

1983 February 8

[TRIANTAFYLIDIS, P., A.LOIZOU, MALACHIOS, JJ.]

XANTHOS ELEFThERIOU HJISOTERIOU AND OTHERS,
Appellants.

v.

1. THE DIRECTOR OF LANDS AND SURVEYS,
2. ANNA MICHAEL MONTANIOU,

Respondents.

(*Civil Appeal No. 5142*).

Civil Procedure—Appeal—Fresh Evidence—Appeal against grant of access over immovable property—Application to adduce evidence in order to establish that the compensation, payable in respect of such access, was lodged prior to the expiration of the time within which appellants could appeal—Dismissed, because even if lodg-
5 *ment made as alleged it could not decide the appeal in favour of the appellant—Section 25 of the Courts of Justice Law, 1960 (Law 14/60)—Order 35, rule 8 of the Civil Procedure Rules and regula-*
tions 7, 8 and 9 of the Immovable Property (Grant of Right of Way)
10 *Regulations, 1967.*

Immovable property—Access—Grant of—Appeal—Lodgment of compensation in respect thereof prior to the expiration of the period within which an appeal could be filed—Whether it nullifies the decision of granting access—Regulations 7, 8 and 9 of the
15 *Immovable Property (Grant of Right of Way) Regulations, 1967.*

The Director of Lands and Surveys granted access to the property of respondent 2 over the property of the appellants and assessed the compensation payable in respect of such access. The appellant challenged the decision of the Director by means
20 of an appeal to the District Court and following the dismissal of his appeal he filed an appeal before this Court. At the commencement of the hearing of this appeal Counsel for the appellants applied for leave to adduce evidence in order
25 to establish that the compensation, which amounted to C£900, was lodged with the appropriate District Lands Office prior

to the expiration of the time within which the appellants could appeal against the aforesaid decision of the District Court.

Counsel for the appellants contended, by relying on regulations 8(2) and 9 of the Immovable Property (Grant of Right of Way) Regulations, 1967, that the fresh evidence to be adduced was relevant to the outcome of this appeal inasmuch as the premature lodgment of the amount of compensation, prior to the expiry of the period for appealing to the Supreme Court, nullified the decision of the Director regarding the access of respondent 2 over the property of the appellants.

On the application to adduce fresh evidence:

Held, that this Court has to hear this appeal by way of rehearing; and that though in acting as a Court of Appeal is empowered not only under section 25 of Law 14/60, but, also, under rule 8 of Order 35 of the Civil Procedure Rules, to receive further evidence as regards, inter alia, matters which have occurred after the date of the decision from which an appeal has been brought it cannot receive on this occasion further evidence on appeal since it would not be proper to allow counsel for the appellants to adduce evidence as regards the fact that the compensation in respect of the right of access was lodged by respondent 2 prior to the expiration, and, actually, on the last day, of the period within which an appeal could be filed by the appellants to the Supreme Court against the decision of the District Court concerned; and this Court is of this view because even if such lodgment was, as alleged, not made in accordance with regulation 8(2) of the relevant Regulations of 1967 it cannot hold that, on a fair construction of the provisions of regulation 9 of the same Regulations, it could decide the present appeal in favour of the appellants on the ground of the premature lodgment of the compensation awarded to them in respect of the right of access in question. In the opinion of this Court the said regulation 9 is intended to secure, among other things, the payment of compensation, in respect of a right of access, in accordance with regulations 7 and 8 of the aforesaid Regulations, but it cannot ever be applied in a manner extinguishing such right in case the amount of the compensation is lodged prematurely. Accordingly the application must fail.

Application dismissed.

Cases referred to:

- Coudounaris v. Coudounaris* (1980) 1 C.L.R. 581 at p. 585;
Loizou v. Konteatis (1968) 1 C.L.R. 291 at p. 293;
The Turkish Co-operative Carob Marketing Society Ltd. v. Kiamil (1973) 1 C.L.R. 1 at p. 5;
5 *The Electricity Authority of Cyprus v. Kipparis*, 24 C.L.R. 121 at p. 130;
Charalambous v. Demetriou, 1961 C.L.R. 14 at p. 22;
Pyrgas v. Stavridou (1969) 1 C.L.R. 332 at p. 342;
10 *The Attorney-General v. Birmingham, Tame and Rea District Drainage Board* [1912] A.C. 788 at pp. 801, 802; .
Murphy v. Stone Wallwork (Charlton) Ltd. [1969] 2 All E.R. 949 at p. 952;
Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service (No. 2) [1979] 3 All E.R. 237 at
15 p. 236; [1980] 1 All E.R. 896;
Paraskevas v. Mouzoura (1973) 1 C.L.R. 88 at p. 98;
Evdokimou v. Roushias (1975) 1 C.L.R. 304 at p. 308;
Pavlidou v. Yerolemon (1982) 1 C.L.R. 912.

20 **Application.**

Application by counsel for the appellants for leave to adduce evidence in order to establish that the compensation of C£900.- was lodged with the appropriate District Lands Office prior to the expiration of the time within which the appellants could
25 appeal against the decision of the District Court of Famagusta dismissing their appeal under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

J. Kaniklides, for the appellants.

30 *Cl. Antoniadis*, Senior Counsel of the Republic, for respondent 1.

A. Triantafyllides, for respondent 2.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellants have filed the present appeal against a decision

of a Full District Court by means of which there was dismissed an appeal of theirs, which was filed under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, against a decision of the respondent Director of Lands and Surveys regarding the grant of access to the property of respondent 2 over the property of the appellants and the assessment of the compensation payable in respect of such access. 5

The said decision of the Director was reached under the provisions of Cap. 224, as amended through the insertion of section 11A by means of the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law, 1966 (Law 10/66). 10

At the commencement of the hearing of this appeal counsel for the appellants applied for leave to adduce evidence in order to establish that the aforementioned compensation, which amounted to C£900, was lodged with the appropriate District Lands Office prior to the expiration of the time within which the appellants could appeal against the aforesaid decision of the District Court. 15

Under the provisions of Order 35, rule 2, of the Civil Procedure Rules such appeal could be filed within fourteen days from the date when the decision of the District Court was given. The lodgment of the compensation was effected on the fourteenth day after the delivery of the decision of the District Court, not counting the day on which such judgment was delivered; and it is correct that the day of the lodgment was the last day on which the appeal to the Supreme Court could have been filed, because the relevant provision in Order 35, rule 2, has been interpreted so as to treat the relevant period of fourteen days as not including the day on which the decision appealed from has been delivered (see, in this respect, inter alia, the case of *Coudounaris v. Coudounaris*, (1980) 1 C.L.R. 581, 585, and, also, the cases of *Loizou v. Konteatis*, (1968) 1 C.L.R. 291, 293 and *The Turkish Co-Operative Carob Marketing Society Ltd. v. Kiamil*, (1973) 1 C.L.R. 1, 5, which illustrate in practice the correct mode of computation of time as it was found to be in the *Coudounaris* case, supra). 20
25
30
35

It was the contention of counsel for the appellants that the fresh evidence to be adduced, as aforesaid, is relevant to the outcome of this appeal inasmuch as the premature lodgment of the amount of compensation, prior to the expiry of the period 40

for appealing to the Supreme Court, nullifies the decision of the Director regarding the access of respondent 2 over the property of the appellants; and counsel for the appellants has relied, particularly, in this respect, on regulations 8(2) and 9 of the
5 Immovable Property (Grant of Right of Way) Regulations of 1967 (No. 255 in the Third Supplement to the Official Gazette of 30.3.67).

*In view of the powers granted to the Supreme Court in hearing an appeal such as the present one, by virtue of section 25 of the
10 Courts of Justice Law, 1960 (Law 14/60), and rule 8 of Order 35 of the Civil Procedure Rules, it would be correct to say that this Court has to hear this appeal by way of rehearing to the extent permissible within the ambit of the proper exercise of the said powers.*

15 It is useful to refer, too, in addition to the relevant provisions of rule 8 of Order 35 of the Civil Procedure Rules, to rule 3 of the same Order which states expressly that all appeals shall be by way of rehearing (see, in this respect, inter alia, *The Electricity Authority of Cyprus v. Kipparis*, 24 C.L.R. 121, 130, *Charalambous v. Demetriou*, 1961 C.L.R. 14, 22 and *Pyrgas v. Stavridou*,
20 (1969) 1 C.L.R. 332, 342).

In The Attorney-General v. Birmingham, Tame, and Rea District Drainage Board, [1912] A.C. 788, Lord Gorell in delivering his judgment in the House of Lords in England stated the
25 following (at pp. 801, 802):-

“The appellants asserted, however, that on the appeal the Court of Appeal could not interfere with the order if it were rightly made at the time. The respondents admitted that the order was rightly made at the time it was made,
30 though there was a question as to what was to be done with regard to storm-water; but their point was that since the order they had completed the construction of fresh works, and that there was no longer any breach by them of the provisions of the Act aforesaid, and no necessity or reason
35 for the injunction continuing. They maintained that the hearing before the Court of Appeal was a rehearing, upon which fresh evidence could be given, and that the Court should determine the matter as at the time of the rehearing.

Under the Judicature Acts and Rules the hearing of an appeal from the judgment of a judge is by way of rehearing, and the Court has power to give any judgment and to make any order which ought to have been made, and to make such further or other order as the Court may think fit (see Order LVIII., rr. 1 and 4). 5

The Court also has power to take evidence of matters which have occurred after the date of the decision from which the appeal is brought (see Order LVIII., r.4).

It seems clear, therefore, that the Court of Appeal is entitled and ought to rehear the case as at the time of rehearing, and if any authority were required for this proposition it is to be found in the case of *Quilter v. Mapleson* [1882] 9 Q.B.D. 672. In that case an action of ejectment had been brought under a proviso of re-entry for breach of a covenant in a lease, and Lord Coleridge C.J. gave judgment for the plaintiff. The defendant appealed and obtained a stay, so that the plaintiff did not get actual possession. After the decision and before the appeal was heard the Conveyancing and Law of Property Act, 1881, came into operation, under which power to relieve against a forfeiture was given, and the Court of Appeal, consisting of Jessel, M.R. and Lindley and Bowen, L.JJ., reversed the decision, and granted the relief sought for by the defendant, holding that on a rehearing such a judgment may be given as ought to be given if the case came at that time before the Court of first instance. 10 15 20 25

In my opinion the Court of Appeal was entitled to make such order as the judge could have made if the case had been heard by him at the date on which the appeal was heard". 30

The relevant provisions regarding the powers of the Court of Appeal in England were then practically identical to the corresponding powers of this Court, as set out, in particular, in rule 8 of Order 35, above 35

The above views of Lord Gorell were followed by the House of Lords in *Murphy v. Stone Wallwork (Charlton) Ltd.* [1969] 2 All E.R. 949, 952, and more recently in *Engineers' and*

5 *Managers' Association v. Advisory, Conciliation and Arbitration Service (No. 2)*, [1979] 3 All E.R. 237, 236; the decision in the *EMA v. ACAS (No. 2)* case was reversed on further appeal to the House of Lords (see, *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service (No. 2)*, [1980 1 All E.R. 896] but not in a manner casting doubt about the correctness of following the aforementioned views of Lord Gorell in the *Birmingham* case, *supra*.

10 The Supreme Court in acting as a Court of Appeal is empowered not only under section 25 of Law 14/60, but, also, under rule 8 of Order 35 of the Civil Procedure Rules, to receive further evidence as regards, inter alia, matters which have occurred after the date of the decision from which an appeal has been brought and, regarding the exercise of this power of the Supreme
15 Court, useful reference may be made to, inter alia, *Paraskevas v. Mouzoura*, (1973) 1 C.L.R. 88, 98, *Evdokimou v. Roushias*, (1975) 1 C.L.R. 304, 308 and *Pavlidou v. Yerolemou* (1982) 1 C.L.R. 912.

20 We cannot, however, agree to receive on this occasion further evidence on appeal since we do think that it would not be proper to allow counsel for the appellants to adduce evidence as regards the fact that the compensation in respect of the right of access was lodged by respondent 2 prior to the expiration, and, actually, on the last day, of the period within which an appeal could
25 be filed by the appellants to the Supreme Court against the decision of the District Court concerned; and we are of this view because even if such lodgment was, as alleged, not made in accordance with regulation 8(2) of the relevant Regulations of 1967 we cannot hold that, on a fair construction of the provisions or regulation 9 of the same Regulations, we could decide
30 the present appeal in favour of the appellants on the ground of the premature lodgment of the compensation awarded to them in respect of the right of access in question. In our opinion the said regulation 9 is intended to secure, among other
35 things, the payment of compensation, in respect of a right of access, in accordance with regulations 7 and 8 of the aforesaid Regulations, but it cannot ever be applied in a manner extinguishing such right in case the amount of the compensation is lodged prematurely.

For the foregoing reasons the application of counsel for the appellants to be allowed to adduce evidence for the purposes of the determination of this appeal is dismissed with costs; and this appeal will be heard on its merits in due course.

Application dismissed. 5