

1972
April 4
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OMIROS
TH. COURTIS
AND ANOTHER
(No. 1)
v.
PANOS K.
IASONIDES

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

OMIROS TH. COURTIS & ANOTHER (NO. 1),
Appellants-Defendants,
v.
PANOS K. IASONIDES,
Respondent-Plaintiff.

(Civil Appeal No. 5033).

Civil Procedure—Notice of appeal—Amendment—Notice of appeal with no full grounds therein, due to non-availability of record and judgment—Application for extension of time within which to amend original grounds of appeal—Made after the expiration of the period within which to file appeal—Application treated as one for enlargement of time within which to file the appeal, up to and including the date when full grounds of appeal were filed—Kyriakides v. Kyriakides (1969) 1 C.L.R. 373 ; followed—Civil Procedure Rules, Order 35, rules 2 and 4.

Notice of appeal—Grounds of appeal—Amendment—Enlargement of time—See supra.

Per curiam : We should observe that the more appropriate course in the circumstances of this case was for the appellant to apply before the expiration of the time within which to appeal for an order enlarging such time.

The facts sufficiently appear in the ruling of the Court.

Cases referred to :

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

Leontiades v. Leontiades (reported in this Part at p. 46, ante).

Application.

Application for an extension of time within which to amend the original grounds of appeal in a notice of appeal against the judgment of the District Court of Larnaca (Orphanides and A. Demetriou, D. JJ.) given on the 22nd December, 1971, (Action No. 1833/67).

E. Lemonaris, for the appellant.

A. Dikigoropoulos, for the respondent.

The ruling of the Court was delivered by :—

TRIANTAFYLLIDES, P. : By this application the appellants seek “ an extension of time within which to amend the

original grounds of appeal”—filed on the 23rd December, 1971—“by filing additional grounds of appeal”, which are attached to the application. The application has not been opposed by counsel for the respondent.

The notice of appeal, as filed, stated only that the judgment of the trial Court was unreasonable, contrary to the evidence adduced and legally erroneous ; and it was added that full grounds of appeal would be filed as soon as the judgment of the trial Court and the record of the case would be ready.

As it appears from the affidavit in support of the application counsel for the appellants, after the judgment appealed from was given, “repeatedly asked for a copy” of such judgment “but this was not available” ; and he, eventually, received a copy of the record of the case, including the judgment, a week before he filed, on the 29th March, 1972, the present application.

In the light of rule 4 of Order 35 of the Civil Procedure Rules which requires that a notice of appeal shall state “all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated” it can hardly be said that on the 23rd December, 1971, a proper notice of appeal was filed ; as, therefore, the period for bringing an appeal (see rule 2 of Order 35) has already expired, we are inclined to the view that—this being because of its circumstances a proper case in which to exercise our relevant discretionary powers in favour of the appellants—the better course would be to enlarge the period for bringing this appeal up to, and including, the 29th March, 1972, when the full grounds of appeal were filed ; and we hereby order accordingly (see *Kyriakides v. Kyriakides* (1969) 1 C.L.R. 373).

Even if this were to be treated as a case of amendment of a properly framed, and filed within time, notice of appeal, we would, in the light of all relevant considerations as well as of the principles of law applicable to a matter of this nature (see, *inter alia*, *Leontiades v. Leontiades* (reported in this Part at p. 46, *ante*)), allow the notice of appeal to be amended so as to include therein the grounds of appeal which were filed as aforesaid on the 29th March, 1972.

In concluding we should observe that the more appropriate course, in the circumstances, was for the appellants to apply before the expiration of the time within which to appeal for an order enlarging such time (see the *Kyriakides* case, *supra*).

The costs of the present application to be costs in the appeal, but in any event not to be costs against the respondent.

*Application granted ;
order for costs as above.*

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