

1977 December 22

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, MALACHTOS, JJ.]

TAKIS CHRISTOU,

Appellant (Applicant),

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 185.*)

Practice—Record of trial—Alleged omission therefrom of ruling refusing cross-examination of witness—In the circumstances counsel not allowed to file affidavit supplementing record of trial.

At the end of the second day of the hearing of an appeal against the dismissal of a recourse challenging the validity of a promotion in the public service, counsel for the appellant complained for the first time that his request to cross-examine a certain witness was refused by the trial Judge and that the relevant ruling was not recorded. The record of trial was furnished to counsel six days before the hearing of the appeal but neither before nor on the first day of hearing did he complain that the record was not complete; and when he complained as above he did not appear to recollect precisely whether he had made a formal application to the Judge in this connection or whether he had only raised the matter informally and later on had abandoned it.

In the circumstances the Court of Appeal decided not to allow counsel for appellant to file an affidavit for the purpose of supplementing the record of the trial.

Application. 20

Application for leave to file an affidavit for the purpose of supplementing the record of the trial, made in the course of

the hearing of an appeal against the dismissal of a recourse challenging the validity of a promotion in the public service.

E. Lemonaris, for the appellant.

5 *N. Charalambous* and *S. Papasavvas*, Counsel of the Republic, for the respondent.

The following ruling was delivered by:

TRIANTAFYLLIDES P.: Ground No. 6 of the notice of appeal in this case reads as follows:

10 “ The Hon. Court wrongly rejected evidence and furthermore prejudiced the applicant in presenting his case by disallowing applicant’s desire to cross-examine Mr. Stavros Makris upon his affidavit filed in Court.”

15 The said Stavros Makris had acted as the Reporting Officer in relation to the preparation of annual confidential reports concerning the appellant and it has been the appellant’s contention that Makris was biased against him for personal reasons; so, in the course of the proceedings before the learned trial Judge both the appellant and Makris swore affidavits, alleging and denying, respectively, the existence of bias; this course was
20 adopted pursuant to an order of the Judge, on July 11, 1974, by means of which it was directed, too, that the affiants should be “available for cross-examination, if they are wanted for the purpose.”

25 After a sine die adjournment, by consent, of the further hearing of the case, the aforementioned affidavits were filed just before the end of 1976 and the hearing of the case was resumed on January 17, 1977. Prior to this, on January 13, 1977, counsel for the appellant filed in Court a notice, dated December 20, 1976, stating that Makris had to be in attendance
30 at the hearing on January 17, 1977, in order to be cross-examined; an attempt was made by appellant’s counsel to deliver copy of this notice to counsel for the respondent shortly before the hearing, but he refused to accept it on the ground that it was too belated.

35 In the record of the trial before us there is nothing to show that at the hearing of the case on January 17, 1977, counsel for the appellant raised, and pressed in a formal manner, the

matter of the non-availability of Makris for cross-examination or that the Judge disallowed any application in this respect.

This record was furnished to counsel for the appellant on September 15, 1977, and the hearing of this appeal commenced on September 21, 1977. Neither before nor on September 21, 1977, did counsel for the appellant complain that the record of the trial was not complete. He did so only at the end of the second day of the hearing of this appeal, on September 23, 1977, when he was about to argue the above ground of appeal No. 6; at that stage, he complained for the first time that his request to cross-examine Makris was refused by the Judge and that the relevant ruling was not recorded; but, counsel for the appellant did not appear to recollect precisely whether he had made a formal application to the Judge in this connection or whether he had only raised the matter informally and later on had abandoned it.

In the circumstances we have decided not to allow counsel for the appellant to file an affidavit for the purpose of supplementing the record of the trial.

Order accordingly. 20