1984 December 12

[LORIS, STYLIANIDES, PIKIS, JJ.]

LAMBROS CH. NICOLAIDES,
AS ADMINISTRATOR OF THE ESTATE
OF OMIROS DEMETRIADES, DECEASED,

Appellant-Plaintiff,

v.

MARINA YEROLEMI,

Respondent-Defendant.

(*Civil Appeal No.* 6556).

Adoption order—Effect—Is a judgment in rem and as such binding not only on the parties immediately connected therewith but the world at large—Review of—In which proceedings and at the instance of whom may be sought—Appellant estopped from litigating validity of adoption order by a judgment in personam in which he was a party and in which validity of adoption order was a fact directly in issue in the first action.

Res judicata—Estoppel—Action on right to inherit—Which was conclusively settled in a previous action between the same parties—Plaintiff estopped by a cause of action estoppel from litigating anew the rights of defendant to inherit.

Abuse of the process of the Court—Meaning.

By an adoption order made on 20th January, 1958, by a competent Court, Marina Yerolemi, the respondent, became the adopted child of Maroulla Yerolemi, late of Paphos. Maroulla was survived by her father Omiros Demetriades, who died intestate on 4th February, 1967, leaving as heirs his daughter Iro, born in lawful wedlock and the adopted daughter of Maroulla, that is, the respondent. Lambros Nicolaides, an advocate of Paphos, the appellant, was appointed administrator of the estate of Omiros Demetriades. He was also the administrator of the property of the aforementioned Iro Demetriadou, a mental patient. In his dual capacity as trustee of the estate

of the deceased and of Iro Demetriades, he disputed the right of Marina to a share in the inheritance contending the rights of inheritance of an adopted child were confined to the adoptive parents and did not extend to their relatives.

In an action by Marina against the estate and Iro Demetriadou the District Court gave judgment for her and issued a declaration that she was entitled to inherit Omiros Demetriades in precisely the same way that a grand-child is entitled in law to inherit a grand-father wherever his parent predeceases her. An appeal was filed against the above judgment but was dismissed; and the right of Marina to rank as an heir of the deceased was acknowledged and her right to inherit Omiros Demetriades definitely settled. Following the dismissal of the appeal Lambros Nicolaides, the administrator, brought another action whereby he, inter alia, disputed the validity of the adoption order and the right of Marina to inherit Omiros Demetriades.

Upon appeal by the administrator against the dismissal of his action:

Held, (1) that an adoption order is a species of a judgment in rem and as such binding not only on the parties immediately connected therewith, but the world at large; that no one is thereafter allowed to question the effect of the order; that an estoppel arises in relation to strangers to the proceedings as well; that the matter is deemed judicially settled and is regarded as res judicata not only between parties to the adoption order but as among strangers as well.

Held, further, that the review of an adoption order could be undertaken only within the content of the adoption proceedings themselves or possibly by certiorari; that in the context of the adoption proceedings an adoption order could only be reviewed at the instance of a party with a direct interest thereto, such as the adopted child, the natural parents and adoptive parents. No other party can rank as an aggrieved party and be heard to question the adoption order.

(2) That the appellant is estopped from litigating the validity of the adoption order by virtue of a judgment in personam as well, that of *Nicolaides and Another* v. *Yerolemi* (1982) 1 C.L.R. 656; that he was a party in the first proceedings and as such estopped from litigating anew the rights of the respondent to

inherit from the estate of Omiros Demetriades, an issue conclusively settled in the first action; that he is thus estopped by a cause of action estoppel; that an issue estoppel operates against him as well for the efficacy of the adoption order was a fact directly in issue in the first action that was definitely settled by the judgment of the Court; and that, moreover, an admission to that end was made in the defence; and that, therefore, the trial Court was plainly right to hold that appellant was barred from litigating afresh the issue of the inheritance rights of the respondent, a matter finally settled in the first action; accordingly the appeal must fail.

Appeal dismissed.

Per curiam: Though it can be seriously argued that the present proceedings do constitute an abuse considering their main object was to neutralize the decision of the Supreme Court in *Nicolaides & Another* v. *Yerolemi* (1982) 1 C.L.R. 656, given the outcome of the appeal, it is unnecessary to give a definite answer to the question whether the institution of the present proceedings amounted to an abuse of process.

Cases referred to:

Nicolaides and Another v. *Yerolemi* (1982) 1 C.L.R. 656;

Re Skinner (An infant) [1948] 1 All E.R. 917 (C.A.);

Re F (infants) [1977] 2 All E.R. 777 (C.A.);

Handerson v. *Henderson* [1843–1860] All E.R. Rep. 347;

Carl–Zeiss–Stiftung v. *Rayner & Keeler Ltd. and Others (No. 2)* [1966] 2 All E.R. 536 at p. 564;

Thoday v. *Thoday* [1964] 1 All E.R. 341;

Fidelitas Shipping Co. Ltd. v. *V.O. Export Shelb* [1965] 2 All E.R. 4;

Theori and Another v. *Djoni and Another* (1984) 1 C.L.R. 296.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Chrysostomis, P.D.C. and Papas, D.J.) dated the

31st March, 1983 (Action No. 727/80) whereby it was declared that the defendant an adopted child of Omiros Demetriades was entitled to inherit the said Omiros Demetriades in the same way as a grand-child is entitled in law to inherit a grand-father.

E. Komodromos, for the appellant.

A. Triantafyllides with *St. Mc. Bride*, for the respondent.

Cur. adv. vult.

LORIS J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Discourse of the facts of the case and their tabulation in chronological order will, I am of the opinion, best illuminate the issues on appeal and shed light on their implications.

By an adoption order made on 20th January, 1958, by a competent Court, namely, the District Court of Paphos, Marina Yerolemi, the respondent, became the adopted child of Maroulla Yerolemi, late of Paphos. Maroulla was survived by her father Omiros Demetriades, who died intestate on 4th February, 1967, leaving as heirs his daughter Iro, born in lawful wedlock and the adopted daughter of Maroulla, that is, the respondent.

Lambros Nicolaides, an advocate of Paphos, the appellant, was appointed administrator of the estate of Omiros Demetriades. He was also, it must be noticed, the administrator of the property of the aforementioned Iro Demetriadou, a mental patient. In his dual capacity as trustee of the estate of the deceased and of Iro Demetriades, he disputed the right of Marina to a share in the inheritance contending the rights of inheritance of an adopted child were confined to the adoptive parents and did not extend to their relatives. Faced with the refusal of the administrator to recognize her professed rights to inheritance, she raised an action before the District Court of Paphos (Action 1114/76) joining as defendants the estate and Iro Demetriadou, through their trustee, Lambros Nicolaides, the appellant. In her statement of claim she asserted that her claim rested on her status as the adopted child of the daughter of the deceased evidenced by an order of adoption issued by a competent Court. Her status as the adopted child of Maroulla

was not questioned; it was admitted. Issue was joined only respecting the right of an adopted child to inherit the parents of the adopters, a pure question of law.

The District Court of Paphos gave judgment for Maroulla Yerolemi(1) and issued a declaration that she was entitled to inherit Omiros Demetriades in precisely the same way that a grant-child is entitled in law to inherit a grand-father whenever his parent predeceases her. An appeal was filed challenging the decision of the Court as founded on a misinterpretation of the relevant provisions of the Adoption Law, Cap. 274, sections 10, 11 and 12 in particular. On the day the appeal came up for hearing, counsel acting for Lambros Nicolaides, pressed an application before the Supreme Court for the amendment of the defence in a manner retracting their acknowledgment of the validity of the adoption order of Marina Yerolemi, asserting instead that the adoption order was invalid. It was a far reaching amendment casting a new complexion on the case of the appellant, defendant before the trial Court. The Supreme Court dismissed the application as wholly unacceptable in view of its nature, altering the basis of the defence and the late stage at which it was made–*Nicolaides & Another* v. *Yerolemi* (1980) 1 C.L.R., p.1.

Eventually, the appeal was heard and subsequently dismissed. The right of Marina to rank as an heir of the deceased was acknowledged and her right to inherit Omiros Demetriades definitively settled. Notwithstanding the authority given thereby to Lambros Nicolaides to proceed and wind up the affairs of the administration, he raised the present proceedings activated, as we were told by counsel appearing for him, by the conscientiousness that an administrator must exhibit in managing the affairs of the administration. He wanted, we were informed, to leave nothing undone that a prudent administrator ought to have done in protecting the estate. We were referred to the standard of the duty of an administrator summarized in *Williams and Mortimer*, Executors, Administrators and Probate, 1970, at p. 950. Not only an administrator must be perfectly honest but prudent as well and avoid every act of carelessness in facing claims against the estate. Whatever the motives of the admi-

(1) Judgment was given on 16th December, 1967.

nistrator may have been, the practical result sought to be achieved by the action under consideration, on appeal, was to neutralize the effect of the judgment of the Court in the first action, that is, *Nicolaides & Another* v. *Yerolemi* (1982) 1 C.L.R. 656.

Counsel for the respondent disputed both before the District Court and before us, the motives of Micolaides in embarking upon the second action submitting his motives were dubious. At the trial Court he was cross-examined with regard to his interest in the estate of Iro Demetriadou in case she predeceases him; it emerged he will be entitled to inherit a share of her estate along with a number of other relations. In the submission of counsel for the respondent, the proceedings before us are an abuse of the process in that they aim to achieve nothing other than destruction of the efficacy of the judgment of the Court in the first action.

The trial Court dismissed the action on four separate grounds, each one of which separately warranted the dismissal of the action. These grounds we may compendiously summarize as follows:

(a) The validity of the adoption order made in 1958 could not be made the subject of inquiry in proceedings for a declaration of the rights of the parties. If any procedural avenue laid open to the appellant, it was through certiorari or possibly by seeking leave to appeal out of time against the adoption order of 1958— *Re Skinner (an infant)* [1948] 1 All E.R. 917 (C.A.).

(b) An adoption order is not an ordinary judicial order but an exceptional one because it changes the status of the person adopted and is binding on the world at large. Only the person adopted or persons immediately affected by the adoption order, such as the natural and possibly the adoptive parents could be heard to dispute an adoption order and have a litigable grievance. Dicta to that effect accepted by the Court as correctly stating the law appear in *Re F (infants)* [1977] 2 All E.R. 777 (C.A.).

(c) The right of Marina Yerolemi to inherit Omiros Demetriades was judicially settled in the first action. The

issue could not be legitimately reopened. The matter was as between the parties res judicata. Consequently, the administrator being a party thereto was estopped from litigating the same matter afresh. Reference was made by the trial Court to a number of cases and textbooks defining the compass of res judicata and illustrating its application:

Henderson v. *Henderson* [1843-1860] All E.R. (Rep.), 374; *Carl-Zeiss-Stiftung* v. *Rayner & Keeler, Ltd. and Others (No. 2)* [1966] 2 All E.R. 536, at p. 564; *Thoday* v. *Thoday* [1964] 1 All E.R. 341; *Fidelitas Shipping Co. Ltd.* v. *V/O Export-Shelb* [1965] 2 All E.R. 4; *Spencer-Bower and Turner* on Res Judicata 2nd Ed., paras. 18 and 19; *Halsbury's* Laws of England, 3rd Ed., Vol. 15, para. 361.

(d) On the merits as well assuming it was permissible to inquire into the validity of the 1958 adoption order, the trial Court held that the case for the appellant could not be sustained.

Counsel for the appellant tried to persuade us that the obstacles noticed by the trial Court in the way of the administrator succeeding were inexistent and invited us to reverse the judgment and in essence set aside the adoption order of 1958. Excusing the failure of his client to raise the issue of the validity of the adoption order earlier, he attributed it to his ignorance of the facts relevant to the making of the order. On the other hand, there is nothing to suggest there was any difficulty in making inquiries into the circumstances of the adoption earlier or that with reasonable diligence the facts relevant thereto could not be traced at an earlier stage. It must be mentioned that Lambors Nicolaides was the advocate who made the application for the adoption of Marina Yerolemi.

The appellant largely rested his case on section 28 of Cap. 274, the provisions of which we quote below:

"No adoption shall be valid and have any effect unless made in accordance with the provisions of the law".

He construed the above provisions of the law as empowering any Court at any future date to inquire into the validity of

the order and that it was open to a Court other than that issuing the order to inquire into the existence of the prerequisites for the making of the adoption order. With respect we disagree with the interpretation of section 28 favoured by counsel for the appellant. To our comprehension what section 28 purported to accomplish was to lay down that only adoption orders made by a competent Court under Cap. 274 could be heeded in law. The legislator did not aim, by the enactment of section 28, to throw an adoption order made by a competent Court, as in this case, in the melting pot of future litigation. Given our construction of section 28, the case for the appellant is considerably weakened.

Counsel for the respondent not only supported the decision as correct but submitted the present proceedings were mainly engineered to bypass, as mentioned, the effect of the judgment of the Court in the first action between the parties. Not only is the decision of the trial Court supportable on each one of the grounds upon which it was dismissed by the trial Court, but examined in their totality, the proceedings constitute an abuse of the process of the Court.

We have carefully weighed the arguments raised and pondered their implications. In the end we are firmly of opinion there is no substance whatever in this appeal.

To begin with the validity of the 1958 adoption order could under no circumstances be inquired into in the context of the present proceedings. An adoption order is a species of a judgment in rem and as such binding not only on the parties immediately connected therewith, but the world at large. The significance of this appreciation of the effect of an adoption order is that no one is thereafter allowed to question the effect of the order. An estoppel arises in relation to strangers to the proceedings as well. The matter is deemed judicially settled and to employ the pertinent legal terminology the matter is regarded as res judicata not only between parties to the adoption order but as among strangers as well. Judicial orders settling status may be set up at any time without pleading them(1). As *Phipson* explains, the importance attached in law to judgments

(1) Phipson on Evidence, 12th Ed., para. 1312.

defining the status of a person, is but a reflection of the policy of the law in matters of personal status necessary in the interest of social tranquility*.

Lord Denning hinted in *Re Skinner* (supra) that the review of an adoption order could be undertaken only within the context of the adoption proceedings themselves or possibly by certiorari. The clear message is that the validity of an adoption order cannot be reviewed incidentally in any other proceedings. This approach is wholly consistent with the rule of res judicata operating in cases of judgments in rem. The decision is binding on each and everyone, the matter cannot be reopened and be made the subject of fresh litigation.

Further we agree with the trial Court that even in the context of the adoption proceedings an adoption order could only be reviewed at the instance of a party with a direct interest thereto, such as the adopted child, the natural parents and adoptive parents. No other party can rank as an aggrieved party and be heard to question the adoption order. In this respect we are wholly in agreement with dicta to that effect in *Re F (infants)* (supra).

Any relaxation of the binding effect of an adoption order would expose the status of an adopted person to the whirlwinds of fortune, something intrinsically unfair and socially destructive. The appellant is estopped from litigating the validity of the adoption order by virtue of a judgment in personam as well, that of *Nicolaides and Another* v. *Yerolemi* (1982) 1 C.L.R. 656. He was a party in the first proceedings and as such estopped from litigating anew the rights of the respondent to inherit from the estate of Omiros Demetriades, an issue conclusively settled in the first action. He is thus estopped by a cause of action estoppel. An issue estoppel operates against him as well for the efficacy of the adoption order was a fact directly in issue in the first action that was definitely settled by the judgment of the Court. Moreover, an admission to that end was made in the defence. It is not our aim to embark on a detailed discussion of the doctrine of res judicata, a subject extensively discussed in a recent judgment of the Supreme Court, *Theori and Another* v. *Djoni and Another* (1984) 1 C.L.R. 296**.

* Phipson (supra), para. 1315.

** See also *Phipson on Evidence*, 12th Ed., para. 1344, and *Halsbury's Laws* of England, 16th Ed., para. 1560.

The trial Court was plainly right to hold that appellant was barred from litigating afresh the issue of the inheritance rights of the respondent, a matter finally settled in the first action. In our judgment the action was patently unfounded and the appeal cannot have a different fate.

The only matter left untouched so far in this judgment is the submission that the present proceedings constitute an abuse of the process of the Court. Abuse of process is a generic concept; it aims to stop a misuse of the judicial process. It is perhaps difficult to give a comprehensive definition but easier to identify acts of abuse of process*. Broadly use of the judicial process for an ulterior purpose, that is, a purpose other than that professed in the action, as well as conduct calculated to subvert, divert or neutralize the judicial process, constitutes an abuse of process. It can, therefore, be seriously argued that the present proceedings do constitute an abuse considering their main object was to neutralize the decision of the Supreme Court in *Nicolaides & Another* v. *Yerolemi* (1982) 1 C.L.R. 656. However, given the outcome of the appeal, it is unnecessary to give a definite answer to the question whether the institution of the present proceedings amounted to an abuse of process. Hopefully, we have said enough to remind Lambros Nicolaides, the administrator, of his duty to proceed without further delay to wind up the affairs of the administration and distribute the estate among the beneficiaries. By his conduct so far, he has unnecessarily delayed the distribution of the estate.

The appeal is dismissed with costs.

Appeal dismissed with costs.

* *Constantinides* v. *Vima Ltd.* (1983) 1 C.L.R. 348.