

1981 June 15

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

SAVVAS YIANNI VALANA,

Appellant-Plaintiff.

v.

ANGELIKI NICOLA ELIA,

Respondent-Defendant,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Third Party.

(Civil Appeal No. 6190).

Civil Procedure—Appeal—Grounds of Appeal—Amendment—Proposed amendment not introducing a new independent ground of appeal—But trying to specify more precisely the basis on which already existing ground will be argued—Application granted.

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This was an application for leave to amend one of the grounds of appeal.

Held, that since Counsel has stated that the proposed amendment is not aiming at introducing a new independent ground of appeal but that he is only trying to specify more precisely the basis on which the already existing ground will be argued in the light of past relevant case-law of this Court the amendment applied for will be granted, especially as Counsel for the respondents will not be in any way prejudiced by such amendment.

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Application granted

Cases referred to:

Papadopoulou v. Polykarpou (1968) 1 C.L.R. 352 at p. 360;
Leontiades v. Leontiades (1972) 1 C.L.R. 46 at p. 48.

Application.

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Application by appellant-plaintiff for leave to amend ground 2 in the notice of appeal.

A. *Ladas*, for the appellant.

N. *Pelides*, for the respondent.

Cl. *Antoniades*, Senior Counsel of the Republic, for the respondent third party.

5 TRIANTAFYLIDIS P. gave the following decision of the Court.
Counsel for the appellant, who has been instructed only on
May 20, 1981, to appear in this appeal in the place of counsel
who appeared for the appellant at the trial, filed on June 5,
10 1981, an application seeking leave to amend ground No. 2
in the Notice of Appeal.

By means of the said ground it is being contended that the
trial Court erred in finding, on the evidence adduced, that the
respondent-defendant acquired by prescription a right of way
through the appellant's property; and by means of the proposed
15 amendment of the said ground it is proposed to add, in effect,
that the trial Court erred because, in view of the fact that the
strip of land of the appellant, over which the alleged right of
way was being exercised, had been mistakenly registered in the
books of the Lands Office as being part of a public road from
20 1930 to 1971 (when the said mistake was rectified) the use by
the respondent-defendant was not of such a kind as to entitle
him to a right of way by prescription.

We have duly noted, in particular, that counsel for the appel-
lant has stated today that the aforesaid amendment is not aiming
25 at introducing a new independent ground of appeal, but that
he is only trying to specify more precisely the basis on which
the already existing ground No. 2 in the Notice of Appeal
will be argued. In view of this and in the light of past relevant
case-law of this Court, such as *Papadopoulou v. Polykarpou*,
30 (1968) 1 C.L.R. 352, 360, and *Leontiades v. Leontiades*, (1972)
1 C.L.R. 46, 48, we have decided to allow the applied for, as
above, amendment; especially as we do not think that counsel
for the respondents will be in any way prejudiced by such amend-
ment since they will have the opportunity, in due course, to
35 put forward their arguments in relation to the matter which is
stated in the proposed amendment; in effect, they have been
forewarned from now about what will be eventually the argu-
mentation of the appellant on an essentially legal point which
40 of appeal in question.

Application granted.