

1962
Dec. 7
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PAVLOS
NEOPHYTOU
V.
E. CIRILLI AND
EM. PANTELIDES

[WILSON, P., ZEKIA, VASSILIADIS and JOSEPHIDES, JJ.]

PAVLOS NEOPHYTOU,

Appellant (Defendant).

E. CIRILLI AND EM. PANTELIDES

Respondents (Plaintiffs)

(Civil Appeal No. 4389).

*Practice—Appeal—Preliminary objection—An issue has to be directed—
Proper course to follow—Direction to serve and file notice of preliminary
objection to the hearing of the appeal.*

The District Court of Larnaca gave a judgment on June 9, 1962 awarding respondents-plaintiffs £64,188 mils and interest and £21,450 mils costs. The respondents-plaintiffs proceeded to levy execution but before the procedure was completed the appellant-defendant attended the respondents-plaintiffs office and paid a lesser sum than was due obtaining a receipt in full satisfaction. Meanwhile the appellant-defendant appealed from the trial judgment.

On the preliminary objection taken at the opening of the appeal that the judgment debt having been paid there is nothing to be heard by the High Court held that an issue would have to be directed.

Held : (1) Inasmuch as the appellant does not agree with the submissions of the respondents, an issue will have to be directed. The proper course to follow is to direct the respondent to serve and file a notice of preliminary objection in writing objecting to the hearing of the appeal. Also to serve and file such supporting material as he thinks necessary.

(2) The appellant should, of course, file such material in reply as he may be advised, and then the application will have to come up for hearing before this Court. The respondents will serve and file the notice of application and affidavits within 10 days of this date. The appellant will serve and file his material within 10 days after service of the respondents' material.

(3) When all the material is complete the Registrar will fix a date for continuing the appeal. I hope that on that occa-

sion not only the preliminary objection will be disposed of but, if necessary we shall be able to continue with the hearing of the appeal and finish the case at that time.

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An issue will have to be directed. Costs of today should be costs to the respondents in any event.

Appeal.

Appeal against the judgment of the District Court of Larnaca (B. L. Vassiliades, D.J.) dated the 9th June, 1962 (Action No. 323/62) whereby judgment was given for plaintiffs in the sum of £64,188 plus £21,450 costs by virtue of bills of exchange or promissory notes.

A. Skordis for the appellant.

L. Santamas with *G. Achilles* for the respondent.

The ruling of the Court was delivered by :--

WILSON, P. : A preliminary objection has been taken at the opening of the appeal, namely, that the judgment debtor having paid the judgment debt, there is nothing to be heard by this Court, the proceedings having come to an end.

Counsel for the appellant does not agree that the judgment debt has been satisfied. Therefore, there is an issue between the parties with respect to this point.

The events giving rise to the respondents' submission that the judgment debt has been paid have occurred since the trial of the action and following dismissal of the appellant's ex parte application on June 21st, last, for a stay of execution of a judgment of the District Court of Larnaca. By this judgment, given on June 9, 1962, the Court awarded the plaintiffs against the defendant a total of £64,188 mils and interest and costs of £21,450 mils. After the dismissal of the application the respondents issued and proceeded to levy execution but before this procedure was completed the appellant, acting apparently without legal advice, attended the respondents' office and paid a lesser sum than was due under the judgment.

Note : The appeal was abandoned by the appellant on the 18th January, 1963.

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Wilson, P

receiving in return a receipt stating the lesser sum was received in full satisfaction of the judgment. In the meantime the appellant's advocate acting upon his client's instructions had appealed from the trial judgment. The appellant after receiving his advocate's advice now desires to have the appeal heard, contending that his client paid the above referred to sum, in order to stay the execution of the writ of execution, reserving his right to proceed with the appeal against the trial judgment.

There was no appeal from the dismissal of the application for a stay of execution. There is in the receipt, now produced, no reservation of the appellant's right to continue his appeal, but there is a statement that the amount paid was in full settlement of the judgment.

Inasmuch as the appellant does not agree with the submissions of the respondents, an issue will have to be directed. The proper course to follow is to direct the respondents to serve and file a notice of preliminary objection in writing objecting to the hearing of the appeal. Also to serve and file such supporting material as they think necessary.

The appellant should, of course, file such material in reply as he may be advised, and then the application will have to come up for hearing before this Court. The respondents will serve and file the notice of application and affidavits within 10 days of this date. The appellant will serve and file his material within 10 days after service of the respondents' material.

We are of the opinion the costs of today should be costs to the respondents in any event.

When all the material is complete the Registrar will fix a date for continuing the appeal. I hope that on that occasion not only the preliminary objection will be disposed of but, if necessary, we shall be able to continue with the hearing of the appeal and finish the case at that time.

An issue will have to be directed. Costs of to-day should be costs to the respondents in any event