

1988 March 28

(TRIANTAFYLIDIS, P , LORIS, KOURRIS, JJ )

ELLI CONSTANTOURI KAPSOU,

*Appellant (Plaintiff),*

v

MIDDLE EAST AIRLINES AIRLIBAN,

*Respondents (Defendants),*

*(Civil Appeal No 6931),*

*Wrongful dismissal — Damages for — Jurisdiction — Employment for less than 26 weeks — Damages claimed did not exceed two years emoluments — District Courts have no jurisdiction to entertain such an action — The Termination of Employment Law 24/67, section 30, as amended by section 3 of Law 6/73*

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*Termination of Employment — The Termination of Employment Law 24/67, as amended by Law 6/73 — Sections 3 and 30*

*Industrial Disputes Court — Jurisdiction — The Termination of Employment Law 24/67, section 30, as amended by section 3 of Law 6/73*

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The action of the appellant (plaintiff) against the respondent (defendant) for damages for wrongful dismissal was dismissed by the trial District Court on the ground of lack of jurisdiction. The employment had lasted for a period of less than 26 weeks and the damages claimed did not exceed two years emoluments.

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Held, dismissing the appeal, Kourris, J dissenting (1) Under section 3 of Law 24/67 an employee whose services are terminated after an employment of less than twenty-six weeks has no right to claim compensation under the provisions of Law 24/67.

(2) Except in a case of a claim for damages for wrongful dismissal exceeding two years emoluments, the Industrial Disputes Court has, in virtue of section 30 of Law 24/67, as amended by section 3 of Law 6/73 exclusive Jurisdiction to decide on all industrial disputes arising out of the operation of Law 24/67 or any Regulations made thereunder including any incidental or ancillary to such dispute matter.

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(3) When a claim cannot succeed before the Industrial Disputes Court on the strength of the statutory right under section 3, the exclusive under section 30 jurisdiction cannot be circumvented by an action before a District Court.

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*Appeal dismissed.  
No order as to costs.*

### **Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Kramvis, D. J.) dated the 3rd May, 1985 (Action No. 10 5134/84) dismissing her action for wrongful dismissal.

G. Korfiotis, for the appellant.

M. Spanos, for the respondent.

*Cur. adv. vult.*

The following judgments were read.

15 TRIANTAFYLLIDES P.: This judgment is a majority judgment of my brother Judge Loris J. and myself and my brother Judge Kourris J. will give a separate dissenting judgment.

20 The appellant has appealed against the judgment of a District Judge of the District Court of Nicosia by means of which there was dismissed her action for wrongful dismissal against the respondents.

The action was dismissed because the trial Judge, in determining a preliminary legal issue, held that the District Court of Nicosia had no jurisdiction to entertain it.

25 It is undisputed that the appellant was employed by the respondents from 25 January 1982 till 11 July 1982 when her services were terminated and that, therefore, her employment lasted for less than twenty-six weeks.

30 Moreover it is, likewise, undisputed that in this case there are not being claimed damages in excess of the appellant's emoluments for two years and, therefore, her claim does not exceed the amount of damages which the Industrial Disputes Court is empowered to award under the Termination of Employment Law, 1967 (Law 24/67).

35 Under section 3 of Law 24/67 an employee whose services are terminated after an employment of less than twenty-six weeks has

no right to claim compensation under the provisions of Law 24/67

By virtue of section 30 of Law 24/67, as reenacted by means of section 3 of the Termination of Employment (Amendment) Law, 1973 (Law 6/73), the Industrial Disputes Court is granted exclusive jurisdiction to decide on all industrial disputes arising out of the operation of Law 24/67 or any Regulations made thereunder including any incidental or ancillary to such dispute matter, except that an employee has the right, in relation to the termination of his employment, to file an action before the District Court of the District where he was employed at the time when the dispute arose if his claim for damages exceeds the amount of damages which the Industrial Disputes Court is empowered to award

In the light of all the foregoing it is clear that the present instance is not one of those cases in which the appellant is entitled under section 30 of Law 24/67, as amended by Law 6/73, to file an action in a District Court and it is a case coming within the exclusive jurisdiction of the Industrial Disputes Court, but the appellant cannot claim compensation under Law 24/67 because she was employed for less than twenty-six weeks prior to the termination of her services

Counsel for the appellant has argued that notwithstanding the provisions of section 30 of Law 24/67 the appellant could claim, by virtue of a common law right, damages for wrongful dismissal by means of her action before the District Court

The learned trial Judge, agreeing in this respect with counsel for the respondents, found that he had no jurisdiction to entertain the action of the appellant because of the provisions of section 30 of Law 24/67

In our opinion section 3 of Law 24/67 has created a new statutory right regarding compensation for wrongful dismissal in substitution of the common law right and consequently when a claim cannot succeed before the Industrial Disputes Court on the strength of such statutory right, as in this case, the exclusive under section 30 of Law 24/67 jurisdiction of the Industrial Disputes Court cannot be circumvented by an action before a District Court, such as the present one which was rightly dismissed by the trial Judge for lack of jurisdiction

In the result this appeal fails and it is dismissed but with no order as to its costs.

KOURRIS J.: This is an appeal from the Ruling of a Judge of the District Court of Nicosia whereby he dismissed Action No. 5134/84 for want of jurisdiction.

By the said action the plaintiff/appellant claimed against the defendants/respondents the sum of £727 being damages for wrongful dismissal. The defendants/respondents by paragraph 1 of their defence alleged that the Industrial Disputes Court had exclusive jurisdiction to try the action and that the District Court of Nicosia had no jurisdiction.

When the action came up for hearing on 29.1.85, both parties applied to the Court to hear and decide the issue raised by the defendants/respondents in paragraph 1 of their defence as the Court's decision of such point might dispose of the whole action.

The learned trial Judge heard arguments by both sides and concluded that the claim of the plaintiff/appellant fell within the jurisdiction of the Industrial Disputes Court and that the District Court had no jurisdiction, whereupon he dismissed the action.

This appeal turns on the construction of ss. 3 & 30 of the Termination of Employment Law, 1967 (Law 24/67) as amended by Law 6/73 and it is pertinent at this stage to set out the said sections. Section 30 of the Termination of Employment Law 1967 (Law 24/67) (as amended by s.3 of the Termination of Employment (Amendment) Law, 1973 Law 6/73) reads as follows:

«30.-(1) Το Δικαστήριο Εργατικών Διαφορών κέκτηται αποκλειστικήν αρμοδιότητα να αποφασίζει επί απασών των εργατικών διαφορών των αναφυσόμενων συνεπεία της εφαρμογής του παρόντος Νόμου ή οιασδήποτε Κανονισμών εκδοθέντων δυνάμει αυτού ή αμφοτέρων, περιλαμβανομένου και παντός παρεμπίπτοντος ή συμπληρωματικού προς τοιαύτας διαφοράς θέματος.

(2) Ουδέν των εν τω παρόντι άρθρω ερμηνεύεται ως επηρεάζον το δικαίωμα εργοδοτούμενου όπως, αναφορικός προς τερματισμόν απασχολήσεως, προσφύγη εις το Επαρχιακόν Δικαστήριο της Επαρχίας εν η ο εργοδοτούμενος ηργοδοτείτο κατά τον

χρόνον κ' θ' ον ανέκυψεν η διαφορά εις περίπτωσιν καθ' ην η αξίωσις αυτού είναι δι' αποζημιώσεις υπερβαινούσας τας διά του παρόντος Νόμου δυναμένας να διεκδικηθώσι:

Νοείται ότι ο εργοδοτούμενος δεν δύναται να προσφύγη εις το Επαρχιακόν Δικαστήριον εάν έχη υποβάλει αίτησιν εις το Δικαστήριον Εργατικών Διαφορών δυνάμει του παρόντος Νόμου και ότι, εάν ούτος προσφύγη εις το Επαρχιακόν Δικαστήριον, δεν δικαιούται να υποβάλη αίτησιν εις το Δικαστήριον Εργατικών Διαφορών δυνάμει του παρόντος Νόμου.»

(«30.-(1) The Industrial Disputes Court shall have exclusive jurisdiction to adjudicate on all industrial disputes arising as a result of the operation of the present Law or any Regulations made thereunder or both, including any incident or ancillary to those disputes matter.

(2) Nothing in this section contained shall be construed as affecting the right of an employee, in respect of a termination of employment, to have recourse to the District Court of the District in which the employee was employed at the time the dispute arose in case his claim is for damages exceeding those which may be claimed under the present Law:

Provided that the employee may not have recourse to the District Court if he has filed an application to the Industrial Disputes Court under this Law and that, in case he has recourse to the District Court, he is not entitled to file an application to the Industrial Disputes Court under the present Law»).

And section 3 reads as follows:

«Όταν κατά ή μετά την ορισθείσα ημέρα ο εργοδότης τερματίζη δι οιονδήποτε λόγον άλλον ή των εν τω άρθρω 5 εκτιθεμένων λόγων την απασχόλησιν εργοδοτουμένου ο οποίος έχει απασχοληθή συνεχώς υπ' αυτού επί εικοσιέξ τουλάχιστον εβδομάδας ο εργοδοτούμενος κέκτηται το δικαίωμα εις αποζημιώσιν

καταβαλλομένην υπό του εργοδότη του και υπολογιζομένην συμφώνως προς τον Πρώτον Πίνακα».

5 (s.3. Where, on or after the appointed day, an employer terminates for any reason other than those set out in section 5 the employment of an employee who has been continuously employed by him for not less than twenty-six weeks, the employee shall have a right to compensation payable by his employer and calculated in accordance with the First Schedule»).

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Counsel for the appellant argued that in view of the provisions of s.3 of Law 24/67 the claim of the plaintiff does not fall within the jurisdiction of the Industrial Disputes Court because she had worked with her employer for a period of less than 26 weeks and, consequently, her claim falls within the jurisdiction of the District Court and that any other construction given to s.3 would be contrary to Article 30 of the Constitution.

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Counsel for the respondent argued that in view of the clear and unambiguous wording of s.30, the appellant's claim cannot be maintained before the District Court under any circumstances in that her claim for damages did not exceed the amount of damages which the Industrial Disputes Court could award to her. It was evident, he said from the writ of summons that the appellant's claim does not exceed the sum of £1,000 while her annual earnings, as they appear in the statement of claim, exceed that amount and under the relevant law the Industrial Disputes Court could award to her as damages up to 2 years' emoluments. He contended that the fact that s.3 of Law 24/67 does not create for an employee a statutory right for compensation unless he has continually served the same employer for at least 26 weeks does not justify the invoking of the jurisdiction of the District Court because such jurisdiction was expressly taken away from it by s.30 of Law 24/67, as amended by s.3 of Law 6/73. He submitted that the Industrial Disputes Court is given exclusive jurisdiction to adjudicate, inter alia on all claims for compensation for wrongful dismissal arising out of the operation of Law 24/67 and the District Court is given jurisdiction to entertain an action for damages only where the employee's claim is for an amount which exceeds the amount of compensation which may be awarded under Law 24/

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67. He also invited the Court to hold that an employee who had worked with his employer for a period of less than 26 weeks and has been wrongfully dismissed cannot have the benefit of resorting to the Industrial Disputes Court and that the District Court has no Jurisdiction to entertain his claim.

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From the wording of s.30 (as amended), it becomes clear that the Industrial Disputes Court was given exclusive jurisdiction to decide on all industrial disputes arising out of the operation of the law, or any regulation made thereunder, or both of them, including any matters incidental or ancillary to those disputes, if the claim for damages does not exceed the amount which the Industrial Disputes Court is empowered to award under the Termination of Employment Law 1967, (24/67) which are the emoluments of up to two years. If a claim exceeds an employee's two years emoluments then the District Court has exclusive jurisdiction.

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I do not agree with the contention that the District Court has jurisdiction only in cases where the employee's claim is for an amount which exceeds the amount of compensation which may be awarded under Law 24/67. In my judgment an employee has no statutory right for compensation by virtue of s.3 of Law 24/67 unless he has continually served the same employer for at least 26 weeks; but, if he is wrongfully dismissed before the lapse of 26 weeks he may resort to the District Court for his claim. If I were to hold that an employee cannot resort to the District Court for his claim then s.3 of the law would be contrary to Article 30 of the Constitution which provides that no person shall be denied access to the Court assigned to him by or under the Constitution.

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The Court having jurisdiction in civil cases in the first instance is the District Court. (See s.22 of the Courts of Justice Law, 1960, (Law 14/60), and a law may take away from its jurisdiction that which is expressly provided in the said law and the residual jurisdiction remains in the District Court.

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In view of the above, the true construction to be given to s.3 of Law 24/67 is that the Industrial Disputes Court has jurisdiction where an employee has continually served the same employer for at least 26 weeks and where the service of an employee is less than 26 weeks and he is wrongfully dismissed and he has a claim against his employer he may resort to the District Court which has jurisdiction to entertain his claim. The contention that an

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employee cannot invoke the jurisdiction of the District Court is untenable because in such circumstances a citizen of the Republic will be prevented from having access to the Courts which is contrary to the express provisions of Article 30 of the Constitution.

- 5 In these circumstances I would allow the appeal and set aside the ruling of the Court below.

*Appeal dismissed by majority.  
No order as to costs.*