

1976 May 17

[STAVRINIDES, HADJIANASTASSIOU AND MALACHTOS, JJ.]

DHORA M. LYSANDROU,

Appellant-Plaintiff,

v.

RENOS SCHIZA AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No. 5519*).

Civil Procedure—Parties—Substitution—Order for—Time limit—Civil Procedure Rules Order 9, rule 11, Order 12 rule 4, Order 25 rule 2 and English Orders 16 and 28 rules 13 and 7 respectively.

5 This was an appeal from an order declaring that the substitution of one of the defendants in an action was void after the expiry of the time limited by the order authorising such substitution.

10 *Held*, that though substitution of parties is permitted and/or regulated by Order 9, rule 11, of the Civil Procedure Rules such substitution must be made in accordance with the provisions of the English Order 28, r. 7 corresponding to our Order 25, rule 2; that, accordingly, on the expiry of the time limited by the trial Judge's order this lapsed and all proceedings taken thereunder were void.

15 *Per Malachtos, J.:*

20 That the application on behalf of the plaintiff in the action as a result of which the order for the substitution was obtained was based wrongly, taking into consideration the undisputed facts, on Order 9, rule 11, of the Civil Procedure Rules; that it should have been made under Order 12, rule 4; and that in such a case Order 25, rule 2, does not come into play.

Appeal dismissed.

Appeal.

25 Appeal by plaintiff against the order of the District Court of Famagusta (Pikis, Ag. P.D.C.) dated the 14th November, 1975

(Action No. 389/73) whereby it was declared that the substitution of one of the defendants in an action pending before the Court after the expiry of the time limited by the order authorizing such substitution was void.

K. Talarides, for the appellant. 5

A. Michaelides, for the respondent.

STAVRINIDES J. gave the following judgment. This is an appeal from an order of the learned President of the District Court of Famagusta (sitting at Larnaca) declaring that the substitution of one of the defendants in an action pending before it after the expiry of the time limited by the order authorising such substitution was void. 10

Substitution of parties is permitted and/or regulated by Order 9, r. 11, which sets out no time limit for giving effect to an order thereunder. But, as the learned President who made the order appealed from pointed out, it is specifically stated in the White Book that under Order 16, r. 13, of the Rules of the Supreme Court, which is the source and origin of our Order 9, r. 11, such substitution must be made in compliance with the provisions of the English Order 28, r. 7, corresponding to our Order 25, r. 2. 15 20

Accordingly on the expiry of the time limited by the President's order this lapsed and all proceedings taken thereunder were void.

Hence I would dismiss this appeal with costs.

HADJIANASTASSIOU J.: As I find myself in agreement with the learned Judge, I do not think I can usefully add anything more and I would also dismiss the appeal. 25

MALACHTOS J.: I agree that this appeal should be dismissed for the reasons just given by the presiding Judge of this Court. I would, however, like to make the following observation: The application on behalf of the plaintiff in the action dated 30th April, 1975, as a result of which the consent order of 14th May, 1975, was obtained was based wrongly, in my view, taking into consideration the undisputed facts, on Order 9, r. 11, of the Civil Procedure Rules. It should have been made under Order 12, r. 4, and in such a case Order 25, r. 2, does not come into play. 30 35

Appeal dismissed with costs.