1961
Jan. 27,
Feb. 16

ANASTASSIS CHARALAMBOUS AND OTHERS
v.
ALKIS J. DEMETRIOU AND OTHERS

[O' BRIAIN, P., ZEKIA, JOSEPHIDES JJ. and TRIANTAFYLLIDES ACTING J.]

ANASTASSIS CHARALAMBOUS AND OTHERS,

Appellants (Plaintiffs)

v.

ALKIS J. DEMETRIOU AND OTHERS,

Respondents (Defendants).

(Civil Appeal No. 4317).

Will—Formalities—Will consisting of more than one sheet—Each sheet must be signed or initialled—The Wills and Succession Law, Cap.195, section 23 (d)—Provisions of the section mandatory—Should be complied with rigidly—Law of Cyprus different from law of England.

By section 23 of the Wills and Succession Law, Cap.195, it is provided: "No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say — (a).....(d) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses". The District Court of Larnaca admitted to probate the will of one C.A. The will consisted of three sheets of paper, all clipped together. It was a common ground that the will had not been signed or initialled by, or on behalf of any of the witnesses apart from where they signed at the end thereof. The trial court held that as the sheets were clipped together, they constituted in effect a single sheet, and, consequently, the will was executed in compliance with the requirements of section 23. The whole of the will, with the exception of the signature of the witnesses, was in the handwriting of the testator. It was argued on behalf of the respondent, that: (a) the trial court was right in holding that the will consisted in effect of one sheet of paper, (b) even if this submission were to fail, the failure to sign or initial each sheet, was only a minor omission and not so important as to require the Court to defeat the clear intention of the testator. The High Court rejected both those submissions. Most significant in this case is the reluctance with which the High Court felt compelled to give effect to the strictness of the provisions in section 23 of the Wills and Succession Law. The hint for

an amending legislation in the sense of some laxity without in any way increasing the risks of fraud is transparent in the judgments of the members of the High Court, especially those of ZEKIA, J., JOSEPHIDES, J. and TRIANTAFYLLIDES, Acting J

Held : (1) The fact that the sheets were clipped together does not convert them into one sheet. Had they been glued together all along one side, then they could have been regarded as constituting one sheet.

(2) The provisions of section 23 are mandatory and not merely directory; consequently, paragraph (d) of section 23 has to be complied with rigidly. This section, dealing with the requirements and the validity of a will, differs form the corresponding provisions of the English Wills Acts. Statement of the law in *Pavlides* v. *Potamitis* 9 C.L.R. 119, at pp. 121-122, *adopted.*

Appeal allowed.

Cases referred to:

Georghios Pavlides and others v. *Socratis Potamitis and others* 9 C.L.R. 119, at pp. 121-122.

Phokion Tano and another v. *Georgi Tano and others* 9 C.L.R. 94, at pp. 101-102.

Warburton v. *Loveland*, II Dow and Clark 480, at p.489; 6 E.R. 806, at p. 809.

Sutters v. *Briggs* (1922) 1 A.C. 1 at p. 8, *per* Viscount Birkenhead, *L.C.*

Kyriacos Costi v. *The Police* 18 C.L.R. 223, at p. 226, *per* Jackson, C.J.

Appeal.

Appeal against the judgment of the District Court of Larnaca (Vassiliades, P.D.C. and Michaelides, D.J.) dated the 20th February, 1960 (Action No. 466/59) whereby it was declared that the will of Christofis Anastassiou, deceased, of Larnaca was a valid will and probate of the will was granted to the 1st defendant dismissing plaintiff's claim that the deceased died intestate etc.

A. Ch. Pouyiouros with *M. Montanios* for the appellants.

G. Achilles for the respondent No. 1.

G. Z. Mylonas for the respondent No. 2

Xanthos Clerides for the respondent No. 3

Cur. adv. vult.

The facts sufficiently appear in the following judgments:—

O' BRIAIN, P. : This is an appeal against an order made by the District Court of Larnaca whereby the will of one Christofis Anastassiou, late of Larnaca, was admitted to probate. The appeal is based on the ground that this will was not duly executed in accordance with the provisions of section 23 (d) of the Wills and Succession Law Cap. 195. That section provides as follows :—

"No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say —

(d) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses".

It is common case that the paper upon which the will was written has not been signed or initialled by, or on behalf of any of the witnesses apart from where they signed at the end of the will. And it is the contention of the appellant that the will in question consists of more than one sheet of paper.

The trial court found that exhibit 1 consisted of what were originally three sheets of paper, upon only two of which the testator wrote. The sheets had been clipped or secured together prior to, or at the time of, the execution of the will, in such a manner as to constitute a single sheet at the time the will was executed according to the finding of the court.

Mr. Pavlides on behalf of the respondents contended that this finding of fact should be upheld and that, upon it, there was compliance with the requirements of the section, by reason of the fact that the testator and witnesses had duly signed their names at the end of the will. He further contended that even if the Court were to hold that the will consisted of more than one sheet, this failure to sign or initial more than one sheet is only a minor omission and is not so important as to require the Court to defeat the clear intention of the testator.

The first point is an issue of fact. This case moreover, is one of those rare cases in which this Court is in as good a position as the trial court to determine the relevant fact *i.e.* whether or not the will of the testator consists of more than one sheet of paper. In that connection, it is of some significance that several of the witnesses in their evidence speak of the will as consisting of more than one sheet of paper. D.W. 2, Christakis Pitsillides says : "He was holding it like this and asked us to sign on this last page. I could see that it consisted of more than one sheet of paper, but I do not know how many. They did not appear to me to be very many but there were more than one clipped together". D.W. 3, Glafcos Casoulides says : "In this envelope I found the will which consisted of three sheets of paper, two of them bearing the handwriting of the deceased and one of them blank".

The trial court itself was satisfied that the will consisted of what were originally three sheets of paper. The judgment at page 30 says : "On the evidence before us we find that exhibit 1, consisting of three sheets of paper clipped together as they now are, was brought to the shop". Again : "We find that the whole of the will (that is to say all the writing on the two out of the three sheets of paper attached together excepting the signature of the witnesses and what was written on the will by the Registrar of finding) is in the handwriting of the deceased". And again : "He continued his will on the second sheet of exhibit 1 and probably desiring to have a spare sheet for eventual alterations he clipped the three sheets together as they were found immediately after his death and are now before the Court".

I am content to rest my judgment on this aspect of the case upon my own observation of the will produced before this Court. Exhibit 1 consists of paper ruled in rectangles. Each sheet has been folded once so as to form four pages. Sheet 1 is written upon by the testator, on the front page and on the back page, and is joined to a similar sheet upon the front page of which only the will is continued and finished. Inserted in the folds of this second sheet is the third sheet, similarly folded but entirely blank. There is no physical connection between these other than a metal clip inserted in one corner and passing through them all. There was no difficulty whatever in identifying and distinguishing, at a glance, each of these sheets and its actual dimensions and format. Notwithstanding the fact that a clip has been used

to join together the papers upon which the will was written I have formed the opinion that exhibit 1, at all material times, consisted of three sheets. Upon two of these the testator wrote out his will. The third, inserted inside the second sheet, he left blank. Giving the best consideration I can to the matter, I am forced to the conclusion that the will in question can only be properly described as consisting of more than one sheet and, with regret, I differ with the learned trial judges on this issue of fact.

This brings me to consideration of Mr. Pavlides' second point. His submission is, as I understand it, that the omission or non-compliance in this case with the requirements of the statute is of such a trivial nature that the Court may ignore it and decree probate of the will notwithstanding such non-compliance. I have difficulty in accepting this contention. It is, in my opinion, a well established general rule that full effect must be given to every word in a statute. The rule of construction is "to intend the legislature to have meant what they have actually expressed". Where by the use of clear and unequivocal language anything is enacted by the legislature, effect must be given to it. Once the meaning of a statutory provision is plain, it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the whole of the words. The authorities for this proposition are to be found, conveniently noted, in Maxwell on "The Interpretation of the Statutes", 10th edition, CAP. 1, Section 2, and I need not refer to them in detail.

In my opinion the requirements of the Wills Act in Ireland and England and the Wills and Succession Law in this country respectively lay down the minimum requirements to be observed by a person who wishes effect to be given to his testamentary wishes after his death. He may, as in this case the testator did, provide more formality than the law requires, but he may not disregard any of the statutory requisites save at the peril that his testamentary wishes will not be given effect to by the Law. The provisions of the Wills and Succession Law relating to wills are manifestly modelled in general upon the English Wills Act but section 23(d) is not found in the latter and was inserted apparently because of circumstances and conditions peculiar to Cyprus. That, to my mind, indicates that the legislator to whom must be imputed a knowledge of the law in England attached importance to this

added clause. The former Supreme Court of Cyprus stressed in the case of *Pavlides* v. *Potamitis* (9 C.L.R. 119 at pages 121-122) the weighty significance of a clear departure from the terms of the English Statute.

It is true as Mr. Pavlides has stressed in his arguments the Courts in England, and I may add in Ireland also, in considering what amounts to compliance with the requisites of the statute have, in the case of holograph wills in particular, always shown a leaning towards a liberal construction of these provisions. I see no reason why the Courts of Cyprus should adopt a different approach to our Wills and Succession Law. I may say that in this case I incline to the view (without expressly so deciding) which Mr. Pavlides urged upon this Court that the writing of his name by the testator at the commencement of the will might well be regarded as a compliance, by the testator, with the section in question in respect of sheet one. But what of the witnesses?

Is it not clear that the statutory provisions of the section with regard to the witnesses have been completely disregarded in this case ? Nothing that could be regarded as compliance with these has been, or could be, suggested. In this case, a clearly prescribed statutory requisite has been entirely disregarded.

On that ground, for the reasons I have mentioned, I take the view that this appeal should be allowed.

ZEKIA, J. : Two are the points which fall for decision in this appeal :

1. Whether the will under consideration consists of one sheet of paper or more within the meaning of section 23(d) of the Wills and Succession Law, Cap. 195.

2. If it consists of more than one sheet of paper whether the fact that one of the sheets has not been initialled by the testator and the witnesses would be fatal to the validity of the will in question.

Point No. 1. The requisites of a valid will are given in section 23 of the said law which reads :

> "No will shall be valid unless it shall be in writing and executed in a manner hereinafter mentioned, that is to say,

(a) .....

(b) .....

(c) .....

(d) if the will consists of more than one sheet of paper each sheet shall be signed or initialled by or on behalf of the testator and witnesses".

The issue in point 1, although constitutes a question of fact, the exhibit (the will) being before us, this Court is as good as a trial court to say whether it consists of one or more sheets of paper. To me it is obvious that the will exhibited consists of more than one sheet, namely, of three sheets, one of which is blank. The sheet containing the first part of the will is not initialled either by the testator or by the witnesses of the will. The fact that both sheets together with a blank sheet are clipped in one end does not convert the two or the three sheets into one sheet. Had they been glued together all along one side then they would have ceased to be three sheets and it would then be possible to regard the document as consisting of one sheet only. The fact that the will is a holograph and one of the sheets bears the initials of the testator on one alteration, in my view, makes no difference.

Point No. 2. This depends on whether section 23(d) is mandatory or directory in nature.

As far as the wording of the section and the subsection in question is concerned the requirement to initial or sign each sheet when the will consists of more than one sheet, is mandatory and I fail to see how one can distinguish and argue that the requirement under subsection (d) is less rigid in character than that in subsection (a) of the same section which is manifestly imperative.

Furthermore our sections dealing with the requirements and validity of a will differ from the corresponding sections of the English Wills Acts. The cited cases help us very little on the points raised. In section 23 it is expressly stated that a will shall not be valid unless it conforms with the requirements mentioned therein. The consequences of non-compliance having been clearly stated in the statute, that is, having the effect of invalidating the will there leaves no room for doubt as to the intention of the legislature that the requirements in the said section were meant to be imperative and not directory. However unfortunate it may turn to be

the application of the law to this particular case the result is inescapable.

I agree, therefore, that the appeal should be allowed.

JOSEPHIDES, J. : It is with great regret that I have come to the conclusion that the appeal must be allowed.

Counsel for the respondents argued, first, that the will did not consist of more than one sheet of paper and, secondly, if it did, the fact that each sheet was not signed or initialled by the testator and the witnesses was a minor omission and it should not defeat the expressed intention of the testator, having regard to the fact that it was a holograph will. In support of the second argument it was stated that the underlying principle of section 23 of the Wills and Succession Law, Cap. 195, is that there should be no fraud, and that the Court should give effect to the expressed intention of the testator.

As regards the first point, i.e. whether the will consists of more than one sheet of paper, on inspecting the will one finds that it consists of three sheets of paper (one of them being blank) clipped together with a metal clip attached to the top left hand side of the sheets, and it is signed in the middle of the second sheet by the testator and the attesting witnesses.

There is no signature or initials of the testator or of the witnesses on the first sheet of the will. Although the three sheets of paper are clipped together this does not, to my mind, amalgamate or transform them into one sheet of paper and one cannot possibly escape the conclusion that the will consists of more than one sheet of paper.

As to the second point, to the effect that this is a minor omission and as the will is a holograph will the Court should give effect to the expressed intention of the testator this argument cannot, in my view, prevail. If this is what was intended nothing would have been easier than for the legislature to have said so. The plain language of section 23, read as a whole, is against that contention.

It was laid down many years ago and followed in *Warburton* v. *Loveland* (II Dow & Clark 480, at page 489) that "where the language of an Act is clear and explicit we must give effect to it whatever may be the consequences ; for in that case the words of the statute speak the intention of the Legislature". In the present case I think that the words of

the statute are clear and explicit and that the intention of the legislature is so expressed that the task of interpretation can hardly be said to arise. The rule of construction is to intend the legislature to have meant what they have actually expressed and it matters not, in such a case, what the consequences may be (see Maxwell on the Interpretation of Statutes, 9th edition, page 4 et seq.)

As Viscount Birkenhead L.C. said in *Sutters* v. *Briggs* (1922) 1 A.C. 1, at page 8 :

> "The consequences of this view will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the Legislature. Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others".

Our Wills and Succession Law (Cap. 195) is a very composite statute. The sections relating to the form of the will are based upon the English law. The sections relating to intestate succession and the limitation of the disposable portion are based upon the Italian Civil Code (which in its main lines is based upon that of the Roman Law, *i.e.*, upon the 118th Novel of Justinian). In both cases the legislator has introduced numerous modifications of substance, presumably with a view to adapting the law to the circumstances of this country (see *Tano* v. *Tano* 9 C.L.R. 94, at page 102; and *Pavlides* v. *Potamitis* 9 C.L.R. 119, at page 121.)

The present section 23 of the Wills and Succession Law appeared in the redrafted Wills and Succession Law of 1895. In its original form it purported to follow section 9 of the English Wills Act, 1837, with at least three deliberate departures : (a) our law required three instead of two attesting witnesses ; (b) it required a specified and precise form of attestation clause, while in the English statute it is provided that no form of attestation shall be necessary; and (c) it required that each sheet of paper must be signed or initialled by the testator and the witnesses (the present section 23 (d)), while there is no similar provision in the English statute.

Following the decision in *Pavlides* v. *Potamitis* (*supra*) decided in 1910, in which it was held that a will in which the

words "at his request and in his presence" were omitted from the attestation clause (even although in fact the witnesses set their names to the will at the request of the testator and in his presence, and although the omission was only due to a clerical error) was not a valid will, when the law was re-enacted in 1945 (the present Cap. 195) requirements (a) and (b) above were expressly modified in our statute, *i.e.* the statute no longer requires a specified and precise form of attestation clause, and two instead of three attesting witnesses are sufficient. But the requirement of the signing or initialling of each sheet of paper by the testator and the attesting witnesses was retained.

In fact the draftsman followed closely the provisions of section 9 of the English Wills Act, 1837, but he deliberately departed from it by re-inserting the provision regarding the signing and initialling of each sheet of paper, where the will consists of more than one sheet.

Reading section 23 as a whole, and having regard to the provisions of paragraphs (a), (b) and (c) of the same section, I am constrained to hold that the provisions of paragraph (d) of that section are imperative ; and I leave the question of remedying the rigidity of this requirement to the Legislature.

Under these circumstances I agree that the appeal should be allowed.

TRIANTAFYLLIDES, Acting J. : I had the advantage of reading the judgments delivered by the President of this Court and my brothers.

I agree with the conclusion that this appeal must be allowed. I do so with reluctance because as a result, the clearly manifested and unambiguous testamentary intentions of a deceased person, embodied in a holograph document which he deliberately intended to be his last will, are being defeated due to the inflexibility of the law governing wills in Cyprus at present.

Unfortunately by means of the definition of "will" in section 2 of Cap. 195, the Wills and Succession Law, and of the rigid wording of section 23 of the same law, a procrustean legal framework has been created to which, no matter what the collateral circumstances, a will has to be fitted, otherwise it cannot survive in a court of law.

Our law in this respect differs fundamentally from the much more liberal corresponding English legislation and allows very limited scope for the benevolent approach of Courts towards the validity of wills, which is clearly manifested by English precedents.

The language of section 23 of Cap. 195 being so clear, definite and imperative there is no room for a construction in accordance with the presumed intention of the legislator. Had it been otherwise I would definitely be inclined to hold that paragraph (d) of section 23 of Cap. 195 is actually intended to guard against fraud where the will is not written out in the handwriting of the testator because in such a case the possibility arises that a sheet of paper may be substituted subsequently without his consent in order to serve alien interests. In the case, however, of a will written out in the handwriting of the testator, such a safeguard is not only unnecessary, because the testator is always free to change his mind, but it may lead to undesirable results as indeed in the present case. I state the above with the hope that they will not escape the urgent attention of the legislators of the Republic.

In concluding I think I could aptly adopt the view of Jackson, C.J., in *Kyriacos Costi* v. *Police*, reported in vol. 18 of the Cyprus Law Reports at p. 223, where having applied a rigid and inflexible legal provision leading to great hardship for the appellant he observed at the end of his judgment at p. 226 "we are very conscious that it is beyond our powers to convince the appellant that he has been treated with justice". I do feel that in this case the beneficiaries under the will would be likewise difficult to be convinced.

O' BRIAIN, P. : There will, therefore, be an order under paragraphs 4 and 7 of the Statement of Claim.

The costs of all the parties to be borne by the estate.

Appeal allowed. Judgment of the Court below, including the order for costs, set aside.