

1984 June 6

[A. LOIZOU, MALACHTOS, LORIS, STYLIANIDES, PIKIS, JJ.]

WILLIAMS & CLYN'S BANK PLC.

*Appellants-Interveners.*

v.

PANAYIOTIS KOULOUMBIS,

*Respondent-Plaintiff.*

v.

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

*Respondent-Defendant.*

(Civil Appeals Nos. 6718-6740).

*Practice—Cross-appeal—Extension of time within which to file—  
Oral application for—Dismissed because serious issues were  
raised and application ought to have been made in writing.*

*Practice—Trial of cases—Adjournments—Discretion of the Court  
—Principles applicable.*

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On the day of hearing of the above appeals the respondent filed a notice under Order 35, rule 10 of the Civil Procedure Rules. As this notice was not filed within the time limits prescribed by the Rules and as objection was raised to this Court taking note of the said notice, counsel for the respondent made an oral application for a relaxation of the time limits prescribed by the Rules or for an adjournment of the hearing of the appeal so that he will take the necessary steps and comply with the procedure prescribed by the Rules for the purpose.

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*Held*, (1) that this Court is not prepared to grant an abridgment or extension of time by an oral application, as there are more than one serious issues raised and such application ought to have been made in writing with the necessary supporting facts so as it will receive the consideration that it deserves.

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(2) That as regards the application for adjournment no sufficient reasons have been put forward and the reason given by learned counsel was not one upon which this Court would accede to a request to an adjournment that comes so late in the day: that in deciding to adjourn all cases, Courts have to bear in mind the interest of all concerned and the desirability of the speedy determination of cases and the avoidance of undue delays which in the long run cannot but affect the prestige of the Courts; (principles governing a Court's discretion as regards adjournments in *Charalambous v. Kazanou and Another* (1982) 1 C.L.R. p. 326 reiterated); accordingly the application must fail.

*Application dismissed.*

Cases referred to:

- 15 *Asimenos and Another v. Chrysostomou and Others* (1982) 1 C.L.R. 145;  
*Charalambous v. Kazanou and Another* (1982) 1 C.L.R. 326 at p. 335.

#### Application.

20 Application by respondent-plaintiff to be allowed a relaxation of the time limits prescribed by the rules for the filing of a cross-appeal or be given an adjournment of the hearing of the appeal so that he will take the necessary steps and comply with the procedure prescribed by the rules.

25 *M. Montanios*, for appellants-interveners.

*P. Pavlou*, for the respondent-plaintiff.

*M. Eliades with A. Skordis*, for the respondent-defendant.

30 A. LOIZOU J. gave the following ruling of the Court. Before the commencement of the hearing of these appeals it was brought to our attention that a notice under Order 35, rule 10 of the Civil Procedure Rules had just been filed by the respondent-plaintiff. Under the said Order such notice has to be not less than a six days' notice in the case of an appeal from a judgment (whether final or interlocutory) or final order and  
 35 not less than two days' notice in the case of an appeal from an interlocutory order. These time periods may, however, be varied by order of the President of the Court of Appeal

an office copy of which has to be served with the notice. It is not in dispute that when the said notice was accepted by the Registry of this Court—and we leave the question as to whether it should or it should not be so accepted once it was obviously out of time—that there had been no compliance with Order 10 as regards obtaining the Order to vary the proscribed time limits. 5

It has not been raised, hence we have had no argument as to why learned counsel for the respondent-plaintiff has invoked this provision of the Civil Procedure Rules and not proceeded on the basis of the Rules of the Supreme Court which were in force and applied in the admiralty Division of the High Court of Justice of England on the day preceding the Independence Day, as being the Rules applicable by this Court in the exercise of its Admiralty Jurisdiction to the extent contemplated by rule 237 of the Cyprus Admiralty Rules of 1893. We do not therefore intend to deal with the matter, because as it will be shortly seen, the pronouncement on this point is not necessary. It is sufficient to refer only to the case of *Nicos Asimenos and Christakis Markou v. Maroulla Paraskeva Chryso-stomou and others* (1982) 1 C.L.R. 145, where the Full Bench of this Court dealt with the question applicable in Admiralty matters. 10 15 20

It further makes no difference to the issues that we have to determine, inasmuch as under the Rules of the Supreme Court of England in force prior to Independence Day and in particular Order 58, rule 6, paragraph 4, such notice (in the said Order referred to as respondent's notice) has to be served on the appellant and upon all parties to the proceedings in the Court below who are directly affected by the contentions of the respondent, (a) in the case of an appeal against an interlocutory order, within four days; (b) in any other case within twenty-one days, after the service of the notice of appeal on the respondent. It is apparent from the aforesaid paragraph 4 of rule 6 of Order 58, that the notice filed this morning by the respondent was, even, if it was made under the said rules, out of time. 25 30 35

Moreover delivery of the said notice to the appellants-inter-veners and the respondents-defendants, was only made this

morning without an order varying the times having been obtained and served with the aforesaid notice.

5 In the light of this situation and as objection was raised to this Court taking note of the said notice, learned counsel for the respondent–plaintiff has made a twofold oral application; either to be allowed to be granted a relaxation of the time limits prescribed by the Rules, or to be given an adjournment of the hearing of the appeal so that he will take the necessary steps and comply with the procedure prescribed by the rules  
10 for the purpose. The reason advanced by him for not acting within the prescribed times was that by oversight a later date was recorded in his diary as the date of hearing of these appeals, namely the 13th June and had that been the correct date he would have had ample time to file the notice within the prescribed days, or otherwise comply with the Rules.  
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We have considered both applications and the arguments advanced. We are, in the first place, not prepared to grant an abridgment or extension of time by an oral application, as there are more than one serious issues raised, as it appears  
20 from what has been said already in this ruling, and such application ought to have been made in writing with the necessary supporting facts so as it will receive the consideration that it deserves.

As regards the application for adjournment we find that no  
25 sufficient reasons have been put forward and the reason given by learned counsel was not one upon which this Court would accede to a request to an adjournment that comes so late in the day. In deciding to adjourn all cases, Courts have to bear in mind the interest of all concerned and the desirability of  
30 the speedy determination of cases and the avoidance of undue delays which in the long run cannot but affect the prestige of the Courts. The principles governing a Court's discretion as regards adjournments were reviewed by this Court in the case of *Nicodemos Charalambous v. Loukis Ka-anou and Another*  
35 (1982) 1 C.L.R. p. 326 and we need not repeat them in detail in this judgment. We feel only compelled to reiterate what was said at p. 335:

“We have dealt at some length with the question of adjournments, of piecemeal hearings and delays in the trial

and conclusion of cases and we have reviewed the cases containing judicial pronouncements on these most important aspects that go to the root of the good administration of justice. No doubt the essence of it is condensed in the old saying that has been repeated so many times that justice delayed is justice denied. We only hope that what has been said in all the aforesaid cases should not be forgotten or ignored but should be followed earnestly for the benefit of all litigants, that come to Courts seeking their aid for the protection of their legitimate rights".

Consequently this Court will proceed to hear the appeals as they stand.

*Order accordingly.*