

MARIA HJISOLOMOU (No. 1),  
*Appellant-Plaintiff,*

MARIA  
HJISOLOMOU  
(No. 1)

v.

GEORGHIOS MANOLIS, AS ADMINISTRATOR OF THE  
ESTATE OF THE DECEASED SAVVAS CHRISTODOULOU,  
*Respondent-Defendant.*

v.  
GEORGHIOS  
MANOLIS,  
AS ADMINIS-  
TRATOR OF  
THE ESTATE OF  
THE DECEASED  
SAVVAS  
CHRISTODOULOU

(Civil Appeal No. 4926).

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*Civil Procedure—Appeal—Notice of appeal—Amendment—Applica-  
tion for leave to amend during the hearing of the appeal—  
No valid reasons given in support of addition of one of the pro-  
posed grounds—Amendment, therefore, refused—Other two  
proposed grounds intended not only to amplify existing grounds  
but to specify more precisely the grounds on which the appeal  
will be argued—Amendment allowed subject to terms.*

*Appeal—Notice of appeal—Amendment—Application made during  
hearing of the appeal—See supra.*

The facts sufficiently appear in the ruling of the Court granting partly an application for leave to amend certain grounds of appeal, such application having been made during the hearing of the appeal.

Cases referred to :

*Sabbar v. Yusuf* (reported in this Part at p. 30, *ante*) ;

*Papadopoulou v. Polykarpou* (1968) 1 C.L.R. 352.

### **Application.**

Application for leave to amend the notice of appeal against the judgment of the District Court of Paphos (Pitsillides, D.J.) given on the 7th July, 1970, (Action No. 993/68) dismissing plaintiff's claim for £200 as her share of the price of a vineyard, at Panayia village, which was sold by her late uncle.

*L. Papaphilippou*, for the appellant.

*D. Liveras*, for the respondent.

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The ruling of the Court was delivered by :—

TRIANTAFYLIDIS, P : In this case counsel for the appellant has applied for leave to amend the notice of appeal. The application, which was filed during the hearing of the appeal, has been opposed by counsel for the respondent.

We might start with the proposed new ground of appeal in relation to the issue of estoppel : The reasons given in support of the addition of this ground are not, in our opinion, valid reasons. It is not correct, as alleged in the present application, that what was found, by the trial Court, to operate against the appellant as an estoppel by conduct was not specially pleaded ; such an estoppel was quite clearly pleaded in paragraph 3 of the statement of defence ; and consequently, the remaining reason given in support of the addition of this new ground of appeal, *viz.* that the learned trial Judge reached his conclusion as to the estoppel *ex proprio motu* by relying on evidence adduced by the respondent which was not related to the contents of the statement of defence, is also devoid of any merit. Moreover, it is not correct, as stated in the affidavit in support of the application, that it is as a result of what was said during the hearing of this appeal that it became necessary to amend, in this respect, the notice of appeal ; the relevant paragraph in the statement of defence has been there all the time and the finding in question, in the judgment of the trial Court, had come within the knowledge of counsel for the appellant long before the hearing of this appeal.

We, therefore, dismiss the application in so far as this new ground of appeal is concerned. It is, of course, open to counsel for the appellant to argue, none the less, the issue of estoppel if he can persuade us that such issue may legitimately be raised in relation to any other ground of appeal which is already contained in the notice of appeal.

Regarding, next, the other two proposed new grounds of appeal, concerning the evaluation of evidence by the trial Court, they do not appear to be merely amplifications of relevant grounds of appeal already on record, in which case no amendment of the notice of appeal would be necessary in order to enable the applicant to put forward in argument the contents of such new grounds (see *Sabbar v. Yusuf*, reported in this Part at p. 30, *ante*) ; they seem to be intended not only to amplify existing grounds but to specify more precisely the grounds on which this appeal will be argued on behalf of the appellant (see *Papadopoulou v. Polykarpou* (1968) 1 C.L.R. 352).

In the light of all relevant considerations we have decided to allow the notice of appeal to be amended accordingly, even at this rather late stage of the proceedings, but we would like to make it quite clear that by doing so we are not allowing any point to be raised, in relation to the two new grounds concerned, which is inconsistent with the pleadings.

No amended notice of appeal need be filed and the appeal will be fixed for hearing on an application by counsel for appellant that it should be so fixed. If he does not apply within one month from today the appeal will be deemed to have been abandoned and will stand dismissed with costs against the appellant.

The costs of this application are, in any case, awarded against the appellant.

*Order in terms.*

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