

1984 August 29

[A. LOIZOU, DEMETRIADES AND STYLIANIDES, JJ.]

CENTRAL CO-OPERATIVE BANK LTD.,

*Appellants-Applicants,*

v,

CY.E.M.S. CO. LTD.,

*Respondents-Plaintiffs,*

v.

CENTRAL CO-OPERATIVE INDUSTRIES CYPRUS LTD.,

*Defendants.*

(Civil Appeal No. 6590).

*Jurisdiction—Point of law as to jurisdiction—It can be raised for the first time by the Supreme Court even if not raised by the parties or the trial Judge—Questions arising in the course of execution of a District Court judgment are “not orders not disposing of the action on its merits” within the meaning of section 22(4)(b) of the Courts of Justice Law, 1960 (Law 14/60)—And if the amount in dispute or the value of the property exceeds the limits of the jurisdiction of a judicial officer, he lacks jurisdiction and the trial is a nullity.*

10 The following issues arose for determination in this appeal:

(a) Can a point of law as to jurisdiction of the trial Court be raised for the first time by the Supreme Court?

15 (b) Had the trial Judge - a District Judge - jurisdiction to determine a question arising in the course of execution of a District Court judgment in a case where the value of the subject property exceeded the limits of his jurisdiction?\*

*Held*, that a point of law going to jurisdiction of a Judge of the

\* The Civil Jurisdiction of a District Judge under section 22(2)(b) of the Courts of Justice Law, 1960 (as amended) is limited to actions where the amount in dispute or the value of the subject-matter does not exceed C£5,000.

District Court is a matter of public policy and even if not raised by the parties or the trial Judge and the trial proceeds, and even if not raised in the notice of appeal, the Appellate Court has a duty to raise it of its own motion: that questions arising in the course of execution of a District Court judgment, as the point raised in the sub judice decision, are not orders "not disposing of the action on its merits" within the meaning of section 22(4)(b) of Law 14/60 and, therefore, if the amount in dispute or the value of the property exceed the limits of the jurisdiction of a judicial officer, he lacks jurisdiction and the trial is a nullity.

*Appeal allowed.*

Cases referred to:

*Thompson v. Shiel* [1840] 3 Ir. R. 135;

*R. v. Dennis* [1924] 1 K.B. 867 at p. 868;

*Simpson and Another v. Crowle and Others* [1921] 3 K.B. 243; 15

*Smith v. Smith* [1925] 2 K.B. 144;

*Smith v. Baker & Sons* [1891] A.C. 325 at p. 333;

*Davies v. Warwick* [1943] 1 All E.R. 309 at p. 313;

*Snell v. Unity Finance Ltd.* [1963] 3 All E.R. 50 at p. 60;

*Oscroft & Others v. Banabo & Another* [1967] 2 All E.R. 548; 20

*Whall and Another v. Balmen* [1953] 2 All E.R. 306;

*Pilavachi & Co. Ltd. v. International Chemical Co. Ltd.* (1965)  
1 C.L.R. 97 at p. 115.

**Appeal.**

Appeal by defendants against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 25th June, 1983 Action No. 5071/80) dismissing their application for an order of the Court staying the execution of a writ of movables which was issued by the plaintiffs against the movable property of the defendants and also for the return of the seized movables to the defendants.

*X. Clerides*, for the appellants.

*K. Michaelides*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of this Court will be delivered by Stylianides, J. 35

STYLIANIDES J.: The plaintiffs-respondents obtained judgment against the respondents-defendants for C£148,536.67 1/2.

In execution of the said judgment they requested and caused the issue of a writ of seizure and sale of movable property of the judgment-debtors.

5 On 2.12.82 movable property of the judgment-debtors was seized by the bailiff of the District Court of Nicosia. On 7.12.82 the appellants took out a summons under s.21 of the Civil Procedure Law, Cap. 6, Civil Procedure Rules, Cap. 12, O.41, r.3, and O.44, and s.20 of the Co-operative Societies Law, Cap. 114, whereby they sought order of the Court arresting the  
10 execution that was issued by the plaintiffs-respondents against the movable property of the defendants-debtors and the return of the seized movables to the possession of the respondents-debtors on the ground that they had a number of charges charging the property of the debtors as security for loans and facilities granted by them, which were registered in accordance with  
15 the provisions of ss. 20 and 21 of Cap. 114.

The application was opposed and it was heard and determined by a District Judge who concluded as follows:-

20 "From a careful reading of the provisions of s.20 of Cap. 114 and having in mind the above referred definition and characteristics of floating and fixed charges, I have come to the conclusion that the charges created under s.20 of Cap. 114 are floating charges on the properties of the co-operative industries and not fixed charges. These floating charges  
25 first must be crystallised under the terms of the charges and since the Bank did not take any steps for crystallisation the charges continue to be floating charges and the Bank is not entitled to the properties charged which continued to belong to the defendants' industries and are liable to seizure  
30 and execution by the plaintiffs.

The Bank therefore is not entitled to a stay of execution and to a return of the properties to the defendant industries and the present application should be dismissed."

The appellants took this appeal on a number of grounds.

35 The District Courts were established under the Courts of Justice Law, 1960 (Law No. 14/60) in furtherance of the constitutional provision of Article 152, that the judicial power shall be exercised by a High Court of Justice and such inferior Courts

is may, subject to the provisions of this Constitution, be provided by a law made thereunder.

The civil jurisdiction of a District Judge under the Courts of Justice Law, 1960, as amended by Laws No. 58/72 and s.4(b) of Law No. 35/82, is limited to actions where the amount in dispute or the value of the subject-matter does not exceed C£5,000.- (Section 22(2)(b)). The amount in dispute and/or the value of the subject property, as it emerges from the material in the file, do not exceed C£5,000.-. 5

At the commencement of the hearing of this appeal the Court ex proprio motu raised the question of jurisdiction of the trial Court and invited counsel to argue on it. 10

X. Clerides for the appellants conceded that the trial Court had no jurisdiction. K. Michaelides for the respondents-judgment creditors submitted that this Court cannot raise the issue of jurisdiction as it was not raised either before the trial Court or in the notice of appeal; further that the appeal rests on legal points and no useful purpose would be served if the question of jurisdiction were determined, as, if his submissions were not accepted by this Court, the litigation would be protracted to the injustice of the parties. 15 20

Two questions pause for determination:-

- (a) Can a point of law as to jurisdiction of the trial Court be raised for the first time by this Court?

By "jurisdiction" it is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute under which the District Court is constituted. Jurisdiction must be acquired before judgment is given - (*Thompson v. Shiel*, (1840) 3 Ir. Eq. R. 135). 25 30

The jurisdiction of the inferior Courts in this country is derived from and must be traced in the statute establishing them. A trial and decision by an inferior Court on a matter on which it has no jurisdiction is a nullity. 35

In *R. v. Dennis*, [1924] 1 K.B. 867, Avory, J., at p. 868 said:-

"It is always the duty of this Court, even although objection

is not put forward by counsel, or in the notice of appeal, to take note of a point which goes to the jurisdiction of the Court of trial”.

5 In *Simpson & Another v. Crowle & Others*, [1921] 3 K.B. 243 it was held that the mere fact that the parties proceeded with the trial without the point as to jurisdiction having been raised does not confer jurisdiction upon the County Court Judge. Lush J., at p. 255 said:-

10 “We should be obliged, when the absence of jurisdiction was pointed out to us, to hold that there was none. We could not affirm a judgment and ignore the fact that the action ought not to have been heard. The question of jurisdiction is one for the Court, and it would be our plain duty to hold that there had been an absence of jurisdiction, if we were  
15 satisfied that it was so”.

And at p. 257:-

20 “Very large consequences would follow if we were to hold that any kind of action can be tried and a binding judgment given in a county Court provided the parties to the proceedings consent to the Court trying it”.

25 In *Smith v. Smith*, [1925] 2 K.B. 144, an action was brought in the County Court to recover a money claim under an agreement and also for a declaration as to future payments under the agreement. It was held that the County Court had no power to make a declaration which might involve the payment of sums of money by the defendant in excess of the limit of £100 prescribed by s.56 of the County Courts Act, 1888. Scrutton, L.J., said at p. 150:-

30 “A county court judge is a judge of limited jurisdiction; he cannot deal with money claims of over £100; and how, as he cannot deal with money claims of over £100, he can hold that a defendant is liable to pay £240 a year for the lifetime of the plaintiff, I do not understand. It seems to me clear that the judge exceeded his jurisdiction when he made a  
35 declaration that that was a liability of the defendant”

The declaration was set aside by the Court of Appeal for lack of jurisdiction of the County Court.

In *Smith v. Baker & Sons*, [1891] A.C. 325, at p. 333, the rule was laid down that "a matter of law can be made the subject of appeal, but then only when the point has been raised at the trial before the learned judge".

This rule, however, has no application to points of law which it is the duty of the judge himself to take even if neither of the parties did so. These points of law go (i) to the jurisdiction of the Court, and (ii) to the illegality of the contract sued on. 5

In *Davies v. Warwick*, [1943] 1 All E.R. 309, at p. 313. Goddard, L.J., as he then was, said:- 10

"It was said in the course of the argument that, as the proper question was not raised at the trial, it could not be taken on appeal. In answer to that it was said that the rule that a point of law not taken in the county court cannot be raised on appeal, as laid down in *Smith v. Baker & Sons*, does not apply to appeals under these Acts (i.e., the Rent Acts). I think the proposition which is to be found in Rent and Mortgage Interest Restrictions, 18th Edn., by the Editors of Law Notes, p.183, is too widely stated. The cases cited show that the effect of s.3 of the Act of 1933, which restricts the power of the court to grant orders for possession, is not to afford a statutory defence to a party, but to limit the jurisdiction of the court. If the court of trial or the Court of Appeal finds that the case is one in which it is debarred from granting an order for possession, it is the duty of the court to refuse it, even though the statute is not raised by the defendant, because there is no jurisdiction to grant it. But that, in my opinion, is all that the cases quoted establish". 15 20 25

In *Snell v. Unity Finance Ltd.*, [1963] 3 All E.R. 50, Diplock, L. J., said at p. 60 referring to the rule in *Smith v. Baker & Sons*: 30

"That case was not concerned with points of law which went to either of those matters which it is the duty of the court itself to take even if neither party does, i.e., points of law which go (i) to the jurisdiction of the court, or (ii) to the illegality of the contract sued on. It is a clear rule of public policy that such points should be taken by the court irrespective of the wishes of the parties; and if not taken by the judge at trial, should be taken of its own motion". 35

by an appellate court. In my view the rule laid down in *Smith v. Baker & Sons* has no application to points of law which it was the duty of the judge himself to take even if neither of the parties did so".

- 5 In *Oscroft & Others v. Benabo and Another*, [1967] 2 All E.R. 548, it was decided that a question going to the jurisdiction of the County Court or to illegality, even though not raised before the trial Court or in the notice of appeal, as a matter of public policy may be taken up by the Court of Appeal on its own  
10 motion. (See, also, *Whall and Another v. Bulman*; [1953] 2 All E.R. 306).

A point of law as to the jurisdiction of an inferior Court is a matter of public policy. The trial Court, even if the parties do not raise it, has a duty to take it up of its own motion. Even if  
15 not raised by the parties before the trial Court and not introduced in the notice of appeal, the Appellate Court has a duty on noticing that a case was being tried by a judge without jurisdiction to raise the point of its own motion as the determination by a trial Court without jurisdiction is a nullity. If found that the trial  
20 Court lacked jurisdiction, the duty of this Court is to set aside such judgment.

(b) Had the trial Judge jurisdiction to determine the application of the appellants?

The jurisdiction of the trial Judge is limited, as aforesaid, to  
25 disputes in which the amount does not exceed £5,000.-.

Section 22(4) of the Courts of Justice Law, No. 14/60, reads as follows:-

30 "(4) Notwithstanding anything in any other Law contained and notwithstanding that the amount in dispute or the value of the subject-matter is in excess of the jurisdiction conferred upon him a President or a Senior District Judge or a District Judge shall have power -

(a) to give judgment in any action in which -

- 35 (i) the defendant fails to enter an appearance within the time fixed for such appearance, or  
(ii) either party fails to appear at the hearing of the action, or  
(iii) either party fails to deliver any pleading within

the time appointed by the Rules of Court relating to civil procedure in force for the time being; or

(iv) application is made for summary judgment under the Rules of Court relating to civil procedure in force for the time being; or

(v) the claim of any party is admitted in whole or where admitted in part with regard to the part admitted;

(b) to make any order in any action not disposing of the action on its merits.”

We think that para. (a) above does not apply in this case.

Having regard to the definition of the expression “action” in s.2 of the Courts of Justice Law, there is no doubt that questions which arise in the course of the execution of a District Court judgment come within the ambit of that definition.

In the present case the trial Judge determined and disposed of the rights of the parties on their merit.

The Civil Procedure Law, Cap. 6, Part IV, is headed “Execution by Sale of Movables”. Section 21 makes provision for proceedings where any movable property seized in execution under any judgment or order is claimed by any person other than the judgment-debtor. The claimant or the person to whom the writ of execution is addressed, may apply to the Court to determine the right to the property. The Court may make such order for the trial and determination of the rights of the parties as it shall think expedient and for the custody in the meanwhile of the property in dispute. The definition of “the Court” in s.2 of the Civil Procedure Law, Cap. 6, does not extend the jurisdiction of the District Judge conferred on him by s.22(2)(b) of the Courts of Justice Law. The trial Judge lacked jurisdiction as the value of the property in dispute exceeded the limit of his jurisdiction.

We find support in this in *Pilavachi & Co. Ltd. v. International Chemical Co. Ltd.*, (1965) 1 C.L.R. 97, where Josephides, J., in delivering the unanimous judgment of the Court of Appeal said (p.115):-

“The proceedings for the setting aside of the registration



of the foreign judgment are closely connected with the questions which arise in the course of execution of a District Court judgment, e.g. applications for writs of attachment, interpleader applications, etc. In those cases, if the property attached under the execution of the District Court judgment, or seized in execution of the judgment and claimed by a third party, exceeds in value the sum of £500, (the then jurisdiction of a District Judge), then the Full Court - and not a Judge sitting alone - has jurisdiction to hear and determine the matter”.

To sum up, the point of law going to jurisdiction of a Judge of the District Court is a matter of public policy and even if not raised by the parties or the trial Judge and the trial proceeds, and even if not raised in the notice of appeal, the Appellate Court has a duty to raise it of its own motion. Questions arising in the course of execution of a District Court judgment, as the point raised in the sub judice decision, are not orders “not disposing of the action on its merits” and, therefore, if the amount in dispute or the value of the property exceeds the limits of the jurisdiction of a judicial officer, he lacks jurisdiction and the trial is a nullity.

In view of the aforesaid, we have no alternative but to set aside the judgment appealed against and to order a new trial of the application before a competent Court.

With regard to costs, in the circumstances of this case we make no order as to costs.

*Appeal allowed. New trial of application ordered. No order as to costs.*