1989 June 5

(A LOIZOU P)

SEA ISLAND TRAVEL & TOURS LIMITED,

Plaintiffs,

v

1 M T GALAXIAS, NOW LYING AT THE PORT OF LIMASSOL,
2 UNITED BROTHERS SHIPPING CO,

Defendants

(Admiralty Action No 86/88)

Admiralty — Practice — Adjournment of hearing — Application for, in order to enable applicant-defendant 1 to apply for consolidation of this action with another pending action (Rules 78 and/or 79 of the Cyprus Admiralty Jurisdiction Order, 1893) — However desirable is for actions to be consolidated such desirability cannot be invoked on the day of the hearing as a ground for adjournment — The applicant had ample time to do so prior to the hearing

Admiralty — Practice — Adjournment of hearing — A matter of judicial discretion entirely depending on the particular facts of each case

Constitutional Law — Fair trial — Constitution Art 30 2 — Right to the determination of one's civil rights and obligations within a reasonable time

The facts of this case sufficiently appear from the hereinabove headnote

Application for adjournment dismissed

Cases referred to

Walker v Walker [1967] 1 All E R 412,

Charalambous v Charalambous (1971) 1 C L R 284,

Kier (Cyprus) Ltd v Trenco Constructions (1981) 1 C L R 30

Application

Application by defendant 1 for the adjournment of the case so that they may be afforded the opportunity to take the necessary steps for the consolidation of this action with Action No. 91/88.

A. Theofilou, for the plaintiffs.

C. Velaris with A. Paschalides, for defendants 1.

G. Louisides with M. Charalambous (Miss) for L. Papaphilippou, for defendants 2.

A. LOIZOU P. gave the following ruling. This is an application on behalf of Defendants 1 for the adjournment of the case so that they would be afforded the opportunity to take the necessary steps for the consolidation of this action with Action No. 91/88, as they are entitled to do under Rules 78 and/or 79 of the Cyprus Admiralty Jurisdiction Order 1893.

The two actions were filed on the 4th July 1988 and the 22nd July 1988 respectively. Eversince, the present action has frequently been coming before this Court due to the hearing and determination of several applications, including those for the discharge of the warrant of arrest and the sale of the ship pendente lite. There were also some adjournments as a result of a problem that arose in respect of defendants 2 that is on account of the change of their advocate and the necessary settlement of the fees that had to be paid under the Rules of Etiquette to the previous advocate before the brief was handed over to the new one. It may be mentioned here, in parentesis however, that this problem seems to have been resolved as I see today appearing on behalf of defendants 2 both advocates.

On the 11th March 1989 counsel for the plaintiffs withdrew his application for judgment in default of filing the Answer without prejudice and requested that, in view of the mounting expenses by the continuance in force of the warrant of arrest, the case be fixed for hearing the soonest possible. The case was indeed fixed for hearing on the 26th April 1989 at 8.45 a.m. and a direction was made that notice of the date of trial be given to the defendants by the plaintiffs to make sure that they would be ready for the hearing of the case.

On the 26th April 1989, the case came up for hearing against

defendants 1 only; there was no appearance for defendants 2 as until then they had not filed their Answer, on account of the problems they had and to which I have just referred. On that date defendants 1 made a statement about a provisional settlement that had been reached. The case was therefore adjourned to the 6th May, 1989 so that if counsel for defendants 1 did not inform counsel for the plaintiffs by the 4th May that the settlement would indeed be finalised, then he would be ready to proceed for hearing on that day. On the 6th of May all sides appeared including defendants 2, who were represented by Mr. G. Louizides and the record of the Court was that the Answer by defendants 2 was to be filed within 10 days and the Reply, if any, within five days from the filing of the Answer. The case was then fixed for hearing today in the presence of all concerned.

The Answer of defendants 2 has been filed and the plaintiffs are ready to proceed with the hearing of the case.

The defendants 1 on the other hand have been afforded ample time to prepare their case and should be ready to proceed with the hearing of the case to-day. Last-minute applications for the purpose of invoking the provisions of rules 78 and 79 for the consolidation of two actions should not in my view and in the circumstances of this case be entertained, and especially on the date of the hearing. There was ample opportunity for that purpose to be taken up by defendants 1. It is obvious from the record that every possible opportunity was given for both defendants to be ready today so that the action would be heard not by piecemeal hearings against either of them, but by the hearing against both of them in one proceeding. It may be mentioned also that Action No. 91/88 is an action arising out of the dispute from a charterparty between the two defendants and, however desirable it is for actions to be consolidated, a procedure which saves the litigants and this Court from multiplicity of proceedings, yet that desirability cannot be invoked on the date of the hearing as a ground for justifying the adjournment of a case of a plaintiff that has nothing to do with a dispute between the two parties on a charterparty, except of course to the extent as to who is responsible to him for his claim which is a matter that can certainly be adjudicated in these proceedings.

The right of the determination of one's civil rights and obligations within a reasonable time is safeguarded by Article

30.2 of the Constitution. The Courts have also supported the view for the desirability for speedy determination of cases.

The question whether an adjournment will be granted or not is generally a matter of judicial descretion, it depends entirely on the particular facts of each case and as observed in the case of *Walker* v. *Walker* [1967] 1 All E.R. 412, at p. 414 by Sir Jocelyn Simon P.:

> «We have authoritative guidance from the Court of Appeal in *Maxwell v. Keun* to a two-fold effect: First, where the refusal of an adjournment, would result in a serious injustice to the party requesting the adjournment, the adjournment should be refused only if that is the only way that justice can be done to the other party; and, secondly, that although the granting or refusal of an adjournment is a matter of discretion, if an appellate Court is satisfied that the discretion has been exercised in such a way as would result in an injustice to one of the parties, the appellate Court has both the power and the duty to review the exercise of the discretion».

See *Charalambous v. Charalambous* (1971) 1 C.L.R. 284, 292-94. *KIER (Cyprus) Ltd v. Trenco Constructions* (1981) 1 C.L.R. 30, 38-39.

For all the above reasons the application for adjournment is refused and the case will proceed for hearing.

Application refused.