1982 June 1

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

IOANNIS PAPADOPOULOS,
Appellant–Plaintiff,

v.

DIONYSIOS STAVROU,
Respondent–Defendant.

(*Civil Appeal No.* 6138).

Findings of fact—Inferences from primary facts—Appeal—Principles on which Court of Appeal interferes with findings of fact made by a trial Court—An appellate tribunal has no justification to interfere with such findings unless they are arbitrary or arrived at in disregard to the evidence—Position different with regard to inferences from primary facts where Court of Appeal is in an equally good position to draw such inferences—And therefore there is room for interfering with the inferential findings of the trial Court—Findings challenged in this case are primary findings of fact—Adequate reasons given by trial Court for coming to the conclusions it did—Nothing to warrant interference by the Court of Appeal—Appeal dismissed.

This appeal turned on the findings of fact made by the trial Court.

Held, that the ascertainment of the primary facts of the case is the province of the trial Court, subject always to the rules of evidence and those relating to the burden of proof; that an appellate tribunal has no justification to interfere with the determination by the trial Court and the elemental facts of the case, unless it appears they are arbitrary or arrived at in disregard to the evidence; that the position is different respecting inferences from primary facts; that what inferences may be derived from a given state of facts, is a matter of logic and common sense, founded on the experience of mankind; and in this area an appellate tribunal is in an equally good position to draw inferences and therefore, there is room for interfering with the

inferential findings of the trial Court, and substitute, where appropriate, its own for those of the court of first instance; that the findings challenged in this case are primary findings of fact; that adequate reasons were given by the trial Court for coming to the conclusions they did; that the evidence of the appellant and his witness was rejected in contrast to that of the respondent; that nothing has been laid or advanced before this Court to warrant its interference on any ground whatever; that, therefore, the appeal must be dismissed (p. 325 post).

Appeal dismissed.

Cases referred to:

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134;

Mamas v. *The Firm "Arma" Tyres* (1966) 1 C.L.R. 158;

Nearchou v. *Papaefstathiou* (1970) 1 C.L.R. 109.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 31st March, 1980 (Action No. 753/77) whereby his claim for C£14,493.—for the sale of the 1/3 shares in the companies Titan Transport Ltd. and Hermes Safaris Ltd., registered in Zambia was dismissed.

V. Harakis, for the appellant.

G. Platritis, for the respondent.

HADJIANASTASSIOU J.: Having heard the address of Mr. Harakis, counsel for the appellant, we consider it unnecessary to call upon the other side to make its address. Pikis, J., will proceed to deliver the judgment of the Court.

PIKIS J.: The appellant emigrated to Zambia in 1967 and settled there and became a resident of the country until January, 1975, when he was forced to leave, following an order for his deportation. It was the case of the appellant, plaintiff before the Limassol District Court, repeated before us, that soon after being served with the order of deportation requiring him to leave the country within 48 hours, he took urgent steps to make such arrangements, as he could, for the disposition of his property in the country, easing thereby the necessitous circumstances into which he found himself. He contacted the respondent, defendant before the trial Court, his compatriot and a fellow resident of Zambia, for the purpose of negotiating a deal for

the sale of his property. A meeting was arranged on the day of his impending departure, at noon on 5.1.1975. The appellant was involved in two trading companies in association with the Raftopoulos brothers of Greece, then residents of Zambia. Following a brief meeting, it was agreed that, in consideration of receiving US $ 45,000.—by the respondent in Cyprus, his shares in the aforementioned companies would be transferred to the respondent. Following the conclusion of their negotiations, they visited the appellant's lawyer, a certain Mr. Ghani, who was instructed to draw up a power of attorney, whereby appellant would authorize the respondent to act on his behalf in connection with his business, pending the payment of the sale price; thereafter, the arrangement was that the shares would be transferred to the respondent by the appellant. It was a Sunday and as no one was available to type the document, Mr. Ghani undertook to prepare it in due course and forward it to the appellant. Later that day, he left the country with his wife.

So, the agreement between the appellant and the respondent was sealed. It was, according to the version of the appellant re-confirmed some time later. It was reaffirmed a few months later, in May, 1975, on a visit of the respondent to Cyprus, subject to certain modifications as to price. The respondent made default in the discharge of his contractual obligations, leading to the institution of the present proceedings. Notwithstanding the efforts of the appellant to secure the power of attorney that he allegedly instructed the aforesaid Ghani to prepare, evidenced by correspondence with his Zambian lawyer, no such document was furnished to him for reasons appearing in the correspondence between the two. (See, exhibits 5, 6, 7 and 8).

The respondent denied the validity of the case for the appellant and put forward a different version of events about their relationship. In his contention, news of his impending deportation leaked before service upon the appellant of the order, following the deportation of his partners. His anticipated deportation caused the appellant to act swiftly in order to make arrangements for the disposal of his property in Zambia.

A series of meetings were held between the respondent, on the one hand, and the appellant and the representatives of his co-shareholders on the other, culminating in an agreement

executed on 31.12.1974, evidenced by three documents, notably exhibits 10, 11 and 12. Exhibits 11 and 12 were transfer deeds for the transfer of the shares of the appellant and his partners in the business to the respondent, and exhibit 10 a resolution of the company to that end. In the light of this reality, the respondent maintained before the trial Court that not only the story of the appellant is untrue but, further, that it was, under any circumstances, unthinkable on his part, given the aforementioned agreement, to enter into any other arrangement with the appellant. When confronted with these documents in cross-examination, the appellant gave an explanation that was found unsatisfactory by the trial Court. Firstly, he disowned the signature on exhibit 10. With regard to the other two documents, while acknowledging his signature, he denied ever writing it for the purpose evidenced therein, maintaining that the documents are forgeries. He speculated that what must have happened, is that the documents signed in blank, left in the possession of Ghani, for the purpose of the execution of the power of attorney were forged so as to secure fraudulently that transfer of his shares in the companies of which he was a shareholder. He put forward this version, notwithstanding his first contention that the papers signed in blank, left in the custody of Ghani, were signed at the botton of the paper. He explained that he must have subscribed his signature on one of the blank papers at the top thereof.

The trial Court, in a well prepared and duly reasoned judgment, rejected the version of the appellant and found for the respondent. They found the respondent, as it emerges from their judgment, a credible witness whose evidence was reinforced by the contents of exhibits 10, 11 and 12. We were urged on appeal to infer with the findings of the trial Court, on the basis of the principles approved by the Supreme Court in a number of cases, including the cases of *Ioannis Patsalides* v. *Karabet Afsharian* (1965) 1 C.L.R. 134, *Sofoclis Mamas* v. *The Firm "Arma" Tyres* (1966) 1 C.L.R. 158, and *Marikkou Nearchou* v. *Maria Demetri Papaefstathiou* (1970) 1 C.L.R. 109.

THE PRINCIPLES RELEVANT TO INTERFERENCE BY AN APPELLATE COURT WITH THE FINDINGS OF A TRIAL COURT:

The ascertainment of the primary facts of the case is the

province of the trial court, subject always to the rules of evidence and those relating to the burden of proof. An appellate tribunal has no justification to interfere with the determination by the trial court and the elemental facts of the case, unless it appears they are arbitrary or arrived at in disregard to the evidence. The position is different respecting inferences from primary facts. What inferences may be derived from a given state of facts, is a matter of logic and common sense, founded on the experience of mankind. In this area, it has been said time and again that an appellate tribunal is in an equally good position to draw inferences; therefore, there is room for interfering with the inferential findings of the trial Court, and substitute, where appropriate, its own for those of the court of first instance. This having been said, it must be emphasized that the dividing line between primary and secondary facts is not always easy and at times very difficult to draw. In reviewing the findings and ultimate judgment of the trial court, an appellate court must never overlook that the trial court, living through the drama of a case and following the unfolding of the rival contentions before it, is in a unique position to evaluate the evidence in its proper perspective. The live atmosphere of the trial court is pre-eminently the forum for the elucidation of the evidence and the assessment of its impact.

The findings challenged in this case are primary findings of fact. Adequate reasons were given by the Court for coming to the conclusions they did. The evidence of the appellant and his witness was rejected in contrast to that of the respondent. Nothing has been said or advanced before us to warrant our interference on any ground whatever. Therefore, as Hadji-anastassiou, J. earlier pointed out, we find it unnecessary to call on the respondent.

Consequently, the appeal is dismissed with costs.

Appeal dismissed with costs.