

1984 February 27

[TRIANTAFYLIDIS, P., L. LOIZOU, MALACHTOS, DEMETRIADES,
STYLIANIDES, JJ.]

KYRIACOS BAGDADES,

Appellant.

v.

1. SPYROS PLOUSSIOU,
2. THE CENTRAL BANK OF CYPRUS,

Respondents

(Revisional Jurisdiction Appeal No. 315).

Practice—Appeal—Recourse for annulment—“Interested party” who has taken part on his own in the proceedings at the trial—Is entitled to file an appeal against a judgment in the recourse.

Legitimate interest—Article 146.2 of the Constitution—Annulment of appointment upon a recourse—Appeal by interested party 5
—Who pending the hearing of the appeal was re-appointed retro-
spectively to his earlier office and has, thus, suffered no detriment
—Recourse by original applicant against the new appointment
which was pending at time of hearing of appeal—Position has 10
not crystallized in such a manner that the interested party is
no longer vested with a legitimate interest entitling him to pursue
his appeal.

Upon a recourse by respondent 1 the trial Judge annulled the appointment of the appellant to the post of Assistant Manager in the service of respondent 2. The appellant, who 15
 during the hearing of the recourse took part in the proceedings on his own, as an interested party challenged the annulment of his appointment by means of an appeal. After the delivery of the judgment of the trial Judge, namely on the 24th October 1983, the appellant was informed that he was appointed retro- 20
 spectively, as from the 6th August 1981, to the post to which his earlier appointment, which was also as from the 6th August 1981, had been annulled by the said judgment; in view of his

re-appointment he has not suffered any detriment as regards salary or other service benefits because of the annulment of his earlier appointment.

5 Respondent 1 in the appeal filed a recourse against the new appointment which was still pending.

On the preliminary objections raised by respondent 1:

10 (a) That the appellant was not entitled to appeal because he was an "interested party" only in the proceedings before the trial Judge and not one of the parties to the recourse;

(b) That the appellant had no longer any legitimate interest entitling him to pursue the appeal any further because, in view of his re-appointment retrospectively, he has not suffered any detriment.

15 *Held*, (1) that an "interested party" is entitled to file an appeal if he has taken part on his own in the proceedings at the trial.

20 (2) That since respondent has filed a recourse (No. 562/83) against the new appointment of the appellant and it is still pending; and that since as a result of it, unless it is eventually withdrawn, the new retrospective appointment of the appellant will be either confirmed or annulled and, possibly, after the first instance decision in this connection an appeal may be filed, it cannot be said that by now the position has crystallized in such
25 a manner and the appellant is no longer vested with a legitimate interest entitling him to pursue his present appeal; and that, accordingly, this appeal will be adjourned sine die pending the final decision in the above recourse.

Order accordingly.

30 Cases referred to:

Theodorides v. Ploussiou (1976) 3 C.L.R. 319 at pp. 330, 331;
Republic v. Nissiotou (*Revisional Jurisdiction Appeal No. 336, not reported yet*);

Republic v. Vassiliades (1976) 3 C.L.R. 82 at p. 88;

35 *Lyssioutou v. Papasavva and Another* (1968) 3 C.L.R. 173;

Republic and Another v. Aristotelous (1982) 3 C.L.R. 497;

Christodoulou v. Kouali and Another (1971) 3 C.L.R. 207.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 15th April, 1983 (Revisional Jurisdiction Case No. 425/81)* whereby appellant's promotion to the post of Assistant Manager in the Central Bank of Cyprus was annulled. 5

Appellant appeared in person.

L.N. Clerides, for respondent 1. 10

No appearance for respondent 2.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. At the commencement of the hearing of this appeal there was raised by counsel for respondent 1, who was the applicant in recourse No. 425/81, the preliminary objection that the appellant is not entitled to appeal because he was an "interested party" only in the proceedings before the trial Judge and not one of the parties to the recourse. It was, also, stressed by counsel for respondent 1 that respondent 2, which was the respondent to the recourse has not filed an appeal against the judgment of the trial Judge by means of which there was annulled the appointment of the appellant to the post of Assistant Manager in the service of respondent 2. 15 20

The position in Cyprus as regards the right to appeal of an "interested party" in proceedings under Article 146 of the Constitution has been expounded in *Theodorides v. Ploussiou*, (1976) 3 C.L.R. 319, 330, 331 and, even more recently, in *The Republic v. Nissiotou* (Ruling in Revisional Jurisdiction Appeal 336, not reported yet). It is a position which is somewhat sui generis, analogous to, but not exactly the same as, that in Greece, because in determining what are the rights of an "interested party" in Cyprus as regards appealing against a first instance judgment in a recourse under Article 146 there has to be borne in mind the nature of the two-tier litigation which is envisaged by section 11(2) of the Administration of Justice 25 30 35

* Reported as *Ploussiou v. Central Bank of Cyprus* in (1983) 3 C.L.R. 398.

(Miscellaneous Provisions) Law, 1964 (Law 33/64), as such nature has been explained in, inter alia, *The Republic v. Vassiliades*, (1967) 3 C.L.R. 82, 88.

5 In the present instance the appellant is an “interested party” who was allowed to take, and did take, part on his own at the hearing of the recourse before the trial Judge.

10 The situation, therefore, in this case seems to be the same as that in *Lyssiotou v. Papasavva and The Republic*, (1968) 3 C.L.R. 173, where an “interested party” who had taken part, through counsel, at the trial, appealed, even though the respon-
15 dent organ of the Republic did not appeal too, and the appeal of the said “interested party” was heard and determined by the Full Bench of the Supreme Court. Of course, in the *Lyssiotou* case, supra, it does not appear that there was raised the preliminary objection which was raised today before us, but such objection is not, in our opinion, sustainable because
20 from what was said in this respect in the *Theodorides* case, supra, it can be derived that an “interested party” is entitled to file an appeal if he has taken part on his own in the proceedings at the trial (and see, also, *The Republic and Haviara v. Aristotelous*, (1982) 3 C.L.R. 497).

25 It is useful to mention, too, that in *Christodoulou v. Kouali and the Republic*, (1971) 3 C.L.R. 207, “interested parties” appealed even though they had not taken part on their own at the trial; but in that case no objection was raised as regards their right to appeal and, in any event, we are not concerned in this instance with such a situation because in the present case the appellant has taken part on his own, as in the *Lyssiotou* case, supra, in the proceedings before the trial Judge.

30 For all the foregoing reasons we find that this appeal could be filed by the appellant.

35 We shall deal, next, with another submission of counsel for respondent 1 which is based on developments in this case which have supervened after the delivery of the judgment of the trial Judge, namely that on the 24th October 1983 the appellant was informed that he was appointed retrospectively, as from the 6th August 1981, to the post to which his earlier appointment, which was also as from the 6th August 1981, had been annulled by the said judgment.

The appellant has stated before us today that in view of his re-appointment he has not suffered any detriment as regards salary or other service benefits because of the annulment of his earlier appointment.

Counsel for respondent 1 has submitted that, in the circumstances, the appellant has no longer any legitimate interest entitling him to pursue this appeal further. 5

As the right of an interested party to take part in first instance proceedings in a recourse, or to appeal, or to take part in an appeal, can, as it appears from the *Theodorides* case, supra, be regulated by the Court, in the interests of justice, by exercising its powers under rule 19 of the Supreme Constitutional Court Rules of Court, we would not have allowed the appellant to pursue any further this appeal if there had elapsed, without any other development in the meantime, a period of seventy-five days (see Article 146.3 of the Constitution) since the retrospective new appointment of the appellant, because then, indeed, he would possess no legitimate interest at all entitling him to proceed further with this appeal. 10 15

During, however, the said period of seventy-five days respondent 1 in this appeal has filed a recourse (No. 562/83) against the new appointment of the appellant and it is still pending; and as a result of it, unless it is eventually withdrawn, the new retrospective appointment of the appellant will be either confirmed or annulled; and, possibly, after the first instance decision in this connection an appeal may be filed. 20 25

So, it cannot be said that by now the position has crystallized in such a manner that the appellant is no longer vested with a legitimate interest entitling him to pursue his present appeal.

In the light of all the foregoing we think that the proper course, in the circumstances, is to adjourn sine die this appeal on condition that if the aforesaid recourse No. 562/83 is either withdrawn, or is dismissed and its dismissal is either not challenged by appeal or is confirmed on appeal, then this present appeal will be dismissed accordingly, with no order as to its costs. If, however, respondent 1 to this appeal succeeds in his recourse No. 562/83 to annul the new appointment of the appellant, either in whole or in part, and, particularly, as regards 30 35

its retripectivity, and such annulment is challenged by appeal and is confirmed on appeal, then the appellant will be at liberty, within three months from the final decision in that recourse, either in the first instance or on appeal, to apply, in writing, to the Registry of this Court, that this appeal should be fixed once again for hearing.

Order accordingly.