1984 October 4

[HADJIANASTASSIOU; DEMETRIADES, SAVVIDES, JJ.]

ANDREAS KALLI,

Appellant-Defendant,

v.

EWALD AND MAKIS LTD.,

Respondents-Plaintiffs.

(Civil Appeal No. 6360).

Practice—Adjournment of trial—Discretion of trial judge—Principles applicable—And principles on which Court of Appeal interferes with the exercise of such discretion—Continued hearing—Written application for adjournment on ground of counsel's absence abroad submitted four days prior to the hearing—Left to be decided on day of hearing—Application repeated orally on day of hearing; —Counsel for other side consenting to both applications—Trial Judge refusing application and proceeding to hear case in the absence of appellant and his counsel—Refusal caused injustice to appellant who was deprived of the chance to present his case—Adjournment wrongly refused—Retrial ordered by another Judge.

After the conclusion of plaintiffs' case the action was adjourned for hearing of the case for the defendant. Four days prior to the hearing counsel for defendant filed a written application to the Court for an adjournment on the ground of his absence abroad and because at that stage of the hearing the case could not be handled by another advocate. Counsel for respondent signified his consent to such application. This application was left by the trial Court to be decided on the date when the hearing of the action was to continue. On the day of the hearing counsel appearing on behalf of counsel for defendant orally repeated the application for adjournment to which Counsel for the plaintiffs raised no objection. The trial Judge refused to grant an adjournment having held that "the fact that an advocate is absent abroad for other work does not mean that the case which is before the Court and especially continued hearing should be adjourned"; and that "the Court's work

cannot be regulated by the ability of advocates to appear before it". Thereafter counsel who appeared on behalf of counsel for the defendant informed the Court that he was not in a position to proceed with the further hearing and presentation of the case of the defendant and applied for leave to withdraw. The trial Judge granted him leave to withdraw and after hearing the address of counsel for respondents, in the absence of the appellant and his advocate, gave judgment in favour of the plaintiffs for £562.675 mils, with costs, and dismissed, at the same time, appellant's counterclaim. Hence this appeal.

Held, (*after stating the principles regarding the discretion of a trial Judge to grant an adjournment and the principles regarding the powers of the Court of Appeal to interfere with the exercise of such discretion*), that though this Court is in agreement with the trial Court that the work of the Court cannot be regulated by the whims of advocates and that adjournments should be sparingly allowed each case must be considered in the light of its surrounding circumstances; that if the trial Judge had in mind to refuse the written application for adjournment on general principles he should have refused it straight away so that appellant's counsel might have made arrangements for the appellant to be informed accordingly and be present at the date of the hearing and be able to be represented by another advocate, whereas by leaving the matter to be determined on the date of the hearing and in the absence of the appellant who obviously took it as granted that the case was to be adjourned, deprived him of the opportunity to be heard and present his case and thus injustice was caused to him; that, further, counsel for respondents consented to both the oral and written applications for adjournment having been satisfied that there was a just cause for such adjournment and it is obvious from his attitude that no injustice would have resulted to the respondents if the adjournment was granted, whereas the refusal of the trial Judge to adjourn the case has caused injustice to the appellant who was deprived of the chance to present his case and be heard; and that, therefore, the proper course is to set aside the judgment of the trial Judge on the ground that the adjournment applied for on November 26, 1981 in writing and repeated orally on November 30, 1981, the day of the hearing, was wrongly refused and it is ordered that there should be a retrial of the case, necessarily before another Judge.

Appeal allowed. Retrial ordered.

Cases referred to:

Tsiarta and Another v. *Yiapana and Another*, 1962 C.L.R. 198 at p. 208;

HjiNicola v. *Christofi and Another* (1965) 1 C.L.R. 324 at p. 338;

HjiNicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421 at p. 431;

Athanassiou v. *Attorney-General of the Republic* (1969) 1 C.L.R. 439 at p. 455;

Edwards v. *Edwards* [1968] 1 W.L.R. 149 at pp. 150, 151;

International Bonded Stores v. *Minerva Insurance* (1979) 1 C.L.R. 557;

Maxwell v. *Keun* [1928] 1 K.B. 645 at p. 657;

Kranidiotis v *The Ship "Amor"* (1980) 1 C.L.R. 297;

Kier (Cyprus) Ltd. v. *Trenco Constructions Ltd.* (1981) 1 C.L.R. 30;

Zachariou v. *Elmini Lioness Inc. and Others* (1982) 1 C.L.R. 474;

Ship "Maria" v. *Williams and Glyns Bank* (1983) 1 C.L.R. 706 at pp. 714, 715;

Tofas and Another v. *Agathangeou* (1980) 1 C.L.R. 560 at p. 565.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 3rd December, 1981 (Action No. 1759/79) whereby he was adjudged to pay to plaintiffs the sum of £562.675 mils for damages for breach by him of a building contract.

P. Ioannides, for the appellant.

Ch. Ierides with *Chr. Clerides*, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal by the defendant in Action No. 1759/79, before the District Court of Nicosia, whereby he was adjudged to pay to the plaintiffs the sum of £562.675 mils, with legal interest and costs, and his counterclaim against them was dismissed.

Respondents' claim against the appellant was for damages for breach by the appellant of a building contract whereby he agreed and undertook to construct a building for the respondents. The appellant denied that he was in breach of the said contract or that he was indebted to them in any amount and alleged that he had to collect from the respondents a balance for the work done by him which was the substance of his counterclaim.

Respondents and their witnesses gave evidence and their case was concluded, and the case was adjourned for hearing of the case for the appellant. On the date fixed for continuation of the hearing, counsel for appellant was unable to attend, being absent abroad, and counsel appearing on his behalf, applied for an adjournment of the hearing. Counsel for respondents did not oppose such application and consented to the granting of the adjournment. In fact, counsel for appellant four days prior to the hearing filed a written application to the Court for an adjournment setting out the grounds for which the adjournment was asked, the main one of which was his absence abroad and that at that stage of the hearing the case could not be handled by another advocate. Such application was left by the trial Judge to be decided on the date when the hearing of the action was to continue.

The learned trial Judge refused to grant an adjournment, and the reason for doing so, as appearing in his ruling, was as follows:

> "I find the application for an adjournment as unjustified. The fact that an advocate is absent abroad for other work, does not mean that the case which is before the Court and especially continued hearings, should be adjourned. It was the duty of counsel before he left for abroad, to take care of his cases which were pending before the Court. The present day mode of work may require that advocates should, for the performance of their duties travel abroad. The Court's work, however, cannot be regulated by the ability of advocates to appear before it and, in particular, it should not be inferred that when advocates are absent abroad their cases will definitely be adjourned in consequence thereof. Once an application was made to the Registry on the 26th November, 1981 by which Mr. Ioan-

nides was making known that he would be absent, he should have given instructions to another advocate to conduct the present hearing. The notes of the evidence, which was given on behalf of the plaintiffs, were ready and could be used. Furthermore, Mr. Ioannides had his own notes.

From the evidence which has been given so far, the nature of the case is not such that it is difficult for another advocate to take instructions and continue the hearing. For the above reasons the application for adjournment is dismissed".

As a result, counsel who appeared on behalf of Mr. Ioannides informed the Court that he was not in a position to proceed with the further hearing and presentation of the case of the defendant and applied for leave to withdraw. The trial Judge then proceeded to hear the address of counsel for respondents, in the absence of the appellant and his advocate, and gave judgment in favour of the respondents-plaintiffs for £562.675 mils, with costs, dismissing at the same time, appellant's counterclaim.

It has been the contention of counsel for the appellant that the trial Court wrongly exercised its discretion by refusing to grant an adjournment and proceeding to hear the case, without affording an opportunity to the appellant to adduce his evidence and be heard, thus having deprived him of his constitutional right to defend himself. He further submitted that the trial Court failed to consider and examine the reasons on which the application for an adjournment was based and whether such reasons were justifying the prayer for an adjournment and by his decision he gave a general reasoning which was not applicable in the present case, as nothing is mentioned therein concerning the grounds on which the adjournment was prayed.

He further argued that the refusal to grant an adjournment was wrong in law, bearing in mind the special circumstances of the case, as put before the Judge and as set out in an affidavit dated 9.1.1982 sworn by counsel for the appellant, the contents of which are briefly as follows:

"On 7th November, 1981, counsel for appellant left for London for serious reasons and he was planning to return

to Cyprus on the 20th November, 1981. He was unable to return on the 20th November and he had to extend his stay in London till 2.12.1981. As the hearing of the case was fixed on the 30th November, 1981, he got in touch with his colleagues in Cyprus, to make arrangements for an adjournment and in fact on the 26th November, 1981, an application was filed on his behalf with the consent of the respondent, for an adjournment of the hearing. Such application was put before the trial Judge on the same day but he left it for consideration on the 30th November, 1981, the date of the continuation of the hearing of the action. On the 30th November, 1981, on his instructions, an advocate appeared before the Court and explained the reasons for the application for adjournment and his non appearance before the Court and the fact that counsel for respondents did not object to such adjournment. In the circumstances of the case and the fact that the case for the plaintiff had already been concluded, it was a matter of justice for the appellant if such adjournment would be granted".

In concluding his argument before us, counsel for appellant submitted that there were valid reasons before the trial Judge for granting an adjournment which the trial Judge failed to consider and in his judgment he did not mention anything that he has not been satisfied about the truthfulness of the allegations and the circumstances which arose urging for an adjournment. Once the adjournment was refused, counsel added, and the advocate whom he had instructed to appear on his behalf and apply for the adjournment had to withdraw, instructions should have been given that the appellant should have been notified of the fact, to make arrangements to be represented and advance his case.

Before embarking on the issue before us, we find it necessary to deal briefly with the history of these proceedings.

The pleadings were concluded on the 13th November, 1979 and the action was fixed for hearing on 30.4.1980. On 19.2. 1980, counsel for respondents-plaintiffs, filed a written application to which counsel for appellant signified his consent praying for an adjournment, on the ground that on that day he would be unable to attend, as he was engaged to appear before the

Full District Court of Limassol. As a result, the hearing was adjourned to 12.6.1980. On 13.5.1980, counsel for respodents-plaintiffs, applied once again for an adjournment, on the ground that on 12.6.1980 he was engaged before the District Court of Limassol. Counsel for appellant consented to such application, and the hearing was adjourned to 13.10.1980. On 16.9.1980, counsel for respondents applied again for an adjournment of the hearing, as he would be absent abroad due to urgent business, to which application counsel for appellant consented and the hearing was, as a result, adjourned to 14.1.1981. Up to 14.1.1981, this case was being handled by another Judge of the same Court but since 14.1.1981 the case was dealt by the Judge who finally tried the case. On 14.1.1981 counsel for appellant happened to be engaged before the Full District Court of Nicosia in a continuing hearing. As a result, he filed with the Registry a letter informing the Court of his inability to attend on 14.1.1981 and praying for an adjournment and on 14.1.1981 counsel appearing on his behalf applied orally for an adjournment, to which counsel for respondents did not object. In the circumstances of the case the Judge granted the adjournment because, as he found, it was in the interests of justice and expressed in strong terms his disapproval of situations where counsel cannot cope with their obligations because they are engaged before more than one Court and stressed the fact that counsel cannot have the confort of choosing the Courts they will attend to, when their engagements clash. The hearing was subsequently adjourned to 14.5.1981 when again counsel for appellant was unable to attend due to an urgent case before the Supreme Court in which he had to appear and counsel on his behalf applied for an adjournment, to which counsel for respondents did not object. The adjournment was granted and the case came up finally for hearing on 6.6.1981 when plaintiffs and their witnesses gave their evidence and the case for plaintiffs was concluded. The further hearing of the case was adjourned to the 27th October 1981. On the 27th October 1981, counsel appeared before the Court for the continuation of the hearing but the file of the case could not be traced at the Registry and brought before the Court, although an effort was made till noon. As a result, the case was not heard on such date and on the 29th October, 1981, presumably when the file was traced, it was adjourned for continuation of the

hearing on the 30th November, 1981 when the application for an adjournment was refused and the hearing was concluded.

The undesirability of delays in the hearing of cases and particularly when such delays are the result of repeated adjournments of the hearing of a case, in the absence of unusual circumstances, has been repeatedly stressed by our Supreme Court in a number of cases. In *Tsiarta and Another* v. *Yiapana and Another*, 1962 C.L.R. 198 at p. 208, Josephides, J. made the following observations concerning adjournments:

> "A further word needs to be said with respect to adjournments. They produce justifiable dissatisfaction by litigants and their witnesses, and statistical records of this Court confirm the opinion there are far too many. If an action can proceed the first time it comes on for trial so much the better. When adjournments are necessary there should not be more than one or two. After that there should be no more adjournments except in unusual circumstances, as to which the Judge has to decide. Having made these comments it must be added these will be very unusual circumstances in which there may be many adjournments, but they should be few in number".

In *Nicola* v. *Christofi and another* (1965) 1 C.L.R. 324, Vassiliades P. at p. 338 said the following:

> "In a judgment delivered by the High Court some time prior to the hearing of this case by the trial Judge, observations were made by the High Court deprecating the piecemeal hearing of a case and the delays in the delivery of reserved judgments by trial Courts. Furthermore, the view was expressed that adjournments should, as far as possible, be avoided, except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion".

Disapproval for delays in hearing of cases was also stressed in *Eleni G. Hji Nicolaou* v. *Mariccou Antoni Gavriel and another* (1965) 1 C.L.R. 421 by Zekia, P. at page 431 as follows:

> "Finally we desire to express once more our disapproval for the delays in the hearing of cases. In a recent judgment (*Nicola* v. *Christofi and Another*, reported in this

vol. at p. 324) we had occasion to reiterate our previous observations deprecating the piecemeal hearing of cases and the delays in the delivery of reserved judgments. We also expressed the view that adjournments should, as far as possible, be avoided except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion".

In *Athanassiou* v. *The Attorney-General of the Republic* (1969) 1 C.L.R. 439 at p. 455, Josephides, J. reiterated what was said by Sir Jocelyn Simon, P. in *Edwards* v. *Edwards* [1968] 1 W.L.R. 149 at pp. 150, 151:

"... it is desirable that disputes within society should be brought to an end as soon as is reasonably practical and should not be allowed to drag festeringly on for an indefinite period. That last principle finds expression in a maxim which English Law took over from the Roman Law: it is in the public interest that there should be some end to litigation. ... ...

As long ago as Magna Carta, King John was made to promise not only that justice should not be denied but also that it should not be delayed; and there have been times in our history when various Courts have come under severe criticism for their procedural delays".

The above authorities have been reviewed by me in *International Bonded Stores* v. *Minerva Insurance* (1979) 1 C.L.R. 557 in which I made also reference to the case of *Maxwell* v. *Keun* [1928] 1 K.B. 645 and in particular, to the following dictum by Atkin L.J. at p. 657, as follows:

"The result of this seems to me to be that in the exercise of a proper judicial discretion no Judge ought to make such an order as would defeat the rights of a party and destroy them altogether, unless he is satisfied that he has been guilty of such conduct that justice can only properly be done to the other party by coming to that conclusion. I am very far from being satisfied that that is so in this case; on the other hand, I am quite satisfied that very substantial

injustice would be done to the plaintiff by refusing the application that this case should be postponed, and that that is the result of the present order".

In the case of *International Bonded Stores* in the special circumstances of the case the application for adjournment was granted, but in concluding, I had this to say at pp. 564, 565:

"Before concluding, I wish to point out that when counsel have to appear for hearing before two Courts at the same time, they should make arrangements in time to instruct some other advocate to appear for them in one of the two cases, or where this is not possible, they may adopt the procedure set out in a practice direction of the Supreme Court to the District Courts of the 28th December, 1965, which reads as follows:

'No adjournments need be granted by District Courts or Assize Courts on the ground that counsel concerned has to appear before the Supreme Court, unless such counsel has contacted the Supreme Court through the Chief Registrar and the Supreme Court finds it proper to request a District Court or Assize Court to consider granting such counsel an adjournment for the prupose.

It is to be understood that this course will be adopted by the Supreme Court only on exceptional occasions as e.g. when an appeal before the Supreme Court continues unexpectedly into the following day' ".

Also, in *Kranidiotis* v. *The Ship Amor* (1980) 1 C.L.R. 297 where an application for an adjournment of the hearing made by the defendants was strongly objected by counsel for plaintiffs, the principles expounded in *International Bonded Stores Ltd.* (supra) were reiterated and in granting the application in the special circumstances of that case, I had this to say at pp. 299, 300.

"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

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 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".

Our case law has been reviewed in the cases of *Kier (Cyprus) Ltd.* v. *Trenco Constructions Ltd.* (1981) 1 C.L.R. 30 and *Zachariou* v. *Elmini Lioness Inc. and others* (1982) 1 C.L.R. 474. The first case was an appeal in which one of the grounds was the refusal of the trial Court to grant an adjournment after several adjournments of the hearing had been granted by the trial Court at the request of the defendants and after the case had been put on the hearing agenda for over two years. A. Loizou, J. in delivering the judgment of the Court dismissing the appeal, had this to say at page 39:

".....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. 39 of 1962)".

The second case was an admiralty case in which an application by defendants 2 for an adjournment, on the ground that an additional advocate had been retained by them who needed some time to study the file and the evidence given, was refused on the ground that no special circumstances were shown to satisfy the Court that an adjournment was justified as applied for.

The principles on which a Court of Appeal may review the exercise of judicial discretion concerning refusal to adjourn a case have been considered in the case of *Ship "Maria"* v.

illiam & Glyns Bank (1983) 1 C.L.R. 706, in which, Pikis J. giving the majority judgment of the Full Bench of the Supreme urt (A. Loizou dissenting) had this to say at pp. 714, 715:

"There is limited scope on the part of an appellate Court to interfere with the exercise of discretionary powers by a trial Court. It is a usurpation of powers to assume the exercise of discretionary powers vested in a Court of first instance. The principles relevant to the review of discretionary powers were the subject of discussion in numerous cases. See, inter alia, *Efstathios Kyriacou & Sons Ltd.* v. *Mouzourides* (1963) 2 C.L.R. 1; Re *Eleni Michael Hji Petri* (1973) 1 C.L.R. 166; *Karydas Taxi Co. Ltd.* v. *Andreas Komodikis* (1975) 1 C.L.R. 321. The premises upon which the Court of Appeal may interfere were recently summarized *in Phylactou* v. *Michael* (1982) 1 C.L.R. 204. They are confined to three instances; where the trial Court (a) acted upon a wrong principle, (b) arrived at a decision that results in injustice (injustice must be obvious) and (c) went wrong on a specific issue.

We are essentially required to review the exercise of discretionary powers relevant to an adjournment that in turn requires us to examine the principles applicable thereto. In plotting the course of a trial and in resolving applications for adjournment the Court must balance, as held in *Phylactou*, two considerations vital for the proper administration of justice—the need to safeguard effectively the right of every party to be heard in the proceedings, fundamental under the Constitution (Article 32), on the one hand and the need to uphold a litigant's right to the expeditious determination of his rights on the other. Another consideration relevant to the exercise of judicial discretion resulting in the issue of a judgment is that of upholding finality of judgment (see the Observations of Megaw, L.J., in *Lambert* v. *Mainland Market* [1977] 2 All E.R. 826, 833 (c–d).

Ordinarily, a Court will accede to an application for adjournment provided no irreparable damage is likely to be occasioned to the other side, irreparable in the sense of injury that cannot be remedied by an appropriate order

for costs. But, as acknowledged in *Phylactou* that is not the sole consideration; an adjournment may be withheld 'where the conduct of the party applying to set aside a judgment is inexcusable, contumelious to the extent of gross disregard to the judicial process or the rights of the adversary' ".

And at page 716:

"A Court of Law must not be astute to deprive a party of the right to be heard unless such a course is inescapable in the circumstances of a case. The entrenchment of the right to be heard is fundamental for the administration of justice. The imprint of finality attaching to a judgment remains liable to be erased unless judgment is given on the merits after hearing the parties thereto. This principle was eloquently expressed, if we may say so with respect by Lord Atkin in *Evans* v. *Bartlam* [1937] 2 All E.R. 646 650 'the principle obviously is that, unless and until the Court has pronounced a judgment upon the merits or by consent it is to have power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the Rules of Procedure' ".

In his dissenting judgment in the above case, A. Loizou, J in dealing with the question of adjournments reiterated the principles expounded by him in *Kier (Cyprus) Ltd.* v. *Trence Constructions Ltd.* (supra) and said at pp. 720, 721:

"Suffice it to say that as it transpires from all the authorities, by reference also to the English ones, this Court ought to be very slow to interfere with the discretion vested in a Judge with regard to such a matter as the adjournment of the trial of an action before him, and very seldom does so..... It will only do so if it appears that the result of an order refusing such an adjournment will be to defeat the rights of the applicants altogether and to do that, which the Court of Appeal is satisfied, will be an injustice to one or other of the parties".

On the question of the power of an Appellate Court to interfere with the Judge's decision in regard to the granting of an adjournment, A. Loizou, J. in his above judgment adopted

the following dictum of Croom-Johnson, J. in *Dick* v. *Piller* [1943] 1 All E.R. 627 at pp. 634, 635:

> "Although this Court has power to interfere with the judge's decision in regard to the granting of an adjournment, it will refrain from doing so unless it appears that such discretion has been exercised in a way which shows that all necessary matters have not been taken into consideration: *Jones* v. *S.R. Anthracite Collieries, Ltd.* In that case, in the absence of any reason being stated for refusing to allow an adjournment and there being no evidence upon which a refusal could properly be based, this Court allowed an appeal. LORD STERNDALE, M.R., at p. 462 says:
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> > ——'this Court would not interfere if it appeared to them that such discretion has been exercised in a way which showed that all necessary matters have been taken into consideration although they might not agree with the learned county Court judge's decision' ".

The above passage has also been quoted with approval in *Tofas and Another* v. *Agathangelou* (1980) 1 C.L.R. 560 at p. 565 in which Triantafyllides, P., in delivering the judgment of the Court of Appeal allowing an appeal against the refusal of the trial Court to grant an adjournment said at page 566:

> "In the present case we have been satisfied that the trial judge was wrong to refuse the adjournment applied for on November 19, 1977; the witness concerned appears, prima facie, to have been an important witness for the case of the appellants and the result of the refusal of the trial judge to adjourn the case, so that he could attend and give evidence, appears to have caused an injustice to the appellants, whereas any injustice caused to the respondent could have been remedied by an order of costs against the appellants if the adjournment applied for was allowed.
>
> The trial judge seems to have taken it for granted that the witness in question did not attend because he was not summoned, whereas, as it appears from the material before us, he was a witness who would have attended even without having been summoned, and, in all probability, he did

not attend on the date in question because, as stated to the trial Court, by counsel for the appellants, he was indisposed".

Having dealt with the principles regarding the discretion of the Court to grant an adjournment and the powers of this Court on appeal to interfere with the exercise of such discretion, we come now to consider whether the discretion of the trial Judge in refusing the adjournment and proceeding to hear the case in the absence of the appellant and his advocate was properly exercised as not to require any interference on our part.

In refusing the application for an adjournment the trial Judge was guided by the general principle that absence of advocates abroad for work is not by itself a sufficient ground for granting an adjournment as by allowing such course the Court's work would be regulated by the ability of the advocates to appear before the Court, who would take it as granted that when they are absent abroad their cases will definitely be adjourned in consequence thereof.

There was a number of other factors in the present case which should have been taken into consideration. Appellant's advocate when realising that he would be unable to attend due to this prolonged absence abroad, filed an application four days prior to the hearing, praying for an adjournment of the hearing due to his absence abroad, to which counsel for the respondents signified his consent. If the trial Judge had in mind to refuse such application on general principles he should have refused it straight away so that appellant's counsel might have made arrangements for the appellant to be informed accordingly and be present at the date of the hearing and be able to be represented by another advocate, whereas by leaving the matter to be determined on the date of the hearing and in the absence of the appellant who obviously took it as granted that the case was to be adjourned, deprived him of the opportunity to be heard and present his case and thus injustice was caused to him. Furthermore, it should not escape one's attention the fact that when the case was fixed for continuation of the hearing on the 27th October and appellant and his advocate were ready in Court waiting till noon, the case had to be adjourned due to no fault on their part but the fault of the Registry which mis-

placed the file of the case and could not trace it in order to put it before the trial Court.

We agree with the trial Court that the work of the Court cannot be regulated by the whims of advocates and that adjournments should be sparingly allowed but each case must be considered in the light of its surrounding circumstances. In the present case there was a written application for an adjournment prior to the hearing to which counsel for respondents signified his consent; moreover, on the date of the hearing the application was renewed orally and counsel for respondent consented to it having been satisfied that there was a just cause for such adjournment. It is obvious from the attitude of counsel for respondents that no injustice would have resulted to the respondents if the adjournment was granted, whereas the refusal of the trial Judge to adjourn the case has caused injustice to the appellant who was deprived of the chance to present his case and he heard.

In the light of all relevant considerations we have decided that the proper course is to set aside the judgment of the trial Judge on the ground that the adjournment applied for on November 26, 1981 in writing and repeated orally on November 30, 1981, the day of the hearing, was wrongly refused, and, we, therefore, order that there should be a retrial of the case, necessarily before an other Judge.

As regards costs, in the circumstances of this case we make no order for costs of this appeal, and the costs of the first trial should be costs in cause in the new trial.

Appeal allowed. Re-trial ordered.