

1980 April 2

[SAVVIDES, J.]

AHMED MAJED AL-CHURAIR AND SONS,
Plaintiffs,

v.

1. SNATIREN SHIPPING LIMITED,
2. THE SHIP "CHRYSOVALANDOU DY0" (OWNED BY SANTIREN SHIPPING LIMITED, DEFENDANTS NO.1 ABOVE),

Defendants.

(Admiralty Action No. 72/79).

Admiralty—Practice—Writ of summons—Application to renew before expiration—Discretion of Court—Action in rem against ship—Service of writ of summons could not have been effected because ship had not called at any port within the jurisdiction—Good cause shown for making an order of renewal for six months—Old English R.S.C. Order 8 rule 1, applicable by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893 and sections 19 and 29(2)(a) of the Courts of Justice Law, 1960 (Law 14/60).

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10 This was an application, by the plaintiffs, made prior to the expiration of the writ of summons, for the renewal of the writ of summons against defendant 2 ship on the ground that service has not been effected on her because she did not call at a Cyprus port since the issue of such writ but was expected to come to a Cyprus port within the next six months.

15 *Held*, that a good cause has been shown for granting the application which, however, does not preclude the defendant ship, after service is effected, to apply to the Court to have the order renewing the writ and service thereof set aside on good cause shown; that, therefore, the application will be granted;
20 and that, accordingly, an order renewing the writ of summons for a period of six months from its expiration is made (principles laid down in *Nigerian Produce Marketing Co. Ltd. and Another v. Sonora Shipping Company Ltd. and Another* (1979) 1 C.L.R. 395 adopted).

Application granted.

Cases referred to:

Nigerian Produce Marketing Co. Ltd. and Another v. Sonora Shipping Company Ltd. and Another (1979) 1 C.L.R. 395;

Berny [1979] 1 Q.B. 80 at p. 103;

"*Hellen Roth*", *New Law Journal* of the 24th January, 1980 at p. 91. 5

Application.

Ex-parte application by plaintiffs for the renewal of the writ of summons against defendant 2.

G. Arestis for *G. Cacoyiannis*, for the applicants-plaintiffs. 10
Defendant absent.

Cur. adv. vult.

SAVVIDES J. read the following decision. By this *ex-parte* application applicants-plaintiffs apply for the renewal of the writ of summons against defendant 2. 15

This is a mixed action, in personam against defendants 1 as the owners of the defendant ship No. 2, and in rem against defendant 2 ship. The writ was issued on 22.3.79 and prior to its expiration, plaintiffs filed the present application praying for the renewal of the writ as against defendant 2. 20

The material facts relied upon in support of this application and as appearing in the accompanying affidavit of Mr. Sotirios Aniftos, a registered advocate's clerk, are to the effect that service on defendant 2 has not been effected because the said ship did not call at a Cyprus port since the issue of such writ but is expected to come to a Cyprus port within the next six months. 25

The application is based on rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893 and on Order 8, rule 1 of the English Rules of the Supreme Court, 1960 (the old Rules of the Supreme Court in England which are applicable in Cyprus by virtue of section 19 and section 29(2)(a) of the Courts of Justice Law 14 of 1960). 30

In a recent decision delivered by me in Admiralty Action 174/76, *Nigerian Produce Marketing Co. Ltd. and another v. Sonora Shipping Company Ltd. and another* (1979) 1 C.L.R. 395 dealing with the question of renewal of a writ of summons in rem after its expiration, I had the opportunity of expounding 35

on the principles which may guide the Court in exercising its discretion in granting such application. Therefore, I find it unnecessary to repeat in the present decision such principles which are adopted for the purposes of the present application.

5 I wish only to add that the present application is made prior to the expiration of the writ of summons which is an additional ground in favour of the applicants.

The question of renewal of a writ in an action in rem was dealt with recently in *Berny* [1979] 1 Q.B., 80, in which Brandon, J. 10 in granting an order for the renewal of a writ of summons in an action in rem., had this to observe at p. 103:

“In my opinion, when the ground for renewal is, broadly, that it has not been possible to effect service, a plaintiff must, in order to show good and sufficient cause for renewal, 15 establish one or other of three matters as follows:- (1) that none of the ships proceeded against in respect of the same claim, whether in one action or more than one action, have been or will be, present at a place within the jurisdiction during the currency of the writ; alternatively (2) that, 20 if any of the ships have been, or will be, present at a place within the jurisdiction during the currency of the writ, the length or other circumstances of her visit to or stay at such place were not, or will not be, such as to afford reasonable opportunity for effecting service on her and arresting her; 25 alternatively (3) that, if any of the ships have been, or will be, present at a place within the jurisdiction during the currency of the writ, the value of such ship was not or will not be, great enough to provide adequate security for the claim, whereas the value of all or some or one of the other 30 ships proceeded against would be sufficient, or anyhow more nearly sufficient, to do so.”

The principles laid down therein were followed in the “*Hellen Roth*” case in which an application to set aside the renewal of the writ of summons and service of it, and the unconditional 35 release of the arrested ship was refused. The short report of the case appears in the New Law Journal of the 24th January, 1980 at p. 91.

On the facts before me I find that in the present case I find that a good cause has been shown for granting the application

which, however, does not preclude the defendant ship, after service is effected, to apply to the Court to have the order renewing the writ and service thereof set aside on good cause shown.

In the result, I grant the application and I make an order renewing the writ of summons for a period of six months from its expiration.

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Application granted.