

1988 February 5

[TRIANTAFYLIDIS, P., LORIS, STYLIANIDES, JJ.]

FEREOS CHRISTOPOULOS,

*Appellant (Plaintiff),*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondent (Defendant).*

*(Civil Appeal No. 6557).*

*Civil Procedure — Pleadings — Amendment of — As a rule allowed, if necessary to do justice between the parties and if hardship caused thereby can be compensated with costs.*

5 *Appeal — Power of Court of Appeal to interfere with the exercise of discretion of trial Court — Principles applicable.*

10 The facts of this case sufficiently appear in the judgment of the Court. Applying the principles governing the amendment of pleadings and the interference with the discretion of a trial Court, the Court upheld certain of the amendments allowed by the trial Court, but allowed the appeal in respect of some others and the addition of a counterclaim to the defence.

*Appeal allowed in part.*

*Cases referred to:*

- 15 *Tsiappas v. Republic* (1974) 1 C.L.R. 167;  
*U Drive Company Ltd. v. Panayi* (1980) 1 C.L.R. 544;  
*Evrpidou v. Kannaourou* (1985) 1 C.L.R. 24;  
*Phylactou v. Michael* (1982) 1 C.L.R. 204;  
20 *The Ship «Maria» v. Williams and Glyns Bank Ltd.* (1983) 1 C.L.R. 706;  
*Hellenic Bank Ltd. v. Kosma* (1984) 1 C.L.R. 53;  
*Jonitexo Ltd v. Adidas* (1984) 1 C.L.R. 263;  
*Andreou v. Tsouloftas Constructions Ltd.* (1985) 1 C.L.R. 373;  
*Aristidou v. Yiannoplast Ltd.* (1986) 1 C.L.R. 548.

**Appeal.**

Appeal by plaintiff against the ruling of the District Court of Limassol (Fr. Nicolaides, Ag. S.D.J.) dated the 25th April, 1983 (Action No. 2617/83) whereby leave was granted to the Attorney-General of the Republic, as defendant, to amend the statement of defence and add thereto a counterclaim. 5

*K. Michaelides*, for the appellant.

*Chr. Ioannides*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision of the Court. The appellant, who is the plaintiff in an action before the District Court of Limassol, has appealed against the Ruling of a Judge of that Court by means of which leave was granted to the Attorney-General of the Republic, as the defendant in the said action, to amend the statement of defence and to add thereto a counterclaim. 10  
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By the aforesaid action the appellant prays for a declaration that he is the tenant of an area of forest land at Troodos and that he is entitled to occupy such land, and the buildings standing thereon, on the terms set out in an agreement of lease which was entered into between the Government of Cyprus and V. Mouradian and two others as tenants, who have assigned the land to the appellant. 20

In the statement of defence of the respondent it is pleaded that under the terms of the aforementioned agreement there could be no assignment or subletting by the tenants without the written consent of the Government of Cyprus, as the landlord, and that such consent has never been given. 25

The principles governing the exercise of judicial discretion in relation to applications for amendment of pleadings have been expounded in, inter alia, the cases of *Tsiappas v. The Republic*, (1974) 1 C.L.R. 167, *U Drive Company Limited v. Panayi*, (1980) 1 C.L.R. 544, and *Evrpidou v. Kannaourou*, (1985) 1 C.L.R. 24, and need not be reiterated in this judgment once again. It suffices to say that, as a rule, an amendment of pleadings is to be allowed if it is necessary to do justice between the parties and if the hardship caused by the amendment can be compensated by costs. 30  
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As the Ruling against which the present appeal has been made is the result of the exercise of judicial discretion by the trial court it must be stressed that this Court, as an appellate tribunal, will not interfere with the decision of the trial court unless it is satisfied that

5 the discretion was exercised wrongly (see, inter alia, *Phylactou v. Michael*, (1982) 1 C.L.R. 204, *The Ship «Maria» v. Williams and Glyns Bank Ltd.*, (1983) 1 C.L.R. 706, *Hellenic Bank Ltd. v. Kosma*, (1984) 1 C.L.R. 53, *The Jonitexo Ltd. v. Adidas*, (1984) 1 C.L.R. 263, *Andreou v. Tsouloftas Constructions Ltd.*, (1985) 1

10 C.L.R. 373 and *Aristidou v. Yiannoplast Ltd.*, (1986) 1 C.L.R. 548).

In the light of the foregoing we have decided to uphold the decision of the trial court to allow the amendment of the statement of defence by the addition of new paragraphs 1, 2, 3 and 4 and the consequential renumbering of its already existing paragraphs.

15 We have, however, been satisfied by the appellant that the decision of the trial court to allow the amendment of the existing paragraphs 4 and 6 and the addition of two new paragraphs, 12 and 13, to the statement of defence is the product of a wrong exercise of the relevant discretionary powers, especially as such a

20 course will result in injustice to the appellant.

Likewise, we have, for the same reason, decided that there should not have been allowed the addition to the statement of defence of a counterclaim, especially as the relief claimed by it is being sought, also, by another action (No. 4043/83 in the District

25 Court of Limassol) which was filed in the meantime by the respondent to this appeal.

In the result this appeal is allowed in every respect except in so far as it relates to the new paragraphs 1, 2, 3, and 4 of the statement of defence, in relation to which it is dismissed.

30 Each side to bear its own costs of this appeal.

*Appeal allowed as above.  
Each side to bear its own  
costs of the appeal.*