

THE HEIRS OF THE ESTATE OF LATE PIERIS
THEODOROU, NAMELY VASSILIKI P.
THEODOROU AND OTHERS,

Appellants-Plaintiffs,

v.

VIAS DEMETRIOU AND OTHERS,

Respondents-Defendants.

(*Application in Civil Appeal No. 4924.*)

THE HEIRS OF
THE ESTATE
OF LATE
PIERIS
THEODOROU,
NAMELY
VASSILIKI
P., THEODOROU
AND OTHERS
v.
VIAS
DEMETRIOU
AND OTHERS

Civil Procedure—Appeal—Grounds of appeal—Amendment—Notice of appeal without full grounds due to the non-availability of the record—Application for leave to amend, granted—The Civil Procedure Rules, Order 35, rule 4.

Appeal—Grounds—Amendment—Application for leave to amend granted—See supra.

The Supreme Court, exercising its discretion, granted this application by the appellants for leave to amend the grounds set forth in the notice of appeal. The facts of the case sufficiently appear in the judgment of the Court.

Cases referred to :

Kyriakides v. Kyriakides (1969) 1 C.L.R. 373.

Application.

Application by the appellants-plaintiffs for an order of the Court directing the amendment of the grounds of appeal in a notice of appeal against the judgment of the District Court of Larnaca (Georghiou, P.D.C. and Orphanides, D.J.) given on the 19th June, 1970, in Action No. 215/66, whereby plaintiffs' claim for a declaration that they were entitled to be registered as owners of a certain piece of land was dismissed.

A. Triantafyllides with *N. Charalambous*, for the appellants.

G. Nicolaidis, for the respondents.

The following ruling was delivered by :—

HADJIANASTASSIOU, J. : The appellants in these two applications applied under the provisions of Order 35

1971

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rule 4 to amend the grounds of notice of appeal. The judgment of the trial Court appealed from was delivered on June 19, 1970, and the notice of appeal, filed within the appropriate period prescribed by rule 2 of this Order, reads that the judgment of the Honourable Court is erroneous in law, unreasonable, and against the weight of evidence. Then a note appears to the effect that fuller grounds of appeal will be filed when the record of the case is ready.

Rule 4 of the said Order reads as follows :

“ 4. The appellant may, by his notice, appeal from the whole or any part of any judgment or order, and the notice shall state whether the whole or part only of the judgment or order is complained of, and in the latter case shall specify such part. The notice shall also state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.”

The judgment of the trial Court was drawn up on August 1, 1971, and on August 27, 1971, counsel for the appellants applied for an Order of this Court, under the said Order, for an Order directing the amendment of the grounds of appeal. In support of the first application dated August 27, 1971, the affidavit, sworn by a Clerk of counsel appearing in this case, reads as follows :

“ 2. Messrs. Pavlides & Triantafyllides did not appear for the appellants at the trial but were only instructed on appeal

3 The record was given to us on or about the 31st July, 1971, and on reading same it appears that the grounds of appeal must be amended so that the Court may effectively and properly decide the issues arising in the present appeal ”

The first application was fixed for hearing on October 1, 1971, but on September 22, 1971, counsel applied, once again, for further amendment of the grounds of appeal. Having heard both counsel and in the light of the material before us—counsel for the respondent having not raised any objection—we have decided, in the interests of both parties, to exercise our discretionary powers and grant an Order directing the amendment sought for in both applications, with costs in favour of the respondents. *Cf. Kyriakides v. Kyriakides* (1969) 1 C.L.R. 373

Application granted.
Order for costs as above