

1982 October 27

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

THE CYPRUS PHASSOURI PLANTATIONS CO. LTD.,
Appellants-Defendants,

v.

STEPHANOS GEORGHIU,

Respondent-Plaintiff.

(Civil Appeal No. 6244).

Termination of Employment Law, 1967 (Law 24/67) (as amended by Law 6/73)—Recourse by employee against employer to Industrial Disputes Court—Withdrawal of recourse by employee and dismissal by Court—Employee cannot claim damages by an action in the District Court even though he withdrew his recourse—Section 30 of the Law. 5

The sole issue in this appeal was whether the respondent-plaintiff could file an action in the District Court against his employers claiming damages for wrongful dismissal and a sum of £100 in lieu of notice of dismissal after he had first filed a recourse to the Industrial Disputes Court which had been withdrawn by him and dismissed; and the determination of such issue turned on the construction of section 30* of the Termination of Employment Law, 1967 (Law No. 24 of 1967 as amended by Law No. 6 of 1973). 10 15

Held, that in view of the wording of section 30 the respondent having filed his recourse in the industrial Disputes Court, even though he withdrew it and as a result it was dismissed, he cannot now claim damages by an action in the District Court.

Appeal allowed. 20

Appeal.

Appeal by defendants against the ruling of the District Court of Limassol (Korfiotis, D.J.) dated the 25th February, 1981,

* Section 30 is quoted at pp. 768-69 post.

(Action No. 579/80) whereby their application that a point of law raised by them in para. 3 of their statement of defence be disposed of preliminarily to the hearing of the action was dismissed.

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Appeal allowed.

St. McBride, for the appellants.

L. Georghiadou (Mrs.) with *M. Constantinidou* (Miss), for the respondents.

Cur. adv. vult.

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L. LOIZOU J.: The unanimous judgment in this appeal will be delivered by Mr. Justice Demetriades.

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DEMETRIADES J.: This is an appeal against the ruling of a Judge of the District Court of Limassol, by which an application made by the appellants that a point of law raised by them in paragraph 3 of their Statement of Defence be disposed of preliminarily to the hearing of the action, filed by the respondent-plaintiff, was dismissed.

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The point of law raised by the appellants is that the respondent, having elected to proceed by way of recourse to the Industrial Disputes Court, had exhausted his remedies and that, after withdrawing that recourse - which, as a result, was dismissed - the action which he filed in the District Court of Limassol, by which he claimed (a) damages for wrongful dismissal and (b) a sum of £100.- in lieu of notice of dismissal, was no longer maintainable.

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The facts of the case as they appear from the record before us, are the following: The respondent filed recourse No. 70/78 in the Industrial Disputes Court and on the 2nd March, 1979, before the commencement of the hearing, he applied for leave to withdraw it. After counsel for the appellants consented to the withdrawal of the recourse, the Industrial Disputes Court granted leave to him to withdraw it and, as a result, the Court dismissed it as withdrawn.

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On the 21st February, 1980, the respondent in this appeal filed Action No. 579/80 in the District Court of Limassol. Pleadings were exchanged and by their Statement of Defence the appellants, defendants in that action, raised the aforementioned preliminary point of law. After hearing arguments, the Court delivered its ruling and dismissed the application,

having found that as the claim of the respondent exceeded the amount of one year's emoluments which the Tribunal could award to him by virtue of the first Schedule to section 3 of the Termination of Employment Law, 1967 (Law 24/67), he was entitled to file an action in the District Court. 5

Counsel for the appellants, in arguing this appeal before us, conceded that the dismissal of the recourse of the respondent by the Industrial Disputes Court did not create a *res judicata*, as it was alleged in para. 3 of their defence. His argument before us, as well as in the District Court, was that in view of the provisions of section 30 of Law 24/67, as amended by section 3 of the Termination of Employment (Amendment) Law, 1973 (Law 6/73), the respondent had forfeited his right to commence proceedings in the District Court. On the other hand, counsel for the respondent submitted that as the recourse filed in the Industrial Disputes Court was withdrawn and there was no decision by that Court on its merits, the respondent could file an action in the District Court. 10
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Section 30, as amended by Law 6/73, reads as follows:

“30.—(1) Τὸ Δικαστήριον Ἑργατικῶν Διαφορῶν κέκτηται ἀποκλειστικὴν ἀρμοδιότητα νὰ ἀποφασίζῃ ἐπὶ ἀπασῶν τῶν ἐργατικῶν διαφορῶν τῶν ἀναφυσόμενων συνετεία τῆς ἐφαρμογῆς τοῦ παρόντος Νόμου ἢ οἰωνδήποτε Κανονισμῶν ἐκδοθέντων δυνάμει αὐτοῦ ἢ ἀμφοτέρων, περιλαμβανομένου καὶ παντὸς παρεμπόπτοντος ἢ συμπληρωματικοῦ πρὸς τοιαύτας διαφορὰς θέματος. 20
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(2) Οὐδὲν τῶν ἐν τῷ παρόντι ἀρθρῷ ἐρμηνεύεται ὡς ἐπιρεάζον τὸ δικαίωμα ἐργοδοτούμενου ὅπως, ἀναφορικῶς πρὸς τερματισμὸν ἀπασχολήσεως, προσφύγη εἰς τὸ Ἐπαρχιακὸν Δικαστήριον τῆς Ἐπαρχίας ἐν ἣ ὁ ἐργοδοτούμενος ἤργοδοτεῖτο κατὰ τὸν χρόνον καθ' ὃν ἀνέκυψε ἡ διαφορὰ εἰς περιπτωσιν καθ' ἣν ἡ ἀξιῶσις αὐτοῦ εἶναι δι' ἀποζημιώσεις ὑπερβαίνουσας τὰς διὰ τοῦ παρόντος Νόμου δυναμένας νὰ διεκδικηθῶσι: 30

Νοεῖται ὅτι ὁ ἐργοδοτούμενος δὲν δύναται νὰ προσφύγη εἰς τὸ Ἐπαρχιακὸν Δικαστήριον ἐὰν ἔχη ὑποβάλει αἴτησιν εἰς τὸ Δικαστήριον Ἑργατικῶν Διαφορῶν δυνάμει τοῦ παρόντος Νόμου καὶ ὅτι, ἐὰν οὗτος προσφύγη εἰς τὸ Ἐπαρχιακὸν 35

Δικαστήριο, δὲν δικαιούται νὰ ὑποβάλῃ αἴτησιν εἰς τὸ Δικαστήριο Ἑργατικῶν Διαφορῶν δυνάμει τοῦ παρόντος Νόμου.

5 (3) Τὸ Δικαστήριο Ἑργατικῶν Διαφορῶν κέκτηται ἐξουσίαν ὅπως, κατὰ τὴν ἀπόλυτον κρίσιν τοῦ Προέδρου αὐτοῦ, ἐπιληφθῆ ἕκ νέου ὑποθέσεώς τινος, ἢ ἀναθεωρήσῃ οἰανδήποτε ἀπόφασιν ἐπὶ οἰασδήποτε πληρωμῆς γενομένης ὑπὸ τοῦ Ταμείου κατὰ πάντα χρόνον, ἐὰν τοῦτο θεωρηθῆ ὑπὸ τοῦ Προέδρου ὡς ὀρθὸν καὶ δίκαιον”.

10 (“30.-(1) The Industrial Disputes Court shall have exclusive jurisdiction to adjudicate on all industrial disputes arising as a result of the operation of the present Law or any Regulations made thereunder or both, including any incidental or ancillary to those disputes matter.

15 (2) Nothing in this section contained shall be construed as affecting the right of an employee, in respect of a termination of employment, to have recourse to the District Court of the District in which the employee was employed at the time the dispute arose in case his claim is for damages
20 exceeding those which may be claimed under the present Law:

25 Provided that the employee may not have recourse to the District Court if he has filed an application to the Industrial Disputes Court under this Law and that, in case he has recourse to the District Court, he is not entitled to file an application to the Industrial Disputes Court under the present Law.

30 (3) The Industrial Disputes Court is empowered, at the absolute discretion of its President, to re-open a case or review any decision on any payment made by the Fund at any time, if the President considers this just and equitable).”

35 From the wording of section 30, it is clear that the Industrial Disputes Court has exclusive jurisdiction to decide on all industrial disputes arising out of the operation of the law or any regulations made thereunder or both of them. It is, also, clear from the wording of this section that an employee has the right, in relation to the termination of his employment, to file an action in the District Court of the district where he was employed at the

time of the arising of the dispute, provided that his claim is for damages which exceed the amount of damages he can recover under the Termination of Employment Law, 1967.

Section 30, by its proviso, in clear and unambiguous words deprives an employee of the right of action to the District Court if he has filed an application before the Industrial Disputes Court and it further provides that if an employee files an action in the District Court, he is not entitled to apply to the Industrial Disputes Court. The mere filing of an application before the Industrial Disputes Court bars any proceedings before the District Court. There is no doubt in our mind that the legislator included this proviso to section 30 in order to have multiplicity of litigation avoided.

In view of the wording of section 30, we find that the respondent, having filed his recourse in the Industrial Disputes Court, even though he withdrew it and as a result it was dismissed, cannot now claim damages by an action in the District Court. However, in all probability, the claim before the District Court could not be maintained under any circumstances because, apparently, it was improperly instituted, in that his claim for damages did not exceed the damages which the Industrial Disputes Court could award to him. As it appears from the writ of summons the claim of the respondent does not exceed £1,000.-, whilst his annual earnings, as they appear in his Statement of Claim, exceeded that amount and, under the relevant law, the Industrial Disputes Court could award to him as damages one year's emoluments. However, no final view need be expressed as the appeal clearly succeeds on other grounds.

In the result, the appeal succeeds. The respondent to pay the costs of the appellants.

Appeal allowed with costs.