

1988 September 22

(MALACHTOS, PIKIS, HADJITSANGARIS, JJ.)

KYPROXIL DESIGNS LTD.,

*Appellants-Applicants,*

v.

PANOS ENGLEZOS & CO. LTD.,

*Respondents.*

*(Case Stated No. 237).*

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*Judgments — Finality of — Appeal — Effect of — First instance judgment retains attribute of finality unless reversed on appeal — Dictum in Stephanidou v. Ioannides (1985) 1 C.L.R. 718, that lodgment of appeal deprives judgment of its finality, obiter and wrong in law.*

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*Rent Control — The Rent Control Law 36/75, section 28 — The period of two months starts running from date of order of ejectment — Running of time not affected by lodgment of appeal.*

*Rent control — Procedure — Costs — Principles applicable.*

The Rent Control Court ordered under Law 36/75 the eviction of the appellants from premises in Nicosia on the ground that they were required by the owners for material alterations. Execution of the order, which had been issued on 22.12.1980, was stayed until 31.1.1981. An appeal was lodged, but it was eventually withdrawn, subject to the extension of the period of stay till 31.12.1982.

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On 4.6.1981 the appellants sent a notice to the respondent demanding a new tenancy under section 28 of Law 36/75. As the demand was not satisfied they began proceedings before the Rent Control Court. The proceedings were determined under the new Rent Control Law 23/83.

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This is an appeal from the judgment of such Court, whereby appellants' application for a new tenancy was dismissed, on the ground that the notice of 4.6.1981 was out of time, i.e. the two months from the issue of the order of ejectment provided by section 28 of Law 36/75.

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The appellants' argument was that the lodgment of the appeal deprived the order of 22.4.1980 of its finality.

Held, *dismissing the appeal*:

5 (1) The statement in *Stephanidou v. Ioannides* (1985) 1 C.L.R. 718 that «And, therefore, though the first instance judgment was final at the time it was given, it ceased to be of final nature as soon as an appeal has been made against», is clearly obiter. It is, also wrong in law.

10 (2) The principle permeating every aspect of our judicial system is that first instant judgments are final; an attribute they retain unless reversed on appeal. Even in that situation, the reversal operates ~~retrospectively~~.

15 (3) The right of appeal is regulated by Statute. An appeal does not operate as a stay of execution (0.35, r.18 of the Civil Procedure Rules). The two fundamental considerations that must be balanced in the exercise of the discretionary powers vested in the Court to grant stay of execution pending appeal are:

20 (a) The right of the successful litigant to enjoy the fruits of his success, and (b) The sustenance of the efficacy of the right to appeal, by seeing that the exercise of the right to appeal is not rendered nugatory by the execution of the first instance judgment.

25 (4) In England, as in Cyprus, an appeal is by way of rehearing, but such process has never been held to entail suspension of finality of the first instance judgment upon the lodgment of an appeal.

*Held further*, as regards the order for costs made against the present appellants by the trial Court:

30 (1) The rule that costs follow the event does not apply in the inelastic way it applies to other civil litigation. Nonetheless, the outcome of the case remains a weighty consideration, a factor that may well prove decisive.

(2) There is no reason in this case to interfere with the order made.

*Appeal dismissed with costs.*

*Cases referred to:*

35 *Stephanidou v. Ioannides* (1985) 1 C.L.R. 718;  
*Kyriacoli and Son Ltd. v. Rologis* (1985) 1 C.L.R. 211;  
*Papastratis v. Petrides* (1979) 1 C.L.R. 231.

*Ioannou v. Demetriou and Others* (1980) 1 C.L.R. 425;

*EVRIC and Others v. Kotsonis* (1986) 1 C.L.R. 617;

*Pourikkos v. Fevzi*, 1962 C.L.R. 283;

*Attorney-General v. Georghiou* (1984) 2 C.L.R. 251;

*Galatariotis v. Polemitis and Another*, 20 C.L.R. (Part II) 70;

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*Electricity Authority v. Georgalietos and Others* (1972) 1 C.L.R. 77;

*Hadjicosta v. Anastassiades* (1982) 1 C.L.R. 296;

*Katsiantonis v. Franzeskou* (1981) 1 C.L.R. 566.

**Case stated.**

Case stated by the Chairman of the Rent Control Court Nicosia relative to his decision of the 28th June, 1985 in proceedings under section 32(1) of the Rent Control Law, 1983 (Law No.23/83) instituted by Kyproxil Designs Ltd. against Panos Englezos & Co. Ltd. whereby applicants' application for an ejection order was refused.

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*Chr. Clerides*, for the appellants.

*Th. Ioannides with P. Liveras*, for the respondents.

*Cur. adv. vult.*

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

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PIKIS, J: On 22nd April, 1980, the Rent Control Court set up under the provisions of s.4 of the Rent Control Law, 1975 (36/75) ordered the eviction of the appellants from the controlled premises occupied at Makarios Avenue, Nicosia. The order of ejection was made for the purpose of enabling the owners to carry out material alterations to the premises. Execution of the order was stayed till 31st January, 1981. In the meantime, an appeal was taken against the decision that was eventually withdrawn and dismissed subject to prolongation of stay till 31st December, 1982. The appellants did not apply for a new tenancy under the provisions of s.28 of Law 36/75 and failed to send the statutory notice within the two-month period from the date of the order envisaged by that enactment. A notice to that end was given much later, on 4th June, 1981. Their demand was not satisfied and proceedings were raised that were tried and determined under the new Rent Control Law - 23/83, that repealed and replaced Law 36/75. The Court refused the application on the ground, inter alia,

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that the notice served on the respondents for a new tenancy was out of time. They rejected the submission of the appellants that the lodgment of an appeal deprived the order of eviction made in 1980 of finality.

- 5 Counsel for the appellant repeated the same submission before us and candidly acknowledged that if the appellants fail on this issue, it would be superfluous to probe any of the remaining matters raised by the notice of appeal. Counsel for the respondents was of the same view. As the Court too was of opinion that the
- 10 remaining issues might become of theoretical interest, we proceeded to hear arguments on the implications of the filing of an appeal upon the outcome of a first instance judgment. Counsel for the appellants acknowledged that the only support he could derive for the proposition that an appeal suspends the outcome of
- 15 the case or deprives the first instance judgment of finality, is an obiter statement in *Stephanidou v. Ioannides*\* (in the majority judgment in *Stephanidou*). Relying on the authority of *Kyriacou & Son Ltd. v. Rologis*\*\* reiterating that an appeal is by way of rehearing in the context of examination of the implications of the provisions of s.32 of Law 23/83, the Court made the following
- 20 observation: «And, therefore, though the first instance judgment was final at the time it was given, it ceased to be of final nature as soon as an appeal has been made against it». This statement was neither necessary for the outcome in *Stephanidou* nor a corollary of
- 25 the judgment in *Kyriacou*. In *Kyriacou* (supra) it was decided that s. 32(2) of Law 23/83 made the new law applicable to the determination of pending appeals notwithstanding the fact that they had been decided under the provisions of the repealed legislation, notably, Law 36/75.
- 30 In our judgment the statement in *Stephanidou* (supra) quoted above, was not only obiter but with respect also wrong. The principle permeating every aspect of our judicial system is that first instance judgments are final; an attribute they retain unless reversed on appeal. Even in that situation, the reversal operates
- 35 retrospectively. The appellate process is not an extension of the trial or a continuation of it. It is a forum for the review of the soundness of the adjudication and the judgment, in no way designed to diminish the finality of first instance judgments.

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\* (1985) 1 C.L.R. 718.

\*\* (1985) 1 C.L.R. 211.

The right to appeal derives from statute and its exercise is subject to its provisions and relevant rules of procedure. In accordance with the specific provisions of Ord. 35, r.18, of the Civil Procedure Rules regulating the exercise of the right of appeal, an appeal does not operate as a stay of execution, that is, it does not upset the finality inherent in the judgment of the trial Court or its sequential enforceability. An order of the Court is necessary for that purpose, involving the exercise of judicial power. Numerous decisions\* on the application of r.18, Ord. 35, suggest that the two fundamental considerations that must be balanced in the exercise of the discretionary powers vested in the Court thereunder, are: (a) The right of the successful litigant to enjoy the fruits of his success, and (b) The sustenance of the efficacy of the right to appeal, by seeing that the exercise of the right to appeal is not rendered nugatory by the execution of the first instance judgment.

In England too similar considerations apply to the suspension of the whole or part of a first instance judgment. In fact, our rule is founded on the corresponding rule of the old English Rules of the Supreme Court, that is, Ord. 58, r.16(12)\*\*.

In England, as in Cyprus, an appeal is by way of rehearing, a process that has never been held to entail suspension of finality of the first instance judgment upon the lodgment of an appeal (See Ord. 35, r.3, of the Civil Procedure Rules and the corresponding rule of the old English rules of the Supreme Court, Ord. 58, r.1). The relevant procedural rules merely serve to define the framework of an appeal and the principles regulating its conduct.

In *EVRİK and Others v. Kotsonis*\*\*\*, the Supreme Court adverted to the consideration that must be balanced in determining whether stay should be granted. In the context of that judgment I made the following observation I consider worth repeating: «He is entitled (referring to the successful litigant) to the fruits of his success notwithstanding the challenge of the decision by way of appeal. The finality attached to first instance judgments is not suspended

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\* See, *inter alia*, *Papastratis v. Petrides* (1979) 1 C.L.R. 231 *Ivoni Ioannou v. Andreas Demetriou and Others* (1980) 1 C.L.R. 425, at 429; *The Annual Practice 1960, 1695-1697*, at pp. 345, 348 & 1183.

\*\* See *Annual Practice 1958*, p. 1697, on the application of Ord. 58 r.12.

\*\*\* (1986) 1 C.L.R. 617.

when challenged by appeal. The imprint of finality attaches thereto unless reversed by the Court of Appeal. Under our judicial system finality is not dependent upon confirmation on appeal\* .

5 The expansion of the right to appeal made by s.25(3) of the Courts of Justice Law (14/60), has not changed the basis of an appeal as the Supreme Court noted in *Yiannis Kyriakou Pourikkos v. Mehmed Fevzi\*\** .

10 In *Attorney-General v. Georghiou\*\*\** , we debated in some detail the position of the trial Court and the effect of its pronouncements under our judicial system. In criminal cases it was also affirmed that the taking of an appeal does not diminish the finality of the first instance judgment.

15 In view of the above the appeal must be dismissed. The only other question we must determine before leaving the case is whether the order for costs made in favour of the respondents should be upset. It is settled\*\*\*\* that in Rent Control proceedings the rule that costs follow the event does not apply in the inelastic way it applies to other civil litigation. In *Katsiantonis v. Franzeskou\*\*\*\*\** we explained that the reason justifying a more flexible rule in rent control proceedings lies in the fact that a large measure of discretion resides with the Court. Nonetheless, the outcome of the case remains a weighty consideration, a factor that may well prove decisive.

25 And surely in a case such as the present where the outcome of the case turned, inter alia, not on the exercise of discretionary powers, but on the absence of the statutory prerequisites for success, the Court could very appropriately adjudge the appellants to pay the costs. Nothing suggested before us justifies interference with the order made.

30 In the result the appeal is dismissed with costs.

*Appeal dismissed with costs.*

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\* Page 623.

\*\* (1962) C.L.R. 283, 288.

\*\*\* (1984) 2 C.L.R. 251 (majority judgment)

\*\*\*\* *Galatariotis v. Polemitis and Another*, 20 C.L.R. (Part II), 70; *Electricity Authority v Georgalletos and Others*, (1972) 1 C.L.R. 77; *Hadjicosta v Anastassiades* (1982) 1 C.L.R., 296

\*\*\*\*\* (1981) 1 C.L.R. 566, at 573, 574.