

1983 November 15

[TRIANTAFYLIDIS, P., A. LOIZOU, SAVVIDES, JJ.]

MARIA PARITSI,

Appellant-Applicant,

v.

ATHANASSIOS KARAPANAYIOTIS,

Respondent.

(Application in Civil Appeal No. 5957).

5 *Civil Procedure—Appeal—Want of prosecution—Dismissal—Reinstatement—Discretion of the Court—Principles applicable—Rules 21 and 22 of Order 35 of the Civil Procedure Rules—Dismissal confirmed by an earlier ruling of Supreme Court and a previous application for reinstatement dismissed for want of prosecution—Subject matter of appeal a judgment regarding access to minor children which does not operate as res judicata—Application dismissed.*

10 On 23.5.1979 the appellant filed an appeal against the dismissal of her application for access to her 2 minor children. She failed, however, to take within the prescribed period the steps mentioned in rule 21* of Order 35 of the Civil Procedure Rules namely to apply for copies of the record and make a deposit; and when the appeal came up for hearing a differently constituted
15 bench of the Supreme Court, sustaining a preliminary objection to the effect that the appeal should, by virtue of rule 22** of Order 35, be treated as having stood dismissed ever since the expiry of the period of three months prescribed under such rule, confirmed and upheld the dismissal of the appeal. There
20 followed an application for reinstatement which was dismissed on the 14th February, 1980 for want of prosecution; and on 22.2.1980 the appellant filed the present application for reinstatement, which was mainly based on the ground that the non-making of the required deposit within the prescribed time

* Rule 21 of Order 35 is quoted at p. 921 post.

** Rule 22 is quoted at p. 921 post.

was due to the failure of the Registry to inform her of the amount of such deposit.

Held, it is in the public interest that there should be an end to litigation and that stipulations as to time in procedural matters laid down in the Rules of Court are to be observed unless justice clearly requires that they should be relaxed; that in view of the ruling of the Supreme Court confirming the dismissal of this appeal for non-compliance with rule 21 of Order 35 and, also, of the dismissal of the previous application for reinstatement, for want of prosecution, this application must fail. (*Anastassiou v. Demetriou* (1980) 1 C.L.R. 573 distinguished). 5 10

Held, further, that since the judgment which is the subject-matter of this appeal is a judgment regarding access to minor children which does not operate as *res judicata*, the question of access to minor children can be raised under the relevant legislation, namely the Guardianship of Infants and Prodigals Law, Cap. 277, at any time in future by placing further material before the competent Court (see, in this respect, *Re F. (W.) (an infant)* [1969] 3 C.L.R. 595). 15

Application dismissed. 20

Observations: In view of the nature of the provisions of rule 22 of Order 35 the Registry of this Court should not take any step in relation to an appeal which stands dismissed by operation of that rule except to certify that it does stand dismissed. 25

Cases referred to:

- Paritsi v. Karapanayiotis* (1979) 1 C.L.R. 629;
Stylianou v. Nicola (1969) 1 C.L.R. 369 at p. 370;
Thomas v. Gavrielides (1969) 1 C.L.R. 371 at p. 372;
Kyriacou v. Gcorghiadou (1970) 1 C.L.R. 145 at p. 147; 30
Ibrahim v. Kassab (1972) 1 C.L.R. 16 at p. 17;
Iiji Panagi v. Hji Panagi (1974) 1 C.L.R. 60 at p. 61;
Harakis v. Feghali (1979) 1 C.L.R. 293 at p. 296;
Anastassiou v. Demetriou (1980) 1 C.L.R. 573 at p. 575;
Re F. (W.) (an infant) [1969] 3 All E.R. 595. 35

Application.

Application by appellant under Order 35, rule 22 of the Civil Procedure Rules for the reinstatement of the present appeal

which was dismissed for non-compliance with Order 35, rule 21.

P. Pavlou, for the appellant-applicant.

A. Anastasiades, for the respondent.

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Cur. adv. vult.

10 TRIANTAFYLIDIS P. read the following judgment of the Court. The appellant-applicant has applied under rule 22 of Order 35 of the Civil Procedure Rules for the reinstatement of the present appeal, which was dismissed under such rule for non-compliance with rule 21 of the said Order 35.

15 The dismissal of this appeal on the above ground was confirmed and upheld on the 12th December 1979 when the appeal came up for hearing before a differently constituted bench of our Supreme Court (see *Paritsi v. Karapanayiotis*, (1979) 1 C.L.R. 629).

The aforementioned rules 21 and 22 of Order 35, above, read as follows:

20 "21. If the appellant does not, within one month of lodging his notice of appeal, apply for copies and make a deposit as provided in rule 6 of this Order, the appeal may be dismissed on the application of any party. Such application may be made *ex parte*, but the Court of Appeal may direct notice to be given to such of the other parties or persons affected by the appeal as it may deem fit.

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30 22. If the appellant does not, within three months of lodging his notice of appeal, take the steps mentioned in rule 21 of this Order, the appeal shall stand dismissed, but it may, if the Court of Appeal so deems fit, be reinstated upon such terms as may be just".

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The relevant parts of the affidavit of counsel for the applicant, which was filed in support of the application for reinstatement of the present appeal, read as follows:

35 "2. On the 14.5.1979 judgment was given by the District Court of Limassol in Application No. 49/1978 by which the application of the Applicant to have access to her 2 minor children in Athens was refused.

3. The Appellant filed a Notice of Appeal against the above

judgment on the 23.5.1979 and as the said Notice of Appeal was not served within the prescribed time, due to a mistake on the part of the Registry of the District Court of Limassol, the Appellant on 1.6.1979 applied and obtained an extension of time for the service thereof. 5

4. On the 11th day of August, 1979, i.e. before the expiration of 3 months from the lodging of the notice of appeal, the Chief Registrar sent a written notice to the advocates for the appellant-applicant, with copy to the advocates for the Respondent, copy of which is attached hereto marked 'A'. In the said notice the space where the amount required to be lodged for the preparation of the record should appear and the space where the number of words should appear, were left blank. 10
5. Upon receipt of the aforesaid notice I rang up the Registry of the Supreme Court and enquired why the sum required to be deposited was not noted on the notice so that I might deposit it. I was given the reply that calculations had not yet been made and that when same were made I would be informed accordingly. 15 20
6. As I had no further communication from the Registry of the Supreme Court I applied to the Registrar on the 24th day of September, 1979 to fix a day for hearing of the appeal and to prepare copies of the file of the proceedings and documents put in evidence. 25
7. On the 13th September, 1979 a notice was sent to the advocates of both sides informing them that the case had been fixed for hearing on the 12th December, 1979.
8. On the 12th December, 1979 when we appeared before the Supreme Court I was for the first time informed that the Appeal 'stands dismissed'. 30
9. On the 30th January, 1980, an application was lodged at the Registry of the Supreme Court on behalf of the Appellant-Applicant whereby she applied for an order reinstating the above Appeal. On that date, i.e. the 30th January, 1980, no date for hearing of the Application was given by the said Registry and the clerk who lodged the Application on our behalf was told that such date 35

would be given later and the advocates appearing for the Appellant-Applicant would be informed accordingly.

- 5 10. Neither myself nor, to the best of my information and belief, anybody else in the office of the advocates for the Applicant, had any communication from the Registry of the Supreme Court, concerning the present case, until the 14.2.1980.
- 10 11. On the 14.2.1980 the office of the advocates for the Applicant was informed through the telephone that the application for reinstatement was fixed on that same day for hearing and that the same was dismissed as there had been no appearance on behalf of the Appellant-Applicant. Personally I heard about the date of hearing and the dismissal of the Application for the first time on
- 15 the '15.2.1980'.

In order to supplement the picture given by the above affidavit it is useful to state once again that, as already mentioned, on the 12th December 1979, when the present appeal came up for hearing, a ruling was given confirming that the appeal had

20 been dismissed for non-compliance with rule 21 of Order 35; and it is, also, necessary to point out, in relation to the proceedings on the 14th February 1980, which are referred to in the said affidavit, that on that date another application for the reinstatement of this same appeal was dismissed for want of

25 prosecution.

The case-law of this Court in relation to applications of this nature comprises, inter alia, the cases of *Stylianou v. Nicola*, (1969) 1 C.L.R. 369, 370, *Thomas v. Gavrielides*, (1969) 1 C.L.R. 371, 372, *Kyriacou v. Georghiadou*, (1970) 1 C.L.R. 145, 147,

30 *Ibrahim v. Kasab*, (1972) 1 C.L.R. 16, 17, *HjiPanayi v. Hji-Panagi*, (1974) 1 C.L.R. 60, 61, *Harakis v. Feghali*, (1979) 1 C.L.R. 293, 296 and *Anastassiou v. Demetriou*, (1980) 1 C.L.R. 573, 575.

The basic principle which is to be derived from the above

35 case-law is that it is in the public interest that there should be an end to litigation and that stipulations as to time in procedural matters laid down in the Rules of Court are to be observed unless justice clearly requires that they should be relaxed.

It is interesting to note that in the *Harakis* case, *supra*, after

40 the appeal was dismissed under rule 22 of Order 35 of the Civil

Procedure Rules, the Registry of this Court had fixed that appeal for hearing because the appellant had, in the meantime, paid the necessary fees and obtained a copy of the record of the appeal, but this development was not considered as altering the legal position which had crystallized when, after the expiry of the three months period prescribed by rule 22 of Order 35, the appeal came to be dismissed by virtue of the operation of rule 22; and we would like to take this opportunity of stressing, once again, what has already been said in the *Harakis* case, *supra*, that in view of the nature of the provisions of rule 22 of Order 35 the Registry of this Court should not take any step in relation to an appeal which stands dismissed by operation of that rule except to certify that it does stand dismissed.

A case in which reinstatement of the appeal was allowed under rule 22, above, and in which the circumstances in which it came to be dismissed under rule 22 bear at first sight some resemblance to the present case is the *Anastassiou* case, *supra*, but that case is clearly distinguishable, both because there has intervened on the present occasion the aforementioned ruling of the 12th December 1979 confirming the dismissal of this appeal for non-compliance with rule 21 of Order 35 and, also, a previous application for its reinstatement had been dismissed on the 14th February 1980 for want of prosecution.

We have, therefore, reached the conclusion that this is not a proper case in which to exercise our discretion in favour of reinstating this appeal.

Moreover, we have taken into account that the judgment which is the subject-matter of this appeal is a judgment regarding access to minor children which does not operate as *res judicata*, in the sense that the question of access to minor children can be raised under the relevant legislation, namely the Guardianship of Infants and Prodigals Law, Cap. 277, at any time in future by placing further material before the competent Court (see, in this respect, *Re F. (W.) (an infant)*, [1969] 3 All E.R. 595).

This application is, consequently, dismissed, but taking everything into account, we have decided to make no order as to its costs.

Application dismissed with no order as to costs.