

1985 March 22

[TRIANAFYLLIDES, P., MALACHTOS, STYLIANIDES, JJ.]

COSTAS SPYROU KYRIAKIDES AND OTHERS,

Appellants-Applicants,

v.

ANDREAS SAVVA KKAFFA AND OTHERS,

Respondents.

(Application in Civil Appeal No. 6692).

5 *Practice—Notice of Appeal—Amendment of—Application for amendment of Notice of Appeal by adding new ground of Appeal raising an issue not raised before the trial Court—Principles applicable to the matter of amendment of a Notice of Appeal.*

*Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 80 and Immovable Property (Tenure, Registration and Valuation) Rules, 1956, rule 7.**

10 During the hearing of the appeal the appellants applied for leave to amend the Notice of Appeal by adding new grounds thereto. The only point that remained in issue at the hearing of the application for leave to amend was in relation to the proposed new ground of appeal (c) whereby the appellants-applicants sought to raise for the
15 first time the issue that the Director of Lands and Surveys Department ought to have examined and considered completely separately and independently from each other the application by respondent 7 and the application by respondents 2 and 3 for rights of access through immovable
20 property belonging to the appellants. The judgment appealed from was given in determining an appeal to a Dis-

* 7. Every summons (Form 2) originating an appeal or application under these rules shall state the grounds of such appeal or application. No grounds other than those so stated shall (except with the leave of the Court hearing the appeal or application and on such terms as the Court may think just) be allowed to be taken by the applicant at the hearing of the appeal or application.

strict Court under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

Held, dismissing the application as to the above new ground of appeal (c): (1) That it is not really in the interests of Justice to allow the proposed new ground (c) to be raised as if such issue had been raised before the trial Court, it might have led to the production of relevant evidence, especially on the part of the District Lands Office Clerk who had dealt with the applications for rights of access, which in all probability would have related to the reasons why the two applications of the respondents for rights of access were dealt with together. 5 10

(2) That rule 7 of the Immovable Property (Tenure, Registration and Valuation) Rules, 1956, though not binding on this Court, may nevertheless be borne in mind as a guideline for the manner in which the Court's discretion would be exercised; and, of course, such rule 7 cannot be allowed to fetter the Court's discretion in a manner inconsistent with the principles expounded in the case-law cited in the judgment. 15 20

Application dismissed with costs against appellants-applicants.

Cases referred to:

- Charalambous v. Koutsides* (1966) 1 C.L.R. 271;
S.O.R.E.L. Limited v. Servos (1968) 1 C.L.R. 123; 25
Papadopoullou v. Polycarpou (1968) 1 C.L.R. 352;
Michael v. Kyriacou (1968) 1 C.L.R. 405;
Remzi v. Remzi (1972) 1 C.L.R. 33;
HjiSolomou (No. 1) v. Manolis (1972) 1 C.L.R. 37;
Leontiades v. Leontiades (1972) 1 C.L.R. 46; 30
Vassiliades v. M. Michaelides Bros. (1973) 1 C.L.R. 80;
Attorney-General (No. 1) v. Adamsa Ltd. (1975) 1 C.L.R. 8;

1 C.L.R. Kyriakides & Others v. Kkaffa & Others

Epiphaniou Ltd. v. Charlwood International Livestock Co. Ltd. (1978) 1 C.L.R. 112;

Electrofabric Co. Ltd. v. Nicolaidou (1978) 1 C.L.R. 421;

HjiHanni v. Elia (1979) 1 C.L.R. 1;

5 *Valana v. Elia* (1981) 1 C.L.R. 616;

Saint Nicolas Shipping Co. Ltd. v. Nissho-Iwai Co. Ltd.
(1984) 1 C.L.R. 604.

Application.

10 Application by appellants for leave to amend the Notice of Appeal by adding thereto new grounds of appeal.

G. Platritis with P. Panayi (Miss), for the appellants-applicants.

A. HadjiIoannou with R. Schizas, for the respondents.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following decision of the Court. During the hearing of this appeal counsel for the appellants have applied for leave to amend the Notice of Appeal by adding thereto new grounds of appeal.

20 When the application for amendment was to be heard counsel for the parties stated that they had agreed that the Notice of Appeal should be amended by the addition of the proposed new grounds of appeal (d) and (e).

25 Counsel for the appellants did not pursue further the present application except in relation to the new ground of appeal (c).

30 We, therefore, heard arguments of counsel as to whether or not we should allow the addition of this new ground of appeal by means of which it is being sought to raise the issue that the Director of Lands and Surveys Department ought to have examined and considered completely separately and independently from each other the application by respondent 1 and the application by respondents 2 and 3 for rights of access through immovable property belonging to the appellants.

This issue is being raised for the first time now as it was not raised at all before the trial Court.

Regarding the principles applicable to the matter of the amendment of a Notice of Appeal it is useful to refer to relevant case-law of this Court, such as *Charalambous v. Koutsides*, (1966) 1 C.L.R. 271, 272, 273, *S.O.R.E.L. Limited v. Servos*, (1968) 1 C.L.R. 123, 126, *Papadopoulou v. Polykarpou*, (1968) 1 C.L.R. 352, 359, 360, *Michael v. Kyriakou*, (1968) 1 C.L.R. 405, 406, 407, *Remzi v. Remzi*, (1972) 1 C.L.R. 33, 36, *HjiSolomou (No. 1) v. Manolis*, (1972) 1 C.L.R. 37, 38, 39, *Leontiadis v. Leontiadis*, (1972) 1 C.L.R. 46, 47, *Vassiliades v. M. Michaelides Bros.*, (1973) 1 C.L.R. 80, 81, *Attorney-General (No. 1) v. Adamsa Ltd.*, (1975) 1 C.L.R. 8, 10, 11, *Epiphaniou Ltd v. Charlwood International Livestock Co. Ltd.*, (1978) 1 C.L.R. 112, 114, *Electrofabric Co. Ltd. v. Nicolaidou*, (1978) 1 C.L.R. 421, 423, *HjiHanni v. Elia*, (1979) 1 C.L.R. 1, 4, 5, *Valana v. Elia*, (1981) 1 C.L.R. 616, 617 and *Saint Nicolas Shipping Co. Ltd. v. Nissho-Iwai Co. Ltd.*, (1984) 1 C.L.R. 604, 608, 609.

It is pertinent to point out that the judgment which is the subject-matter of the present appeal was given in determining an appeal to a District Court under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, and it is to be noted that rule 7 of the Immovable Property (Tenure, Registration and Valuation) Rules, 1956 (No. 622 in Supplement No. 3 to the Official Gazette of 5th July 1956) provides that in an appeal under the said section 80 no grounds other than those stated in the appeal shall be allowed to be taken by the appellant at the hearing of the appeal except with the leave of the District Court hearing the appeal and on such terms as such Court may think just.

This Court in dealing with the present appeal is not bound by the said rule 7, though it may nevertheless to be borne in mind, as a guideline, when exercising judicially, in the light of all relevant considerations, our discretionary powers as to whether or not to permit an amendment of the Notice of Appeal in this case at this stage; and, of course, such rule 7 cannot be allowed to fetter our said

powers in a manner inconsistent with their proper exercise in accordance with the principles expounded in the case-law cited earlier on in this Decision.

5 In the light of such principles we have reached the conclusion that it is too late in the present proceedings to allow
the amendment of the Notice of Appeal by the addition of
the new ground of appeal (c) as it raises an issue which
if it had been raised before the trial Court it might have
led to the production of relevant evidence, especially on
10 the part of the District Lands Office clerk who has dealt
with the applications for rights of access on behalf of the
Director of Lands and Surveys; and without having on record
such evidence, which in all probability would have related
to the reasons for which the two applications of the res-
15 pondents for rights of access were dealt with together, it
is not really in the interests of justice to allow the pro-
posed new ground of appeal (c) to be raised and argued
before us.

20 We have, therefore, decided to order the amendment of
the Notice of Appeal in accordance with the agreement of
the parties by adding thereto new grounds of appeal (d)
and (e) and to refuse to grant leave for the addition of
new ground of appeal (c). Consequently, to the extent to
which it has been contested the present application for
25 amendment of the Notice of Appeal in this case is dis-
missed with costs.

Order accordingly.