

1979 December 12

[A. LOIZOU, DEMETRIADES, SAVVIDES, JJ.]

MARIA PARITSI,

Appellant.

v.

ATHANASSIOS KARAPANAYIOTIS,

Respondent.

(Civil Appeal No. 5957).

Civil Procedure—Appeal—Want of prosecution—Rules 6, 21 and 22 of Order 35 of the Civil Procedure Rules—Appeal stands dismissed ever since the expiry of the period prescribed under rule 22.

5 The above appeal was filed on May 23, 1979 and the appellant failed to take, within a period of three months of lodging his notice of appeal, the steps mentioned in rule 21* of Order 35 of the Civil Procedure Rules, in that he failed to apply for copies and make a deposit as provided in rule 6 of the same Order. He did, however, take the said steps after the expiry of the above
10 period.

On a preliminary objection that the appeal should, by virtue of rule 22 of Order 35, be treated as having stood dismissed ever since the expiry of the period of three months:*

15 *Held*, that in spite of steps taken by the appellant under rule 21 after the expiry of the three months' period prescribed by rule 22, same could not alter the legal position which crystallized when after the expiry of the said period the appeal came to stand

* Rules 21 and 22 of Order 35 of the Civil Procedure Rules provide as follows:

"21. If the appellant does not, within one month of lodging his notice of appeal, apply for copies and make a deposit as provided in rule 6 of this Order, the appeal may be dismissed on the application of any party. Such application may be made *ex parte*, but the Court of Appeal may direct notice to be given to such of the other parties or persons affected by the appeal as it may deem fit.

22. If the appellant does not, within three months of lodging his notice of appeal, take the steps mentioned in rule 21 of this Order, the appeal shall stand dismissed, but it may, if the Court of Appeal so deems fit, be reinstated upon such terms as may be just".

dismissed by virtue of the application of rule 22; that, therefore, the preliminary objection should be sustained; and that, accordingly, the appeal should be treated as having stood dismissed ever since the expiry of the period prescribed under rule 22 (*Harakis v. Feghali* (1979) 1 C.L.R. 293 adopted).

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Appeal dismissed.

Cases referred to:

Kyriacou v. Georghiadou (1970) 1 C.L.R. 145;

Ibrahim v. Kasab (1972) 1 C.L.R. 16;

Hji Panayi v. Hji Panayi (1974) 1 C.L.R. 60;

Harakis v. Feghali (1979) 1 C.L.R. 293.

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Preliminary objection.

Preliminary objection that the appeal, against the judgment of the District Court of Limassol (Anastassiou, D.J.) dated 14th May, 1979 (Appl. No. 49/78) dismissing applicant's application for the custody of her two children, should be treated as having stood dismissed, in that the appellant had not within three months of lodging his notice of appeal taken the steps mentioned in rule 21 of Order 35 of the Civil Procedure Rules.

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P. Pavlou, for the appellant-applicant.

A. P. Anastassiades, for the respondent.

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A. LOIZOU J. gave the following ruling of the Court. When this appeal came up for hearing counsel for the respondent invoked, by way of preliminary objection, the provisions of Order 35, rule 22, of the Civil Procedure Rules, in that as the appellant had not within three months of lodging his notice of appeal taken the steps mentioned in rule 21 of that order, the appeal should be treated as having stood dismissed ever since that period expired after the filing of this appeal on the 23rd May, 1979.

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The steps to be taken by an appellant under rule 21 of the said order are that within one month of lodging his notice of appeal he should apply for copies and make a deposit as provided in rule 6 of the same Order. As it appears from the file and there is no dispute about it, the appellant did not take such steps within the specified period.

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Rule 22 of Order 35 was judicially considered in the cases

of *Kyriacou v. Georghiadou* (1970) 1 C.L.R., p. 145; *Mustafa Halil Ibrahim v. Mustafa Kasab* (1972) 1 C.L.R., 16; and *Kathleen (alias Andre) Hji Panayi v. Panos G. Hji Panayi* (1974) 1 C.L.R., p. 60. The views expressed therein were referred to and considered as affording quite useful guidance about the nature of the significance of the said rule recently in the case of *Valentinou Harakis v. Tannous K. Feghali* (1979) 1 C.L.R., p. 293, where it was held that in spite of steps taken by the appellant under rule 21 after the expiry of the three months period prescribed by rule 22 of Order 35, same could not alter the legal position which crystallized when after the expiry of the said period that appeal came to stand dismissed by virtue of the application of rule 22.

On the aforesaid construction of the two rules in question, which we respectfully adopt, we have come to the conclusion that the preliminary objection by counsel for the respondent should be sustained and this appeal treated as having stood dismissed ever since the expiry of the period prescribed under the said rule 22 of Order 35.

The costs of the respondent in this appeal are awarded to him against the appellant.

*Preliminary objection sustained.
Order for costs as above.*