

ELLI MOUZOURI,

Appellant-Defendant No. 1,

v.

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ELLI MOUZOURI
v.
ANDREAS MAKRIS
AND OTHERS

1. ANDREAS MAKRIS,

Respondent-Plaintiff,

2. ANDREAS NICOLAOU

Respondent-Defendant No. 2,

3. KYRIACOS CONSTANTINOU,

Respondent-Third Party.

(Civil Appeal No. 5388).

Civil Procedure—Appeal—Notice of Appeal—Drafting of—No reasons for the grounds of appeal given—Requirements of 0.35 r. 4 not complied with—Appellant precluded from arguing appeal on the basis of such notice—Adjournment of hearing of appeal to enable him to comply duly with requirements of said rule.

As the grounds of appeal (quoted in full in the judgment *post*) did not comply, even to the minimum required extent, with the provisions of rule 4 of Order 35 of the Civil Procedure Rules the Court of Appeal, after stressing the need for due compliance with the said rule, decided to adjourn the hearing of the appeal sine die, so as to give counsel for the appellant the opportunity to comply duly with the requirements of the said rule, by filing in Court, and delivering to all other Counsel, within three weeks, full reasons for each one of the grounds of appeal contained in the Notice of Appeal.

Order accordingly.

Cases referred to:

Michael v. Kyriacou and Others (1968) 1 C.L.R. 405;

Courtis and Another (No. 1) v. Iasonides (1972) 1 C.L.R. 56.

20 Appeal and cross-appeals.

Appeal by defendant 1 against the judgment of the District Court of Nicosia (Anastassiou, D.J.) dated the 8th January, 1975, (Action No. 7858/72) by virtue of which he was ordered to pay to the plaintiff the sum of £180.— plus costs as damages to property caused as a result of a traffic collision and cross-

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appeals by defendant 2 and the third party against that part of the judgment which related to costs.

N. Zomenis, for appellant–defendant No. 1.

A. Panayiotou, for the respondent–plaintiff.

M. Zambakidou (Miss), for respondent–defendant No. 2. 5

P. Frakalas, for respondent–third party.

The following decision was given by:

TRIANTAFYLLIDES, P.: The grounds set out in the Notice of Appeal are as follows:

“1. Τὸ πρωτόδικον δικαστήριο ἔσφαλε εἰς τὸν καταμερισμὸν τῆς εὐθύνης. 10

2. Τὸ πρωτόδικον δικαστήριο ἔσφαλε εἰς τὸ νὰ μὴ εὖρη συντρέχουσαν ἀμέλειαν εἰς τὸν ὀδηγὸν τοῦ ἐνάγοντος (δημιουργῶν εὐθύνην ἐκ προστήσεως εἰς τὸν ἐνάγοντα) καὶ εἰς τὸν Τριτοδιάδικον. 15

3. Ἡ ἀπόφασις τοῦ Δικαστηρίου δὲν ὑποστηρίζεται ὑπὸ τῆς προσαχθείσης μαρτυρίας ἢ/καὶ ἡ προσαχθεῖσα μαρτυρία στοιχειοθετεῖ συντρέχουσαν ἀμέλειαν.”

(“ 1. The trial Court erred as regards the apportionment of liability. 20

2. The trial Court erred in not finding contributory negligence on the part of the driver of the plaintiff (so as to render the plaintiff vicariously liable) and on the part of the third party.

3. The judgment of the Court is not supported by the evidence adduced and/or the evidence adduced establishes contributory negligence”). 25

The above grounds were drafted by counsel other than the one appearing for the appellant today.

We have, in the past, on more than one occasion (see, for example, *Michael v. Kyriacou and others*, (1968) 1 C.L.R. 405, 406) drawn attention to the need for due compliance with rule 4 of Order 35, of the Civil Procedure Rules, when a Notice of Appeal is being drafted. 30

We have carefully weighed all that counsel for the appellant has submitted, but we are still not persuaded that it is possible 35

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to allow this appeal to be argued on the basis of the Notice of Appeal as it is at present. No matter how one may look at such Notice, it cannot be said that it complies, even to the minimum required extent, with the provisions of rule 4 of Order 35.

It is correct that there have been instances in the past when we have allowed appeals to be heard even though the Notice of Appeal did not satisfy fully the requirements of rule 4, above, but we cannot adopt such a course in the present case as such requirements have not been complied with at all.

It is, moreover, pertinent to stress that proper drafting of the Notice of Appeal was, in this case, particularly necessary, because of the fact that the appellant seeks to persuade us on appeal—contrary to what has been held by the trial Court—that three other drivers, who were involved with him in a traffic accident, at a busy cross-roads, in Nicosia, were all guilty of contributory negligence; and, indeed, most indicative of the vagueness of the contents of the Notice of Appeal is the fact that in ground 2 therein respondent-defendant No. 2 is not named, together with the respondent-plaintiff and the respondent-third party, as a party who has, also, been guilty of contributory negligence, and yet today counsel for the appellant has informed us, in very clear terms, that it is claimed that respondent-defendant No. 2, too, ought to have been found guilty of contributory negligence.

Though we do not think that in the present case it is warranted to go as far as to hold that because of the way in which the Notice of Appeal has been drafted there is not before us, actually, a properly filed appeal at all (see *Curtis and Another (No. 1) v. Iasonides*, (1972) 1 C.L.R. 56), we have decided that we should adjourn this appeal sine die so as to give counsel for the appellant the opportunity to comply duly with the requirements of rule 4 of Order 35, by filing in Court, and delivering to all other counsel, within three weeks from today, full reasons for each one of the grounds of appeal contained in the Notice of Appeal.

If counsel for appellant wishes to amend any of the grounds—as intimated by him today—then a formal application for amendment must be made.

If there is no compliance with our direction for the filing of

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full reasons, then this appeal shall stand dismissed with costs against the appellant.

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The costs for today are awarded against the appellant in any event.

Order accordingly. 5