

AVGHI LAMBROKLIS SAKELLARIDES,

*Appellant.*

v.

LEONDIOS PAPA SAVVA AND ANOTHER,

*Respondents.*

LAMBROKLIS  
SAKELLARIDES

v.

LEONDIOS  
PAPA SAVVA  
AND  
ANOTHER

(Civil Appeal No. 4588).

*Civil Procedure Execution-- Sale of immovables--Appeal against the dismissal of an application by the judgment debtor based on sections 43, 44 and 46 of the Civil Procedure Law, Cap. 6 and the Rules of Sale (rule 11 (a) and (b)) made thereunder, to set aside the sale for alleged irregularities. Open to the trial Court, on the evidence before them, to vary the findings they did--And to come to the conclusion that there were neither omissions nor irregularities at the sale--And that the highest bid was not inadequate--Civil Procedure Law, Cap. 6 section 38.*

*Execution--By sale of immovables--See above.*

*Immovable Property--Sale of in execution--See above.*

*Sale of Immovable Property-- In execution of a judgment debt-- Alleged omissions or irregularities--See above.*

*Practice --Appeal-- Findings of fact made by trial Courts. Finding by the Court preferring the evidence adduced by one party to that of the other--A matter of credibility of witnesses. Open to the trial Court to make the findings of fact complained of and to prefer certain witnesses' evidence to that of others-- Onus on the appellant to convince the Court of Appeal that the decision appealed from is wrong--Such onus not discharged in the present case.*

*Findings of fact by trial Court--Principles upon which the Appellate Court will interfere with such findings--Onus cast on the appellant--See above.*

*Witnesses--Credibility of--See above.*

*Practice--Appeal--Adjournment--Application to Court of Appeal for adjournment to brief counsel--Refused as ample notice of the hearing of the appeal was given.*

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*Practice--Adjournment-- Application for adjournment to bring witnesses not summoned by applicant--Delaying tactics--Application refused.*

*Adjournment Adjournment of hearing of application or of the hearing of an appeal - Application for-- See above.*

### **Appeal.**

Appeal against the judgment of the District Court of Limassol (Malachos & Papadopoulos D.J.J.) dated the 30th June, 1966 (Action No. 1347/61) dismissing an application to set aside the sale of appellant's property which took place on the 3rd April, 1966.

*Appellant* in person.

A. *Myrianthis*, for the respondents.

The following ruling was delivered by:-

JOSEPHIDES, J. : At this late stage of the proceedings the appellant is applying for an adjournment to instruct counsel to appear on her behalf in this appeal. It is on record that notice of the date of hearing of this appeal was given to the appellant on the 21st September last, that is to say, 23 days ago. We think that in the circumstances there was ample time to instruct counsel to represent her today before the Court. The present appeal before us today is not the first appeal connected with the execution of the judgment issued against appellant and her husband in September 1963. This Court has in the past repeatedly referred to the delaying tactics of the appellant in this case. In giving his judgment on the 4th February, 1966, the President of the Court said :

“ Unfortunately, the appellant in this case has repeatedly taken steps in this action for the purpose of delaying execution and satisfaction of the judgment ”.

Likewise, in the judgment of the 5th April, 1966, this Court referred again to the delaying tactics of the appellant. With regard to the appellant's application to set aside the sale of her property, the learned President of this Court, in giving his judgment on that day, said “ She must, however, seek legal advice in the matter before taking any action ”. Unfortunately, it seems that the appellant has not thought fit to seek legal advice in connection with her present appeal, and in these circumstances we are not prepared to grant the adjournment sought by her.

Having heard her address this Court for over an hour, we shall now proceed to give judgment in this appeal.

*Application for adjournment refused.*

The judgment of the Court was delivered by:-

JOSEPHIDES, J. : This is an appeal by the judgment debtor from the order of the Full District Court of Limassol dismissing her application to set aside the sale of her property which took place on the 3rd April, 1966.

The sale was made by virtue of a writ of sale issued against the appellant on the 15th November, 1965, in respect of her immovable property consisting of a building-site at Ay. Ioannis quarter, Limassol, under Registration No. 38964. The grounds on which the judgment debtor sought to have the sale set aside were :

- (a) that there was an omission or irregularity at the sale, and,
- (b) that the highest bid was inadequate.

The application was based on sections 43, 44 and 46 of the Civil Procedure Law, Cap. 6, and the Rules of Sale made under the same law

The debtor's version appears in paragraph 5 of her affidavit, sworn on the 7th April, 1966. The substance of that paragraph is that the sale commenced on the 3rd April, 1966, with a bid for £3,000, then the Mukhtar conducting the auction received a bid for £9,500 from the first respondent then a bid for £10,000 from a stranger, but he illegally refused to accept a higher bid for £10,500 from the appellant's son Georghios Sakellarides. The appellant further complains that other persons who were willing, ready and able to bid and buy the property were stopped either by the Mukhtar conducting the sale or the respondents.

The trial Court, after hearing four witnesses called by the appellant and four witnesses called by the respondents, made its finding preferring the version of the respondents, as appearing mainly in the evidence of the Mukhtar auctioneer, Thisseas Pilavakis, and that of the first respondent. The appellant today has complained that the trial Court did not believe the evidence adduced by her and that it preferred the evidence adduced by the respondents. This was a matter of credibility of the witnesses and it was upon the trial Court to make their

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findings of fact and to come to the conclusion that certain witnesses' evidence was preferable to that of others. The onus is on the appellant to convince this Court that the decision below is wrong.

The evidence of the Mukhtar, was supported by two bidding lists, bearing the signatures of the bidders, which were put in evidence from the custody of the Land Registry Office. The first auction list shows that the auction opened at 10 a.m. on the 3rd April, 1966, with the respondents as the first bidders for the sum of £3,000. There followed fifteen minutes later another bid by one Rena and Nicos Theodorides for £4,500 ; at 10.20 a.m. the first respondent bid £5,000 ; at 10.25 a.m. Rena and Nicos Theodorides bid £6,000 ; at 10.27 a.m. the first respondent, bid £7,000 ; at 10.50 a.m. there came the first bid by the appellant's son G. Sakellarides for £7,500 ; at 10.55 a.m. the first respondent bid £8,500 ; at 11.05 a.m. the appellant's son bid £9,000 ; at 11.10 a.m. the first respondent bid £9,500 ; at 11.15 a.m. Andreas Exadaktylos bid £10,000, and finally at 11.20 a.m. the appellant's son bid the sum of £10,500.

There was no other bid for some 40 minutes and at 12 noon the auctioneer knocked down the property to the appellant's son for the sum of £10,500 as the highest bidder. There and then the auctioneer, in conformity with the provisions of rule 11 (a) of the Rules of Sale, called upon the highest bidder, the appellant's son, to deposit one-fifth of the amount bid, plus transfer fees etc., which altogether amounted to something like £2,530. But appellant's son produced only a cheque for £100 only. There and then the auctioneer cancelled the sale and, acting in accordance with the provisions of rule 11 (b) of the Rules of Sale, re-opened the bidding. That rule reads as follows :

“(b) that if the highest bidder shall fail to comply with the provisions of condition (a), the bidding shall thereupon be re-opened, and any loss which may result by reason of any subsequent highest bid falling short of the value of such original highest bid shall be made good by the original highest bidder, together with all expenses incurred in compelling him to make good the same”.

Section 38 of the Civil Procedure Law, Cap. 6, is substantially to the same effect.

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The bidding was re-opened at 12.15 p.m. on the same day with both respondents bidding £3,000; D. Pissourios then bid £4,500 to be followed by the first respondent with a bid for £5,000; five minutes later at 12.35 p.m. Pissourios bid £5,100 and at 12.37 p.m. the first respondent bid the sum of £5,500. The auctioneer, after waiting for about an hour and a half, knocked down the property to the respondents at 2 p.m. for the sum of £5,500. This version of the auctioneer was accepted by the trial Court which, as already stated, found the facts accordingly.

We have gone into the facts concerning the bidding with some detail in order to show that the auctioneer complied strictly with the law and the rules of sale. The version put forward by the appellant before the trial Court was rejected by them and, we think, rightly so. On the evidence before them, it was open to the trial Court to make the findings which they made. On these findings of facts, we are of the view that the trial Court were justified in coming to the conclusion that there was neither omission nor irregularity at the sale.

As regards the second ground on which the application was founded, that is to say, that the sale should be set aside on the ground that the highest bid was inadequate, we have not really heard any argument by the appellant, but we are of the view that there was ample evidence on the record to justify the Court in reaching the conclusion that the highest bid was not inadequate.

Before dealing with the last ground of appeal, that is to say, the refusal of the trial Court to allow her an adjournment on the 29th June, 1966, to enable her to call more witnesses, I think it would be relevant to refer briefly to the history of this case.

The respondents, judgment creditors, instituted their action in the year 1961, claiming by virtue of a contract of dowry. After protracted hearings, the District Court of Limassol issued their judgment on the 21st September, 1963, awarding them the sum of £11,140 plus costs. Since then the judgment creditors have been trying unsuccessfully to satisfy that judgment, due mainly to the deliberate delays and protracted litigation by the judgment debtors, mainly the present appellant. There have been at least four appeals before this Court in connection with the execution of the

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judgment, and this Court cannot but take judicial cognizance of this matter. In fact, reference has been made in at least two previous judgments of this Court to the delaying tactics of the appellant.

Reverting now to the question whether the trial Court was justified in refusing to grant the adjournment, we have looked at the record (page 28) which shows how the matter was raised. First of all it appears that on the previous day the appellant had misled the Court by informing them that her advocate had left Cyprus, which in fact was not true. The advocate appeared in person and stated that the appellant had withdrawn her instructions from him, informing him that the matter had been settled. After dealing with this matter, the Court informed the parties that it proposed proceeding with the hearing of the application. Thereupon the appellant said "I have no other witnesses available today. My witnesses are two ladies and an electrician who cannot come today to Court. They may come to-morrow in the afternoon. I therefore apply for an adjournment".

Respondents' counsel opposed this request saying that these were delaying tactics on the part of the appellant. The Court then asked the appellant whether she had summoned her witnesses and she replied that she only summoned the Registry Clerk, who had already given evidence. Her application for adjournment was accordingly refused.

Considering the long history of this case and the facts stated in the record we are of the view that the trial Court was justified in refusing the adjournment.

For these reasons the appeal is dismissed with costs.

*Appeal dismissed with costs.*