

1982 May 3

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

GEORGHOUILLA HADJICOSTA,

Appellant,

v.

ANTONIOS ANASTASSIADES IN HIS CAPACITY
AS EXECUTOR OF THE ESTATE OF THE DECEASED
AGATHOCLIS NICOLAOU,

Respondent.

(Civil Appeal No. 6103).

Judge—Disqualification—Objection to participation of Judge as a member of the Bench on ground that a few years back appellant’s husband allegedly unsuccessful in a suit tried by him—No legitimate ground upon which objection could be upheld—To sustain the objection, without proper justification, would come close to acknowledging to litigants a right to choose their Judges, something totally impermissible under our system of law—And would undermine the impersonal process whereby the composition of the Court is pre-determined.

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Landlord and tenant—Practice—Costs—Need not follow the event—Successful tenant—Deprived of his costs—No valid grounds warranting interference with discretion of trial Court on the subject of costs.

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Civil Procedure—Practice—Costs—Appeal solely against costs—Whether leave required—Question left open—Order 35 rule 20 of the Civil Procedure Rules.

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Following the dismissal of respondent’s application for recovery of possession of certain premises at Polemidhia, occupied by the appellant as a residence, the trial Court directed that each party should bear its own costs.

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Upon appeal by the tenant she mainly contended that the trial Court wrongfully deprived her of her costs; and she also objected to the participation of Mr. Justice Loris as a member of the Bench for the hearing of the appeal on the ground that her

husband was allegedly unsuccessful in a suit tried by Loris P.D.C. as he then was.

5 *Held*, (1) that in proceedings under the Rent Control Legislation costs need not follow the event; that in the absence of valid grounds warranting interference with the discretion of the trial Court on the subject of costs the appeal against the order as to costs must be dismissed; that this being the case it is unnecessary to decide in the present proceedings whether in view of Order 35 rule 20 of the Civil Procedure Rules, an appeal, 10 exclusively directed against an order as to costs, lies without prior leave and reserve judgment for a future opportune occasion.

(2) That there is no conceivable ground upon which appellant could legitimately object to the participation of Mr. Justice Loris as a member of the present Bench; that to uphold the application of the appellant, in the absence of proper justification, would come close to acknowledging to litigants a right to choose their Judges, something impermissible under our system of Law and would undermine the impersonal process whereby the composition of the Court is pre-determined, a very consequential matter for the proper administration of justice; accordingly appellant's objection cannot be upheld. 20

Appeal dismissed.

Cases referred to:

Katsiantonis v. Frantzeskou (1981) 1 C.L.R. 566 at pp. 573, 574.

25 **Appeal.**

Appeal by the tenant against the judgment of the District Court of Limassol (A. Anastassiou, D.J.) dated the 3rd April, 1980 (Appl. No. 133/79) whereby the landlord's application for the recovery of possession of his premises at Polemidhia was 30 dismissed without any order as to costs.

Appellant appeared in person.

A. Anastassiades, for the respondent.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Pikiis, J.

35 **PIKIS J.:** This is an appeal directed against a decision of the District Court of Limassol, whereby an application by the respondent, applicant before the trial Court, for recovery of possession of premises at Polemidhia occupied by the appellant, respondent before the trial Court, as a residence, was dismissed

on the ground that the respondent could not successfully invoke the provisions of the rent control legislation because the facts of the case were such as to take it outside the ambit of the relevant laws. Notwithstanding the successful, for the appellant, outcome, the present appeal was lodged without, it seems, valid cause except to the extent that it challenges the order made for costs. An appeal only lies when the trial Court has, by its decision, failed to vindicate a right or grant a remedy asked for, in the same way that the trial Court can only take cognizance of an action, disclosing a litigable cause. *Only a decision that is, that part of the judgment that is definitive of the rights of the parties, can be made the subject of appeal as opposed to the remaining part of the judgment, explanatory of the decision.* This is made clear by the provisions of s. 25(1) of the Courts of Justice Law 14/60, laying down that only a decision can be made the subject of appeal.

The appellant, who appeared in person before us, raised numerous arguments, one such argument concerning her objection to the participation of Mr. Justice Loris as a member of this Bench. We found it difficult to follow her line of thought, and more difficult still, to comprehend her reasons behind this objection. It is founded on the fact that a few years back, her husband was allegedly unsuccessful in a suit tried by Loris P.D.C., as he then was (Action No. 2382/76—Limassol District Court). That her husband was unsuccessful, arises from her own construction of the judgment of the Court for, as it emerges from the record of the Court in that action, Mr. Justice Loris did not pronounce on the merits but merely recorded a consent judgment following the agreement of the parties. Also, it must be noted that Loris P.D.C., was not the only member of the District Court that took cognizance of the action, as the case was heard by the Full District Court of Limassol, composed of Loris P.D.C. and Pitsillides S.D.J. There is no direct connection between the present proceedings and those in Action No. 2382/76, nor was any nexus established between the two proceedings before the trial Court. The present proceedings exclusively turn on the propriety and validity of the proceedings for recovery of possession under the rent control laws.

As Hadjianastassiou, J. intimated to the appellant while she was addressing the Court, there is no conceivable ground

upon which she could legitimately object to the participation of Mr. Justice Loris as a member of the present Bench. It seems to us that to uphold the application of the appellant, would come close to acknowledging to litigants a right to choose
5 their judges, something totally impermissible under our system of law. Had there been a cause incapacitating Mr. Justice Loris from being a member of this Bench, he would, we have no doubt, be the first to ask to be excluded. *On the other hand, to accede to applications for the exclusion of judges from*
10 *participation in any given case, in the absence of proper justification, would undermine the impersonal process whereby the composition of the Court is pre-determined, a very consequential matter for the proper administration of justice.* Sensitive though we remain to the views of the parties on the delicate subject
15 under consideration, it would be injudicial and wrong in principle to make the composition of the Court dependent on the whims of the parties.

In the end, the appeal turned solely on the complaint of the appellant that she was wrongfully deprived of her costs. Mr.
20 Anastassiades submitted we have no jurisdiction to go into the matter for no appeal exclusively directed against costs can be entertained except by the prior leave of the Court of Appeal, or one of its members, in accordance with the provisions of Ord. 35, r. 20, of the Civil Procedure Rules, a rule that has, in
25 his contention, survived the enactment and is reconcilable with the provisions of s. 25(1) of Law 14/60. We find it unnecessary to go into the matter for, on any view of the law, the appeal against the order as to costs must be dismissed in the absence of valid ground warranting interference with the discretion
30 of the trial Court on the subject of costs. It is well settled that, in proceedings under the rent control legislation, costs need not necessarily follow the event. As I had occasion to indicate recently in the case of *Katsiantonis v. Frantzeskou* (1981) 1
C.L.R. 566 at 573, 574, in proceedings of this nature, a large
35 element of discretion is left with the trial Court:

“In proceedings under the rent control laws, the rule that costs follow the event, does not apply in the inelastic way it does elsewhere (*Galatariotis v. Polemitis & Another*,
40 20 C.L.R. (Part II) 70; *Electricity Authority v. Georgallettos & Others* (1972) 1 C.L.R. 77). The reason is that under

the rent control legislation, a large element of discretion is left to the court, making the outcome of litigation less predictable than other areas of the law. So, a party who has misjudged his rights, should not necessarily be penalised".

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In the absence of any valid reasons justifying interference with the way the discretionary powers of the trial Court were exercised, we shall refrain from interfering with the order of the Court. This being the case, we consider it unnecessary to decide in the present proceedings whether an appeal, exclusively directed against an order as to costs, lies without prior leave and reserve judgment for a future opportune occasion. Finally, there will be no order as to costs in the proceedings before us.

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In the result, the appeal is dismissed with no order as to costs.

Appeal dismissed. No order as to costs.

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