

1988 June 20

(MALACHTOS, STYLIANIDES, PIKIS JJ.)

KYRIACOS PHOTIOU,

*Appellant-Plaintiff,*

v.

LAZAROS M. HADJIFORADOS

*Respondent-Defendant.*

*(Civil Appeal No. 7303).*

*Contempt — Civil contempt — Enforcing obedience to orders of a Court — Prerequisites — The Courts of Justice Law, 14/60, section 42 — Power thereunder exercisable subject to the Rules of Courts — 0.42A, rules 1 and 2 of the Civil Procedure Rules — Rule 2 clear and unambiguous — If an endorsed copy of the relevant order is not served, the application for punishment for contempt must be dismissed — Endorsed copy of interlocutory injunction issued ex parte served on defendant — Injunction made absolute after some modifications effected by consent — A new order — Therefore, service of an endorsed copy thereof was a prerequisite for enforcing obedience to it by contempt proceedings.* 5 10

*Judgment and Orders — Orders — Obedience to — Importance of. Interlocutory injunctions — Ex parte application for — The Civil Procedure Law, Cap. 6 section 9 — Period for which such an injunction issued ex parte remains in force.* 15

Upon ex parte application by the plaintiff (appellant) the trial Court issued an interlocutory injunction. An endorsed copy was served on the defendant (respondent). On the day when the order was returnable the defendant stated that he would oppose it. The trial Court adjourned, consequently, the application for hearing. On the day of the hearing the interlocutory injunction was made with certain modifications absolute by consent. The defendant failed to obey it, whereupon the plaintiff initiated contempt proceedings. The trial Court dismissed the application of the plaintiff on the ground that an endorsed copy of the order made as aforesaid by consent had not been served on the defendant as provided by order 42A Rule 2 of the Civil Procedure Rules. 20 25

Hence this appeal. The appellant argued that as the final interlocutory order was the same as that which had been issued ex parte, there was no need to serve an endorsed copy thereof.

5 Held, dismissing the appeal: (1) The power of the Court in virtue of section 42 of Law 14/60 to enforce obedience to any order issued by it is exercised subject to any Rules of Court. The relevant Rules are 0.42A, Rules 1 and 2.

10 (2) 0.42A rule 2 is clear and unambiguous. The controlling word is «shall». Personal service of duly endorsed copy of an order, either mandatory or prohibitory, is a condition precedent to its enforcement under section 42 of the Courts of Justice Law.

15 (3) Subsection (1) of section 9, of Cap. 6 clearly empowers the Court to make an interim order ex-parte. This interim order, however, shall remain in force for no longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it. At the end of such period it ceases to be in force, unless the Court otherwise directs. It is only upon the hearing of the parties or any of them that the Court has a discretionary power to direct that it remains in force for a longer  
20 period, which in practice normally is until the final determination of the action.

(4) The Order made by consent is in view of the modifications effected different from the Order issued upon the ex parte applications.

25 *Appeal dismissed with costs.*

*Cases referred to:*

*Canadian Metal Co. Ltd. v. Canadian Broadcastig Corp.* (No.2),  
48 D.L.R. 641;

30 *Mouzouris and Another v. Xylophaghou Plantation Ltd.* (1977) 1  
C.L.R. 287;

*HjiCosta v. Eteria Thomaides Bros (Cyprus) Ltd.* (1979) 1 C.L.R.  
476.

**Appeal.**

35 Appeal by plaintiff against the order of the District Court of Lamaca (Constantinides, S.D.J.) dated the 10th January, 1987 (Action No. 1140/86) whereby his application for the arrest, imprisonment, imposition of fine or sequestration of respondent's property for disobedience of the Order of the Court was dismissed.

*Chr. A. Theodoulou, for the appellant.*

*A. Koukounis, for the respondent.*

*Cur. adv. vult.*

MALACHTOS J.: The Judgment of the Court will be delivered by Mr. Justice Stylianides. 5

STYLIANIDES J.: This appeal raises a single point - is the service of an endorsed copy of an order an essential prerequisite for the prosecution of an application for enforcing obedience to such order?

The appellant-plaintiff is the owner of a shop situate at Hermes Street, No. 109, shown on D.L.O. maps as Plot 67, Block D. Sheet/Plan XLI/57.I.III, Scala town. 10

The respondent is the owner of immovables abutting the property of the appellant.

On 30th April, 1986, the appellant filed this action, whereby he prayed for an injunction, damages and other consequential relief. 15

On an ex-parte application of the appellant the District Court of Lamaca on 30th April, 1986, made an Order «restraining the defendant and/or his servants and/or his agents from demolishing and in any way interfering with the immovable of the plaintiff-applicant, including a wall, situate in Lamaca, Hermes Street 109, Registration No. D65, XLI/57.I.III, Plot 67, Block D, Scala, until the hearing and final determination of the action and/or until further order of the Court, unless the defendant appears before the Court on 13th May, 1986 and show cause why the Order should not continue to be in force». Endorsed copy of the said Order was served on the person of the respondent on the same date. 20 25

The respondent appeared by counsel and opposed the application.

The trial Court adjourned the application for hearing on the 1st July, 1986. On 25th June, 1986, counsel for the respondent filed notice of intention to oppose the application supported by an affidavit sworn by the respondent. On 1st July, 1986, the Court, on the motion of both counsel, visited the locus in quo in the presence of the parties and their respective counsel. Negotiations took place, which were meticulously recorded by the Court stenographer and finally the interlocutory order was made by 30 35

consent absolute, subject to the following modification: The respondent was entitled, within seven days, to place in front of the disputed wall a block-board, which should neither abut, nor be supported by the existing wall and, further, he was entitled to cut  
5 out the part of an arch protruding over his own space up to the plaster of the disputed wall.

On 21st October, 1986, the appellant applied by summons for the arrest, imprisonment, imposition of fine or sequestration of the property of the respondent for disobedience to the Order of the  
10 Court, dated 1st July, 1986.

This application was based on section 42 of the Courts of Justice Law, 1960 (Law No. 14/60) and the Civil Procedure Rules, Order 42A, rules 1, 2 and 6 and Order 48, rule 2.

The District Court of Lamaca dismissed this application on the  
15 ground that an endorsed copy of this Order was not served on the respondent as required by Order 42A, rules 1 and 2.

Hence this appeal.

Counsel for the appellant submitted that the Order of 1st July, 1986, was not different from the Order of 30th April, 1986,  
20 endorsed copy of which was served on the respondent and no new service was required. The respondent is a physical person and the Order sought to be enforced was made absolute on 1st July, 1986 in his presence. Furthermore, he invited the Court to make a differentiation between mandatory and prohibitory orders  
25 and to construe the relevant rule liberally so as to enable the enforcement of the Order of the Court.

An injunction, including an interlocutory injunction, is a solemn and authoritative form of order made by the Court expressly enjoining a party either to do a particular act, in which case the  
30 injunction is known as a mandatory injunction, or to refrain from doing a particular act, in which case the injunction is known as a prohibitory injunction. The duty of a person so enjoined is to comply strictly with the terms of the injunction.

The judgments of the Court have to be obeyed for the private  
35 interest, to give to the individual-litigant the full fruits of the remedy given to him by the Court, and the public interest, as society has an interest in the obedience of the orders of the Courts and the application of the Rule of Law.

O' Leary J. in *Canadian Metal Co. Ltd. v. Canadian Broadcasting Corp. (No.2)*(1975) 48 D.L.R. 641 at p. 669 said:-

«To allow Court orders to be disobeyed would be to treat the road towards anarchy. If orders of the Court can be treated with disrespect, the whole administration of justice is brought into scorn ... If the remedies that the Courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the Courts will quickly result in the destruction of our society.»

Section 42 of the Courts of Justice Law 14/60 provides that every Court shall have power to enforce obedience to any order issued by it, directing any act to be done or prohibiting the doing of any act, by fine, imprisonment, or sequestration and such powers shall be exercised subject to any Rules of Court.

A person who disobeys a judgment or order of the Court is guilty of civil contempt.

The Rules of Court, which concern this appeal, are the Civil Procedure Rules, Order 42A, rules 1 and 2, which read as follows:

«1. Where any order is issued by any Court directing any act to be done or prohibiting the doing of any act there shall be endorsed by the Registrar on the copy of it, to be served on the person required to obey it, a memorandum in the words or to the effect following:

'If you, the within named A.B., neglect to obey this order, by the time therein limited, you will be liable to be arrested and to have your property sequestered'.

2. An office copy of the order shall be served on the person to whom the order is directed. The service shall, unless otherwise directed by the Court or a Judge, be personal.»

The wording of rule 2 of Order 42A is clear and unambiguous.

The old English Order 41, rule 5 has material differences from our rule. Even the new Order 45, rule 7, which applies to a judgment or order to do an act as well as to abstain from doing an act, is still contrasted to our Rules.

The controlling word in rule 2 is «shall». It is a mandatory

provision and not directory. Only strict compliance thereto opens the way for the exercise by the Court of its power under section 42 of the Courts of Justice Law. There is no room for any other interpretation (see *Antonis Mouzouris and Another v. Xylophaghos Plantations Ltd.*, (1977) 1 C.L.R. 287 *Georgoulla Hjiocosta v. Eteria Thomaidis Bros. (Cyprus) Ltd.* (1979) 1 C.L.R. 476).

In *Mouzouris* and *Hjiocosta* cases (supra) it was held that the non-service of an endorsed copy of the order of the Court on the person disobeying such order renders the whole proceedings a nullity and the trial Court is bound to dismiss the application for the issue of the writ of attachment and sequestration as it has no discretion in the matter.

Personal service of duly endorsed copy of an order, either mandatory or prohibitory, is a condition precedent to its enforcement under section 42 of the Courts of Justice Law.

Is the Order of 1st July, 1986 the identical Order of 30th April, 1986?

In general a Court in granting a remedy, even interlocutory injunction, by virtue of the power vested in it, normally hears both parties. The rule *audi alteram partem* is well rooted in our system of administration of justice. For the proper administration of justice, however, and the issue of prompt and effective orders there is a deviation from this rule and orders *nisi* are made *ex-parte*, without the Court having the opportunity to hear the other party. By definition of «an *ex-parte*» application the party against whom the order is sought is absent.

The Civil Procedure Law, Cap. 6, section 9 reads as follows:

«9.(1) Any order which the Courts has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party.

(2) Before making any such order without notice the Court shall require the person applying for it to enter into a recognizance, with or without a surety or sureties as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3) No such order made without notice shall remain in force for a longer period than is necessary for service or notice of it

on all persons affected by it and enabling them to appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just. 5

(4) Nothing in this section shall be construed to affect or apply to the powers of the Court to issue writs of execution.»

Subsection (1) of section 9, above clearly empowers the Court to make an interim order ex-parte. This interim order, however, shall remain in force for no longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it. At the end of such period it ceases to be in force, unless the Court otherwise directs. It is only upon the hearing of the parties or any of them that the Court has a discretionary power to direct that it remains in force for longer period, which in practice, normally is until the final determination of the action. 10 15

The Order of 1st July, 1986, in view of the modification made with the consent of the parties, is different from the Order of 30th April, 1986. 20

Before concluding, we observe that in the drawn up Order of 1st July, 1986, attached to the application, the respondent is recorded to have appeared in person, whereas he was represented by counsel, as in more detail we have referred earlier in this Judgment. 25

In view of the foregoing, the appeal fails and is hereby dismissed with costs.

*Appeal dismissed  
with costs.* 30