[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

PINELOPI DEMETRIOU CHRISTOFIDOU

Appellant,

v.

ELLI P. NEMITSAS AND 3 OTHERS,

Respondents.

(Civil Appeal No. 4418).

Practice—Appeal—Rulings made by the Courts on objections or other matters raised by either side in the course of the trial-Appeal against such rulings unwarranted by the rules of procedure whilst trial continues—" Piecemeal appeals " undesirable—Applicability of this rule in criminal matters, especially in matters of questions of law reserved for the opinion of the High Court under section 148 *of the Criminal Procedure Law, Cap.* 155, *undecided.*

The appellant (respondent in the District Court), at the opening of the hearing before the District Court, raised an objection that the matter before the Court (*i.e.* an appeal against a decision of the Director of Lands and Surveys) should have been brought before the Court in the form of an action and not by way of appeal under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

The trial Judge, after hearing both sides, overruled the objection and intended to proceed with the case when he was asked to adjourn and in fact he did adjourn the matter pending a contemplated appeal against his ruling. The respondent in the District Court appealed against this ruling and the High Court in dismissing the appeal unanimously (except that WILSON, P., ZEKIA and JOSEPHIDES, JJ., expressed no opinion as to the applicability of the rule in criminal matters) :—

Held, (1) without going into the merits of the case at all, we are clearly of the opinion that this method of interrupting proceedings during a hearing, for the purpose of taking an appeal against a ruling, in circumstances such as these, is unwarranted by the rules, is undesirable in practice, and should be discouraged.

(2) In the course of a trial, or of a hearing of any proceeding before a trial Court, there may well be numerous occasions when the Court may have to make a ruling on objections or

other matters raised by either side. One need not have a strong imagination to see the embarrassment which may be caused, in both civil and criminal matters, if there was to be an interruption of the proceeding for the purposes of an appeal, every time a party was dissatisfied with the court's ruling.

(3) (*a*) The appellate jurisdiction of this Court is statutory. It derives from the Constitution, and from the particular statute authorising an appeal. In this case, presumably from the Courts of Justice Law, 1960, section 25. And such appeals are expressly made subject to rules of procedure governing the matter. As at present advised, I know of no rule providing for an appeal from a ruling such as this.

(*b*) The present case demonstrates once again the good reasons for which such "piecemeal appeals" as they were described in *Korallis* v. *Christoforou* (1957) 22 C.L.R. 159, at p. 161, should be discouraged.

Costas Korallis v. *Cleanthis Christoforou* (1957) 22 C.L.R. 159, *followed*; The *heirs of Theodhora Panayi* v. *The Administrators of Stylianos Mandrioti* (reported in this Volume at p. 167 *ante*), *cited with approval.*

(4) This appeal is dismissed with costs. And the District Court may now proceed with the matter before it as if this appeal had not interrupted the proceedings. It is hardly necessary to add that this judgment, in no way deals with the merits of the case, such as they may be.

(5) *Per* VASSILIADES, J.: I had the occasion of dealing with a somewhat similar matter in *The Republic* v. *Georghios Theocli Kalli* 1961 C.L.R. 140 where, during a murder trial the proceedings were interrupted to reserve for the opinion of this Court, at the instance of the Attorney-General, under section 148 of the Criminal Procedure Law Cap. 155, questions of law arising from a ruling of the Assize Court on an issue of admissibility. As that was a criminal case, I shall not make further reference to it here, except for saying that such interruptions during a trial, are as "highly undesirable" in criminal matters as they are in civil suits.

Appeal dismissed with costs.

Cases referred to :

The Republic v. *Georghios Theocli Kalli* (1961) C.L.R. 140 ;

Costas Korallis v. *Cleanthis Christoforou* (1957) 22 C.L.R. 159 ;

The heirs of Theodora Panayi v. *The Administrators of the Estate of Stylianos Mandrioti* (reported in this Volume at p. 167 *ante*).

Appeal.

Appeal against the judgment of the District Court of Limassol dated the 25.1.63 (Appeal No. 2/62) overruling appellants objection that proceedings against a decision of the Director of Lands and Surveys should be brought to Court in the form of an action and not by way of appeal.

Phivos Pitsillides with *Riccos Michaelides* for the appellant.

G. Cacoyiannis for the respondents.

The facts efficiently appear in the judgment of the High Court.

WILSON, P. : I concur in the judgment given by Mr. Justice Vassiliades, except his reference to *The Republic* v. *Georghios Theocli Kalli* 1961 C.L.R. 140 as to which I express no opinion.

VASSILIADES, J. : At this stage, having heard counsel for the appellant, we find it unnecessary to call on the respondents. We are unanimously of opinion that we can dispose of this appeal on a short point of procedure.

At the opening of the hearing of a proceeding before the District Court, instituted under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, by way of appeal against a decision of the Director of Lands and Surveys, the appellant herein (respondent in the District Court) took the objection that the matter should have been brought to Court in the form of an action, and not by way of appeal under section 80.

The trial Judge, after hearing both sides on the point, overruled the objection and was to proceed with the case, when he was asked to adjourn the matter pending a contemplated appeal against his ruling on the objection ; the appeal now before us.

Without going into the merits of the case at all, we are clearly of opinion that this method of interrupting proceedings during a hearing, for the purpose of taking an appeal against a ruling, in circumstances such as these, is unwarranted by the Rules, is undesirable in practice, and should be discouraged.

In the course of a trial, or of a hearing of any proceeding before a trial Court, there may well be numerous occasions when the Court may have to make a ruling on objections or other matters raised by either side. One need not have a strong imagination to see the embarrassment which may be caused, in both civil and criminal matters, if there was to be an interruption of the proceeding for the purposes of an appeal, every time a party was dissatisfied with the Court's ruling.

The appellate jurisdiction of this Court is statutory. It derives from the Constitution, and from the particular statute authorising an appeal. In this case, presumably from the Courts of Justice Law, 1960, section 25. And such appeals are expressly made subject to rules of procedure governing the matter. As at present advised, I know of no rule providing for an appeal from a ruling such as this.

On the other hand, the Courts have occassionally expressed themselves in similar matters. In *Costas Korallis* v. *Cleanthis Christoforou* for instance (1957) 22 C.L.R. 159 the trial Court in a libel action, made a ruling as to who was to be the "first party" in the trial. The litigant dissatisfied with that ruling, took the matter to the Court of Appeal. But such appeal was dismissed, Zekia, J. stating the view (at p. 161) that :—

> "In the first place it is very doubtful whether the ruling made could be embodied in an Order so as to enable a litigant to appeal against it. Indeed a trial Court in conducting the hearing of a case and directing the various phases of trial usually has to make a number of rulings. To hold that each of these rulings constitutes a decision within the meaning of section 27 of the Courts of Justice Law, 1953, and, therefore, is subject to appeal to the Supreme Court would unnecessarily protract litigation and encourage piecemeal appeals in one and the same case, which is highly undesirable".

I had the occasion of dealing with a somewhat similar matter in *The Republic* v. *Georghios Theocli Kalli* 1961 C.L.R. 140 where, during a murder trial the proceedings were interrupted to reserve for the opinion of this Court, at the instance of the Attorney-General, under section 148 of the Criminal Procedure Law, Cap. 155, questions of law arising from a ruling of the Assize Court on an issue of admissibility. As that was a criminal case, I shall not

make further reference to it here, except for saying that such interruptions during a trial, are as " highly undesirable " in criminal matters as they are in civil suits.

In a recent appeal before this Court, *The heirs of Theodora Panayi* v. *The Administrators of the Estate of Stylianos Mandrioti* (reported in this Volume p. 167 *ante*) Mr. Justice Josephides in delivering the judgment of the Court, and while dealing with a matter of a more or less similar nature, had this to say : (at p. 170).

> " We would like to add that in cases where an objection is taken in the defence, the interested party must apply to the Court to have a particular point of law under Order 27, formulated and set down for hearing before the date of trial, and he should not wait until the day of trial when all the parties and their witnesses are before the Court, when considerable costs may be incurred. An application under Order 27 should normally be made on the summons for directions ".

The present case demonstrates once again the good reasons for which such " piecemeal appeals ", as they were described in *Korallis* v. *Christoforou* (*supra*) should be discouraged. This appeal is dismissed with costs. And the District Court may now proceed with the matter before it as if the appeal had not interrupted the proceedings. It is hardly necessary to add that this judgment in no way deals with the merits of the case, such as they may be.

ZEKIA, J. : I concur in the judgment given by Mr. Justice Vassiliades but wish to express no opinion as to the applicability of the rule to criminal matters.

JOSEPHIDES, J. : I concur in the judgment given by my brother Vassiliades, J., except his reference to criminal matters and the case of *The Republic* v. *Georghios Theocli Kalli* 1961 C.L.R. 140. I have expressed my views in that case to which I still adhere.

MR. CACOYIANNIS : I claim also the costs of the trial Court ; in any event on the day the ruling was made.

COURT : Those are costs before the District Court and you may raise the matter there, in due course.

Appeal dismissed with costs.