

1987 September 17

[MALACHTOS PIKIS KOURRIS. JJ.]

PANAYIOTIS CHRISTODOULOU,

Appellant-Plaintiff.

v.

AVRAAM SOFRONIOU,

Respondent-Defendant.

(Civil Appeal No. 6972).

Civil Procedure — Trial — Adversarial system — Implication of — Refusal of leave to file a defence out of time, but allowing defendant to cross-examine the plaintiff — Course adopted struck at the root of adversarial system

5 Although the defendant was refused leave to file a defence out of time, because of inordinate and inexcusable delay, he was given leave, on the day fixed for the proof of the case, to cross-examine the plaintiff on the merits of his claim.

10 The claim was for a liquidated amount. Following such cross-examination and after hearing the addresses of counsel the trial Court dismissed the action. Hence this appeal by the plaintiff.

15 Held, *allowing the appeal*: (1) Under the adversarial system of administration of justice the issues in dispute are defined by the pleadings of the parties, the statement of claim and the defence. Only after the submission of the defence is there an issue joined between the parties as to the right of the plaintiff to recover. In the absence of a defence, a defendant cannot be heard to deny the plaintiff's case; his only right in those circumstances is to question the quantum of damages.

20 (2) The rules governing adversarial trial find expression in the Civil Procedure Rules (Order 21, rules 2, 3, 4 and 5, Order 26, rules 4 and 9, Order 65).

(3) In this case the defendant was in essence allowed to defend the action and be heard to dispute the claim of the plaintiff without having delivered a

defence The course adopted struck at the root of the adversarial system of the administration of justice as well as defied the rights of the plaintiff to trial as ordained by the Rules of Court

Appeal allowed with costs Case remitted to District Court for further consideration Plaintiff at liberty to move the Court to set it down for proof. Defendant at liberty to renew his application for leave to file the defence out of time

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Appeal.

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Appeal by plaintiff against the judgment of the District Court of Lamaca (Eliades, D.J.) dated 9th May, 1985 (Action No. 422/85) whereby his claim for £243.60 cent agreed or reasonable remuneration for services rendered to defendant was dismissed.

Z. Mylonas, for the appellant.

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A. Koukounis, for the respondent.

MALACHTOS J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: Although the defendant was refused leave to file a defence out of time, because of inordinate and inexcusable delay, he was given leave, on the day fixed for the proof of the case, to cross-examine the plaintiff on the merits of his claim. The claim was for a liquidated amount, namely £243.60, agreed or reasonable remuneration for services rendered to the defendant on two specified occasions. Following the cross-examination of the plaintiff by defendant's counsel, and after hearing counsel address the Court, the trial Court dismissed the plaintiff's claim as ill founded, adding he might have come to the same conclusion independently of the corss-examination of the plaintiff.

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The plaintiff appealed complaining that defendant was allowed to cross-examine the plaintiff and be heard to dispute his claim notwithstanding his failure to file a defence, a course unwarranted by the Rules of Court and running contrary to basic norms governing the trial of a civil action. We find the complaint of the appellant justified for the reasons given below.

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Under the adversarial system of administration of justice the issues in dispute are defined by the pleadings of the parties, the statement of claim and the defence. The object of the statement of claim is to define the right breached and articulate the remedy to

which the plaintiff is entitled 'The defence', on the other hand is intended to signify the reaction of the defendant and elicit whether the claim of the plaintiff to a right to recover is denied and the reasons for the rejection of the claim, in short, to disclose his
5 defence to the claim. Only after the submission of the defence is there an issue joined between the parties as to the right of the plaintiff to recover. Responsibility for the statement of a party's case under our system of justice rests with the litigants. In the
10 absence of a defence, a defendant cannot be heard to deny the plaintiff's case, his only right in those circumstances is to question the quantum of damages. By the exchange of pleadings the litigants apprise one another of their case paving the ground for the definition of the issue in dispute and the orderly trial of the case as well as the avoidance of surprises that might divert the course of
15 justice. The rules governing adversarial trial find expression in the Rules of Court, regulating the exercise of civil jurisdiction originating from and modelled upon the English Rules of the Supreme Court. * Order 21 of the Civil Procedure Rules provides for the submission of the defence as well as the form it must take
20 for the denial of specific causes of action. (See in particular rr 2, 3, 4 and 5.) The plaintiff is entitled to apply for judgment in respect of part of his claim where a defence provides an answer only to part of his claim. (See Ord 26, r 9.) Where the defendant makes default in delivering a defence, the plaintiff is entitled to apply for
25 judgment. The same procedural rules find application in proceedings raised under Ord 65 as can be gathered from the tenor of the provisions of the rules embodied therein.

The inevitable conclusion on a review of what took place before the trial Court is that defendant was in essence allowed to defend
30 the action and be heard to dispute the claim of the plaintiff without having delivered a defence. The course adopted struck at the root of the adversarial system of the administration of justice as well as defied the rights of the plaintiff to trial as ordained by the Rules of Court. Failure to file a defence is, as can be gathered from the
35 tenor of the rules, in many respects equated with the admission of a right on the part of the plaintiff to recover.

In the result, the appeal is allowed with costs. The judgment and order for costs of the trial Court are set aside. The case will be remitted to the District Court of Lamaca, for further consideration.

* See the Annual Practice 1958, Ord 21 rr 3, 4, 5 and 6, Ord 27 r 11.

Plaintiff will be at liberty to move the Court to set down his case for proof. Moreover, the defendant may, if he so chooses, renew his application for leave to file a defence out of time, though reference to this right should not be construed as in any way foreshadowing the outcome of such application.

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Appeal allowed with costs. Judgment of the trial Court set aside as above.

*Appeal allowed
with costs.*