1989 May 19

(STYLIANIDES, KOURRIS, BOYADJIS, JJ.)

LEFKOS P. GEORGHIADES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY GENERAL,

Respondent.

(Civil Appeal No. 7129).

Res Judicata — Recourse for annulment — Settlement declared in Court — Dismissal of recourse — No question of res judicata arises — But settlement may give rise to an estoppel.

Evidence — Admissibility — Construction of contracts — A witness cannot be asked about his opinion as regards the meaning of a term of the contract.

Public Servants — Salaries and other emoluments — Whether a public servant can validly resign from receiving earned salaries or other emoluments — The question whether such a resignation is contrary to public policy or unenforceable does not arise in this case, because the appellant failed to substantiate the factual substratum on which he based his argument.

Estoppel or representation — An estoppel arising from a contract is a species of estoppel by representation — In a proper case the promisor may insist that before he be held estopped by his promise, the promisee must perform his own corresponding obligation.

Appeal — Res judicata — Although the plea was available, it was never raised before the trial Court — Whether it can be raised on appeal — Question determined in the negative — But as in this case res judicata, if it could be raised, would have emanated from a decision in Civil Appeal interpreting a term used in a contract between the parties, such decision has the force of a judicial precedent as regards the meaning of such term.

The material facts, as far as the legal principles, which have been summarized hereinabove are concerned, are briefly the following, namely:

(a) Various claims by the appellant against the respondent and various claims by the respondent against the appellant were submitted to arbitration.

(b) Some time after the issue of the award of the arbitrator the parties declared a settlement in a Recourse for annulment by the appellant against the respondent concerning a refusal of the Public Service Commission to revoke a previous decision, whereby the applicant had been demoted from Ambassador to Counsellor in the foreign service of the Republic. This settlement is quoted at pp. 242-243 post.

(c) Following declaration of the settlement, the Court dismissed the recourse.

(d) At some time after the declaration of the settlement the appellant applied to the District Court of Nicosia to have the award of the arbitrator set aside. Two preliminary questions of law were set down for hearing. The second - which is the relevant question as far as this appeal is concerned - was whether the appellant was estopped by reason of the said settlement from proceeding with his application.

The outcome depended largely on the interpretation of the term «foregoes» used in the settlement. Though this term had been interpreted by the Court of Appeal in other proceedings between the parties, the plea of res judicata was never raised at the trial. This is an appeal from the judgment, whereby the appellant was held estopped by res judicata from proceeding with his application to have the award set aside.

Appeal dismissed with costs.

Cases referred to:

Re Goile, Ex p. Steelbuild Agencies Ltd. (1963) N.Z.L.R. 666;

Georghiades v. Attorney-General (1984) 1 J.S.C. 4.

Appeal.

Appeal by applicant against the ruling of the District Court of Nicosia (Laoutas, S.D.J.) dated the 8th March, 1986 (Appl. No. 8/81) whereby his application to set aside the award issued on 19.8.78 by Chr. Stephanis whom the parties had appointed as a sole arbitrator of their disputes was dismissed.

Appellant appeared in person.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

STYLIANIDES J.: The judgment of the Court will be delivered by Boyadjis, J.

BOYADJIS J.: This is an appeal from the ruling of a judge of the District Court of Nicosia dated 8th March, 1986, whereby the appellant's Application No. 8/81 to set aside the award issued on 19.8.1978 by Chr. Stephanis whom the parties had appointed as a sole arbitrator of their disputes, was dismissed.

The history of events which led to the present appeal is shortly this:

Between 1963 and 1979 the appellant was a civil servant in the diplomatic service of the Republic. During this period certain differences of a financial nature had arisen between the appellant and the respondent Republic. By their written agreement dated 29th August, 1975, the parties referred all their aforesaid differences to arbitration and nominated Mr. Chr. Stephani as the sole arbitrator with whose award they agreed to be bound. On 20.10.1976, the Ministry of Foreign Affairs delivered to the arbitrator and to the appellant particulars of the Republic's claims against the applicant, which are set out in Schedule 1 to the Award which is Exhibit «A» attached to the appellant's affidavit filed in support of his aforesaid application. On 26th January, 1977, the appellant delivered to the Arbitrator and to the Ministry of Foreign Affairs his final statement of claim which is set out in Schedule II to the Award and which is described by the appellant as «practically identical to the one submitted on 26th October, 1976». Altogether 34 meetings were held for the hearing of the disputes between 22nd October, 1976 and 6th April, 1978. The Arbitrator delivered his award on 19th August, 1978.

By his Award the Arbitrator refused to allow several claims by the Republic against the appellant and several claims by the appellant against the Republic for the reasons set out therein. Summarising in paragraph 158 of the Award his findings the Arbitrator allowed to the Republic claims against the appellant of a total amount of £2,975.- and to the appellant claims against the Republic of a total amount of £1,293.- He then set off the latter

amount against the former and directed that the appellant should pay to the Republic the balance of £1,682.- in full settlement of the financial differences between the parties which were referred to arbitration.

On 21st September, 1978, feeling aggrieved with the arbitrator's Award, the appellant, acting without the advice of counsel, filed against the Award Civil Appeal No. 5879 before the Supreme Court where it remained pending until 17th February, 1981, when it was withdrawn with reservation of the appellant's rights, the latter having obtained to that effect the leave of the Court.

In the meantime and before the appellant filed Application No. 8/81 before the District Court of Nicosia, the following events had occurred:

On 16th May, 1978, the appellant filed with the Supreme Court in its Revisional Jurisdiction, Recourse No. 243/78 against the Public Service Commission challenging the latter's refusal to revoke its decision dated 30th April, 1969, whereby the appellant was demoted from Ambassador to Counsellor A following his trial and conviction for a disciplinary offence. On 24th November, 1978, this Recourse was withdrawn and dismissed. It is common ground that the withdrawal of the recourse was made in furtherance of an agreement reached between the parties, embodied in a document filed on 24th November, 1978, and marked Exhibit 1 in the aforesaid Recourse No. 243/78, which reads as follows:

«(a) In view of the new material which came to light the whole case has been re-examined and the Respondent admits, subject to the ensuing provisions, that the Applicant should not be considered as having lost his substantive post of Ambassador a post which is deemed to hold till to-date;

(b) The parties after going through any possible claims which the Applicant could have had against the Republic of Cyprus in respect of any difference in salary, emoluments, remuneration, allowances and other benefits whatsoever in respect of that post have been found that any such claim has been settled and satisfied and the Applicant declares unreservedly that he has no claim whatsoever in respect thereof against the Republic;

(c) Notwithstanding paragraph (b) above, the Republic of Cyprus foregoes any claim in respect of any sum found to be due by the Applicant to the Republic in the arbitration held between the Ministry of Foreign Affairs and Mr Lefkos Georghiades Mr Lefkos Georghiades hereby admits that he received the sum of £1,389 -in full satisfaction of any other claim he may have against the Republic of any nature whatsoever and he hereby declares that he has no other claim against the Republic arising from any cause and of any nature whatsoever,

(d) It is understood that the applicant's pension, however shall in no way be affected by what is stated in para (b) above

(e) Viewing all the above the Respondent has no objection to the annulment of the decision, the subject matter of this recourse (No 243/78), without any order as to costs»

It is also common ground that, following the delivery of the Award by the Arbitrator, the appellant kept submitting to the Republic several new claims and complaints against the Award and that the amount of £1 682 which according to paragraph (c) of the above settlement, was foregone by the Republic, was in fact taken by the Republic into consideration in arriving at the figure of £1,389 - which according to the same settlement, was paid to and was received by the appellant in full settlement of all his claims against the Republic «arising from any cause and of any nature whatsoever»

Relying on the last aforementioned fact, the appellant in 1980 filed a civil action against the Republic claiming payment to him of the aforesaid amount of £1,682 - allegedly due to him by virtue of the aforesaid settlement dated 24 11 1978 reached in Recourse No 243/78 His claim was heard and dismissed by the District Court of Nicosia He then filed Civil Appeal No 6539 against the judgment dismissing his claim, which was also dismissed on 8th March, 1984 The judgment of the Supreme Court in Civil Appeal No 6539 is reported in (1984) 1 J S C 4

In the meantime and in particular on 24th March, 1981, the appellant filed with the District Court of Nicosia the Originating Application No 8/81 under sections 19 and 20 of the Arbitration Law, Cap 4, praying for an order in the following terms

«(1) Διάταγμα του Σεβ Δικαστηρίου διατάττον την

ακύρωσιν και/ή παραμερισμόν και/ή παραπομπήν προς επανεξέτασιν υπό του Διαιτητού Χρ. Κ. Στεφανή ή οιουδήποτε ετέρου Διαιτητού ως ήθελεν θεωρήση σκόπιμον να διορίση το Σεβ. Δικαστήριον μέρους της εκδοθείσης αποφάσεως του εν λόγω Διαιτητού κατά την 19.8.78 αφορώσης τας υπό του Αιτητού εναντίον των καθ' ων η αίτησις Απαιτήσεως υπ' αριθμόν 2, 3, 4, 5, 6, 7, 11, 16 και 17 όπως επίσης και τας υπό των καθ' ων η αίτησις εναντίον του Αιτητού Απαιτήσεις υπ' αριθμόν 3 και 4 ως αύται απαριθμούνται εν τη αποφάσει του Διαιτητού λόγω του ότι ο Διατητής κακώς και/ή εσφαλμένως εχειρίσθη την υπόθεσιν (misconducted himself) και/ή διεξήγαγεν την Διαιτησίαν και/ή εξέδωσεν την απόφασιν του ακαταλλήλως και/ή εσφαλμένως (improperly procured the arbitration or the award) ήτοι:

(α) Πράγμασι και/ή Νόμω εσφαλμένη.

(β) Παραγνώρισις θεμελιωδών Αρχών Δικαίου.

(γ) Παραβίασις και/ή παραγνώρισις άρθρων 6 και 28 του Συντάγματος.

(δ) Παραγνώρισις αξιοπίστου και/ή αποδεκτής μαρτυρίας.

(ε) Ανακάλυψις νέας μαρτυρίας.

(στ) Εσφαλμένη ερμηνεία και/ή εφαρμογή Νόμου εμφαινομένη καταφανώς εις την απόφασιν του Διαιτητού.

(ζ) Σκόπιμος και/ή δολία απόκρυψις μαρτυρίας υπό των καθ' ων η αίτησις.

(η) Προκατάλειψις Διαιτητού εις βάρος Αιτητού».

It follows from the above prayer that the appellant seeks to have part of the Award either set aside or remitted for reconsideration by the Arbitrator and the main ground relied upon is the alleged misconduct or improper procurement, of the Award by the Arbitrator.

The Arbitrator himself was made respondent to the application. On being served with copy thereof, he opposed the application

and in his affidavit sworn in support of his opposition on 7th September, 1982, he denied that he either misconducted himself or the proceedings or that he improperly procured the Award.

The Republic also opposed the application. In the affidavit sworn on 18th January, 1983, by Mikis Zapitis in support of the opposition, much reliance is laid on the settlement reached in Recourse No. 243/78 whereby, it is alleged, the appellant waived and/or is estopped from seeking the setting aside of the award.

After several adjournments Application No. 8/81 was fixed for hearing on 22.4.1983. The appellant and the two respondents to the application appeared in Court on that date through their counsel who made a joint statement in Court to the effect that there were two preliminary legal issues involved in the application, namely, (a) whether the appellant had followed the correct procedure by filing an application instead of an action, and (b) whether the appellant is estopped by the terms of the settlement reached on 24.11.1978 in Recourse No. 243/78 from proceeding with his application. Counsel then applied for an adjournment to prepare themselves and address the Court on the above preliminary issues and the Court granted the adjournment.

The Application was finally heard on 4.7.1985 in the presence of the appellant and the Republic only. The Arbitrator did not take part, evidently because he knew nothing of the settlement reached between the appellant and the Republic after the delivery of his Award. Mr. Gavrielides for the Republic was the first to address the Court on the preliminary issues (a) and (b) above. In fact, he confined himself to issue (b) above. The appellant who appeared without his counsel, stated that he was not ready and applied for an adjournment; he also stated that he wished to cross-examine the affiant who had sworn the affidavit in support of the Republic's opposition. The hearing was adjourned to 19.12.1985 when the Court allowed the appellant who had again appeared without his counsel, to cross-examine the Republic's affiant, though the purpose of the hearing was the resolving of the preliminary legal points set out herein-above. At the conclusion of the cross-examination, the appellant addressed the Court.

The reserved ruling of the Court was delivered on 8th March, 1986. Appellant's application was thereby dismissed for the following two reasons taken cumulatively:

(a) Paragraphs (b) and (c) of the settlement reached in Recourse No. 243/78, properly construed, cover all claims of the applicant against the Republic of whatever nature including his right to apply to have the Award of the Arbitrator set aside for whatever reason; and

(b) The aforesaid settlement operates by way of res judicata whereby the appellant is estopped from adjudicating afresh on the matters covered thereby.

Against the above ruling of the Nicosia District Court the appellant lodged the present appeal against the whole of the said ruling on the following grounds:

«1. The Trial Court erred in dismissing the Applicant's application (motion) as formulated in paragraph 1 of the application and/or erred in finding and/or ruling and/or deciding that the written statement «ο δικαστικός συμβιβασμός» filed on the 24th November, 1978, in the Supreme Court operated as estoppel and/or erred in interpreting the said written statement and/or failed to interpret correctly the said statement.

2. The Trial Court wrongly found and/or decided that estoppel applied to claims of the applicant which were never submitted to the Council of Ministers for consideration.

3. The Trial Court erred in Law when it thought that it ought not to examine the essence of the Application for the remission of the award in the case of Government claims 3 and 4 and rejected the Application, because there was no evidence at all entitling the Trial Court to do so.

4. The Trial Court erred in Law when it reached the conclusion that the applicant withdrew his application for setting aside or for remission of the award on the conclusion of his Agreement with the Government as he did with Recourse

No. 243/78 on the 24th November, 1978. On the contrary the record shows that the application was before the Supreme Court on the 17th February, 1981, when it was pointed out immediately that this application should not have been submitted to the Supreme Court but to the District Court. The Applicant carried out the ruling of the Supreme Court.

5. The Trial Court ought not act on the affidavit of Mr. M. Zapitis, whose good faith was challenged and ought not to sustain an objection of the respondent preventing the cross-examination of the affiant.

6. The Trial Court erred in Law when it reached the conclusion that the agreement operated as an estoppel and/or release of the claims which might arise after the remission of the arbitrator's award because, as a matter of Law and/or upon grounds of public policy, the Republic cannot be released of its obligations in respect of unpaid emoluments and/or benefits to public servants otherwise than by actual payment of the same».

The appellant conducted his appeal in person, without the help of counsel. In his address he advanced several arguments which may conveniently be grouped as follows·

(A) The settlement reached in Recourse No. 243/78, which would have indeed operated as an estoppel had the Republic performed its own obligations under it, does not so operate following the failure of the Republic to forgo the amount of £1,682.- referred to therein. The fact that the republic has instead deducted that amount from a sum larger than the amount of £1,389.- before the latter sum was paid to him in settlement of all his claims, in breach of its obligation under the settlement, has released him, appellant added, from his corresponding obligations under the same settlement.

(B) The trial Court did not construe correctly paragraph (c) of the settlement and in particular the word «forgoes» found therein.

(C) The trial Court wrongly held that the settlement covered the claims to which his Application No. 8/81 referred.

(D) The trial Court wrongly failed to examine the award and his application on their merits

(E) The trial Court did not conduct a fair trial in that it did not allow him to cross-examine the Republic s affiant on relevant matters

(F) The trial Court wrongly ignored the fact that the appellant, being a civil servant cannot validly abandon his rights to his salary and other emoluments covered by the post in the civil service which he was holding

We shall deal with the above arguments in the aforesaid order We shall consider the first two arguments together

Arguments (A) and (B)

In support of his argument that, in the circumstances of the present case, he is not estopped by the settlement reached in Recourse No 243/78, the appellant relied on the following extract from the Book *Estoppel by Representation* by Spencer Bower and Turner 3rd Ed . at p 395

> « it cannot be inequitable to proceed to enforce legal rights, notwithstanding a promise not to do so, if that promise was in turn dependent on the performance of another mutual promise, in respect of which the representee has not performed his part of the undertaking»

The above passage was in fact taken from the judgment of the Court of Appeal of New Zealand in *Re Goile, Ex p Steelbuild* Agencies Ltd (1963) N Z L R 666, C A , to which he also referred

We must state from the outset that we find ourselves unable to agree with the opinion expressed by the trial Court that the doctrine of res judicata applied in the present case None of the contents of the settlement now in issue were either matters in issue or the subject of adjudication and judicial decision by the Administrative Judge in Recourse No 243/78 which was dismissed following the extrajudicial agreement reached between the parties The mere fact that the terms of that agreement were filed in Court as an exhibit does not constitute its terms a matter adjudicated upon by the Administrative Judge The estoppel in this case does not arise from the application of the doctrine of res judicata, but from the contract or settlement of the parties itself and

it is immaterial whether it was filed in Court or not Estoppel arising from contract, being a species of estoppel by representation entitles the one party to the contract to insist in a proper case i e where his promise is dependent on the performance of another mutual promise by the other party to the contract, that before he be held bound and estopped by his promise, the other party must also perform his own corresponding obligation The mutual promise by the promisee, the respondent Republic in this case is its undertaking to forgo any claim in respect of any sum found to be due by the appellant to the Republic in the Arbitrator's award i e the amount of £1,682 The appellant complained that the Republic did not perform the above promise and in view of this he now alleges that the Republic cannot insist that he be bound and/or estopped by his mutual promise not to raise any other claim whatsoever against the Republic

As it is common ground that, in reaching at the sum of £1,389 paid to the appellant in full settlement of his claims, the amount of £1 682 - due by him to the Republic under the Arbitrator's award had been deducted from a larger amount, it becomes pertinent to examine whether this deduction constitutes a breach of the aforesaid obligation of the Republic under the sub judice settlement This same matter has been adjudicated upon and determined by the District Court of Nicosia that tried the appellant's action against the Republic for payment to him of the same sum of £1,682 By its judgment in the action the Nicosia District Court had placed a different construction on the words «the Republic of Cyprus foregoes» set out in para (c) of the settlement, than the one suggested by the appellant and repeated before us, and dismissed, as a result, the appellant's claim That judgment of the District Court was confirmed on appeal by the Supreme Court in *Lefkos Georghiades v Attorney-General of the Republic* (1984) 1 J S C 4 (Civil Appeal 6539) The judgment in the last aforesaid case gives rise to the doctrine of res judicata whereby the appellant is estopped from adjudicating afresh the matters covered by the judgment, which include the correct interpretation of the settlement as far as his claim to the sum of £1,682 - is concerned and his allegation that the Republic failed to perform its obligation under the settlement concerning the same amount

Be that as it may, although in their corresponding addresses before us both parties referred to the judgment in Civil Appeal 6539 (supra), none referred to it or to its repercussions before the

trial Court The judgment was issued after the Republic had filed its opposition and, therefore, it was impossible to refer to it in the affidavit accompanying it Yet, Application No 8/81 was heard long after the issuing of the above judgment and the Republic could have raised the matter in a supplementary affidavit They failed however, to do so with the result that the matter was not raised or argued at all before the trial Court Pursuant to authority (see in this respect 1) *Christodoulos Nissis (No 2) v The Republic* (1967) 3 C L R 671, 2) *Stavros Othonos and Another v The Republic* (Rev Appeal No 720, not yet reported*, and 3) *Republic v P HadjiPanteli* (Rev Appeal 827, judgment delivered on 25 4 1989*, not yet reported), the matter cannot, in the circumstances be taken on appeal Had this been permissible, the judgment in Civil Appeal 6539** would have been conclusive answer to the appellant's present arguments (A) and (B)

Although for the reasons just explained, we refuse to treat the judgment in Civil Appeal No 6539 as giving rise to the doctrine of res judicata, it still carries the force of judicial precedent regarding the correct interpretation of the word «foregoes» in the context of the sub judice agreement Delivering the unanimous judgment of the Court, A Loizou, J , (as he then was) said the following on the matter now in issue at pp 14-15 of the report

> «We have no difficulty in dismissing this appeal as the settlement (Exhibit 1) referred to and, in particular, paragraph (c) thereof, makes it abundantly clear that the amount of £1,389 - received by the appellant was arrived at after deducting from a bigger amount, namely, the amount of £3,071 - as shown in Exhibit 5, the amount of £1,682 - which had been found by the Arbitrator as due to the respondent
>
> The argument advanced on behalf of the appellant that the Republic has foregone payment of this amount and therefore it had to be refunded to him once it was deducted from the claims, cannot stand as it was obvious that the whole dispute was settled by the payment of the £1,389 - arrived at after deducting this amount from the total claims made and this is made clear by reading paragraph (c) of the settlement, Exhibit 1 in the context of that settlement and not by isolating a particular part of it and disconnect it from the rest

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* *(1988) To be reported in* (1989) 3 C L R

** See *Georghiades v Attorney General of the Republic* (1984) 1 J S C 4

For all the above reasons this appeal is dismissed and very reluctantly we follow the course adopted by the trial Judge and make no order as to costs»

We adopt the above interpretation and we reject the submission of the appellant that the Republic has not performed its mutual promise under the agreement It follows that there is no merit in the allegation set up by the appellant as an excuse for retreating from his promise under the agreement The appellant who, under and by reason of the settlement, has received the amount of £1,389 - «in full satisfaction of any other claim he may have against the Republic of any nature whatsoever and he hereby declares that he has no other claim against the Republic arising from any cause and of any nature whatsoever», is by the same agreement estopped from raising any claim covered by it, provided of course that the agreement is not invalid or uneforceable for any of the other reasons put forward by the appellant which we shall presently examine

Argument (C)

The question is whether para (c) of the settlement covers or not the claims of the appellant which by his award the Arbitrator refused to allow to him and/or the claims of the Republic which the Arbitrator allowed against him The answer to the question is in the affirmative The words in para (c) of the agreement are clear and unambibuous and too general to admit any exception The appellant argued that, even if he is estopped by the sub judice agreement for raising any claims against of the Republic, since the settlement does not refer to the claims of the Republic allowed by the Arbitrator against him, he is free to challenge the part of the award whereby a total sum of £2,975 - claimed by the Republic was allowed against him We reject this argument Out of all the claims of the appellant against the Republic the Arbitrator allowed a total sum of £1,293 - which was set off against the aforesaid amount of £2,975 - leaving a balance of £1,682 - still payable to the Republic If we were to accept the argument of the appellant the result would have been that he would be free to raise a claim against the Republic at least for the sum of £1,293 - which was found due to him but was set off against the larger sum of £2,975 - allowed by the Arbitrator against him and in favour of the Republic We are convinced that by virtue of para (c) of the sub judice agreement the appellant is estopped from challenging each and every part of the Arbitrator's award

Argument (D)

The appellant complains that the trial Court wrongly failed to examine and adjudicate upon the merits of his application and of his compaints against the award and against the conduct of the Arbitrator This argument is completely untenable As it appears from the record of the proceedings, the Court had acceded to a common suggestion and request of counsel appearing for all sides on 22 4 1983 which was repeated on 23 11 1983 that the Court would first hear and determine the preliminary issue of whether the appellant is estopped from prosecuting further his application by reason of the settlement reached on 24 11 1978 in Revisional Jurisdiction Case No 243/78 The trial Court set the case down for hearing the above issue pursuant to the joint suggestion of the parties and conducted the trial on that issue alone and not on the merits of the matters raised by the appellant's application

Argument (E)

The appellant complains that the trial Court sustained an objection raised by counsel for the Republic whereby he was denied his right to cross-examine on relevant matters Mikis Zapitis who had sworn the affidavit filed in support of the opposition of the Republic He drew our attention to the relevant parts of the record which show that in at least two occasions questions put by the appellant to the witness were disallowed by the trial Court after objection raised by counsel for the Republic

We have examined the record of the proceedings and the rulings of the trial Court challenged by the appellant and we are satisfied that the Court was right in disallowing the appellant's questions as irrelevant On one occasion the appellant had asked the witness of his opinion regarding the meaning of the word «foregoes» found in para (c) of the sub judice agreement On another occasion the appellant had asked the witness whether his claims against the Republic which were disallowed by the Arbitrator are covered or not by the words used in the aforesaid agreement Both questions were clearly irrelevant The construction of a written agreement is a legal issue to be determined by the Court with reference to the meaning and effect of the words used and not with reference to the opinion of the witness

Argument (F)

Before the trial Court the appellant has argued that he cannot in law validly abandon his right to his earned salary and other emoluments to which he is entitled by virtue of the post which he held. He repeated his argument before us adding that, since by the sub judice agreement he purports to abandon his right to receive earned salaries and other benefits, the agreement is against policy and unenforceable.

The trial Court wrongly failed to deal at all with the above submission of the appellant in its ruling now under appeal.

In support of his submission the appellant drew our attention to, inter alia, the followin passage from the Greek textbook «Διοϊκηση και Δίκαιον» by A.G Tsatsos at p 187

«Ο δημόσιος υπάλληλος δεν δύναται να αρνηθή την λήψιν των αποδοχών αύτού, ως δεν δυναται γενικως να αρνηθή τα παρεχόμενα εις αυτόν εκ της καταστάσεώς του πλεονεκτήματα. Συνεπώς, δεν δύναται να παραιτηθή του επί του μισθού δικαιώματος αυτού. Τούτο ώρισεν ο Υπαλληλικός Κώδιξ εν άρθρο 64 παρ. 2, αναγαγών εις πειθαρχικόν παράπτώμα την μη είσπραξιν των αποδοχών εκ μέρους του υπαλλήλου.

Παραίτησις από των αποδοχών γενικώς θα ήτο άκυρος και δεν θα απέκλειε την αναζήτησιν αυτών, ως αντικειμένη εις την δημοσίαν τάξιν, λογω του ως είρηται χαρακτήρος των παροχών τούτων, αίτινες αποβλέπουσιν εις το συμφέρον της δημοσίας υπηρεσίας».

It becomes pertinent in this respect to examine the nature of the appellant's claims against the Republic which the Arbitrator disallowed either partly or fully and against which we have found that the estoppel raised by clause (c) of the agreement operates as having been unreservedly abandoned by the appellant. Those claims are adequately described in the Arbitrator's award which is before us. They are indentified therein as Claims Nos. 1, 2, 3, 4, 5, 6, 8, 11, 12, 14, 16 and 17. None of those claims relates to earned salaries. Most claims concern travelling expenses and subsistence expenses allegedly incurred by the appellant in connection with the hearings of his case before the Public Service Commission and expenses which he alleged that he had incurred in order to secure

evidence from abroad to help his case Some claims concern special allowances or special subsistence or increased hospitality allowance or education grants for his children to which he was not found entitled under the Government regulations, and his allegations that he had been orally promised such increased benefits by the late President Archbishop Makarios had not been substantiated Another claim concerned actual expenses allegedly incurred for packing and transport of his household effects from Moscow to Nicosia which he could not, however, prove One of his claims was for subsistence for 946 days for his stay in Nicosia following his alleged recalling from Moscow, which was disallowed on the ground that he had been transferred and not recalled to Nicosia Another claim concerned travelling expenses of his wife on three occasions to accompany him to a reception at Helsinski, to which he was not entitled under the Government regulations

In view of all the above we are satisfied that by the sub judice agreement the appellant has not abandoned either earned salaries or benefits to which he was entitled under the relevant regulations in force governing the post which he was holding at the material time In the circumstances, the question whether the sub judice agreement in against public policy or unenforceable does not arise since its factual substatrum, as alleged by the appellant, remained unsubstantiated

For the reasons which we have endeavoured to explain hereinabove, the appeal is dismissed with costs against the appellant

Appeal dismissed with costs