

1981 May 7

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

ESEFECO LTD.,

*Appellants-Defendants.*

v.

OLYMPOS TOURS LTD.,

*Respondents-Plaintiffs.*

(Civil Appeal No. 5950).

*Practice—Trial of action—Adjournment—Discretion of trial Court—Principles applicable—Failure of appellants to attend Court—Counsel’s application for adjournment—Previous hearing of action adjourned on same ground—Court’s discretion in refusing adjournment properly exercised.*

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On April 6, 1977 the respondents–plaintiffs filed an action against the appellants–defendants for the value of air freight and other expenses incurred for the carriage of the goods of the appellants from Larnaca to Lagos, Nigeria. The case came up for hearing on November 25, 1978 and it was fixed for hearing on March 22, 1979, when counsel for the appellants applied for an adjournment as his client was not present. The case was then adjourned to the 24th March, 1979 “for mention with costs against the defendant, when a settlement is declared on 24.3.1979. If case not settled to be presented for hearing on 30.3.1979”. On March 24, 1979 counsel for the respondents appeared but there was no appearance for the appellants and the case was left for hearing on the 30th March, 1979. On this date Counsel for the appellants applied for an adjournment on the ground that his clients did not attend the Court, although they had been notified. The adjournment was objected to and was refused by the Court. Thereupon Counsel for the appellants withdrew from the case, with the leave of the Court, evidence was heard and judgment was given in favour of the respondents–plaintiffs.

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Upon appeal by the defendants it was contended that by refusing to grant the adjournment the trial Court denied to the

appellants the rights to be heard, to present their case before the Court, to cause evidence to be adduced and to examine witnesses as safeguarded by Article 30(2) and (3)(b) and (c) of the Constitution; and that, furthermore, the trial Court  
5 wrongly exercised its discretion in the circumstances.

*Held, (after stating the principles governing the granting of an adjournment—vide pp. 239–40 post) that bearing in mind all relevant circumstances the trial Judge exercised his discretion in the matter properly; that he obviously paid due regard to the right  
10 of hearing within a reasonable time, which the respondent-plaintiffs had and the protection of their interests which naturally includes the timely recovery of what was eventually found to be due to them; accordingly the appeal must fail (Kier (Cyprus) Ltd. v. Trencos Constructions Ltd. (1981) 1 C.L.R. 30 applied).*  
15 *Appeal dismissed.*

Cases referred to:

*Kier (Cyprus) Ltd. v. Trencos Constructions Ltd. (1981) 1 C.L.R. 30;*  
*International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd. (1979) 1 C.L.R. 557;*  
20 *Kranidiotis v. Ship "Amor" (1980) 1 C.L.R. 297;*  
*Tofus and Another v. Agathangelou (1980) 1 C.L.R. 560.*

### Appeal.

Appeal by defendants against the judgment of the District  
25 Court of Nicosia (Stavrinakis P.D.C.) dated the 30th March, 1979, (Action No. 1512/77) whereby they were adjudged to pay to the plaintiff the sum of C£655.850 mils as value of airfreight and other expenses incurred for the carriage of their goods from Larnaca to Lagos Nigeria.

30 *A. Eftychiou, for the appellants.*  
*M. Iacovou, for the respondents.*

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment of the Court. This is an appeal by the defendants (hereinafter to be called  
35 the appellants) against the judgment of the District Court of Nicosia whereby they were adjudged to pay to the plaintiffs (respondents in these proceedings), the sum of C£655.850 mils with interest thereon at 4% p. a. as from 30.3.1979 to date of

payment, their counterclaim was dismissed and they were also ordered to pay to the respondents the costs, both of the claim and the counterclaim.

The grounds of law upon which this appeal has been argued is that the trial Court by refusing to accede to the application of their counsel to adjourn the hearing of the case when they did not attend, though duly notified by him of the date, appellants were denied their rights to be heard, to present their case before the Court, to cause evidence to be adduced and to examine witnesses as safe-guarded by Article 30 of the Constitution and in particular paras. 2 & 3 (b) and (c) thereof. Furthermore that the trial Court wrongly exercised its discretion in the circumstances.

The relevant facts as they appear in the record of the case are the following:

The respondents filed their action in the District Court of Nicosia on the 6th April, 1977, with a specially endorsed writ claiming thereby the amount adjudged by the judgment as the agreed and/or reasonable value of airfreight and other expenses incurred for the carriage of the goods of the appellants from Larnaca to Lagos, Nigeria, via Athens. The pleadings were closed on the 26th May, 1978, and the case came up before a District Judge on the 25th October, 1978, when it was discovered that the subject-matter of the counterclaim exceeded the jurisdiction of a District Judge and the Registrar was directed to send the file to the appropriate Court to be dealt with accordingly.

On the 25th November, 1978, the case came up before the learned President of the District Court and the case was adjourned for hearing on the 22nd March, 1979, when counsel for the appellants applied for an adjournment as his client was not present. Counsel for the respondent did not object to the adjournment but claimed costs and intimated that as there were prospects of settling the case, he would not insist on being paid the cost of the adjournment if the case was eventually settled. The case was then adjourned to the 24th March, 1979, "for mention with costs against the defendant, when a settlement is declared on 24.3.1979. If case not settled to be presented for hearing on 30.3.1979". On the 24th March, 1979, counsel for the respondents appeared but there was no appearance for

the appellants and the case was left for hearing on the 30th March, 1979, as already intimated at the previous adjournment. The question of costs, however, for that appearance was reserved. On the 30th March, 1979, counsel for the appellants said that he was compelled to apply for an adjournment on the ground that his clients did not attend the Court, although they had been notified about it, both orally and in writing by letter dated the 22nd March, 1979, by which he had invited the defendants to be present at 9 a.m. at the Court for the trial of their case. The adjournment was objected to and the learned President said that the Court did not feel that it should grant the adjournment applied for as it was the second time that the case was fixed for hearing and the defendants did not attend. Upon that counsel for the appellants applied for leave to withdraw from the case. Leave was granted to him to withdraw from the case as his client was aware of the date of hearing and it was not thought expedient to issue new notices and stated that the respondents could proceed with the proof of their case. Evidence was then heard on the strength of which the judgment appealed from was given against the appellants on the claim, whilst the latter's counterclaim was dismissed, costs being awarded in favour of the plaintiffs, both on the claim and the counterclaim.

Counsel for the appellants has argued that the learned President was wrong in refusing the adjournment, both in law and as a matter of exercise of judicial discretion, and that the appeal should be allowed and the judgment of the trial Court set aside.

We had recently the opportunity in the case of *Kier (Cyprus) Ltd. v. Trencos Constructions Ltd.* (1981) 1 C.L.R., p. 30, to review our case law on the question of adjournments and the principles governing the exercise of the Court's discretion. In that case after referring to the cases of *International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R., p. 557; *Manolis Kranidiotis v. Ship "AMOR"* (1980) 1 C.L.R., p. 297; *Michael HjiPanayi Tofas & Another v. Aglaia Agathangelou* (1980) 1 C.L.R., p. 560, we had this to say:

"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). 5

On the facts of the present case and taking into consideration the repeated opportunities—more than what anyone would expect—given to the appellants to make arrangements for the presentation of their case, we find that there has been no wrong exercise of the Court’s discretion”. 10

In the light of the aforesaid approach which applies with equal force to the present case and bearing in mind all relevant circumstances as already outlined in this judgment, we have come to the conclusion that the learned President exercised his discretion in the matter properly. He obviously paid due regard to the right of hearing within a reasonable time which the respondents/plaintiffs had and the protection of their interest which naturally includes the timely recovery of what was eventually found to be due to them. 15 20

For all the above reasons this appeal is dismissed with costs.

*Appeal dismissed with costs.*