

1988 November 29

(STYLIANIDES, KOURRIS & BOYIADJIS, JJ.)

IN THE MATTER OF THE ADOPTION LAW, CAP. 274

AND

IN THE MATTER OF MARIA DEMOSTHENOUS, AN INFANT, FEDROS
ZOGRAFOU AND SOFOULLA F. ZOGRAFOU,

Appellants-Applicants,

v.

CHRISTOFOROS DEMOSTHENOUS AND ELENI DEMOSTHENOUS,

Respondents.

(Civil Appeal No. 7480).

Adoption — The Adoption Law, Cap. 274, section 28 — Neither the particular section nor any other provision in the law empowers a Court to annul an adoption order earlier made.

5 *Civil Procedure — 0.64 — Enables the remedy of procedural irregularities, but does not expand the substantive law and does not confer a remedy where none is given by law.*

10 The appellant filed an application, before a District Court, relying on section 28 of the Adoption Law, Cap. 274 and on Rule 44 of the Adoption Rules and 0.64 of the Civil Procedure Rules, for setting aside and/or declaring an adoption order made by the District Court null and void.

The application was dismissed for lack of jurisdiction. Hence this appeal.

Held, dismissing the appeal:

15 (1) Section 28 of Cap. 274 was judicially examined by this Court in the case of *Nicolaides v. Yerolemi*, (1984) 1 C.L.R. 742. The section does not purport to empower a District Court to declare null without any legal effect an adoption order or to order the annulment or avoidance of the order.

(2) Regulation 44 of the Adoption Rules introduces the Civil Procedure Rules including of course Order 64. However, what can be remedial under Order 64 of the Civil Procedure Rules is a procedural irregularity for non-compliance with the rules of Civil Procedure. Order 64 does not expand the substantive law and consequently it does not confer a remedy where none is given by the law. 5

(3) The Adoption Law, Cap. 274, vests no such power in the District Court and none is to be found in any other enactment.

(4) The proper procedure in cases such as the present is possibly to apply for an extension of time to file an appeal. 10

Appeal dismissed. No order as to costs.

Cases referred to:

Nicolaides v. Yerolemi (1984) 1 C.L.R. 742. 15

Appeal.

Appeal by applicants against the judgment of the District Court of Nicosia (Michaelides, D.J.) dated the 29th September, 1987 (Adoption Appl. No. 9/79) whereby their application to set aside an adoption order was dismissed for lack of jurisdiction. 20

L. Papaphilippou, for the appellants.

No appearance for the respondent.

Y. Frangou (Mrs.), on behalf of the Attorney-General as amicus curiae.

Cur. adv. vult. 25

STYLIANIDES J. : The Judgment of the Court will be delivered by Mr. Justice A. KOURRIS.

KOURRIS J.: This is an appeal against the decision of a judge of the District Court of Nicosia by which he dismissed an application filed by the applicant/appellant to set aside an adoption order, on the ground that he had no jurisdiction to entertain same. 30

The facts leading to the present appeal shortly are as follows:-

Appellants filed an application on 4.6.1979 in the District Court of Nicosia for the adoption of a girl who was born on 26.2.1970. The application came before the District Court on 9.8.1979 and 35

the Judge having been satisfied that all the prerequisites to the making of the adoption order have been satisfied and having also been satisfied that the adoption order was for the benefit and the welfare of the child he made the adoption order.

5 On 22.6.1982 an application was filed by the appellants for the cancellation and/or annulment of the adoption order; this application was withdrawn and dismissed accordingly on 22.9.1982.

Appellants on 15.9.1984 filed a fresh application through a
10 different counsel by which they prayed for:-

(a) A declaration that the adoption order dated 9.8.1979 is null without any legal effect;

(b) An order of the Court ordering the annulment or avoidance of the said order; and

15 (c) Any other order or remedy.

The learned trial Judge in dealing with the application said as follows:-

20 «This application is supported by an affidavit composed of six pages and 22 paragraphs. The gist of what is stated therein is that the girl never felt at ease with her adoptive parents and that the welfare officer who prepared the social welfare report had no authority to deal with the application as her name was not among the legally authorized officers under the Adoption Law. The welfare report is also attacked for being misleading
25 and inadequate in many respects.»

During the hearing of the application and after the testimony of two witnesses the trial Court considered it expedient to raise *ex proprio motu* the point of jurisdiction and the application was adjourned to enable counsel to address the Court on the matter
30 before proceeding further with the hearing.

The trial Judge having considered the arguments of counsel concluded that he had no jurisdiction to entertain the application and held that he had no power under the Adoption Law to annul or declare void an order of this nature made by another judge of
35 the District Court.

Counsel for the appellants in arguing the appeal before us relied on section 28 of the Adoption Law, Cap. 274, Regulation

44 of the Adoption Rules and Order 64 of the Civil Procedure Rules

Section 28 of Cap 274 was judicially examined by this Court in the case of *Lambros Nicolaides v Marina Yerolemi* (1984) 1 C.L.R 742 Pikiis J who delivered the judgment of the Court at page 748 said as follows - 5

«The appellant largely rested his case on Section 28 of Cap 274 The provisions of which we quote below

'No adoption shall be valid and have any effect unless made in accordance with the provisions of the law ' 10

He construed the above provisions of the law as empowering any court at any future date to enquire into the validity of the order and that it was open to a court other than that issuing the order to enquire into the existence of the prerequisites for the making of the adoption order With 15 respect we disagree with the interpretation of section 28 favoured by counsel for the appellant. To our comprehension what section 28 purported to accomplish was to lay down that only adoption orders made by a competent Court under Cap 274 could be heeded in law The legislator did not aim, by the 20 enactment of section 28, to throw an adoption order made by a competent Court, as in this case, in the melting pot of future litigation. Given our construction of section 28, the case for the appellant is considerably weakened »

Thus it is apparent from the construction given to Section 28 of Cap 274 that adoption orders only could be made by this Section 25 And it does not purport to empower a district court to declare null without any legal effect an adoption order or to order the annulment or avoidance of the order

We agree with the trial Judge that there is no provision in the Adoption Law, Cap. 274 empowering it to annul an adoption order Therefore the appellants cannot avail themselves of Section 28 of Cap 274 to move a district court for the annulment of an adoption order and consequently this ground fails. 30

The second point raised by learned counsel for the appellants is that Order 64 of the Civil Procedure Rules enables the appellants to apply to the District Court to set aside the adoption order His argument was to the effect that Regulation 44 of the Adoption 35

Rules introduces the Civil Procedure Rules including of course Order 64.

5 We are unable to agree with this submission of counsel for the appellants. What can be remedied under Order 64 of the Civil Procedure Rules is a procedural irregularity for non-compliance with the rules of Civil Procedure. Order 64 does not expand the substantive law and consequently it does not confer a remedy where none is given by the law.

10 In this case we are concerned with the competence of the District Court, if any, to set aside an adoption order; in fact to set it aside years after its making. The Adoption Law, Cap. 274, vests no such power in the District Court and none is to be found in any other enactment. That being the case Order 64 is irrelevant to the matter in issue and consequently inapplicable.

15 We think, and we leave the matter open, that the procedure to be followed in cases such as the present is possibly to apply for an extension of time to file an appeal.

In the circumstances the appeal is dismissed but with no order for costs.

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Appeal dismissed. No order as to costs.