

1982 June 28

[HADJIANASTASSIOU, DEMETRIADES, SAVVIDES, LORIS, STYLIANIDES,
PIKIS, JJ.]

PITRIA SHIPPING ENTERPRISES INC.,
Appellants-Defendants 3,

v.

MICHAEL GEORGHIOU,
Respondent-Plaintiff.

(Civil Appeal No. 6186).

Admiralty—Practice—Parties—Addition—Service of amended writ of summons—Time within which service must be effected—Not specifically and exhaustively dealt with by rules 30 and 32 of the Cyprus Admiralty Jurisdiction Order, 1893—In the absence of an express direction by the Court, governed by rule 7 of Order 28 of the old English Rules of the Supreme Court, applicable by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893—Assuming that Order 28 rule 7 inapplicable service would still have to be effected within a reasonable time in view of the provisions of Article 30.2 of the Constitution. 5
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Admiralty—Practice—English Rules applicable by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893—Are those which were in forcè in 1960—See Asimenos and Another v. Chrysostomou and Another (1982) 1 C.L.R. 145.

Following the filing of the petition the appellants-defendants sought to join two additional parties as defendants and filed an application to that end before the Court. On February 13, 1978 the plaintiff consented to the joinder, which was sanctioned by the Court subject to the following directions: “Necessary amendments and service on the new defendants to be effected in the prescribed manner as per the Rules of Court”. The relevant rules were not specified in the order. Nothing was done to implement the order of the Court until 31.5.1978. On 29.9.1979 the appellants applied to set aside service of the amended writ in its entirety on the ground that it was not effected within fourteen days as provided under 15
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Order 28 rule 7* of the English Rules of the Supreme Court. The trial Judge dismissed the application having held that as the question of amendment is dealt with by rules 30** and 32** of the Cyprus Admiralty Rules there was no room for the invocation
 5 of rule 237** of the same Rules and consequently Order 28 rule 7 of the English Rules had no application in Cyprus.

Upon appeal by the defendants the sole issue for consideration was whether Order 28 rule 7 of the old English Rules of the Supreme Court had application in Cyprus by virtue of rule
 10 237 of the Cyprus Admiralty Rules and in particular whether the time within which an amendment must be effected, was specifically and exhaustively dealt with by rules 30 and 32 of the Cyprus Rules.

Held, that an omnibus provision, such as that of Order 28
 15 rule 7 of the old English Rules is indispensable for the efficacy of any procedural code; that the absence of a general provision in the Cyprus Admiralty Rules, specifying the time limits within which procedural steps should be implemented, in the absence
 20 of a specific direction by the Court, would infuse an element of uncertainty in the rules, making them inadequate in a most material respect; that from the wording of the order authorising the amendment it can be inferred that the trial Judge presumed

* Rule 7 reads as follows:

"7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge".

** Rules 30, 32 and 237 provide as follows:

"30. The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out or that the names of any person or persons who are interested in the action or who ought to have been joined either as Plaintiffs or Defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action be added".

32. The Court or Judge may order upon what terms any person shall be joined as a party, and what notices and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as shall seem fit".

237. In all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed".

that there was in existence a rule regulating the time within which an amendment should be effected; that, therefore, Order 28 rule 7 of the Old English Rules of the Supreme Court is applicable by virtue of rule 237 of the Cyprus Admiralty Rules; accordingly the appeal must be allowed and the amendment and subsequent steps founded thereon must be set aside because of the failure of the respondents to effect the amendment within the prescribed fourteen-day period. 5

Held, further, (1) that the English Rules applicable, by virtue of rule 237 of the Cyprus Admiralty Rules are those that were in force in 1960 (see *Asimenos and Another v. Chrysostomou and Another* (1982) 1 C.L.R. 145). 10

(2) That assuming it was found that Order 28 rule 7 (English) is inapplicable, an amendment authorized under rule 30 and rule 32 would still have to be accomplished, in the absence of a specific direction, within a reasonable time; that such construction is unavoidable in view of the provisions of Article 30.2 of the Constitution, requiring that judicial proceedings should be concluded within a reasonable time, necessitating by implication that antecedent procedural steps should likewise be completed within a reasonable time. 15 20

Appeal allowed.

Cases referred to:

- Stigand v. Stigand* [1882] 51 L.J. Ch. 446;
Jamaica Railway v. Colonial Bank [1905] 74 L.J. Ch. 410; 25
Owners of ship "Zeus" v. The cargo laden on the ship "Zeus" and Others (1970)¹ 1 C.L.R. 289;
Senior Service Ltd. and Others v. Chrysanthi Shipping Co. Ltd. (1975) 1 C.L.R. 316;
Asimenos and Another v. Chrysostomou and Another (1982) 30
 1 C.L.R. 145;
Lyssandrou v. Schiza (1979) 1 C.L.R. 267;
Kouppa and Another v. Vassiliades (1981) 1 J.S.C. 120.

Appeal.

Appeal by defendants 3 against the judgment* of a Judge of the Supreme Court (A. Loizou, J.) dated the 29th October, 1980 (Adm. Act. No. 57/76) dismissing their application for (a) an order setting aside the writ; (b) an order setting aside the 35

¹Reported in (1980) 1 C.L.R. 504.

service of the notice of the writ and (c) an order setting aside the order of the Court dated 13.2.1978 whereby they were joined as parties to the action.

St. McBride, for the appellants.

5 *M. Montanios*, for the respondents.

Cur. adv. vult.

HADJIANSTASSIOU J.: The judgment of the Court will be delivered by Pikis, J.

10 PIKIS J.: One of the two appeals arising from litigation in Admiralty Action No. 57/76, Civil Appeal No. 6185, an appeal taken on behalf of defendants 2—The Captain and Owners of the ship “PITRIA SPIRIT” of Athens—has been abandoned and in fact the proceedings in their entirety, in view of the fact that—

15 (a) no service has, as yet, been effected upon defendants 2, and

(b) absence of any real likelihood of the ship calling in future at a Cyprus port.

20 Therefore, we need only concern ourselves with Civil Appeal No. 6186, though it must be said that the abandonment of one of the two appeals does not, in any way, simplify our task for the issues raised in the two appeals are virtually identical.

The question we must resolve in this appeal can briefly be stated thus:

25 Whether the old English Admiralty Rules, made applicable in Cyprus under certain circumstances and subject to certain qualifications by virtue of r.237 of the Cyprus Admiralty Rules, specifying the time within which procedural steps must be taken in the absence of an express direction by the court, notably
30 Order 28 r.7 of the old rules of the English Supreme Court, has application in Cyprus. In particular, we must decide whether the time within which an amendment must be effected, is specifically and exhaustively dealt with by r.30 and r.32 of the Cyprus Admiralty Rules. The learned trial Judge held,
35 at first instance, that, inasmuch as the topic of an amendment is the specific subject of the aforementioned two rules, there is no room for the invocation of r.237; consequently, the afore-

mentioned Order 28 r.7 of the English Rules has no application in Cyprus.

To understand the issues in their proper perspective, it is necessary to make brief reference to the background of the case, particularly those facts that relate to the issues under appeal. Following the filing of the petition the defendants-appellants sought to join two additional parties as defendants, and filed an application to that end before the Court. At first, the application was opposed by the plaintiff, respondent before us, but objection was subsequently withdrawn. On 13.2.1978 the plaintiff consented to the joinder, whereupon the Court sanctioned the amendment, subject to the following directions: "Necessary amendments and service on the new defendants to be effected in the prescribed manner, as per the rules of court". The relevant rules were not specified in the order. Nothing was done to implement the order of the Court, until 31.5.1978. On 29.9.1979, the appellants applied to set aside service of the amended writ of summons and the amended writ in its entirety, on the ground that it was not effected within fourteen days, as provided under Order 28 r.7 of the English Rules. The submission was that the amendment became abortive in view of the plain provisions of Order 28 r.7, providing that failure to implement the amendment within fourteen days renders the amendment in its totality "ipso facto void". The argument did not carry favour with the learned trial Judge who took the view, as indicated, that r.237 and all it imports is inapplicable, in view of the fact that the matter of amendment is specifically dealt with by r.30 and r.32 of the Cyprus Admiralty Rules. Notwithstanding his ruling, the learned trial Judge did not advert to the time factor within which an amendment ought to be effected in the absence of a specific direction by the trial Court, inevitably subscribing to the view that the time within which the amendment was effected was not unreasonable.

We have examined with very great care the rival submissions of counsel, not least because of the absence of any definitive statement on the compass and ambit of r.237. Mr. McBride drew our attention to Order 9 r.11 of the Cyprus Procedure Rules, empowering the court to authorize an amendment, founded on Order 16 r.13 of the old English Rules, its similarity to r.30 and r.32 of the Admiralty Rules, pointing out that the

Admiralty Rules would be incomplete without a provision akin to Order 28 r.7 (English rules), as the Cyprus Procedure Rules would be incomplete without Order 25 r.2, founded on Order 28 r.7 (English rules).

- 5 Reference was made to a number of English cases, establishing the formalities that must attend and follow an application for an order to amend, and the practice followed in England, requiring a copy of the proposed amendment to accompany the application for amendment. (See, inter alia, *Stigand v. Stigand* [1882] 51 L.J. (Ch.) 446; *Jamaica Railway v. Colonial Bank* [1905] 74 L.J. (Ch.) 410).

- 15 Mr. Montanios for the respondents submitted that the subject of amendment is adequately covered by the rules, so much so that no room is left for the application of any English rules on the matter. He referred us to two decisions of the Supreme Court, in the exercise of its original jurisdiction, illustrating some of the circumstances indicating the inapplicability of r.237. (See, *The Owners of Ship "Zeus" v. The Cargo Laden on the ship "Zeus" and Others* (1970) 1 C.L.R. 289; and *Senior Service Ltd. and Others v. Chrysanthi Shipping Co. Ltd. and Another* (1975) 1 C.L.R. 316). In the first case, it was held that the procedure, and matters ancillary to the arrest of a ship, are regulated by r.50 to the exclusion of any other rule. In the second, it was similarly held that r.237 is inapplicable in respect of matters pertaining to security for costs, in view of the specific provisions of r.185. In the end, the matter turns on the construction of r.237, in conjunction with r.30 and r.32, read and examined in the context of the Cyprus Admiralty Rules in their entirety. Of especial importance is the construction of the expression, in r.237, "in all cases not provided for by these rules". The expression is not altogether happily worded, and it is vague to a degree for, the word "case" may bear a number of different meanings, depending on the context in which it is encountered. However, for reasons that will appear later, it is unnecessary in this judgment to attempt to define comprehensively the word. We may, however, explore with profit two alternative meanings it may import. The first is that a "case" is dealt with by the rules whenever a procedural matter is regulated, wholly or in part, by one or more rules.
- 40 The second meaning, equally tenable, is that a "case" is covered

by the rules whenever a procedural matter is dealt with exhaustively by the Cyprus Admiralty Rules. None of the decided cases indicates conclusively the ambit of r.237. Had we felt compelled to express a final opinion on the two possible meanings of "case", we would incline to adopt the second possible construction on a consideration of the Cyprus Admiralty Rules in their entirety, their brevity, as well as the fact that procedural matters are, by and large, only outlined in the Cyprus Admiralty Rules. Obviously, the Admiralty Rules are not designed to provide a comprehensive procedural code, betraying thereby the legislative intent to rely on r.237 as a necessary supplement of the Cyprus Admiralty Rules. We have not endeavoured to supply a definitive statement of "case" in the context of r.237 for, Order 28 r.7 (English), is not aimed to supplement any individual rule of procedure, but it is designed as a necessary supplement to the rules in their entirety. Consequently, the relevant question to be answered is not whether Order 28 r.7 (English) is applicable on account of any incompleteness of r.30 and r.32 of the Cyprus Admiralty Rules, but whether it is a necessary concomitant of the Cyprus Admiralty Rules, where the Judge, authorizing a procedural step, omits to indicate the time within which it must be effected.

In our judgment, an omnibus provision, such as that of Order 28 r.7, is indispensable for the efficacy of any procedural code. The absence of a general provision, specifying the time limits within which procedural steps should be implemented, in the absence of a specific direction by the Court, would infuse an element of uncertainty in the rules, making them inadequate in a most material respect. We can fairly infer from the wording of the order authorizing the amendment in the first place, that the Judge presumed there was in existence a rule regulating the time within which an amendment should be effected. The order states, *inter alia*: "To be effected in the prescribed manner as per the rules of court", implying thereby that the case did not warrant the issue of any special directions.

Having decided that Order 28 r.7 is applicable by virtue of the provisions of r.237 of the Cyprus Admiralty Rules, it becomes necessary to examine its provisions. Order 28 r.7 reads:-

"7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for

that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case
5 may be, become ipso facto void, unless the time is extended by the Court or a Judge”.

In a note explanatory to the rule, contained in the White Book, it is explicitly mentioned that an amendment, not subject to any time limit set out in the order itself, must be effected within
10 fourteen days, as provided in Order 28 r.7. The plain provisions of the rule make this an imperative course (Annual Practice 1958, p. 632).

Assuming it was found that Order 28 r.7 (English) is inapplicable, an amendment authorized under r.30 and r.32 would
15 still have to be accomplished, in the absence of a specific direction, within a reasonable time. Such construction is unavoidable in view of the provisions of Article 30.2 of the Constitution, requiring that judicial proceedings should be concluded within a reasonable time, necessitating by implication that antecedent
20 procedural steps should likewise be completed within a reasonable time.

That the old English Rules of the Supreme Court are applicable, is now certain beyond peradventure in the light of the recent decision of the Full Bench in *Asimenos and Markou v. Chrysostomou and Another* (1982) 1 C.L.R. 145, authoritatively settling
25 that the English rules applicable by virtue of r.237 are those that were in force in 1960. This was found to be the case on a fair interpretation of s.29(2)(a) of the Courts of Justice Law—14/60, and the unlikelihood of the House of Representatives
30 intending to delegate any of its legislative functions to a body or authority outside the realm over which it could have no control. The case of *Asimenos*, supra, also furnishes an example of the application of r.237. It was held that r.4, r.7(1)(c) and r.7(3) of Order 16(a) of the old English Rules of the Supreme
35 Court, regulating some aspects of third party proceedings, are applicable under r.237.

The unambiguous words employed in Order 28 r.7 make it absolutely clear that failure to effect the amendment within fourteen days, unless otherwise stated in the order, renders the

amendment abortive in its entirety. The Supreme Court, in *Lyssandrou v. Schiza* (1979) 1 C.L.R. 267, made this abundantly clear in construing Order 25 r.2 of the Cyprus Civil Procedure Rules modelled on the provisions of Order 28 r.7. Failure to comply with the provisions of the order in question, renders the proceedings void ab initio. 5

Lastly, Mr. Montanios referred us to a decision of the District Court of Larnaca in *Kouppa and Another v. Vassiliades* (1981) 1 J.S.C. 120, particularly a passage at p. 124, where I had occasion to refer to the objects of procedural rules and the purposes they are meant to serve. It was observed that rules of procedure are instruments in the pursuit of justice and as such, they should not be allowed to dominate the judicial process whereupon they might become dangerous masters. This is a sound approach so far as the exercise of discretionary power is concerned, provided discretion is vested in the court, but not otherwise. And in the light of mandatory provisions in the rules, such as those contained in Order 28 r.7, there is no authority to override the provisions of the Statute, something that would be arbitrary and highly undesirable. 10
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In the end, we must allow the appeal and set aside the amendment and subsequent steps founded thereon, because of the failure of the respondents to effect the amendment within the prescribed fourteen-day period. In the result, the appeal is allowed with costs. Order accordingly. 25

Appeal allowed with costs.