

1984 December 20

[A. LOIZOU, MALACHTOS, LORIS, STYLIANIDES, PIKIS, JJ.]

WILLIAMS & GLYN'S BANK PLC.,

Appellants-Interveners.

v.

PANAYIOTIS KOULOUMBIS,

Respondent-Plaintiff.

and

THE SHIP "MARIA" NOW LYING AT THE PORT
OF LIMASSOL,

Respondent-Defendant.

*(Application for Review in Admiralty Action
No. 73/82).*

*Admiralty—Practice—Review of order made by a trial Judge—
Reviewing Court can go beyond the directions and order made
by the trial Judge and as of duty make the correct directions
in the circumstances—Rules 165–167 of the Cyprus Admiralty
Jurisdiction Order, 1893.*

5

In the course of the hearing of an application for review of the order made by the trial Judge the Court was asked to give a ruling on an interlocutory issue, namely that in the exercise of its jurisdiction under rules 165 to 167 of the Cyprus Admiralty Jurisdiction Order, 1893, the scope of "reviewing an order" made by a Judge, is wide enough to entitle this Court to go beyond the directions or the order made by the trial Judge, and to give the correct in law directions once it is moved to review same even if those directions will go still more against the party applying for a review.

10

15

Held, that this Court can go beyond the directions and the order made by the trial Judge and as of duty make the correct directions in the circumstances.

Order accordingly.

Cases referred to:

C.M. Van Stillvoldt B. v. El Carriers Inc. [1983] 1 All E.R. 699.

Application.

Application by the interveners for the review of an order
5 of the trial Judge in an Admiralty Action.

M. Montanios, for the appellants-interveners.

P. Pavlou, for the respondent-plaintiff.

M. Eliades with *A. Skordis* for the respondent-defendant.

Cur. adv. vult.

10 A. LOIZOU J. read the following judgment of the Court.
In the course of the hearing of this Application for Review
of the Order made by the learned trial Judge, this Court has
been asked to give a ruling on an interlocutory issue, namely
that in the exercise of its jurisdiction under Rules 165, to 167,
15 of the Cyprus Admiralty Jurisdiction Order 1893, the scope
of "reviewing an order" made by a Judge, is wide enough to
entitle this Court to go beyond the directions or the order
made by the trial Judge, and to give the correct in law directions
once it is moved to review same even if those directions will go
20 still more against the party applying for a review.

In support of this approach, learned counsel for the
respondents have argued that the Rules prescribing the Appli-
cation for Review, unlike Order 35 of the Civil Procedure Rules
of the corresponding English Rules dealing with appeals do
25 not require an applicant to give in the Application for Review
the grounds upon which same is sought. This is clearly demon-
strated from the wording of rules 165-167, and Form "M"
in Schedule I, to the aforesaid Order which gives the form such
Application for Review should have.

30 Indeed that is the position as far as the statutory provisions
and the provisions of the Rules are. Furthermore there is
no provision as to what might be the procedure corresponding
to a cross-appeal, that is a cross-review, if we might coin such
an expression for the purpose of illustrating the position. The
35 Admiralty Jurisdiction of this Court was by Law conferred
on this Court, though exercisable in the first instance by a

Judge of the Court subject either to an appeal or the right of litigants to an application for review by the Full Bench. In the present case we have already pronounced that the procedure followed should be that of Review as the Direction or Order made by the learned trial Judge came within the ambit of the aforesaid Rules and in particular rule 165. 5

The term therefore "review" requires the Court to exercise its discretion and give an order or issue a direction according to the merits of the case unlike an appeal that confines the jurisdiction of the Court to examination of the grounds of appeal. 10

Assistance in this respect may be found in the approach of the Court of Appeal in the case of *C M Van Stillevoeldt BV v. El Carriers Inc.*, [1983] 1 All E.R. p. 699. In this case the meaning of the term "review" or "reviewing" to be found in the Supreme Court Act 1981, section 58(1) and in paragraph 12 of Order 59, rule 14 where it is said that "Provided that an appeal shall not lie to the Court of Appeal without the leave of that Court in respect of a determination of the Registrar which has been reviewed by a single Judge", was considered and judicially interpreted. 15 20

Griffiths, L. J. in delivering the judgment of the Court had this to say, after referring to the relevant statutory provision at pp. 701-702.

"And they submit that the use of the word 'reviewed' indicates that it is the intention of the rule that the decision of the registrar should be approached in the same way as the Court of Appeal will ordinarily review the decision of a judge of the High Court, namely that it will recognise that the discretion is that of the judge and not of the Court of Appeal and only interfere if the discretion has in their judgment been wrongly exercised, albeit that, if they had been considering the matter afresh themselves, they might not have exercised the discretion in the same manner as the judge. I see the weight of that argument but it is, in my view, to read too much into the use of the word 'reviewed' in the proviso. I believe that to be no more than a shorthand way of referring to the fact that there has been an appeal from the registrar. 25 30 35

I remind myself of the words of Lord Atkin in *Evans v. Bartlam* [1937] 2 All E.R. 646 at 648-649, [1937] A.C. 40

473 at 478. It will be remembered that that was the authority which finally settled the nature of the jurisdiction exercised by a judge when hearing an appeal from a master. Lord Atkin said:

5 ‘I only stay to mention a contention of the respondent
that, the master having exercised his discretion, the
judge in chambers should not reverse him unless
it was made evident that the master had exercised
his discretion on wrong principles. I wish to state
10 my conviction that, where there is a discretionary
jurisdiction given to the Court or a judge, the judge
in chambers is in no way fettered by the previous
exercise of the master’s discretion. His own discretion
is intended by the rules to determine the parties’
15 rights, and he is entitled to exercise it as though the
matter came before him for the first time. He will,
of course, give the weight it deserves to the previous
decision of the master, but he is in no way bound by
it. This, in my experience, has always been the practice
20 in chambers, and I am glad to find it confirmed by
the recent decision of the Court of Appeal in *Cooper*
v. *Cooper* [1936] 2 All E.R. 542 with which I entirely
agree’.

25 I can for myself see no reason why there should be any
difference in approach in the case of a single judge of the
Court of Appeal hearing an appeal from the registrar of
the Civil Division of the Court of Appeal than when a
judge of first instance is hearing an appeal from a master
30 or a district registrar. It seems to me that, if anything,
the indication is that there is a stronger case to be made
for a judge of the Court of Appeal exercising his own dis-
cretion than a judge of first instance. I am quite satisfied
from the wording of the rules and the general background
of the law against which they were framed that it cannot
35 be the intention that there should be a different approach
to appeals from the registrar of the Court of Appeal than
that which pertains in respect of appeals from a master
or district registrar. Accordingly I conclude that it is
my duty to consider the facts raised by this appeal afresh
40 and to use my own discretion”.

Moreover giving to the word "review" its ordinary meaning according to its common understanding and acceptance we see it defined in the Oxford Universal Dictionary as meaning "(1) the act of looking over something again with a view to correction or improvement; (2) Law. Revision of a sentence etc., by some other Court or authority: (3) (4) an inspection; (5) a general survey or reconsideration: (6) a retrospective survey of past action". In the Shorter Oxford English Dictionary, the same meaning is again given. 5

Although "review" may in some contexts have a meaning analogous to an appeal, ordinarily it means to reconsider a matter. It is in this sense that "review" is used in the Admiralty Rules under consideration in this judgment. 10

For all the above reasons we rule that this Court can go beyond the directions and the order made by the learned trial Judge and as of duty, make the correct directions in the circumstances. The objection therefore of learned counsel for the applicants is overruled. Costs in cause. 15

Order accordingly.