

1989 July 3

(SAVVIDIS KOURRIS BOYIADJIS JJ)

TAKIS CHRISTOFIS

Appellant-Plaintiff

v

LOUIS TOURIST AGENCIES LTD

Respondents-Defendants

(Civil Appeal No 7248)

5 *Civil Procedure — Adjudgment of hearing of action — Repeated
adjudgments at the instance of plaintiff (appellant) — New
application for adjournment on the ground of his absence abroad
refused with the result that the action was dismissed for want of
prosecution — The discretion of the Court must be exercised
judicially — Review of authorities concerning the matter — In this
case the trial Judge correctly exercised the discretion — Judges
should have in mind that it is in the public interest that there should be
an end to litigation and that a party is entitled in virtue of the
10 Constitution (Art 30) to a fair trial within reasonable time*

The facts of this case as well as the principles expounded by the Court in dismissing the appeal appear sufficiently from the hereinabove headnote

Appeal dismissed with costs

15 *Cases referred to*

Tsiarta and Another v Yapana and Another 1962 C L R 198

Nicola v Chnstofi and Another (1965) 1 C L R 324

Hji Nicolaou v Gavriel and Another (1965) 1 C L R 421,

Edwards v Edwards [1968] 1 W L R 149,

20 *Athanassiou v The Attorney General of the Republic* (1969)
1 C L R 439,

International Bonded Stores Ltd v Minerva Insurance Co Ltd
(1979) 1 C L R 557

Kranidiotis v The Ship Amor (1980) 1 C L R 297,

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

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Laoutas, S.D.J.) dated the 27th September, 1986 (Action No. 7333/83) whereby the trial Judge refused to grant an adjournment and subsequently dismissed the action for want of prosecution. 5

G. Papatheodorou with Chr. Christofides, for the appellant.

N. Papaefstathiou, for the respondents. 10

SAVIDES, J. gave the following judgment of the Court. This is an appeal against the decision of a Judge of the District Court of Nicosia in Civil Action No. 7333/83 refusing to grant an adjournment of the hearing and subsequently dismissing the action for want of prosecution. 15

The facts of the case are briefly as follows:

The appellant-plaintiff in Civil Action 7333/83 of the District Court of Nicosia, brought the said action against the respondents-defendants claiming £1,237.50 for goods sold and delivered to the respondents. 20

The action was fixed for mention on the 27th February, 1984, when both counsel appeared and applied for an adjournment for mention with a view to settlement. After a considerable number of adjournments for mention with a view to settlement which extended till the 20th December, 1984, counsel informed the Court that no settlement could be reached and applied for a date of hearing and the action was fixed for hearing on the 8th May, 1985 when both counsel applied for an adjournment once again with a view to availing themselves of the opportunity of the summer vacations to reach an amicable settlement. 25 30

The case was adjourned for hearing to the 4th November, 1985 when counsel for appellant applied for an adjournment because, as he said to the Court, he could not proceed with the hearing having failed to serve the other party with a notice to produce the documents referred to in the pleadings. No objection was raised and the hearing was adjourned to the 15th February, 1986. 35

On the 7th February, 1986, counsel for appellant applied once again for an adjournment of the case for some time in September on the ground that the appellant had left urgently for abroad for professional reasons and that he could not attend the Court. As a
5 result of such application the hearing was adjourned by consent and fixed on the 27th September, 1986. On the date of the hearing counsel for appellant applied for a further adjournment of the hearing on the ground that his client had left again Cyprus for Baghdad and could not attend the Court and requested that the
10 action be adjourned some time in 1987 in the expectation of the appellant returning to Cyprus.

The application was strongly opposed by counsel for respondents and the Court after hearing both counsel refused the application having reached the conclusion that there had been
15 considerable delay in the hearing of this action which was caused by the repeated adjournments asked by counsel for appellant and that the absence abroad of the appellant in the circumstances of the case was not a sufficient reason to grant further adjournments as his counsel could have applied that the evidence of the
20 appellant be taken preparatory to the hearing at any time during his various visits to Cyprus during the long time that elapsed from the filing of the action till the final date of hearing

As counsel for the appellant could not adduce any evidence the learned trial Judge dismissed the action for want of prosecution.

25 Counsel for appellant in arguing his case before us submitted that the learned trial Judge wrongly exercised his discretion in the present case bearing in mind that the reason that the adjournment was sought was appellant's absence abroad. He submitted that it was in the interest of justice that the adjournment would be
30 granted as by the refusal of the adjournment the appellant would suffer irreparable loss whereas any loss which might have resulted to the respondents concerning costs could be remedied by an order for costs against the appellant.

It is well settled that the granting of adjournments is a matter
35 within the discretion of the Court. It has been repeatedly stressed by our Supreme Court in a number of cases that adjournments of the hearing of a case are highly undesirable and that adjournments should be avoided as far as possible and that only in unusual circumstances they must be granted. The reason for this is that it is
40 in the public interest that there should be some end to litigation

and furthermore it is right of the citizen to a fair trial within a reasonable time according to the Constitution and the Courts should comply with this constitutional provision with meticulous care. The discretion of the Court in granting an adjournment should be exercised in a proper judicial manner

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In *Tsiarta and Another v Yiapana and Another*, 1962 C.L.R. 198 the following observations were made by Josephides, J. at p. 208, concerning adjournments

«A further word needs to be said with respect to adjournments. They produce justifiable dissatisfaction by litigants and their witnesses and statistical records of this Court confirm the opinion there are far too many. If an action can proceed the first time it comes on for trial so much the better. When adjournments are necessary there should not be more than one or two. After that there should be no more adjournments except in unusual circumstances, as to which the Judge has to decide. Having made these comments it must be added these will be very unusual circumstances in which there may be many adjournments, but they should be few in number.»

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The above dictum was reiterated in *Hji Erini Nicola v Charalambos Christofi and Another* (1965) 1 C.L.R. 324, 338, *Eleni Gr Hji Nicolaou v Mariccou Antoni Gavriel and Another* (1965) 1 C.L.R. 421, 431. Reference may be made also to the dictum of Sir Jocelyn Simon, P., in *Edwards v Edwards* [1968] 1 W.L.R. 149 at pp. 150-151 which was reiterated in *Athanassiou v The Attorney-General of the Republic* (1969) 1 C.L.R. 439 at p. 455

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«It is desirable that disputes within society should be brought to an end as soon as reasonably practical and should not be allowed to drag festenngly on for an indefinite period. That last principle finds expression in a maxim which English Law took over from the Roman Law: it is in the public interest that there should be some end to litigation. As long ago as Magna Carta King John was made to promise not only that justice should not be denied but also that it should not be delayed and there have been times in our history when various Courts have come under severe criticism for their procedural delays.»

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The above principles have been reviewed in *International Bonded Stores Ltd v Minerva Insurance Co Ltd* (1979) 1 C L R 557 and reiterated in *Kranidiotis v The Ship Amor* (1980) 1 C L R 297 The principles expounded in the last two cases were followed in *Kier (Cyprus) Ltd v Trenco Constructions Ltd* (1981) 1 C L R 30 where at p 39 the following were added

10 «The question whether an adjournment will be granted or not is undoubtedly a matter of judicial discretion As such it has to be examined on the particular facts of each case and not in abstracto whether an adjournment will be granted or not must always be considered in the light of the right to a hearing within a reasonable time as provided by Article 30, para 2, of our Constitution and Article 6, para 1, of the European Convention on Human Rights of 1950, ratified by the European Convention on Human Rights (Ratification) Law 15 1962 (Law No 39 of 1962)»

On the facts of the present case and taking into consideration the repeated opportunities given to the appellant to make arrangements for the presentation of his case we find that there has been no wrong exercise of the Court's discretion The learned trial Judge very rightly in the exercise of his discretion refused a further adjournment of the case as such refusal was in line with the principle expressed in the Latin maxim that it is the public interest that there should be some end to litigation (interest reipublicae ut sit finis litium)

In the result the appeal is hereby dismissed with costs

Appeal dismissed with costs