

1984 September 6

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

WILLIAMS & GLYN'S BANK PLC.,

Appellants-Interveniers,

v.

PANAYIOTIS KOULOUMBIS,

Respondent-Plaintiff.

v.

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

Respondent-Defendant.

(Civil Appeals Nos. 6718-6740).

Admiralty—Practice—Review of Judge's order—Form of application for—Judgment expressed in foreign currency—Directions by the Court as to date of conversion to Cyprus pounds—Appeal against directions—Said directions not a "final order or judgment disposing of the claim in the action" within the meaning of rule 165 of the Cyprus Admiralty Jurisdiction Order, 1893—But an order made by a Judge in the first instance in the exercise of the admiralty jurisdiction of the Court—Application for review lies which may be made in the form "M" in Schedule 1 to rule 166 of the above Order.

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Following judgment against the defendant which was expressed in Greek drachmas or their equivalent in Cyprus pounds there arose a question concerning the date of conversion of the drachmas to Cyprus pounds; and the Court was moved for directions on the matter which were given. As against these directions an appeal was filed.

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On the question whether the form of Notice of Appeal should be in Form No. 28 of the Civil Procedure Rules or in Form M in Schedule 1 of rule 166 of the Cyprus Admiralty Jurisdiction Order, 1893;

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Held, that the subject-direction does not come within the

expression "final order or judgment disposing of the claim in the action" in rule 165* of the Cyprus Admiralty Jurisdiction Order, 1893; that, therefore, it is an order made by a Judge in the first instance in exercise of the Admiralty Jurisdiction of this Court and as such an application to the Court for review lies under rule 166, which has to be made within seven days of the making of the order by filing a notice in writing stating that he desires to apply to the Court for a review of the order which may be made in the Form "M" in Schedule 1 to the said rule 166; and that, accordingly, the above appeals must be dismissed as unfounded.

Appeals dismissed.

Cases referred to:

Asimenos and Another v. Chrysostomou and Others (1982) 1 C.L.R. 145; 15
Onslow v. Inland Revenue [1890] 25 Q.B.D. 465 (C.A.).

Objection.

Objection raised by respondent's counsel that the Notice of Appeal filed under Order 35, rule 3 of the Civil Procedure Rules following Form No. 28 was wrongly used. 20

M. Montanios, for appellants-intervenors.

P. Pavlou, for respondent-plaintiff.

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

Cur. adv. vult.

A. LOIZOU J. read the following ruling. Upon delivering the ruling of this Court refusing the application of the respondent /plaintiff for adjournment, his counsel raised an objection that the Notice of Appeal filed under Order 35, rule 3, of the Civil Procedure Rules following Form No. 28, was wrongly used inasmuch as in the instant case the Rules applicable were rules 165 to 167, both inclusive, of the Cyprus Admiralty Jurisdiction Order 1893, which come under the title "Appeals". They read as follows:- 25 30

"165. Save where by these Rules is otherwise provided, any party may apply to the Court to review any order made 35

* Rules 165-167 are quoted at pp. 570-571 post.

by a Judge not being a final order or judgment disposing of the claim in the action.

166. Any party desiring to apply to the Court for a review of any order made by a Judge shall within seven
5 days of the making of the order file a notice in writing stating that he desires to apply to the Court for a review of the order and requesting that a day may be fixed for the hearing of his application, and the Registrar shall fix a day accordingly.

10 Every such application shall be entitled in the action and shall be signed by the party making the application or his advocate and may be in the Form M in Schedule I hereto.

167. Upon the hearing of the application, the Court may confirm, set aside, or vary the order of the Judge,
15 or may make such order as in the opinion of the Court should have been made, or such further order as the nature of the case may require”.

Form ‘M’ of the first Schedule to the said Order is entitled “Application for Review of Judge’s Order” and an application
20 following the aforesaid Rules and complying with Form ‘M’ was simultaneously filed by the appellants-interveners. As it appears there has been some doubt for some time now as to what is the appropriate procedure in view of the constitution and statutory changes that came about in the structure of the
25 Courts after Independence. Learned counsel for the appellants-interveners informed the Court that he is ready to proceed on either of the two processes filed by him but inevitably we have to pronounce and resolve the issue in order to decide on the basis of which form used we shall proceed to consider the
30 matters in issue.

The Admiralty Jurisdiction of this Court originates from the Cyprus Admiralty Jurisdiction Order of 1893 of the 23rd
November, 1893, made by Her Majesty The Queen in Council by virtue of section 12 of the Colonial Courts of Admiralty Act
35 1890 (53 and 54 Victoria 1890. See Law Journal Statutes 1890 p. 153 et seq.) There had been established in Cyprus by the Cyprus Courts of Justice Order 1882 made by Her Majesty in Council, the Supreme Court, and subordinate Courts styled “District Courts in Cyprus”, and as it was found expedient

that the said Supreme Court should possess admiralty jurisdiction and that the above recited Act should be applied to the said Court as if that Court were a Colonial Court of Admiralty, the Cyprus Admiralty Jurisdiction Order of 1893 was made by Her Majesty and the said Act was to apply to the Supreme Court of Cyprus "subject to the conditions, exceptions and qualifications" which were set out in the said Order with which we are not here concerned. (See Subsidiary Legislation of Cyprus, Vol. 2, pp. 572 and 573). There were also published in a Schedule to the said Order, Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

By virtue of section 6 of the Colonial Courts of Admiralty Act, 1890:-

"The appeal from a judgment of any Court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal or after a decision on local appeal lies to Her Majesty The Queen in Council, an appeal under this section shall not be allowed--

(a) from any judgment not having the effect of a definite judgment unless the Court appealed from has given leave for such appeal . . ."

By the Privy Council (Admiralty) Appeal Rules, 1910 made by Order in Council by His Majesty on the 31st day of May, 1910, an amendment was effected to the Rules contained in the Schedule to the Cyprus Admiralty Jurisdiction Order of 1893 and rules 160 to 164, both inclusive, were repealed and new Rules of Court were made (see Subsidiary Legislation of Cyprus, Vol. 2, p. 546, et seq.).

Since Independence the right of appeal to the Privy Council has been abolished and as matters relating to admiralty came within the exclusive jurisdiction of the High Court, now the Supreme Court, and was exercised by one of its Judges, a right of appeal to the Court from their decision was established by virtue of Article 155.2 of the Constitution and subsequently section 11(2) of the Courts of Justice (Miscellaneous Provisions) Law, 1964. We are left, therefore, under the Cyprus Admiralty Jurisdiction Order with no rules as such in the said order, except those contained in rules 165 to 167 hereinabove referred

to, and rule 237 which provides that in all cases not provided for by the said rules the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed. This rule was judicially considered and interpreted in the case of *Nicos Asimoneos and Christakis Marcou v. Maroulla Paraskeva Chrysostomou & Others* (1982) 1 C.L.R. 145, in the sense that the rules applicable in such cases are the rules of the Supreme Court which were in force and applied in the Admiralty Division of the High Court of Justice in England on the day preceding the Independence day. We need not, however, go any further into this matter as the point in issue before us is whether the appellants should have proceeded on the basis of rule 165 for a review of the order made by the learned trial Judge which in any case it is not a final order or judgment disposing of the claim in the action. What is a final judgment needs hardly any definition. A judgment has been defined by Lord Esher, M.R. in *Onslow v. Inland Revenue* [1890] 25 Q.B.D. 345, C.A. as being a decision obtained in an action, every other decision being an order.

What has been the subject of further judicial consideration and pronouncements are the differences between interlocutory orders and final orders. The matter is dealt at great length in relation to Order 58, rule 5, of the pre 1960 Rules of the Supreme Court of England, regulating the time of appealing and numerous cases are referred to in the notes thereto in the Annual Practice 1958, pp. 1667, 1668, 1669, under the headings "Interlocutory Orders", "Examples of Interlocutory Orders", and "Examples of Final Orders".

We need not review in detail the matter as the nature of the order under appeal in the present case leaves no doubt that same is neither a final order nor judgment disposing of the claim in the action in the sense of rule 165, inasmuch as judgment has been given in favour of several plaintiffs, one of them being the respondent/plaintiff in this appeal, expressed in Greek drachmas or their equivalent in Cyprus pounds and their costs in Cyprus pounds. The defendant ship was sold by writs of movables issued by the judgment-creditors and the proceeds of the sale were deposited by the Marshal in Court following directions to that effect. The judgment-creditors applied for payment out to them of the money so held to under the aforesaid

judgments. A question then arose concerning the date of conversion of the drachmas to Cyprus pounds. Counsel appearing for the two interveners in this action alleged that the conversion should be effected on the day of payment, whereas counsel for plaintiffs contended that the conversion should be effected on the day of judgment. Counsel for the defendant-ship did not oppose the application and left the matter to the Court.

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After extensive arguments the learned trial Judge gave his direction that "The date for conversion of drachmas into Cyprus pounds in Actions Nos. 73-85/82 should be the 23rd September, 1982, and in Actions Nos. 124-133/82 the 28th September, 1983". It is as against this direction that the appellants-intervenors complained.

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As already said, as of its nature, viewed in the context of the express provisions of rule 165 and the construction placed on the expressions "final order or judgment disposing of the claim in the action", we must rule that the subject direction comes under neither of the above two; therefore it is an order made by a Judge in the first instance in exercise of the Admiralty Jurisdiction of this Court and as such an application to the Court for review lies under rule 166, which has to be made within seven days of the making of the order by filing a notice in writing stating that he desires to apply to the Court for a review of the order which may be made in the Form 'M' in Schedule 1 to the said rules.

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In the light of the aforesaid, the proper procedure to be followed is not one by way of the course followed here. Consequently we dismiss these appeals before us as ill founded. We shall proceed to review the order complained of on the basis of the applications for review which are already before us, under rules 165 to 167, the obvious purpose of which is for a quick review in matters which, as of their nature, so demand.

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The applications for review will be fixed for hearing before this Court in due course.

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In the circumstances, there will be, however, no order as to costs.

Order accordingly.