

1983 October 27

[SAVVIDES, J.]

WILLIAMS AND GLYN'S BANK LIMITED,
Plaintiffs,

THE SHIP "MARIA",
Defendants.

(Admiralty Action No. 59/82).

Practice—Adjournments—Discretion of the Court—Principles applicable—Application for adjournment of hearing of action to enable counsel for applicants attend a Seminar on Administrative Law—Action given an early date of trial because of special circumstances—Change of such circumstances after action had been fixed for hearing.—Good reasons for granting the adjournment—Application granted. 5

Counsel for the defendant ship made an application, which was joined by counsel for the intervener, for the adjournment of the hearing of the above action on the ground that leading counsel for the defendant ship and counsel for the intervener were impeded from attending the hearing, due to the fact that they have to attend an International Seminar on Administrative Law organised by the Council of Europe in collaboration with the Ministry of Justice, of which advocate for the defendant ship was an active participant and advocate for the intervener had to participate as the Chairman of the Nicosia Bar Committee. Both counsel relied on a circular sent by the Supreme Court to all Judges, which was communicated to the Chairman of the Cyprus Bar Council, informing them of the Seminar and expressing the desire that during those dates fixing of hearings of actions should be avoided and any cases already fixed be adjourned, where possible, for the purpose of facilitating judges and lawyers to attend and participate in the Seminar. 10
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The above action was, on the application of the plaintiffs, given an early date of trial because the plaintiffs had been suffer- 25

ing hardship due to the fact that the ship was under arrest and they had to pay about £5,000 per month Marshal's expenses; and, also, that the condition of the defendant ship was deteriorating and its value diminishing by her being kept under
 5 arrest. Since the date, however, when the action was fixed for hearing there has been a change of the circumstances which had led the Court treating the case as urgent because the defendant ship had been sold, by an order of the Court, *pendente*
 10 *lite* only a few weeks prior to the hearing and the proceeds of the sale have been deposited in an external account in Cyprus bearing interest of about 9%.

Held, that the question whether an adjournment will be granted or not, is a matter of judicial discretion which should be exercised in a proper judicial manner and an adjournment should not be
 15 made if there is danger that the rights of a party before the Court will be prejudicially affected by such adjournment; that since the exceptional circumstances which existed at the time when the action was fixed for hearing and which urged for an early date of trial ceased to exist after the sale of the ship; and that
 20 since there is ample time for counsel for plaintiffs to inform his witnesses about the adjournment, this Court has come to the conclusion that there are good reasons for granting the adjournment; accordingly the application will be granted and the hearing is adjourned to the 5th of December, 1983.

25 *Application granted.*

Cases referred to:

- International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R. 557;
Kranidiotis v. Ship "Amor" (1980) 1 C.L.R. 297;
 30 *Tofas and Another v. Agathangelou* (1980) 1 C.L.R. 560;
Kier (Cyprus) v. Trencu Constructions (1981) 1 C.L.R. 30;
Spanos v. Attorney-General of the Republic (1983) 1 C.L.R. 133.

Application.

35 Application by the defendant ship for the adjournment of the hearing of the above action.

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

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

L. Papaphilippou, for the intervener.

SAVVIDES J. gave the following judgment. This application

for the adjournment of the hearing of the above action which has been fixed for the 31st of October, 1983 to continue daily till the 4th of November, 1983 and which was made on behalf of counsel for the defendant ship and joined by the intervener, was strongly opposed by counsel for the plaintiffs. 5

The adjournment was sought on the ground that leading counsel for the defendant ship and counsel for the intervener were impeded from attending the hearing, due to the fact that they have to attend an International Seminar on Administrative Law organised by the Council of Europe in collaboration with the Ministry of Justice, of which advocate for the defendant ship is an active participant and advocate for the intervener has to participate as the Chairman of the Nicosia Bar Committee. Both counsel relied on a circular sent by the Supreme Court to all Judges, which was communicated to the Chairman of the Cyprus Bar Council informing them of the Seminar and expressing the desire that during those dates fixing of hearings of actions should be avoided and any cases already fixed be adjourned, where possible, for the purpose of facilitating judges and lawyers to attend and participate in the Seminar. Applicants also submitted that since the date when this action was fixed for hearing, there has been a change in the circumstances which had led the Court in treating the case as urgent. Such change of circumstances was that the defendant ship which was under arrest, as a result of which the plaintiffs were burdened with the payment of considerable expenses for maintaining her under arrest, was sold by an order of the Court pendente lite only a few weeks prior to the hearing and the proceeds of the sale have been deposited in an external account in Cyprus bearing interest of about 9%. Another ground set out in the application for adjournment, is an allegation that the parties are negotiating a settlement and the negotiations are at an advanced stage and are expected to materialise within the next one or two months as a result of which the hearing of the action may not be necessitated. 10
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Counsel for plaintiffs in opposing the application, submitted that if the adjournment is granted, all parties will suffer injustice because, on the one hand the owners of the defendant ship will be bound under the mortgage to pay interest at the rate of 14 1/8% as against 9% which is payable on the proceeds of the 40

sale and on the other hand the plaintiffs could deposit the proceeds in England at the rate of 10%, thus gaining 1% interest more or they could lend it to others at the rate of 12%, if such proceeds were collected by them. Counsel further contended
5 that plaintiffs will also suffer damage by reason of the substantial costs which they have already incurred in making arrangements for witnesses and lawyers from London and Athens to come to Cyprus and give evidence in the case.

The allegation contained in the application that negotiations
10 are being carried out for the purpose of settlement, is not denied by counsel for the respondents-plaintiffs, and in fact, in paragraph 13 of the affidavit sworn on behalf of the plaintiffs by Persefoni Panayi, advocate at the office of counsel for plaintiffs, it is stated as follows:

15 "I am advised and verily believe that although negotiations are in progress, they have been continuing for many years without result. The issues involved are complex involving many parties and litigation in Greece and the United Kingdom apart from Cyprus and it cannot be assumed that a
20 settlement will be reached or that it may be reached in a matter of a few months".

Before dealing with the merits of this application, I shall briefly summarise the facts material to the application under which this action was fixed for hearing as aforesaid.

25 On the 8th of June, 1983 counsel for plaintiffs applied for an early date of the trial and the grounds put forward in support of such application were: That plainatiffs had been suffering hardship due to the fact that the ship was under arrest and they had to pay about £5,000 per month Marshal's expenses
30 and, also, that the condition of the defendant ship was deteriorating and its value considerably diminishing by her being kept under arrest.

In the meantime, counsel for plaintiffs filed certain affidavits which contained allegations which were touching the credibility
35 of the owners of the defendant ship and making certain improper insinuation against them. Counsel for the defendant ship, rightly, applied to the Court to have the said affidavits struck out of the record, on the ground that they were constituting

an abuse of the process of the Court. Counsel for plaintiffs opposed such application and insisted that such affidavits should remain in the file of the Court.

When the application for fixing a date for hearing came up before me, the following directions were made:

“So long as there are pending interlocutory applications the hearing of which is fixed, I cannot fix this case for hearing. The application is adjourned to be considered after the determination of the question whether the affidavits filed by plaintiffs will remain as part of the file or will be struck out”.

Counsel for the plaintiffs was informed accordingly and on the 5th of August, 1983, he consented to such affidavits being withdrawn and an order be made as per application of counsel for the defendant ship.

Taking into consideration the grounds in support of the application for an early date of trial and in spite of the fact that the diary of the Court was already burdened till the end of December with cases and appeals which had priority over the present one, I fixed the hearing on the 31st October, to continue daily till the 4th of November, 1983. The hearing was so fixed notwithstanding the circular of the Supreme Court expressing the desirability of adjourning any hearings, where possible, to facilitate advocates for whose benefit the Seminar was held, to participate to it, because, having considered the special reasons set out in the application for a date of trial, I found that the hearing should take place as early as possible.

The exceptional circumstances, however, mentioned in the application for an early date of hearing, ceased to exist since the 22nd September, 1983 when, consequent to an application by counsel for the plaintiffs, an order was made for the sale pendente lite of the defendant ship and for the proceeds of the sale to be paid into Court. The reason that such sale was ordered about five weeks before the hearing of the action, was that the hearing was not expected to finish within the dates so reserved, as both counsel had intimated to the Court that the hearing was to last at least ten days and, therefore, it had to be continued some time next year. I had this to say in my decision on such application:

5 "It is correct that the hearing was fixed for five days next
November. From indications, however, which I had
from counsel on both sides, the hearing is not likely to
be concluded in less than ten days which means that the
five days allocated for the hearing in November will not
be sufficient and the further hearing will have to be
adjourned to a future time. But even after the conclusion
of the hearing, there is always the right of appeal which
will prolong the final determination of the action for quite
10 a long time in future".

The question whether an adjournment will be granted or
not, is a matter of judicial discretion and the principles that
should govern its exercise have been reviewed in a number of
cases (see, inter alia, *International Bonded Stores Ltd. v. Minerva*
15 *Insurance Co. Ltd.* (1979) 1 C.L.R. p. 557, *Manolis Kranidiotis*
v. Ship "AMOR" (1980) 1 C.L.R. p. 297, *Michael Hjiapanayi*
Tofas & Another v. Aglaia Agathangelou (1980) 1 C.L.R. 560
and *Kier (Cyprus) v. Trencos Constructions* (1981) 1 C.L.R.
p. 30, all of which have been reviewed in *Spanos v. Attorney-*
20 *General of the Republic* (1983) 1 C.L.R. 133.

The discretion of the Court in granting an adjournment should
be exercised in a proper judicial manner and an order for an
adjournment should not be made if there is danger that the
rights of a party before the Court will be prejudicially affected
25 by such adjournment. (see, *Manolis Kranidiotis v. Ship*
"AMOR" (supra).

It was further held in *Kier (Cyprus) v. Trencos Constructions*
(supra) at p. 39 that—

30 "The question whether an adjournment will be granted
or not is undoubtedly a matter of judicial discretion. As
such it has to be examined on the particular facts of each
case and not in abstracto; whether an adjournment will
be granted or not, must always be considered in the light
of the right to a hearing within a reasonable time as
35 provided by Article 30, para. 2, of our Constitution and
Article 6, para. 1, of the European Convention on Human
Rights of 1950, ratified by the European Convention on

Human Rights (Ratification) Law 1962 (Law No. 30 of 1962)".

The exceptional circumstances, to which reference has already been made, which existed at the time when the action was fixed for hearing and which urged for an early date of trial ceased to exist after the sale of the ship. The high expenses which the plaintiffs had to incur monthly for maintaining the ship under arrest have discontinued to run; the ship has been sold and the proceeds of her sale have been deposited with a local Bank at a high rate of interest. As I have already mentioned the order for the sale of the ship *pendente lite* was made only a few weeks before the hearing, though the ship had been under arrest since February 1982, because it was not contemplated that the hearing was to be concluded within the 5 days on which it was fixed.

As to the allegation of counsel for plaintiffs that costs have been incurred in respect of witnesses who were summoned to give evidence and who have to come from abroad, I wish to observe that the application for adjournment is not an application made on the day or on the eve of the hearing but an application made well in advance of the hearing and it was then pointed out by the Court to counsel for the plaintiffs that in view of the change of circumstances and the grounds set out in the application for an adjournment there was a strong probability for granting the adjournment and that he could keep his clients and witnesses informed of the situation. But even to-day when the application for an adjournment will be decided, there is ample time for counsel for plaintiffs to inform his witnesses about the adjournment. So I do not find such ground, as weighing against the granting of the adjournment.

Bearing in mind the legal principles dealing with adjournments and having seriously taken into consideration the grounds put forward by counsel for applicants in support of the application and the arguments on behalf of counsel for the respondents against the granting of the adjournment, I have come to the conclusion that there are good reasons for granting the adjournment. On the other hand to eliminate and injustice to the respondents, I have arranged to fix the hearing at an early date, not later than the 5th of December, 1983.

In the result, the application is granted and the hearing is adjourned to the 5th of December, 1983 to continue daily till the 8th of December, 1983. In the circumstances of the case, I make no order for costs.

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*Appucation granted with no order
as to costs.*