

1985 June 27

[TRIANTAFYLIDIS, P., PIKIS AND KOURRIS, JJ.]

NICOS STAVROU AND ANOTHER,

*Appellants-Applicants,*

v.

FEREOS CHRISTOPOULOS,

*Respondent.*

*(Civil Appeal No. 6895).*

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*Stay of execution of an order of ejectment issued by consent—  
Section 47 of the Courts of Justice Law 1960 (Law 14/60),  
and Order 40, rule 11 of the Civil Procedure Rules.*

5 An order of ejectment was made by the District Court  
of Limassol on the consent of the parties, requiring the  
appellants to vacate the premises in question by a speci-  
fied date. An action to set aside the said order on the  
grounds of fraud was dismissed. An appeal against such  
dismissal met with similar fate. The imprint of finality re-  
10 mained attached to the said order of ejectment.

The appellants applied for stay of execution of the  
order of ejectment. The application was based on section  
47 of the Courts of Justice Law 14/1960 and on Order 40,  
rule 11 of the Civil Procedure Rules. It appears that the  
15 purpose of the proceedings for stay was to safeguard the  
position of the appellants in other independent proceedings,  
in no way designed to upset or interfere with the said  
order of ejectment. The trial Judge dismissed the applica-  
tion. The appellants appealed.

20 *Held, dismissing the appeal:*

- (1) No circumstances can be visualized under which a Court  
of Law may interfere, in the indirect way sought in these  
proceedings, with the finality of a Judgment of a Court  
of competent Jurisdiction. Order 40, rule 11 of the  
25 Civil Procedure Rules is irrelevant to the present pro-

ceedings. Section 47 of Law 14/1960 does not confer jurisdiction to impeach the finality of a judgment in the way sought in these proceedings.

- (2) Sympathy for the plight of the appellants is no reason for not applying the Law. 5

*Appeal dismissed. By consent  
no order as to costs.*

**Appeal.**

Appeal by defendants-applicants against the judgment of the District Court of Limassol (Hadjihambis, D. J.) dated the 7th March, 1985 (Action No. 2618/73) whereby their action for the stay of execution of an ejectment order issued against them was dismissed. 10

*A. Pandelides*, for the appellants.

*N. Ioannou (Mrs.)* with *M. Georghiou*, for the respondent. 15

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Recitation of the facts will immediately reveal the groundlessness of this appeal. An order of ejectment was made by the District Court of Limassol on the consent of the parties; the appellants agreed to vacate the premises by a specified date. The order was never disturbed. It remains with the imprint of finality attached to it and is in no way the subject of litigation. 20  
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An attempt was made to set aside the aforementioned order in collateral proceedings founded on allegations of fraud. An action was raised to set aside the order because the consent of the appellant was allegedly induced by the fraudulent conduct of the respondent. The action was dis- 30

missed and an appeal against the dismissal had a similar fate.

Notwithstanding the finality of the ejectment order, these proceedings were raised for stay of execution of the order of ejectment founded on the provisions of 0.40, r. 11 and s. 47 of the Courts of Justice Law-14/60. So far as we are able to gather, stay is sought in order to safeguard the position of the appellants in other proceedings, wholly independent from those that resulted in the issue of the ejectment order. Such proceedings are in no way designed to upset or interfere with the ejectment order in question.

The learned trial Judge dismissed the application as unfounded. We are wholly in agreement. We cannot visualize any circumstances under which a Court of Law may interfere, in the indirect way sought in these proceedings, with the finality of a judgment of a Court of competent jurisdiction. 0.40, r. 11 is specifically intended to confer jurisdiction to stay a judgment or order pending the determination of an appeal in the proceedings. It is, therefore, irrelevant to the present proceedings. Nor does s. 47 of the Courts of Justice Law confer jurisdiction to impeach in the way sought in these proceedings the finality of a judgment.

Though unnecessary to explore the ambit of s. 47 for the purposes of this judgment we can certainly conclude that it does not confer jurisdiction to interfere with the finality of judgment or order in the manner sought in these proceedings.

Counsel laid emphasis on the distressed condition of his client, a displaced person who found himself involved in multitudinous litigation for reasons that need not be recounted here. He has our sympathy. No doubt the District Court of Limassol seized of litigation involving the appellants pending for some years will do its utmost to dispose of the case the soonest. On the other hand, our sympathy for the plight of the appellants is no reason for not applying the law. The one thing we can do for the appel-

lants is to inquire of counsel fo the respondent whether they will claim their costs in this appeal.

*Mrs. Ioannou:* We claim no costs.

*Court:* In the result the appeal is dismissed with no order as to costs.

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*Appeal dismissed.*

*No order as to costs.*