

1965
June 3

[VASSILIADES, MUNIR, JOSEPHIDES, JJ.]

ANDREAS D.
KALIMERAS
v.
SOCRATES
GEORGIU

ANDREAS D. KALIMERAS,
Appellant-Plaintiff,
v.
SOCRATIS GEORGIU,
Respondent-Defendant.

(Civil Appeal No. 4519)

Practice—Evidence—Evidence on commission—Appeal from the dismissal of plaintiff's application for an order that the evidence of certain unnamed witnesses may be taken on commission abroad—Principles on which a Court may allow the taking of evidence on commission are well established in Cyprus.—Restatement of their substance.

Evidence—Evidence on Commission abroad.

The Court dismissing the appeal from the Order of a District Judge dismissing the plaintiff's application for an order that the evidence of certain unnamed witnesses may be taken on commission abroad.

Held, (1) the principles on which a Court may allow the taking of evidence on commission are well established and they were summarised in two reported cases in Cyprus : *Power v. Beha* (No. 1) (1959), 24 C.L.R. 254 ; and *Power v. Beha* (No. 2) (1959) 24 C.L.R. 266. I do not propose going into these principles *in extenso*, except to state their substance : In every case the applicant must show that the proposed evidence cannot reasonably be obtained except by the method he proposes ; while in cases where it is obviously desirable that the witness should be seen in Court, he must show a degree of difficulty in producing the witness at that period which amounts to practical inability to do so (24 C.L.R. at p. 258).

(2) The application must be supported by a full affidavit showing that the case involves a real issue for the Court to try ; that the application is made *bona fide* ; that the examination abroad will be effective ; that the witnesses to be examined are material and their evidence admissible ; and that there is some good reason why the witnesses cannot be examined here. And, it should also be borne in mind that the provision for the taking of evidence on commission is " for the purposes of justice ", which means for the purposes of justice between the plaintiff and the defendant.

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(3) Looking at the affidavit in support of the plaintiff's application in the present case, one cannot even see the names of the proposed witnesses, let alone the substance or the materiality of their evidence. This is sufficient to dispose of the plaintiff's application without considering the other points which are necessary to be proved before an order for evidence on commission may be granted, and the District Judge rightly dismissed his application.

(4) For these reasons the appeal is dismissed with costs.

Appeal dismissed with costs.

Cases referred to :

Power v. Beha (No. 1) (1959), 24 C.L.R. 254 ;
Power v. Beha (No. 2) (1959), 24 C.L.R. 266.

Appeal.

Appeal against the order of the District Court of Nicosia (Izzet, D.J.) dated the 24th March, 1965 (Action No. 4883/63) dismissing plaintiff's application for an order that the evidence of certain unnamed witnesses may be taken on commission abroad.

A. Georghiades, for the appellant.
X. Clerides, for the respondent.

VASSILIADES, J.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: This is an appeal from the order of a District Judge dismissing the plaintiff's application for an order that the evidence of certain unnamed witnesses may be taken on commission abroad.

The principles on which a Court may allow the taking of evidence on commission are well established and they were summarised in two reported cases in Cyprus : *Power v. Beha* (No. 1) (1959), 24 C.L.R. 254 ; and *Power v. Beha* (No. 2) (1959), 24 C.L.R. 266. I do not propose going into these principles *in extenso*, except to state their substance : In every case the applicant must show that the proposed evidence cannot reasonably be obtained except by the method he proposes ; while in cases where it is obviously desirable that the witness should be seen in Court, he must show a degree of difficulty in producing the witness at that period which amounts to practical inability to do so (24 C.L.R. at page 258).

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Looking at the affidavit in support of the plaintiff's application in the present case, one cannot even see the names of the proposed witnesses, let alone the substance or the materiality of their evidence. This is sufficient to dispose of the plaintiff's application without considering the other points which are necessary to be proved before an order for evidence on commission may be granted, and the District Judge rightly dismissed his application.

For these reasons the appeal is dismissed with costs.

Appeal dismissed with costs.