

1988 February 16

[A LOIZOU, SAVVIDES, KOURRIS, JJ]

PANAYIOTA MINA PAPADEMETRIOU,

Appellant-Plaintiff,

v.

ANTONIOS SOFOKLI CHRISTOFI AND OTHERS,

Respondents - Defendants.

(Civil Appeal No. 7024).

5 *Civil Procedure — Trial, day of — Summons for directions under 0.30 of the Civil Procedure Rules moving Court to fix a day for the trial of the action — The Judge dealing with the summons is not entitled to examine the effectiveness of an earlier Order for substituted service in bringing the action to the knowledge of one of the defendants.*

The facts of this case sufficiently appear in the Judgment of the Court.

Appeal allowed with no order as to costs.

10 **Appeal.**

Appeal by plaintiff against the ruling of the District Court of Paphos (Chrysostomis, P.) dated the 15th December, 1984 (Action No. 69/80) whereby his application to fix the action for hearing was dismissed.

15 *E. Korakides*, for the appellant.

No appearance for the respondents.

/ A.LOIZOU J.: The Judgment of the Court will be delivered by Mr. Justice Kourris.

20 KOURRIS J.: This is an appeal from a Ruling of the President of the District Court of Paphos whereby he refused to fix Action No. 69/80 for hearing.

The appellant - plaintiff in the said action on 15.12.84 took out a summons for directions to move the Court to fix the action for

hearing under Order 30 of the Civil Procedure Rules. The learned President in dealing with the application proceeded and examined whether service has been effected on defendant 4 because it appeared to him from the name that she was a Turkish - Cypriot.

It should be noted that on the application of the plaintiff granted by another Judge, substituted service has been allowed on defendant 4 and the President thought it proper to examine whether the proceedings would be likely to come to the knowledge of defendant 4 by reason of the substituted service before deciding whether to fix the action for hearing. He examined the application for substituted service and concluded that in all reasonable probability the proceedings would not come to the knowledge of the defendant No. 4 and consequently he refused to fix the application for hearing.

We have no doubt that the learned President was wrong in refusing to fix the action for hearing before satisfying himself that the application for substituted service was rightly granted by another Judge. He took upon himself to act as an Appellate Judge from the decision of another Judge to grant substituted service when he was not entitled to do so. What he had to examine was an application to fix the action for hearing and he ought to have confined himself to the examination of that application. When he heard the application counsel appearing for the other three defendants had no objection to the fixing of the action for hearing and there was no application before the learned President to set aside the substituted service.

In these circumstances, the appeal is allowed but with no order as to costs.

*Appeal allowed with
no order as to costs.*