defendants that if the adjournment is granted the costs which may be awarded in their favour cannot reasonably be met by him, I find that this is not a ground that can persuade me to refuse the adjournment. The plaintiff has already filed a security for costs and if this
10 is not sufficient to meet the costs that will be awarded in favour of the defendants, they can apply for further security for costs, in which case if an order is granted to that effect and if the plaintiff fails to comply, the defendants can apply for the dismissal of the action.
- 15 Having considered the facts of the present case and taking into account that the inability of the plaintiff to appear today is not due to his own volition or negligence, but to unusual circumstances, I have decided to grant the adjournment applied for, and fix the action for mention on the 2nd April, 1981, at
20 9.15 a.m., when counsel for the plaintiff will have to appear and inform the Court of the position with regard to her client.

As regards the costs of this adjournment, I find that the defendants are entitled to them. I shall allow costs of one advocate plus the costs of travelling from England to Cyprus
25 and back and subsistence here of one of their witnesses, but I shall not allow the costs of two of their witnesses who came from England, as defendants' counsel were, on the 13th March, 1981, by telex, informed of the intention of counsel for the plaintiff to apply for the adjournment of the hearing and they
30 were given the reasons why this application was to be made. In any event, as it appears from the record, the defendants knew of the situation and had ample time to inform their witnesses not to travel to Cyprus.

Costs to be assessed by the Registrar.

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Application granted.