

1982 December 15

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

GEORGE SPANOS AND OTHERS,

Appellants-Plaintiffs.

v.

ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal Nos. 6327-6329).

Practice—Adjournments—Principles applicable—Discretion of the trial Court—Principles on which Court of Appeal will interfere with the exercise of the discretion of a trial Court in granting or refusing an adjournment.

5 This was an appeal against the refusal of the trial Court
to grant an adjournment of the hearing of plaintiffs' actions.
The hearing of the actions had, on the application of counsel
for plaintiffs, been adjourned several times on the ground that
10 counsel wanted some time to make efforts for an out-of-
court settlement of the actions. The actions were not settled
and there was a number of adjournments since 3.2.1979. When
the actions came up for hearing on the 5.2.1981, the Court
fixed them for hearing on the 21st September, 1981 and, also,
15 fixed a date for mention three months before the date of hearing
to enable counsel for plaintiffs to inform the Court in case the
the actions would be withdrawn.

On the date of hearing counsel for the plaintiffs applied for
an adjournment on the ground that neither his clients, whom
he had informed in writing nor any witnesses were present
20 and that he was not ready for the hearing. The trial court
refused the adjournment applied for and Counsel for plaintiffs
then applied for leave to withdraw, which was refused, as no
reason was advanced in support of such application. The
trial Court in the absence of any evidence by the plaintiffs
25 dismissed the action; and hence this appeal.

Counsel for the appellants mainly contended that the refusal of the trial Court to grant an adjournment was wrong and that the discretion of the Court in that respect was wrongly exercised.

Held. that the question whether an adjournment will be granted or not is a matter of judicial discretion which should be exercised in a proper judicial manner and an order for an adjournment should not be made if there is danger that the rights of a party before the Court will be prejudicially affected by such adjournment; that an appellate Court will not, in normal circumstances, interfere with the exercise of the discretion of a trial Court in granting or refusing an adjournment, unless such discretion has been exercised in such a way as to cause what can properly be regarded as an injustice to any of the parties affected or in a way which shows that all necessary matters have not been taken into consideration; that on the facts of the cases, and taking into consideration the repeated adjournments of the cases which were pending before the court for over 6 years, the numerous opportunities given to appellants to present their cases and the fact that no valid ground was put before the trial Court justifying the granting of an adjournment, the trial Court very properly exercised its discretion by refusing an adjournment and by subsequently dismissing the actions for want of prosecution, and there is no reason for interfering with the exercise of such discretion by the trial Court; accordingly the appeals must fail.

Appeals dismissed.

Cases referred to:

- International Bonded Stores v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R. 557;
- Kranidiotis v. Ship "Amor"* (1980) 1 C.L.R. 297 at pp. 299-300;
- Tofas and Another v. Agathangelou* (1980) 1 C.L.R. 560;
- Kier (Cyprus) v. Trenco Constructions* (1981) 1 C.L.R. 30 at p. 39;
- Efstathios Kyriacou and Sons Ltd. v. Mouzourides* (1963) 2 C.L.R. 1;
- Charalambous v. Charalambous* (1971) 1 C.L.R. 284;
- Dick v. Piller* [1943] 1 All E.R. 627 at pp. 634-635;

Jones v. S.R. Authacite Collieries Ltd. [1920] 124 L.T. 462;

Maxwell v. Kean [1928] 1 K.B. 645;

Priddle v. Fisher and Sons [1968] 3 All E.R. 506;

Rose v. Humbles (Inspector of Taxes) [1970] 2 All E.R. 519;

5 and on appeal [1972] 1 All E.R. 314;

Otley v. Morris (Inspector of Taxes) (1979) 1 All E.R. 65.

Appeal.

10 Appeal by plaintiffs against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Kronides, S.D.J.) dated the 21st September, 1981 (Action Nos. 1687/74, 2181/73, 3972/74) whereby the trial Court refused to grant them an adjournment of the hearing and their action for damages for alleged assaults committed upon them by servants in the employment of the Republic was dismissed.

15 *A. Eftychiou*, for the appellants.

S. Georghiades, Senior Counsel of the Republic, with
M. Photiou, for the respondent.

 TRIANTAFYLIDES P.: The judgment of this Court will be delivered by Mr. Justice Savvides.

20 SAVVIDES J.: The appellants in these three appeals which were heard together, have appealed both against the refusal of the trial Court to grant them an adjournment of the hearing and the judgment of the same Court whereby the appellants' actions were dismissed for want of prosecution.

25 The three actions which gave cause to the present appeals were brought against the defendant claiming damages for alleged assaults committed upon them by servants and/or persons in the employment of the Republic of Cyprus. They were in fact three out of ten similar actions which were being dealt
30 with by the District Court together, because, according to a joint statement of counsel on both sides, they presented common points of law. On the application of counsel for appellants the hearing of the actions was adjourned several times on the ground, according to the record, that counsel wanted some
35 time to make efforts for an out-of-court settlement of the actions, which, in the end, proved fruitless. On 27.11.1978

when all ten actions came up for hearing before the Court, counsel for plaintiffs withdrew all other actions with the exception of the three which are the subject matter of the present appeals and applied for an adjournment to communicate with the plaintiffs who were not in Court, one of whom appeared to have been abroad, and advise them to withdraw the actions as he did in respect of the other seven similar actions. As there was no objection by counsel for the defendant and in view of the reasons given in support of the application for an adjournment, the Court adjourned the hearing to 3.2.1979, unless, in the meantime, a notice of discontinuance of the actions was filed with the Registrar.

The actions were not withdrawn and there was a number of adjournments since 3.2.1979. As the actions had been pending before the Court for a considerable time, having been instituted in 1974, when they came up before the Court on the 5th February, 1981, the Court fixed them for hearing of the 21st September, 1981 and, also, fixed a date for mention three months before the date of the hearing, to enable counsel for plaintiffs to inform the Court in case the actions would be withdrawn.

On the date of the hearing counsel for applicants who, since 6.6.1981 had changed, after a notice of change of advocate had been filed, applied for an adjournment on the ground that neither his clients whom he had informed in writing, nor any witnesses were present and that he was not ready for hearing. The Court refused the adjournment applied for, as it found that no valid reason had been put before it justifying the granting of an adjournment. Counsel for plaintiffs then applied for leave to withdraw, which was refused, as no reason was advanced in support of such application. Once counsel for plaintiffs had no witnesses to call and was not ready to proceed with the hearing, the Court in the absence of any evidence by the plaintiffs, dismissed the actions, making no order for costs as none were claimed by counsel for defendant.

Various grounds were advanced in support of these appeals, such grounds being that the Court was wrong in dismissing the actions in that by refusing an adjournment it had deprived the plaintiffs of the opportunity of being heard and calling any

evidence to prove their case, that the discretion of the Court in refusing an adjournment was wrongly exercised and that such refusal amounted to violation of Article 30(1)(3)(b)(c) of the Constitution, and lastly that the Court was wrong in
5 not granting leave to counsel for appellants to withdraw after his application for adjournment was refused.

At the hearing of the appeals, counsel for appellants argued only his ground of appeal that the refusal of the Court to grant an adjournment was wrong and that the discretion of the Court
10 in that respect was wrongly exercised, and abandoned the other grounds of appeal.

The question whether an adjournment will be granted or not is a matter of judicial discretion and the principles that
15 should govern the exercise of such discretion have been reviewed recently by this Court in a number of case (see, inter alia, *International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R. p. 557, *Manolis Kranidiotis v. Ship "AMOR"* (1980) 1 C.L.R. p. 297, *Michael Hjiapanayi Tofas & Another*
20 *v. Aglaia Agathangelou* (1980) 1 C.L.R. 560 and *Kier (Cyprus) v. Trencu Constructions* (1981) 1 C.L.R. p. 30.

The position was summed up as follows in *Manolis Kranidiotis v. Ship "AMOR"* (supra) at pp. 299-300.

25 "It has been repeatedly stressed by our Supreme Court in a number of cases that delays in the hearing of a case are highly undesirable and that adjournments should be avoided as far as possible and that only in unusual circumstances they must be granted. The reason for this, is
30 that it is in the public interest that there should be some end to litigation and, furthermore, the right of a citizen to a fair trial within a reasonable time according to the Constitution and the Courts should comply with these constitutional provisions with meticulous care. The discretion of the Court in granting an adjournment should
35 be exercised in a proper judicial manner and an order for an adjournment should not be made if there is danger that the rights of a party before the Court will be prejudicially affected by such adjournment".

In *Kier (Cyprus) v. Trencu Constructions* (supra) the Court had this to say at p. 39:

“The question whether an adjournment will be granted or not is undoubtedly a matter of judicial discretion. As such it has to be examined on the particular facts of each case and not in abstracto; whether an adjournment will be granted or not must always be considered in the light of the right to a hearing within a reasonable time as provided by Article 30, para. 2, of our Constitution and Article 6, para. 1, of The European Convention on Human Rights of 1950, ratified by The European Convention on Human Rights (Ratification) Law 1962 (Law No. 30 of 1962)”.

The question of whether the Supreme Court can interfere on appeal with the exercise of judicial discretion of a trial Judge in refusing an adjournment has been examined in a number of cases decided by this Court (see, inter alia, *Efstathios Kyriacou & Sons Ltd. v. Mouzourides* (1963) 2 C.L.R. 1, *Charalambous v. Charalambous* (1971) 1 C.L.R. 284, *Kier (Cyprus) v. Trencu Constructions* (supra) and reviewed in *Tofas and Another v. Agathangelou* (supra). See, also, the English cases, *Dick v. Piller* [1943] 1 All E.R. 627 at pp. 634—635 in which reference is made to *Jones v. S.R. Authacite Collieries Ltd.* [1920] 124 L.T. 462), *Maxwell v. Keun* [1928] 1 K.B. 645, *Priddle v. Fisher & Sons* [1968] 3 All E.R. 506, *Rose v. Humbles (Inspector of Taxes)* [1970] 2 All E.R. 519 (and on appeal [1972] 1 All E.R. 314), *Otley v. Morris (Inspector of Taxes)* [1979] 1 All E.R. 65).

It is well settled that an appellate Court will not, in normal circumstances, interfere with the exercise of the discretion of a trial Court in granting or refusing an adjournment, unless such discretion has been exercised in such a way as to cause what can properly be regarded as an injustice to any of the parties affected or in a way which shows that all necessary matters have not been taken into consideration.

In the present appeals, on the facts of the cases, and taking into consideration the repeated adjournments of the cases which were pending before the Court for over 6 years, the numerous opportunities given to appellants to present their cases and the fact that no valid ground was put before the trial Court justifying

the granting of an adjournment, the trial Court very properly exercised its discretion by refusing an adjournment and by subsequently dismissing the actions for want of prosecution, and we see no reason for interfering with the exercise of such
5 discretion by the trial Court.

For all the above reasons these appeals fail and are hereby dismissed with costs in favour of the respondent.

Appeals dismissed with costs.