1987 December 23

[A LOIZOU DEMETRIADES SAVVIDES JJ]

TYPOGRAFIKI EKDOTIKI ETERIA «PROODOS» LTD

Appellants-Plaintiffs,

v

1 PAVLOS PAVLOU,
2 MAUREEN O' SULLIVAN,

Respondents-Defendants

(Civil Appeal No 7139)

Civil Procedure — Writ of Summons — Language of — The Civil Procedure Rules Order 58, Rule 1 — Writ of Summons, drafted in Greek and served on a defendant, who was Irish and her mother tongue English — Service of, rightly set aside

Constitutional Law — Language in judicial proceedings — Constitution Articles 3 1, 3 4 and 189 — The Laws and Courts (Text and Proceedings) Law, 1965 (Law 51/1965) section 4 — Provisions of justified by the Law of Necessity

The trial Judge set aside the service of the writ of summons on defendant 2 in the action on the ground that as such defendant was Irish and her mother tongue English the writ of summons should have been drafted, in accordance with Ord 58, Rule 1* of the Civil Procedure Rules, in English and not as it was in fact drafted in the Greek language

Hence this appeal In arguing the appeal the appellants contended that the said rule is repugnant to the Constitution **

Held, dismissing the appeal (1) The Civil Procedure Rules, 1954 previously cited as the Rules of Court, 1938, were in force long before the declaration of the Independence of Cyprus and embodied the rules to be followed in all matters concerning the practice and civil procedure of the Court They remained in force by virtue of the Rules of Court (Transitional Provisions) 1960, issued by the High Court at the time under Article 163 of the Constitution (Vide Rule 3*** thereof)

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* *Quoted at p 531*

** The relevant Articles of the Constitution, namely Articles 3 1, 3 4 and 189 are quoted at p 532

*** Quoted at p 532

(2) Section 4 of Law 51/65 provides that «Notwithstanding the provision of any law and until the enactment of any other law on the matter, any procedure before any court will continue to be conducted in any of the languages used in the courts until today »

(3) The object of the introduction of Article 189 of the Constitution, the further reasons which led to the need of the enactment of Law 51/65, and the validity of this law have been expounded by the Full Bench of the Supreme Court in the case of *Koumi v Kortan (1983) 1 C L R 856, at pp 859, 860 and 861*. In that case the Court considered such law as valid on the basis of the doctrine of necessity. It follows that this appeal should be dismissed

Appeal dismissed with costs

Cases referred to

Koumi v Kortan (1983) 1 C L R 856

Appeal.

Appeal by plaintiffs against the order of the District Court of Nicosia (Emphiedjis, Ag. D J.) dated the 27th March, 1986 (Action No. 5519/85) setting aside the writ of summons on defendant 2.

C. Emilianides, for the appellants

N. Andreou, for the respondents.

Cur. adv. vult.

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

SAVVIDES J.: This is an appeal against an order of the District Court of Nicosia (Emphiedjis, Ag. D.J.) setting aside the service of the writ of summons on defendant 2.

The facts of the case are briefly as follows:-

The appellants on 12.6.1985 issued a writ of summons against the defendants in Action 5519/85 of the District Court of Nicosia, claiming £824.- balance of an invoice for work done by appellants for the defendants. Copy of the writ of summons in Greek was served on both defendants. Counsel for defendant 2 moved the Court by application dated 1st November, 1985, to set aside the service of the writ of summons on such defendant, on the ground that the writ of summons served on the defendant was in Greek, a language foreign to the defendant who was Irish and her mother language was English. The application was based on Order 58, rule 1 of the Civil Procedure Rules. The learned trial Judge after hearing argument on both sides came to the conclusion that in the

light of the provisions of Order 58, rule 1 of the Civil Procedure Rules, copy of the writ of summons served in Cyprus on a person who was neither Greek-speaking nor Turkish-speaking should be in English.

Counsel for appellants argued that the trial Court misinterpreted the relevant legislation and the Rules and ignored the express provisions of the Constitution which are superior to any law or rules. Therefore, it exercised its discretion wrongly. Counsel contended that under paragraphs 1 and 4 of Art. 3 of the Constitution, the official languages of the Republic are Greek and Turkish and, therefore, service upon the respondent of the writ of summons in Greek was a proper one under the provisions of the Constitution.

Order 58 of the Civil Procedure Rules deals with the language used in Court. Rule 1 provides as follows:

> «1. Subject to rule 3 of this Order, any document served in Cyprus shall, if served on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English.»

The Civil Procedure Rules, 1954 previously cited as The Rules of Court, 1938, were in force long before the declaration of the Independence of Cyprus and embodied the rules to be followed in all matters concerning the practice and civil procedure of the Court.

The introduction of Order 58 was obviously necessitated by the recognition during the British Rule of the fact of the existence of the two main languages prevailing in Cyprus and used by the majority of the population which consisted of members of either of the two communities of the Island, Greeks and Turks. The English language was to be used in cases where service was to be effected on parties who were neither Greek-speaking nor Turkish-speaking Cypriots but belonged to any other class of people speaking a foreign language. English was at the time a language which was mostly spoken by all foreigners and which was the official language. This was the reason for the provision in the rules that service of documents on defendants who were neither Greek-speaking nor Turkish-speaking should be in English.

The said Rules of Court remained in force by virtue of the Rules of Court (Transitional Provisions) 1960, issued by the High Court at the time under Article 163 of the Constitution.

Rule 3 of the 1960 Rules, reads as follows -

«3 Τηρουμένων των διατάξεων του Συντάγματος, πας κατά την αμέσως προηγουμένην της ημέρας ανεξαρτησίας ημέραν ισχύων διαδικαστικός κανονισμός, πίναξ δικαστικών τελών και η εν τοις δικαστηρίοις ακολουθουμένη και νόμω καθοριζομένη πρακτική και δικονομία (practice and procedure) θα εξακολουθούν να ισχύουν μέχρις ου τροποποιηθούν δια μεταβολής, προσθήκης ή καταργήσεως, δυνάμει διαδικαστικού κανονισμού και θα εφαρμόζωνται και θα εφαρμόζωνται μετα τοιούτων μετατροπων καθ' ο μετρον ειναι τουτο αναγκαιον προς συμμόρφωσιν προς τας διαταξεις του Συντάγματος »

(«Subject to the provisions of the Constitution, any rule of court, schedule of court fees and the practice and procedure defined by law and followed in the courts which were in force on the day preceding the day of independence will continue to apply until they are amended by alteration addition or repeal, on the basis of a rule of court and will be interpreted and applied with such changes as far as this is necessary for compliance with the provisions of the Constitution»)

Paragraphs 1 and 4 of Article 3 of the Constitution, read as follows -

«1 The official languages of the Republic are Greek and Turkish

4 Judicial proceedings shall be conducted or made and judgments shall be drawn up in the Greek language if the parties are Greek, in the Turkish language if the parties are Turkish, and in both the Greek and the Turkish languages if the parties are Greek and Turkish The official language or languages to be used for such purposes in all other cases shall be specified by the Rules of Court made by the High Court under Article 163.»

Under Article 189 the following provision is made -

«Notwithstanding anything in Article 3 contained, for a period of five years after the date of the coming into operation of this Constitution-

(a) all laws which under Article 188 will continue to be in force may continue to be in the English language;

(b) the English language may be used in any proceedings before any Court in the Republic.»

On 9th September 1965, a law entitled the Laws and Courts (Text and Proceedings) Law, 1965, Law No. 51 of 1965 was enacted, the preamble of which reads as follows:-

«Whereas the translation of the text of all the Laws in force has not become possible until to-day:

And whereas in the circumstances the temporary legislative regulation on certain matters relating to the procedure before the Courts has become necessary:

Therefore the House of Representatives enacts as follows:»

Under section 3 of the said Law, provision is made authorising the Attorney-General of the Republic to look into and supervise the translation of the English text of the laws in force at the coming into operation of that law and the said laws remained in force until their translation became possible. Furthermore, under section 4, the following provision was made:

«4. Ανεξαρτήτως της διατάξεως οιουδήποτε νόμου και μέχρις ου γίνη επί του προκειμένου άλλη νομοθετική πρόνοια πάσα ενώπιον οιουδήποτε δικαστηρίου διαδικασία θα εξακολουθήση να διεξάγηται εις οιανδήποτε μέχρι τούδε εν χρήσει εν τοις δικαστηρίοις γλώσσαν.»

(«Notwithstanding the provision of any law and until the enactment of any other law on the matter, any procedure before any court will continue to be conducted in any of the languages used in the courts until today.»)

The object of the introduction of Article 189 and the further reasons which led to the need of the enactment of Law 51/65, have been expounded by the Full Bench of the Supreme Court in the case of *Koumi v. Kortari* (1983) 1 C.L.R. 856, at pp. 859, 860 where we read the following:-

«It appears from this latter article that when the Constitution was being drawn up, its drafters obviously took cognizance of the fact that not only the laws, rules and regulations in force at

the time were written in English, but that the whole legal system of the then British colony was basically modelled on and followed the English Legal System - Hence the necessity to allow some time which they thought would have been sufficient in the circumstances to be five years for the necessary changes in the language to be made. Circumstances proved that they were over optimistic as the English Common Law is not merely based on rules and regulations which could be translated but on caselaw as it is to be found in law reports and commented upon in text-books and writings that are all written in the English language. Moreover precedents of forms in judicial proceedings which are the products of the experience and knowledge of their drafters based on the caselaw are also written in English. It was therefore, discovered in 1965 that that was an immense task which brought about a necessity that had to be faced by some legislative action so that there would not have followed a disruption and chaos in the administration of justice. A Law entitled The Laws and Courts (Text and Proceedings) Law, 1965, (Law No. 51 of 1965), was enacted ....»

The validity of Law 51/65 has been considered by the Full Bench in *Koumi v. Kortari* (supra) which held (per A. Loizou, J) at p. 861 as follows:-

«Having given the matter our best consideration and taking judicial notice of the existing situation as well as of the contents of the Preamble highlighting a situation as ascertained by the Executive and the Legislative and the magnitude of the task that was to be faced by those responsible for the translation of the necessary material, we have come to the conlcusion that this law is valid on the basis of the doctrine of necessity in view of the necessity that has arisen and the temporary nature of the law which has been enacted to meet it.

It may also be pointed out that this Law does not in any way exclude the use of the Greek or Turkish languages in Court proceedings and matters relevant thereto and which have in practice been extensively used. It was therefore, in view of its provisions wrong to find as irregular the filing of the Statement of Claim in English.»

The issue before the Full Bench in the above case was the validity of an order of the District Court of Limassol in Action No. 1564/79 whereby it was ordered that the statement of claim filed in the above action and drawn up in English should be struck out and a new statement of claim be filed and delivered in Greek. The appeal was allowed and the order of the trial Court was set aside.

Bearing in mind the legal position as above and the fact that Order 58, rule 1 still continues to be in Force, we find that the trial Judge was right in reaching his decision and ordering the setting aside of the service of the writ of summons in Greek on defendant 2 an English-speaking person.

In the result this appeal fails and is hereby dismissed with costs.

Appeal dismissed with costs.