CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

LAMBROS CH. NICOLAIDES AND ANOTHER,
Appellants-Defendants,

v.

MARINA M. YEROLEMI,
Respondent-Plaintiff.

(*Civil Appeal No.* 5799).

Civil Procedure—Pleadings—Amendment—Statement of defence—Sought to be amended before commencement of hearing of appeal because of facts that came into light after judgment—Administration proceedings pending for almost 10 years—No exceptional circumstances justifying amendment particularly because of the long delay—Moreover amendment introducing new ground of relief at this very late stage.

The appellant-defendant has since the 27th April, 1967 been the administrator of the estate of the deceased Omiros Demetriades. The respondent-plaintiff, who claimed to be the adopted child of the late daughter of the deceased, in an action against the appellant succeeded in obtaining a declaration that she was entitled to rank as an heiress of the said deceased. The administrator appealed and on the day of hearing of the appeal

he applied for leave to amend his statement of defence in the above action by the addition of a new paragraph* to the effect that the order of adoption, relating to the adoption of the respondent, was invalid in law and unenforceable because during its issue the provisions of the Adoption Law, Cap. 274 had not been complied with. The application was based on the ground that after the delivery on the 16th December, 1977, of the judgment appealed against there came into light new facts, namely that the adoption of the respondent was invalid in law in that no certificate of Ecclesiastical adoption existed.

Held, that the administration of the estate has been delayed for almost ten years; that the amendment sought is in effect introducing at this very late stage a new ground of relief; that after the closing of the case and after judgment is delivered the Court very rarely should grant leave for the amendment of the pleadings unless there are exceptional circumstances justifying such a course, once it is in the interest of justice to finalize litigation between the parties; that in the absence of any exceptional circumstances and particularly because of such a long delay the amendment sought should not be allowed; and that, accordingly, the application must fail (*Pourikkos* v. *Fevzi* (1963) 2 C.L.R. 24 and *Courtis and Others* v. *Iasonides* (1970) 1 C.L.R. 180 distinguished).

Application dismissed.

Cases referred to:

Pourikkos v. *Fevzi* (1963) 2 C.L.R. 24;

Courtis and Others v. *Iasonides* (1970) 1 C.L.R. 180;

Associated Leisure Ltd. and Others v. *Associated Newspapers Ltd.* [1970] 2 All E.R. 754 at p. 757;

Brown v. *Dean* [1910] A.C. 373;

Murphy v. *Stone-Wallwork (Charlton) Ltd.* [1969] 2 All E.R. 949;

Paraskevas v. *Mouzoura* (1973) 1 C.L.R. 88.

Application.

Application for an order of the Supreme Court amending the statement of defence in Action No. 1114/76 of the District Court of Paphos, the hearing of which was concluded and judgment

* Quoted at p. 3 *post*.

delivered on December 16, 1977, made just before the commencement of the hearing of the appeal which was filed against such judgment.

E. Komodromos, for the appellants-defendants.

M. Houry, for the respondent-plaintiff.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. Just before the appeal was called, counsel for the appellant applied to this Court by an interlocutory application seeking an order of the Supreme Court to amend the defence filed in Action 1114/76 before the District Court of Paphos which was concluded and judgment was delivered on 16th December, 1977, by adding a new paragraph 8 which reads as follows:-

" The defendants in the alternative are alleging that the order of adoption which was issued in application No. 1/57 by the District Court of Paphos on 20th January, 1958, is invalid in law and unenforceable because during its issue the provisions of Cap. 274 have not been complied with viz., with regard to the required substantial acts for the issue of an order of adoption i.e., the religious ceremony of adoption by the Church, an essential prerequisite which is necessary for the issue of a valid and lawful order of adoption, and which provision does not appear in the minutes of the District Court."

This application is based on the Civil Procedure Rules, Cap. 12, and particularly on Order 25 r. 1, Order 27 r. 1 and on the powers of the Supreme Court. Order 25 r. 1 reads as follows:-

" The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his endorsement or pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for determining the real questions of controversy between the parties".

Our order 25 was apparently taken from the English Rules of Court, Order 28(1). The said application is based also on Order 27(1) which deals with points of law raised by pleadings and is in these terms:-

" Any party shall be entitled to raise by his pleadings any

point of law and any point so raised shall be disposed of by the Court at any stage that may appear to it convenient."

In support of the present application, Mr. Lambros Nicolaides the administrator of the estate of the late Omiros Demetriades of Paphos, filed an affidavit in which he states in Greek:-

"1. Ὅτι εἶμαι ὁ ἐναγόμενος εἰς τὴν ἐγερθεῖσαν κατ' ἐμοῦ ὑπὸ τὴν ἄνω ἰδιότητα ἀγωγῆς No. 1114/76 τοῦ Ἐπαρχιακοῦ Δικαστηρίου Πάφου ὑπὸ τῆς Μαρίνας Μ. Γερολεμῆ ἐκ Πάφου, ἀξιούσης κληρονομικὸν δικαίωμα ἐπὶ τῆς περιουσίας τοῦ ὡς ἄνω εἰρημένου ἀποβιώσαντος Ὁμήρου Δημητριάδη βάσει Διατάγματος Υἱοθεσίας ταύτης No. 1/57 Ἐπαρχιακοῦ Δικαστηρίου Πάφου ὑπὸ τῆς προαποβιωσάσης θυγατρὸς τούτου Μαρίας Ο. Δημητριάδου μετὰ τοῦ συζύγου αὐτῆς Μιχαλάκη Γερολεμῆ, ὡς καὶ ὁ ἐφεσείων τῆς ὑπὸ τὸν ἄνω ἀριθμὸν καὶ τίτλον ἐφέσεως.

2. Ὅτι καλῇ τῇ πίστει ἐκ παρουσιάσεως τῶν ἐγγράφων υἱοθεσίας ὑπὸ τοῦ Τμήματος Κοινωνικῆς Εὐημερίας καὶ πιστοποιημένου ἀντιγράφου τοῦ Δικαστικοῦ Διατάγματος υἱοθεσίας ἡμερ. 8/1/1958 ὑπὸ τοῦ ἐκ τῶν υἱοθετησάντων Μιχαλάκη Γερολεμῆ, ἐπίστευον ὅτι συνετελέσθη κατὰ Νόμον ἔγκυρος υἱοθεσία ὑπὸ ἀμφοτέρων τῶν ὡς ἀνωτέρω ἀναφερομένων συζύγων Μαρούλλας Μ. Γερολεμῆ καὶ Μιχαλάκη Γερολεμῆ ἐκ Πάφου.

3. Ὅτι κατὰ τὴν μελέτην τῶν πρακτικῶν τῆς ὑπὸ ἐκδίκασιν ἐφέσεως ὑπὸ τοῦ δικηγόρου μου κ. Ε. Κωμοδρόμου, προέκυψαν ζητήματα ἐκ τοῦ ὑποστηριχθέντος ἰσχυρισμοῦ ὑπὸ τοῦ δικηγόρου τῆς ἐφεσιβλήτου, ὅτι αὕτη υἱοθετήθη μόνον ὑπὸ τῆς Μαρίας Μ. Γερολεμῆ ὡς καὶ δι' ἄλλα συναφῆ θέματα, διὰ τὴν ἐξακρίβωσιν τῶν ὁποίων κατέστη ἀναγκαία ἡ διεξαγωγὴ ἐρεύνης, τὴν 26/5/1978, τῶν πρακτικῶν τοῦ φάϊλ τῆς ὑπ' ἀριθμὸν 1/57 υἱοθεσίας, κατὰ τὴν ὁποίαν διεπίστωσα ὅτι ὁ προβαλλόμενος ἰσχυρισμὸς δὲν ἦτο βάσιμος ἀλλὰ καὶ ὅτι οὐδὲν ὑπῆρχεν πιστοποιητικὸν συνελεύσεως Ἐκκλησιαστικῆς Υἱοθεσίας ὑφ' οἱουδήποτε ἐκ τῶν ἀναφερομένων ὡς υἱοθετησάντων τὴν ἐφεσίβλητον.

4. Ὅτι κατὰ Νομικὴν συμβουλὴν τοῦ δικηγόρου μου, εἶναι ἀπαραίτητον νὰ προστεθῇ εἰς τὴν ἔκθεσιν ὑπερασπίσεως τῆς ἐκδικασθείσης ἀγωγῆς ὑπ' ἀρ. 1114/76 Ἐπαρχιακοῦ

Δικαστηρίου Πάφου 8η παράγραφος ἥτις ἔχει ὡς ἀκολούθως:-

'Οἱ ἐναγόμενοι διαζευτικῶς πρὸς τὰ ἀνωτέρω ἰσχυρίζονται ὅτι τὸ Διάταγμα υἱοθεσίας τὸ ἐκδοθὲν εἰς τὴν αἴτησιν ὑπ' ἀριθμὸν 1/57 ὑπὸ τοῦ 'Επαρχιακοῦ Δικαστηρίου Πάφου τὴν 20/1/1958 εἶναι Νόμῳ ἄκυρον καὶ ἀνεφάρμοστον καθ' ὅτι κατὰ τὴν ἔκδοσιν του δὲν ἐτηρήθησαν αἱ ὑπὸ τοῦ σχετικοῦ Νόμου Κεφ. 274 προβλεπόμεναι συστατικαὶ πράξεις διὰ τὴν ἔκδοσιν Διατάγματος υἱοθεσίας ὡς εἶναι ἡ θρησκευτικὴ τελετὴ υἱοθεσίας ὑπὸ τῆς 'Εκκλησίας, στοιχεῖον ἐκ τῶν οὐκ ἄνω, δι' ἔγκυρον καὶ νόμιμον ἔκδοσιν τοῦ Διατάγματος υἱοθεσίας, στοιχείου μὴ παρουσιαζομένου εἰς τὰ πρακτικὰ τοῦ Δικαστηρίου'."

And in English it reads:-

"1. That I am the defendant in the action No. 1114/76 brought against me in the District Court of Paphos in my aforesaid capacity as administrator by Marina M. Yerolemi of Paphos who demands a hereditary right upon the property of the aforementioned late Omiros Demetriades on the strength of an Adoption Order No. 1/57 of the District Court of Paphos by his predeceased daughter Maria O. Demetriadou with her husband Michalakis Yerolemi, and also the appellant bearing the above number and title in this appeal.

2. That from the presentation of the adoption papers by the Social Welfare Department and a certified copy of the adoption order of the Court dated 8.1.1958 by the adopter Michalakis Yerolemi, I believed in good faith that a valid adoption has taken place in accordance with the law by both the aforementioned spouses Maroulla M. Yerolemi and Michalakis Yerolemi from Paphos.

3. That in the course of the study of the record of the appeal under trial by my lawyer Mr. E. Comodromos matters came into light from the allegations put forward by counsel of the respondent that she has been adopted only by Maria Yerolemi as well as other relevant matters for the ascertainment of which the carrying out of an investigation on the 26.5.1978, of the record of the file of the adoption under No. 1/57 became necessary from

which I realized that the allegations put forward were unfounded and that no certificate of Ecclesiastical Adoption by any of the persons mentioned as having adopted the respondent existed.

4. That according to the legal advice of my lawyer it is necessary to add in the statement of defence in the action No. 1114/78 tried by the District Court of Paphos paragraph 8 which reads as follows:-

'The defendants in the alternative allege that the adoption order issued in the application under No. 1/57 by the District Court of Paphos on 20.1.58 is null in law and unenforceable because at its issue the provision of the relevant Law Cap. 274 regarding the acts constituent with the issue of an Adoption order viz., the religious ceremony for adoption by the Church, an essential prerequisite necessary for the issue of a valid and lawful Order of adoption, an element not appearing in the court's record.'"

On the contrary, on May 25, 1978, counsel for the respondent-plaintiff opposed the application viz., that the decision of the trial Court should be varied, and asked (1) to cancel the last paragraph of the office copy of the judgment which orders "that the costs of this action in favour of counsel for all parties be paid out of the Estate of the deceased Omiros Demetriades"; (2) to substitute for the above-mentioned order, if cancelled, the following:- "And this Court doth further order that the costs of the Plaintiff's action be paid by the Defendants-Appellants personally."

The following are the grounds and reasons for seeking to have the decision varied on appeal:-

"(1) The Appellant/Defendant (1) Lambros Chr. Nicolaides is the Administrator of the Estate of Omiros Demetriades, deceased, and is a practising Advocate.

(2) The Appellant/Defendant (1) was appointed Administrator of the Estate of Omiros Demetriades on the 27.4.1967, and he delayed completing the administration for upwards of 10 years.

(3) His first step to have the question of whether or not the

Plaintiff/Respondent is entitled to share in the Estate of the said deceased Omiros Demetriades was made by Originating Summons No. 58/76 in the District Court of Paphos on the 23.10.76.

(4) The Appellant/Defendant (2) Iro Demetriades was at all material times mentally afflicted and the Appellant/Defendant (1) was at all material times the Administrator of her property.

(5) The issue of law whether the Respondent/Plaintiff was entitled to share in the Estate of Omiros Demetriades is not a question which justified the Appellant/Defendant (1) to employ any advocate as this was a simple issue which could have been resolved by himself as a practising advocate.

(6) The Appeal now made has no merits."

There was a further application dated 13th June, 1978, made by Marina M. Yerolemi of Paphos, respondent-plaintiff, opposing the application of Mr. Lambros Ch. Nicolaides, and the facts relied upon in the opposition are as follows:-

"(a) The order of adoption referred to in the affidavit attached to the application still stands valid and no steps have been taken by the Respondent/Plaintiff to have it set aside or declared null and void.

(b) Any irregularity (which is not admitted) and which may be shown to have occurred in the making of the adoption order is not substantial and, in any event, Section 4(5)(b) of Cap. 274 is qualified by Article 111 of the Constitution which puts the process of adoption in the hands of the Civil Authority exclusively.

(c) An ecclesiastical ceremony is not by ecclesiastical law shown to be necessary in order to validate the adoption order. There is no ecclesiastical law which makes such a ceremony necessary in order to validate an adoption by the Civil Court.

(d) The Honourable Court should not allow the amendment applied for on the ground that the adopters of the Respondent/Plaintiff are dead and the Estate of the adopter father is not represented in these proceedings.

(e) The Application is not supported by a proper affidavit containing allegations of fact which could lead the Honourable Court to allow the amendment to their pleadings claimed in the application.

(f) Certain of the allegations contained in the affidavit are inferences drawn by Mr. E. Komodromos and they constitute hearsay evidence and should be excluded, from any consideration by the Honourable Court."

This opposition was based on section 4(5)(b) of Cap. 274 and on the Civil Procedure Rules, Order 48 rule 4, and on the Constitution, Article 111.

It appears that from the statement of claim which was delivered on 20th December, 1976, the plaintiff Marina M. Yerolemi was the adopted daughter of Maroulla M. Yerolemi by virtue of an adoption order made by the District Court of Paphos on 20th January, 1958. See application 1/57 and para. 3 of the statement of claim. Finally the plaintiff claimed: (a) A declaration that she is entitled to rank as an heiress of the late Omiros Demetriades. (b) A declaration that she is entitled to take as her share in the intestacy of the Estate of the late Omiros Demetriades, the share which Maroulla M. Yerolemi would have taken had she survived her father the late Omiros Demetriades namely one half of the said estate. (c) A declaration that she and the defendant 2 are entitled to share equally the estate of the late Omiros Demetriades. (d) Costs. On the contrary in the statement of defence filed by the administrator of the estate Lambros Ch. Nicolaides, a lawyer, on 8th January, 1977, no mention was made and no allegation that the order of adoption was invalid.

On 16th September, 1977, the trial Court after dealing with a number of issues—which are not necessary at this stage to refer to, had this to say at p. 42 of the judgment:

" In view of our finding as above, the Plaintiff succeeds in her claim and we made the following declarations:

(a) That the Plaintiff is entitled to rank as an heiress of the late Omiros Demetriades.

(b) That she is entitled to take as her share in the estate

of the late Omiros Demetriades the share which Maroulla M. Yerolemi would have taken had she survived her father, namely, one-half of the said estate.

Costs of this action in favour of the Plaintiff to be paid out of the estate of the deceased. In view, however, of the nature of the case and the fact that the Defendants had to fight this case, we direct that the costs of advocate for the Defendants should also be borne by the estate of the deceased, Omiros Demetriades, and directions to that effect are hereby made to Defendant 1, the administrator of the estate of the deceased."

Counsel for the appellants argued that once new facts came into light, after the delivery of the judgment, the Court had a discretion to allow the appellants in the interest of justice to amend the statement of claim even at this stage of the proceedings. Counsel relies on *Yiannakis Kyriacou Pourikkos* v. *Mehmed Fevzi* (1963) 2 C.L.R. 24, and on *Homeros Th. Courtis and Others* v. *Panos K. Iasonides* (1970) 1 C.L.R. 180. The question which arises in these proceedings is whether the legality of the adoption was an issue properly raised at this stage. In the case of *Pourikkos* (*supra*) Josephides, J. had this to say at p. 32:

"Under Order 20, rule 2, of the Civil Procedure Rules the plaintiff must state specifically the relief which he claims either simply or in the alternative. The plaintiff in settling the claim for damages is not restricted to the figures, if any, given on the writ. If he names a figure, he should claim the largest amount which he is likely to recover; for in the absence of amendment, he cannot recover more than the amount claimed. An amendment, however, may be allowed under the provisions of Order 25, rule 1, after verdict."

Then having quoted a number of authorities on the same issue said:

" On these authorities I have no hesitation in holding that the plaintiff cannot recover the amount of special damage awarded in the judgment without having the indorsement of his writ and the prayer in the statement of claim amended. In my opinion in the circumstances of this case

no injustice will be done by allowing the amendment on appeal, if leave was asked for. But respondent's counsel has not asked for leave to amend.

If an application for leave to amend is made before us and the desired amendment formulated we are prepared to grant such leave on payment of the costs by the respondent.

However, I think that it is important to make it quite clear that cases may very well occur in future where this loose way of dealing with pleadings may lead to grave injustice to the other side and in such a case I apprehend that this Court would not be prepared to entertain an application for leave to amend on appeal."

In *Homeros Th. Courtis and Others* (*supra*) Vassiliades, P. dealing with the question of the amendment of the pleadings had this to say at pp. 182 and 183:

" The respondent's case before us, was mainly argued on the power of the Court to make the amendment complained of. Learned counsel referred to a number of cases to show that the trial Court had such power; and submitted that the Court had properly used it. We find it unnecessary to deal with the different English cases to which counsel referred, because the power of the Court to permit or order an amendment of the pleadings is regulated by our Civil Procedure Rules (Or. 25); and was discussed in *Yiannakis Pourikkos v. Mehmet Fevzi* (1963) C.L.R., Part II p. 24, referred to during the argument. There can be no doubt that the Court has the power to allow amendment of a party's pleadings; and that in certain circumstances, such power has also been used for correcting formal mistakes or omissions before judgment. I would say it has been used in a proper case. At the same time, the Courts in most of the English cases referred to, and this Court in the *Pourikkos* case, made it clear that the Court should be very slow and reluctant to order or allow amendments of the pleadings at a late stage in the proceedings; and that in any case, such amendments should only be made if they are found necessary and as provided in the Rules.

The pleadings in an action are the foundations of the litigation; they must be carefully prepared as the set of

rails upon which the train of the case will run. The Civil Procedure Rules (Or. 19 r. 4) are clear on the point; and daily practice lays stress on the need to apply strictly this rule. A case is decided on its pleaded facts to which the law must be applied. If in the course of the trial it appears that a party's pleading requires amendment, steps for that purpose must be taken as early as possible in order to give full opportunity to the parties affected by the amendment to meet the new situation; to run their case, so to speak, on the new rails. An amendment of the pleadings after the closing of the case and for the purpose of the judgment, is a matter which in exceptional circumstances may have to be done; but it should be avoided unless it is unavoidable in the circumstances of the particular case, in order to finalize litigation in the interests of justice. In the circumstances of this case, it is clear to us that the amendment in question should not have been allowed at that stage. It was contended on behalf of the respondent that the amendment made no difference to the outcome of the case. If that were so, it should have not been attempted. To us, it appears to have been a material amendment; and we must treat it as such."

In *Associated Leisure Ltd. and others* v. *Associated Newspapers Ltd.* [1970] 2 All E.R. 754 Lord Denning M.R., dealing with the question of amendment of the pleadings had this to say at pp. 756 and 757:

" The application to amend came before the master and the Judge. Both refused to allow it. It was made, they thought, too late. It came at the eleventh hour. If allowed, it would mean a very considerable delay. The case would not come on for trial, at the earliest, before the end of this year, or the beginning of next. It was, they thought in these circumstances, unjust to allow the amendment.

I start with the principle, well settled, that an amendment ought to be allowed, even if it comes late, if it is necessary to do justice between the parties, so long as any hardship done thereby can be compensated in money. That principle applies here. I think that justice requires that the matters alleged in this amendment should be investigated in a Court

of law. It would, I think, be very strange if this libel action were to be tried next month and damages awarded on the basis that there was nothing whatsoever to be said against the plaintiff; and yet, in October, the Gaming Board were to refuse them a certificate on the ground that they were not fit and proper persons to supply and sell gaming machines. It is in the interests of consistency and justice that the reputation and character of the plaintiffs should be properly considered in this action, provided always, as I have said, that any hardship to the plaintiffs can be compensated for in money. I think it can so be compensated."

For amendment of pleadings, see also 24 Halsbury's Laws of England (3rd Edn.) 96, para. 173.

Having considered very carefully the cases quoted, we have reached the conclusion that all three cases are distinguishable from the facts of the present case. It is on record that the administration of the estate has been delayed for almost ten years. The application for the amendment of the pleadings was filed on 31st May, 1978, after judgment was delivered, that is on 16th December, 1977. In this application, the amendment sought was alleged to be a material one, but in effect is introducing at this very late stage a new ground of relief.

It is said time and again that a case is decided on its pleaded facts to which the law must be applied. If in the course of the trial it appears that a party's pleading requires amendment, steps for that purpose must be taken as early as possible, in order to give to the parties affected by the amendment the opportunity to meet the new situation. After the closing of the case and after judgment is delivered, the Court very rarely should grant leave for the amendment of the pleadings unless there are exceptional circumstances, justifying such a course, once it is in the interest of justice to finalize litigation between the parties.

In *Brown* v. *Dean*, [1910] A.C. 373 H.L., Lord Loreburn L.C. delivering the first speech, in dismissing the appeal, said at p. 374:–

" My Lords, the chief effect of the argument which your Lordships have heard is to confirm in my mind the extreme value of the old doctrine 'Interest reipublicae ut sit finis litium,' remembering as we should that people who have

means at their command are easily able to exhaust the resources of a poor antagonist.

With great respect for the authority of Fletcher Moulton L.J., I am of opinion that the order of the Divisional Court confirmed by the majority of the Court of Appeal is perfectly right. When a litigant has obtained a judgment in a Court of justice, whether it be a county Court or one of the High Courts, he is by law entitled not to be deprived of that judgment without very solid grounds; and where (as in this case) the ground is the alleged discovery of new evidence, it must at least be such as is presumably to be believed, and if believed would be conclusive."

In *Murphy* v. *Stone-Wallwork (Charlton Ltd.)* [1969] 2 All E.R. 949, H.L., Lord Pearce delivering his speech had this to say at p. 953:

" It is an important principle that there should be finality in judgments or, if one prefers a Latin maxim, ut sit finis litium. For that reason a time limit is set within which any appeal to overset a judgment must be launched. Only in exceptional circumstances is this time limit extended. For the same reason the Courts have refused to re-open a case on appeal by the admission of evidence which the appealing party could have made available at the trial. Only in very exceptional circumstances will it allow this fresh evidence. The hardship in a particular case must be balanced against the general evil of allowing judgments to be disturbed and thereby prolonging and extending litigation."

See *Savvas Paraskevas* v. *Despina Mouzoura* (1973) 1 C.L.R. 88, where a number of authorities are reviewed.

In the light of the authorities quoted and in the absence of any exceptional circumstances, and particularly because of such a long delay, it is clear to us in the circumstances of this case, that the amendment sought should not be allowed. We, therefore, dismiss this interlocutory application.

Application dismissed with costs.

Application dismissed with costs.