1983 September 29

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, DEMETRIADES, LORIS & PIKIS, JJ.]

THE SHIP "MARIA" NOW LYING AT THE PORT OF LIMASSOL,

Appellants-Defendants.

v.

WILLIAM & GLYNS BANK LTD.,

Respondents-Plaintiffs.

(Civil Appeal No. 6502).

Practice—Appeal—Jurisdiction—Default orders adjusting rights of the parties—They can be reviewed on appeal even though aggrieved party has not exhausted all procedural steps for review at first instance—Section 25(1) *of the Courts of Justice Law,* 1960 (*Law* 14/60)*—Default judgment set aside upon condition that the sum specified therein be lodged in Court.*

Practice—Adjournment—Discretion of trial Judge—Principles upon which it is exercised—And principles on which Court of appeal reviews exercise of such discretion—Proceedings for judgment by default—Application by defendants for stay of proceedings and for enlargement of time within which to file their answer—Wrongly refused because the trial Judge gave inadequate consideration to the reasons advanced by applicants for failure to file the answer and to the possibility of attaching conditions to the adjournment.

The respondents-plaintiffs raised an admiralty action (No. 59/82) against the appellants-defendants for the recovery of a mortgage debt amounting to 7,500 million dollars. The applicant ship was then arrested and as it was not bailed out a problem arose regarding the repatriation of the crew, whose wages were running and whose maintenance was becoming a burden to the already mounting expenses of the respondents. On March 10, 1982 the respondents secured an order from the Court authorising them to negotiate and settle the crew claims

and pay them whatever appeared to be due to them. The respondents settled the crew claims and as the appellants failed to reimburse them in respect of such payments, the latter instituted proceedings by means of action No. 177/82. Due to the urgency for disposing of the cases pending against the ship, in view of the heavy Marshal's expenses incurred for keeping her under arrest directions were given by the trial Court, on the 21st October, 1982, for pleadings to be filed within a fixed limited period and listed the case for hearing on the 8th December, 1982. Plaintiffs' petition was filed within the time prescribed by these directions but no answer was filed by the defendants. On November 27, 1982 the plaintiffs filed an application by summons for judgment by default of defence which was fixed for hearing on the 8th December, 1982 and to which no opposition was filed by the defendants. On November 27, 1982 the applicants-defendants filed an application in Action No. 59/82 seeking to set aside the above order of the Court of the 10th March, 1982. When both the action and the application for judgment by default came up for hearing before the trial Court on the the 8th December, 1982, the appellants pressed an application before the Court for stay of the proceedings in Action No. 177/82 until determination and resolution of their application of 27th November, 1982, or in the alternative for enlargement of time for filing their answer. The appellants claimed that their non-compliance with the Court's directions concerning the filing of the answer was, inter alia, due to the filing on their behalf of the above application to set aside the order of the 10th March, 1982.

The trial Judge dismissed the application having held that non-compliance by appellants with the directions for the exchange of pleadings was inexcusable and that the adjourment of the case to an early date was impossible. He then proceeded to hear the application of the respondents for judgment in default and gave judgment as per claim.

Upon appeal by defendants.

Held, per Pikis, J., Triantafyllides, P., Hadjianastassiou, Demetriades and Loris, JJ., concurring and A. Loizou, J. dissenting:

(1) That though as a matter of proper practice no jurisdiction should ordinarily be exercised on appeal before the aggrieved

party exhausts all procedural steps for review at first instance there is appellate jurisdiction to review default orders made at first instance adjusting the rights of the parties and that the existence of jurisdiction to take cognizance of a matter at first instance does not rule out jurisdiction on appeal (see section 25(1) of the Courts of Justice Law, 1960 (Law 14/60)); and that in this case it was correct in principle and a sound step to seek review of the order made by a process of appeal (p. 714 post).

(2) That the Court of appeal may interfere with the exercise of discretionary powers by a trial Judge concerning his refusal to adjourn a case where the trial Court (a) acted upon a wrong principle, (b) arrived at a decision that results in injustice (injustice must be obvious) and (c) went wrong on a specific issue; that in resolving applications for adjournment the trial Judge must balance two considerations vital for the proper administration of justice—the need to safeguard effectively the right of every party to be heard in the proceedings, fundamental under Article 30.2 of the Constitution, on the one hand and the need to uphold a litigant's right to the expeditious determination of his rights on the other; that a Court of Law must not be astute to deprive a party of the right to be heard unless such a course is inescapable in the circumstances of a case; that in this case the trial Judge gave inadequate consideration to two matters that led him astray in the exercise of his discretion: the reasons advanced by appellants for failure to comply with the directions of the Court and secondly the possibility of attaching conditions to the adjournment such as to strike an appropriate balance between the parties' competing rights; accordingly, the order of the trial Court will be set aside upon condition that the sum specified therein be lodged by the respondents in Court or by furnishing the Registrar of the Supreme Court with a proper bank guarantee within 45 days from today.

Appeal allowed.

Cases referred to:

Dorothea Shipping v. *Consolidated Investments* (1980) 1 C.L.R. 556;

Re Edward's Will Trust [1981] 2 All E.R. 941 (C.A.);

Efstathios Kyriacou & Sons Ltd. v. *Mouzourides* (1963) 2 C.L.R. 1;

In re Eleni Michael HjiPetri (1973) 1 C.L.R. 166;

Karydas Taxi Co. v. *Komodikis* (1975) 1 C.L.R. 321;

Phylactou v. *Michael* (1982) 1 C.L.R. 204;

Lambert v. *Mainland Market* [1977] 2 All E.R. 826 at p. 833;

Evans v. *Bartlam* [1937] 2 All E.R. 646 at p. 650;

Dick v. *Piller* [1943] 1 All E.R. 627 (C.A.);

M. V. York Motors v. *Edwards* [1982] 1 All E.R. 1024;

Kier (Cyprus) Ltd. v. *Trenco Constructions Ltd.* (1981) 1 C.L.R. 30;

Escfeco Ltd. v. *Olympus Tours Ltd.* (1981) 1 C.L.R. 236 at p. 239;

Maxwell v. *Keun and Others* [1928] 1 K.B. 645;

Rose v. *Humble (Inspector of Taxes)* [1970] 2 All E.R. 519;

Tofas and Another v. *Agathangelou* (1980) 1 C.L.R. 560 at p. 565.

Appeal.

Appeal by defendants against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) dated the 8th December, 1982 (Admiralty Action No. 177/82*) whereby the defendant was ordered to pay to plaintiffs Nos. 2-11 and by subrogation to plaintiff No. 1 the sum of U.S. $62,134.32 and 336,639 Greek drachmas.

M. Eliades with *A. Skordis,* for the appellants.

E. Montanios with *S. Panayi* (*Miss*), for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The first judgment of the Court will be given by Pikis, J.

PIKIS J.: To appreciate the issues requiring resolution a somewhat detailed reference must be made to the history of the proceedings in the action under consideration in this appeal - action 177/82 and another Admiralty Action 59/82 that preceded the present proceedings and established, in the contention of the respondents, the basis for their claim in the second action.

History of the proceedings

Williams and Glyns Bank Limited raised Admiralty Action

* Reported in (1983) 1 C.L.R. 124.

59/82 against the appellants for the recovery of a mortgage debt totalling, in their contention, 7,500 million Dollars. The ship was arrested in the course of the proceedings and in consequence the boat was immobilized at the port of Limassol or outside it. There were problems, as it is usually the case, about the payment of the wages of the crew and the continuance of their employment. Seemingly, in their anxiety to minimize claims against the ship the respondents initiated negotiations with the crew for the purpose of terminating their employment upon payment of wages due and repatriation expenses. There were serious indications that the negotiations had the approval of the appellants evidenced by the participation of the master of the ship in the negotiating process and the execution of a document attested by a notary public in London authorizing respondents to pay the claims of the crew and discharge them.

On the application of the respondents an order was made by the Court on 10th March, 1982 authorizing them to negotiate and settle the crew claims and pay them whatever appeared to be due to them. It appears that respondents satisfied the claims of the crew as quantified and agreed at the negotiations, apparently on the basis of the authorization given by the Court. The appellants failed to reimburse them whereupon the present proceedings were instituted.

The present proceedings were filed in Court on 31st August, 1982. They were raised by Williams and Glyns Bank P.L.C. as plaintiffs claiming to be, so far as one may gather from the nature of their claim, the same legal entity as Williams and Glyns Bank Limited. The members of the crew whose claims were satisfied in the manner above indicated joined as co-plaintiffs laying an alternative basis for the recovery of the moneys paid to them by Williams and Glyns Bank Limited. The respondents Williams and Glyns Bank P.L.C. claimed to be entitled to the recovery of the moneys paid to the crew for wages and repatriation expenses in virtue of the authorization order issued by the Court on 10th March, 1982. By a process of subrogation they claimed to be entitled to step into the shoes of the crew and recover whatever was paid to them.

The case came up before the Court on 21st October, 1982 for the purpose of eliciting the response of the defendants to

plaintiffs' claim. The appellants denied liability and signified their intention to dispute the claim. The Court appreciating, as one may discern from the time limits fixed for the exchange of pleadings, the urgency of the claim of the respondents, issued directions for a quick exchange of pleadings and listed the case for hearing on 8th December, 1982. The learned trial Judge, it appears, took the view that an exchange of pleadings was the best mode of defining the facts in issue. Consequently directions were given for the exchange of pleadings in lieu of directions under rules 38 and 39 (Cyprus Admiralty Rules) a course he was perfectly entitled to follow in view of the provisions of rule 82. The respondents were directed to file their petition within seven days and consequent thereto the appellants their answer within fifteen days. The reply, if any, should follow four days thereafter.

The petition was filed on 29th October, 1982. But no answer was filed until the day of hearing. The appellants claimed that their non-compliance was justified because of a series of developments that occurred in the meantime bearing on the rights of the parties. They were (a) an application filed on behalf of the appellants on 27th November, 1982 in Admiralty Action 59/82 to set aside the order of 10th March, 1982. If successful it would sap respondents cause of action of legitimacy. The application was fixed for hearing on 8th December, 1982, the date fixed for the hearing of Action 177/82; (b) another application pending in Action 59/82 made by respondents likewise fixed for hearing on 8th December, 1982 whereby they prayed for the amendment of the title in Action 59/82 so that the name of the respondents in the two proceedings should coincide. In the appellants contention Williams and Glyns Bank Limited and Williams and Glyns Bank, P.L.C. was one and the same legal entity. The tail-end of their name changed from Limited to P.L.C. as a result of an amendment of English Law albeit an amendment that left their legal identity unaffected.

Meanwhile the appellants took out, on 27th November, 1982 a summons application under rule 84 for judgment in default in view of the omission of appellants to file an answer in breach of the directions of the Court given on 21st October, 1982. On 8th December, 1982 the appellants pressed an application before the Court for stay of the proceedings in Action 177/82 until determination and resolution of the aforementioned application

of 27th November, 1982 or, in the alternative, for enlargement of time for filing their answer. Not unnaturally all applications were fixed before the same Judge as they were directed against the same ship. The application of appellants of 27th November, 1982 remained unopposed till 13th December, 1982.

The appellants made a strong plea before the Court in suport of their application for enlargement of time to file their answer, a submission that amounted in effect to an application for the adjournment of the application of respondents for judgment in default of filing an answer. Their application met the strong opposition of the respondents who argued that any adjournment of the case would cause incalculable damage to them.

The learned Judge was, as we may gather from the record, impressed by the objections of the respondents to any adjournment of the hearing of the application for a default judgment. He formed the view that non-compliance by appellants with the directions for the exchange of pleadings was inexcusable despite the developments above outlined. The adjournment of the case to an early date was impossible as he observed. The hearing of the case, if adjourned, could not take place before February. He proceeded to hearing the application of the respondents for judgment in default and eventually gave judgment as per claim. In the judgment of the Court the reasons for refusing an adjournment are explained in detail. The expenses of the Marshal into whose custody the ship "Maria" had been placed were mounting. These expenses might, eventually, have to be borne by the respondents, considering the magnitude of their mortgage claim, with no certain prospect of recovering them. It seems, the learned Judge took the view, although he does not say so, in express terms, that appellants were engaging in delaying tactics. After all, he noted in his judgment, they had given authorization duly certified before a notary public to the respondents to pay the wages and repatriation expenses of the crew that they now disputed.

The Appeal

The appeal revolves around two basic issues. Firstly, the refusal of the Judge to adjourn the case that makes necessary the review of the discretion exercised by the Court and, secondly, the correctness of the judgment and individual parts of it upon

examination of respondents' claims on their face value. Logically, we must deal with the first part of the appeal before embarking upon examination of the merits of the claim of the plaintiffs. If the appellants are successful on the first ascpect of the appeal it would be undesirable for obvious reasons to embark upon examination of the merits of the claims of the respondents. But before examining either of the two aspects of the appeal we have to probe the question of jurisdiction. The submission of both counsel that we have jurisdiction does not relieve us of the duty not to exercise appellate jurisdiction unless such jurisdiction is vested by law. There is authority for the proposition that provisional orders liable to review and confirmation by the trial Court should not be made the subject of appeal save in exceptional circumstances - *Djeredjian (Import-Export) Ltd. etc. through (a)Chr. P. Mitsides, (b)Nicos Chr. Lacoufis v. The Chartered Bank*. The present case is distinguishable from *Djeredjian* because the order made was final and purported to adjudge the rights of the parties. A more relevant case bearing on the subject is the decision in *Dorothea Shipping* v. *Consolidated Investments* (1980) 1 C.L.R. 556 where it was proclaimed that proper judicial practice requires that any motion to set aside a judgment given by default should first be pressed before the trial Court. Any other course would, as Triantafyllides, P. observed, flood the Supreme Court with appeals to the detriment of the administration of justice. Neither of the above cases establishes that no appellate jurisdiction lies to review default orders made at first instance adjusting the rights of the parties. The provisions of s.25(1) of the Courts of Justice Law 14/60 are in terms wide enough to vest jurisdiction in the Supreme Court to review, by way of appeal, every order made at first instance that bears on the rights of the parties. What the above cases establish is that as a matter of proper practice no jurisdiction should ordinarily be exercised on appeal before the aggrieved party exhausts all procedural steps for review at first instance. The decision in *Re Edwards's Will Trusts* [1981] 2 All E.R. 941 (C.A.) acknowledges that the existence of jurisdiction to take cognizance of a matter at first instance does not rule out jurisdiction on appeal. In fact, jurisdiction may co-exist in both tiers of the judicial system. Re *Edwards's* though decided on the interpretation of the new English Rules of the Supreme Court applies to my comprehension having regard to the provisions of the new and the old rules (upon which

our Civil Procedure Rules are modelled) with equal force in both cases. Basically, Re *Edwards's* establishes that jurisdiction to review an order at first instance does not negative jurisdiction on appeal.

In the present case it was correct in principle and a sound step in practice to seek review of the order made by a process of appeal. Unlike the ordinary case in which judgment is given by default because of the non-appearance of one of the parties to the litigation, in this case judgment was given despite appearance of the appellants and professed desire to defend the proceedings. If an application had been made before the Supreme Court, in the exercise of its original jurisdiction, to set aside the judgment it would have been placed in all probability before the Judge who gave the order for review; alternatively, before another Judge of the Supreme Court. In the first case it would have been necessary for the Judge to review his first decision and his reasons for refusal to adjourn whereas in the second the Judge of the Supreme Court would have had to review a decision of a Court of co-ordinate jurisdiction. Either course would be undesirable.

Refusal to adjourn a case. Review of discretion.

There is limited scope on the part of an appellate Court to interfere with the exercise of discretionary powers by a trial Court. It is a usurpation of powers to assume the exercise of discretionary powers vested in a Court of first instance. The principles relevant to the review of discretionary powers were the subject of discussion in numerous cases. See, inter alia, *Efstathios Kyriacou and Sons Ltd.* v. *Mouzourides* (1963) 2 C.L.R. 1; Re *Eleni Michael Hji Petri* (1973) 1 C.L.R. 166; *Karydas Taxi Co. Ltd.* v. *Andreas Komodikis* (1975) 1 C.L.R. 321. The premises upon which the Court of appeal may interfere were recently summarized in *Phylactou* v. *Michael* (1982) 1 C.L.R. 204. They are confined to three instances; Where the trial Court (a) acted upon a wrong principle, (b) arrived at a decision that results in injustice (injustice must be obvious) and (c) went wrong on a specific issue.

We are essentially required to review the exercise of discretionary powers relevant to an adjournment that in turn requires us to examine the principles applicable thereto. In plotting

the course of a trial and in resolving applications for adjournment the Court must balance, as held in *Phylactou*, two considerations vital for the proper administration of justice—the need to safeguard effectively the right of every party to be heard in the proceedings, fundamental under the Constitution (Article 32), on the one hand and the need to uphold a litigant's right to the expeditious determination of his rights on the other. Another consideration relevant to the exercise of judicial discretion resulting in the issue of a judgment is that of upholding finality of judgments (see the *Observations of Megaw, L.J.*, in *Lambert* v. *Mainland Market* [1977] 2 All E.R. 826, 833 (c-d).

Ordinarily, a Court will acceed to an application for adjournment provided no irreparable damage is likely to be occasioned to the other side, irreparable in the sense of injury that cannot be remedied by an appropriate order for costs. But, as acknowledged in *Phylactou* that is not the sole consideration; an adjournment may be withheld "where the conduct of the party applying to set aside a judgment is inexcusable, contumelious to the extent of gross disregard to the judicial process or the rights of the adversary".

Mr. Eliades argued, if we may summarize his submissions on the point, that non-compliance on the part of his clients with the directions for the filing of the answer if not justified because of steps in related proceedings between the parties it was not inexcusable to the point of justifying the Court debarring them from being heard in the cases. At the least, he submitted, his clients could presume that the present case would not be heard before a decision was given on the validity of the order of 10th March, 1982 that constituted the basis of the actions of the respondents.

Mr. Montanios for the respondents argued - here again we summarize the arguments made - that the decision of the Court was perfectly warranted by the urgency of the claim of the respondents and the implications upon their rights likely to arise from the procrastination of the litigation. Every delay was likely to have direct consequence on the rights of his clients by reducing the value of the security without any definite prospect of recovering added expenses that might be occasioned by delay.

The learned trial Judge was impressed by the urgency of the claim of the plaintiffs and inclined to agree that any adjournment was likely to cause damage to the respondents. On the other hand the time schedule of the learned trial Judge was such as to make it hard to accommodate the hearing of the case at an early date. As noticed, he stated there was no prospect of the case coming up for hearing, if adjourned, before February. Later in his judgment, apparently after reflection, he mentioned that if the case had to be adjourned it would have to be shifted to an indefinite future date. Seemingly, the possibility of the case being listed before another Judge was not inquired into. Another consideration that obviously influenced the learned trial Judge was the apparent soundness of the claim of the respondents in face of the authorization given by the appellants for the payment certified by a notary public.

A Court of Law must not be astute to deprive a party of the right to be heard unless such a course is inescapable in the circumstances of a case. The entrenchment of the right to be heard is fundamental for the administration of justice. The imprint of finality attaching to a judgment remains liable to be erased unless judgment is given on the merits after hearing the parties thereto. This principle was eloquently expressed, if we may say so with respect, by Lord Atkin in *Evans* v. *Bartlam* [1937] 2 All E.R. 646, 650 "the principle obviously is that, unless and until the Court has pronounced a judgment upon the merits or by consent it is to have power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the Rules of Procedure."

In our judgment the learned Judge gave inadequate consideration to two matters that led him astray in the exercise of his discretion. The reasons advanced by appellants for failure to comply with the directions of the Court and, secondly, the possibility of attaching conditions to the adjournment such as to strike an appropriate balance between the parties' competing rights. In *Dick* v. *Piller* [1943] 1 All E.R. 627 (C.A.) it was acknowledged that the Court has power to attach conditions to the adjournment of a case such as to remove the possibility of damage being caused to the other side. The conditions that may be attached include, in our opinion, conditions designed to eliminate the possibility of abuse of the Rules of Procedure by anyone party securing an advantage. Such conditions may

include terms for the lodgement of the plaintiffs' claim in Court pending the determination of the case. We are, of course, aware of the decision of the House of Lords in *M. V. Yorke Motors* v. *Edwards* [1982] 1 All E.R. 1024 that financial terms imposed must not be such as to negative the right to be heard. On the other hand it is upon the party seeking to set aside a judgment to place before the Court material establishing inability to comply with financial conditions. In the present case no suggestion was made of any inability on the part of the appellants to comply with a condition as to the lodgement of the claim of the respondents in Court. On the contrary we were told that negotiations are in progress for the settlement of the case, a submission suggestive of ability to pay any sum they may be adjudged to pay.

In reviewing an order on appeal provided there is room for intervention under s.25(3) of the Courts of Justice Law - 14/60 - we have the same powers as the trial Court to make any order that appears to be just. Having given anxious consideration to every aspect of the case, we make the following order: The order of the trial Court is set aside upon condition that the sum specified therein is lodged by the respondents in Court or by furnishing the Registrar of the Supreme Court with a proper bank guarantee within 45 days from today. It goes without saying that in the event of non-compliance with the above condition, the judgment of the trial Court will stand.

Given the history of the proceedings and the outcome as to appeal, it is appropriate there should be no order as to costs.

HADJIANASTASSIOU J.: I agree with the judgment of Mr. Justice Pikis and I do not think that it is useful to add anything else.

A. LOIZOU J.: I regret that I find myself unable to agree with the result arrived at by my learned brother Justice Pikis allowing the appeal on the ground that the learned trial Judge has wrongly exercised his discretion in refusing to adjourn the case.

I need not repeat the facts of the case which are so elaborately set out in his judgment. I wish, however, to highlight certain aspects of them which, to my mind, are of the utmost importance

to the issue of the exercise of judicial discretion in granting or refusing an adjournment.

The plaintiffs - respondents in this appeal - are Williams and Glyns Bank Plc. who apparently before the change of the relevant legislation in England were known as Williams & Glyns Bank Ltd., and the members of the crew whose claims were satisfied by the first plaintiffs in circumstances that will be shortly explained and who joined as co-plaintiffs, alternatively claiming the recovery of the monies paid to them by the first plaintiffs. Williams & Glyns Bank Ltd. had filed proceedings under Admiralty Action No. 59/82 against the appellants for the recovery of a mortgage debt amounting to 7,5 million U.S. dollars. The ship had been arrested, she was not bailed out and a problem arose regarding the repatriation of the members of the crew whose wages were running and whose maintenance was becoming a burden to their already mounting expenses of the Marshal of this Court.

The respondents who were obviously concerned with the increase of claims against the ship whose market value in their view could not even satisfy their claim secured by mortgage, commenced negotiations for the termination of the employment of the crew by the payment of wages due and their repatriation expenses. The Master of the ship participated in these negotiations and a document was executed in London attested by a Notary Public authorizing the respondents to pay the claims of the crew and discharge them.

On the 10th March, 1982, the Court made an order authorizing the respondents so to negotiate and settle the crew claims and pay them whatever appeared to be due to them. The crew claims were settled and the respondents paid also their repatriation expenses. As the appellants had failed to reimburse the respondents in respect of all this money, the latter instituted the present proceedings on the 31st August, 1982.

Directions were then made by the Court on the 21st October. It should be noted that when these directions were given for pleadings the usual time limits for filing same were abridged and a short date of trial was given. Hence the Petition had to be filed within seven days, the Answer within 15 days and any reply within four days and the hearing was fixed for the 8th

December, 1982. To this no objection was raised by counsel for the appellants.

The Petition was filed on the 29th October, but the Answer was not filed until the date of the hearing. The respondents filed on the 27th November an application by summons under rule 84 of the Cyprus Admiralty Jurisdiction Order, 1893 for judgment in default in view of the failure of the appellants to file their Answer in breach of the direction of the said Court. What was in effect an application for an adjournment and an enlargement of the time to file their Answer was refused by the learned trial Judge as that if granted it would mean a postponement of the hearing of the action until February the following year.

The learned trial Judge in his judgment gave the following reasons in refusing the adjournment:

"When both the action and the application, to which no opposition was filed, came up for hearing before this Court today, counsel for applicant applied for an adjournment on the ground that this morning they filed an application for an order staying the proceedings pending the final determination of an application filed by the defendant ship in Admiralty Action No. 59/82 and in the alternative, for an order enlarging the time within which the applicant was to file his defence until after the determination of three applications pending for determination in Admiralty Action No. 59/82. Counsel for plaintiffs strongly objected to any adjournment and persisted in obtaining judgment as per their application.

As I have already mentioned, earlier in this judgment, due to the urgency of having any claims against the defendant ship disposed of as expeditiously as possible, in view of the enormous expenses which are being incurred due to the arrest of the defendant ship and for maintaining same under arrest and also the risks which the ship is undergoing due to the approaching winter and the rough sea, as she is anchored outside the Limassol port, directions were made for expediting the trial of this action by the speedy exchange of pleadings and for an early date of trial. There was no compliance by the defendant ship with such directions. Not even after the filing of the application on

behalf of the plaintiffs to obtain judgment by default, which was an indication that the plaintiffs persisted to have their claims dealt with as early as possible. The filing of an application by the defendant ship at this late stage, if granted, will amount to granting an adjournment of the hearing of the action for an indefinite time. I find that such application has been made very late in the day and cannot be a ground for adjourning the hearing and granting the remedies prayed for by such application. In the circumstances, I find that the application for an adjournment should be dismissed and is hereby dismissed and I shall proceed to consider the matters fixed for hearing before me today.

Once there was default on the part of the defendant ship to file her answer, the plaintiffs were entitled to apply to the Court for judgment by default of pleadings and they rightly did so. Their application is based on rules 84, 203 - 212 and 237 of the Supreme Court of Cyprus in its Admiralty Jurisdiction, on the Rules of the Supreme Court of England 1883 and on the inherent power and jurisdiction of the Court. Under rule 84 of our Admiralty Rules in case where the Court deems fit to require the parties to file written pleadings under rule 82, if the defendant shall make default in the filing of his answer within the prescribed period he shall not be at liberty, except by leave of the Court, to dispute any of the facts alleged by the plaintiff in his petition and the Court may on the application of the plaintiff, give judgment as the plaintiff may appear to be entitled to upon the facts alleged in his petition."

I had had the occasion of reviewing the authorities dealing with the question of adjournments in the cases of *Kier (Cyprus) Ltd., v. Trenco Constructions Ltd.,* (1981) 1 C.L.R. p. 30 and *Esefeco Ltd. v. Olympus Tour Ltd.,* (1981) 1 C.L.R. 236 at p. 239. I do not feel that I should go through them again. Suffice it to say that as it transpires from all the authorities, by reference also to the English ones, this Court ought to be very slow to interfere with the discretion vested in a Judge with regard to such a matter as the adjournment of the trial of an action before him, and very seldom does so. (*Maxwell v. Keun and others* [1928] 1 K.B. 645). It will only do so if it appears that the result of an

order refusing such an adjournment will be to defeat the rights of the applicants altogether and to do that, which the Court of Appeal is satisfied, will be an injustice to one or other of the parties. So the Court has power to review the order and it is its duty to do so (see also *Rose v. Humbles (Inspector of Taxes)* etc., [1970] 2 All E.R. 519). Moreover in *Dick v. Piller* [1943] 1 All E.R. 627, at pp. 634-635 it was said:

> "Although this Court has power to interfere with the judge's decision in regard to the granting of an adjournment, it will refrain from doing so unless it appears that such discretion has been exercised in a way which shows that all necessary matters have not been taken into consideration: *Jones v. S.R. Anthracite Collieries, Ltd.* In that case, in the absence of any reason being stated for refusing to allow an adjournment and there being no evidence upon which a refusal could properly be based, this Court allowed an appeal. LORD STERNDALE, M.R., at p. 462 says:
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> ..... 'this Court would not interfere if it appeared to them that such discretion has been exercised in a way which showed that all necessary matters have been taken into consideration although they might not agree with the learned county Court judge's decision' ".

This passage has also been quoted by Triantafyllides, P., in *Tofas and Another v. Agathangelou* (1980) 1 C.L.R. p. 560 at p. 565.

It is clear that there is a consensus as regards the legal principles applicable. The disagreement is with regard to their application to the particular facts of the present case.

No doubt the powers of an Appellate Court to interfere with the exercise of discretionary powers by the trial Courts are limited.

In my view when it comes to adjournments, the right of a party to be heard, especially a defendant as in this case, on whose behalf and with whose approval the amounts claimed were paid by the plaintiffs, as already said, must be considered in conjunction with the constitutionally enshrined right of a litigant for the trial of his claim within a reasonable time. In no circumstances a party to proceedings should shield behind the

right to be heard on any occasion and undermine the right of his adversary for a speedy trial.

Adjournments have proved over the years to be a curse to the good administration of justice and it seems to me that more and more litigants and counsel nowadays feel that an adjournment can be secured almost as a matter of right. With these brief thoughts in mind I turn to the issue before me, I find that the learned trial Judge has acted neither upon a wrong principle nor his refusal to adjourn the case would result in injustice nor did he go wrong on any specific issue. Moreover irreparable damage was likely to be caused to the respondents who were until then footing all the bills. If anything, the appellants themselves have to blame for non complying with the directions of the Court regarding the filing of their Answer within the time limit set by it, an act that would unduly delay the proceedings. Needless to say that the abridgment was made and the early date of trial was given in their presence and without objection on their behalf.

For all these reasons I would dismiss this appeal on this ground, and consequently I would have had to deal with the rest of the grounds of appeal, but as the majority view is that this appeal should be allowed, it would serve no purpose if I proceeded alone to determine the other issues raised in this appeal.

DEMETRIADES J.: I had the advantage of reading the judgment of my brother Mr. Justice Pikis and I fully agree with it.

LORIS J.: I fully agree with the judgment of my brother Mr. Justice Pikis and I have nothing to add.

TRIANTAFYLLIDES P.: As I do share the views of Mr. Justice A. Loizou about the undesirability of adjournments I would have been inclined to dismiss this appeal if I had had to choose between allowing it unconditionally or dismissing it. After much anxious consideration I have reached the conclusion that the outcome of this appeal, as set out in the judgment just delivered by Mr. Justice Pikis, results in doing substantial justice in this case and I, therefore, agree with him.

This appeal is allowed by majority, with no order as to its costs.

Appeal allowed by majority. No order as to costs.