

1988 February 8

[TRIANTAFYLIDIS, P., LORIS, STYLIANIDES, JJ.]

ANNITA GLAFCOU MICHAELIDOU,  
*Appellant-Plaintiff,*

v.

SOLON GREGORIOU AND OTHERS,  
*Respondents - Defendants.*  
*(Civil Appeal No. 6341).*

*Jurisdiction — Inferior Court — Their jurisdiction emanates from the Statute under which they are constituted — The Jurisdiction of the District Courts is governed by sections 21-24 inclusive of the Courts of Justice Law, 14/1960 — The parties cannot confer jurisdiction by consent.* 5

*Jurisdiction — District Courts — The Courts of Justice Law, section 21(2) — The phrase «any other matter relating to immovable property» should not be interpreted ejusdem generis with «partition» or «sale» — A claim for damage to immovable property caused by fire is a claim «relating to immovable property» (Cyprus Hotels Co. Ltd. v. Hotel Plaza Enterprises Ltd. (1968) 1 C.L.R. 423 distinguished) — It is, also, a claim for a civil wrong.* 10

*Jurisdiction — Lack of — The District Court should not dismiss the action, but only stay the proceedings.*

*Words and phrases: «Any other matter relating to immovable property» in section 21(2) of the Courts of Justice Law 14/60 — It should not be interpreted ejusdem generis to «partition» or «sale» of immovable property.* 15

The appellant is the owner of premises situated in the District of Nicosia. By a contract of lease dated 16.3.79 she leased them to defendants 1, 2 and 3. Defendants 4, 5 and 6 guaranteed the discharge of the obligations of defendants 1, 2 and 3. Defendant 7 took part in the management of the business for which the premises were rented and, at some time, became the owner of such business. 20

All defendants reside within the District of Nicosia. 25

On 20.6.80 the premises were extensively damaged by fire. As a result the appellant brought an action before the District Court of

Lamaca against the said seven defendants claiming damages for breach of the contract of lease, conspiracy and negligence.

5 Originally, the defendants objected to the jurisdiction of the District Court of Lamaca. They later withdrew the objection. The said Court heard the evidence, but, at the end, having found that the plaintiff's claims do not sound in contract, dismissed the action on the ground of lack of jurisdiction.

Hence this appeal.

10 Held, *allowing the appeal*: (1) The material facts contained in the statement of claim, coupled with the evidence adduced, leave no room for a cause of action ex-contractu.

15 (2) «Jurisdiction» means the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute under which the District Court is constituted. Jurisdiction must be acquired before judgment is given. A trial and decision by an inferior Court on a matter on which it has no jurisdiction is a nullity. The District Courts are inferior Courts set up by the Courts of Justice Law, 1960, (Law No. 14/60) made in pursuance of Article 152 of the Constitution. Their jurisdiction is limited by the provisions of sections 21-24 inclusive.

20 (3) The question of jurisdiction is a matter of public policy and cannot be waived by the parties. The parties cannot confer jurisdiction upon a Court that does not possess same by virtue of the statute establishing it.

25 (4) «Any other matter relating to immovable property» in section 21 subsection (2) do not refer to things ejusdem generis with «partition or sale of immovable property», because the Legislature by using the words «any other matter» intended to show that a wider sense was intended. This case is clearly distinguishable from the case of *Cyprus Hotels Co. Ltd. v. Hotel Plaza Enterprises Ltd. and Others* (1968) 1 C.L.R. 423.

30 (5) The claim for damage to immovable property by fire is a civil wrong, but at the same time is a claim relating to immovable property. On either view the District Court of Lamaca lacked territorial jurisdiction to deal with this claim.

The conspiracy was committed in Nicosia.

(6) In the light of O.33, r. 10 of the Civil Procedure Rules the action should have been stayed, not dismissed.

*Appeal allowed with costs.  
Judgment of District Court of  
Lamaca set aside. Proceedings* 5  
*stayed.*

*Cases referred to:*

- Cyprus Hotels Co. Ltd. v. Hotel Plaza Enterprises Ltd. and Others*  
(1968) 1 C.L.R. 423;
- Thompson v. Shiel* (1840) 3 Ir. Eq. R. 135; 10
- HadjiNicola v. HadjiPavlou*, 10 C.L.R. 45;
- Theofanous v. Georghiou* (1969) 1 C.L.R. 203;
- Mouyios and Others v. The Police* (1974) 2 C.L.R. 23;
- R. v. Dennis* [1924] 1 K.B. 867;
- Simpson and Another v. Crowle and Others* [1921] 3 K.B. 243; 15
- Attorney-General and Another (No. 2) v. Savvides* (1979) 1 C.L.R. 349.

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Lamaca (Pikis, P.D.C. and Eliades, D.J.) dated the 4th November, 20 1981 (Action No. 812/80) whereby her action for damages caused to her property in breach of the term of the contract of lease was dismissed.

*K. Talarides with A. Poetis* for the appellant.

*P. Angelides*, for the respondent. 25

*Cur. adv. vult.*

TRIANTAFYLLIDES, P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES, J.: This appeal was made against the Judgment of the District Court of Lamaca by means of which plaintiff's action 30 was dismissed for want of territorial jurisdiction.

The plaintiff-appellant is the owner of immovable property - a two storey building and yard - situated at Nicosia, 105 Prodromou Street.

By a written contract, dated 16/3/79, done at Nicosia, she leased the said premises to defendants 1, 2 and 3 for a period of five years, commencing on 1/3/1979. Defendants 4, 5 and 6 guaranteed the discharge of the obligations of the tenants-defendants under the said written contract. There is a term in the contract that the premises would be used as a cafe-restaurant. The tenants took up possession of the premises. Defendant 7, wife of defendant 1 - not in any capacity party of the aforesaid written agreement - took part in the management of the business and at some stage she became the owner of the business.

In the early hours, shortly after 0200 hours, of 20th June, 1980, a fire erupted in the premises that caused extensive damage to the building and destroyed its contents.

The plaintiff filed this action against all seven defendants, but, as no service was effected within the period of one year, envisaged by Order 4, rule 1 of the Civil Procedure Rules, on defendants 3 and 5, the writ of summons expired and the case against them was abandoned and dismissed.

The plaintiff by the generally indorsed writ of summons claimed damages caused to her premises in breach of the term of the contract of the lease, for conspiracy and for negligence, relying on the provisions of section 53 of The Civil Wrongs Law, Cap. 148, whereby the occupier of premises is liable in damages for loss emanating from fire.

All the defendants have their ordinary residence at Nicosia and their addresses, as given in the writ of summons are within the area of Engomi, a suburb of the Capital within the district of Nicosia.

«Defendants» hereinafter refer to defendants 1, 2, 4, 6 and 7.

The defendants denied and desisted the claim. In paragraph 1 of their defence they raised the preliminary objection that the District Court of Larnaca had no jurisdiction to try this action.

When the case was set down for hearing, after the completion of the pleadings, counsel for the defendants withdrew the objection to the territorial jurisdiction of the trial Court.

The hearing followed its normal course and at the address stage the learned trial Judges invited counsel to address the Court on the question of jurisdiction.

The trial Court found that the statement of claim as formulated, and the evidence adduced by the plaintiff are such that plaintiff's claim does not sound in contract. It is plainly a claim for negligence in the context of section 53 of the Civil Wrongs Law and the Court found that defendants 1, 2 and 7 were liable to the owner for the damage caused to the building of the plaintiff as a result of the fire that started in the premises in the early hours of 20th June, 1980. The Court further found that defendants 1 and 7 were guilty of the tort of conspiracy that led to the setting of the fire and the considerable damage caused as a result thereof.

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The Court decided that its jurisdiction was limited by section 21 of The Courts of Justice Law, (Law No. 14/60), and they had no jurisdiction to take cognizance of the dispute and dismissed the action with costs.

Counsel for the appellant submitted that the finding of the trial Court - that there is no breach of contract - was erroneous; that the substantive jurisdiction of the District Court is set out in section 22 of The Courts of Justice Law; that section 21 regulates the venue; that the objection as to venue may be waived by the defendant who unconditionally subjects to jurisdiction and consent of a party confers territorial jurisdiction on a District Court; and lastly that the provisions of section 21(2) do not include the present case, having regard to the interpretation of the expression «relating to immovable property», in the case of *Cyprus Hotels Co. Ltd. v. Hotel Plaza Enterprises Ltd. and Others* (1968) 1 C.L.R. 423.

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Counsel for the respondents, on the other hand, submitted that territorial jurisdiction is substantive provision and not procedural; that consent, expressed or implied, cannot enlarge the territorial jurisdiction and the provision of section 21, is an insurmountable obstacle in the way of the prosecution of the case before the Lamaca District Court.

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We have given due consideration to the argument of counsel, but on the material before us we are unable to accept the submission that this was an action for breach of contract.

We need not set out *seriatim* the statement of claim; suffices to say that the material facts contained in the statement of claim, coupled with the evidence adduced, leave no room for a cause of action *ex-contractu*.

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«Jurisdiction» means the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute under which the District Court is constituted. Jurisdiction must be acquired before judgment is given - (*Thompson v. Shiel*, (1840) 3 Ir. Eq. R. 135).

The jurisdiction of the inferior Courts in this country is derived from and must be traced in the statute establishing them. A trial and decision by an inferior Court on a matter on which it has no jurisdiction is a nullity.

The District Courts are inferior Courts set up by The Courts of Justice Law, 1960, (Law No. 14/60) made in pursuance of Article 152 of the Constitution. Their jurisdiction is limited by the provisions of sections 21-24 inclusive.

Sections 21 and 23 refer to the territorial jurisdiction of the District Courts in civil matters and in criminal matters respectively.

The material parts of section 21 are paragraphs (a) and (b) of subsection (1) and the first paragraph of subsection (2) which read as follows:-

«21. - (1) A District Court shall, subject to the provisions of section 19, have original jurisdiction to hear and determine any action in accordance with the provisions of section 22 where -

(a) the cause of action has arisen either wholly or in part within the limits of the district in which the court is established;

(b) the defendant or any of the defendants, at the time of the institution of the action, resides or carries on business within the district in which the court is established;

(2) Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate.»

It was submitted by learned counsel for the appellant that this is a procedural provision and may be waived by the parties. In the present case, though the defendants objected to the jurisdiction in their statement of defence, later, at the commencement of the hearing, withdrew their such objection and consequently question

of jurisdiction does not arise. The case of *Christophi Haji Nicola v. Haji Michael Haji Pavlou*, 10 C.L.R. 45 and a number of California authorities were cited in support.

The *Haji Nicola* case was decided in 1911 when the Order in Council of 1882 was in operation. The Order did not limit the territorial jurisdiction of the District Courts. At p. 47 we read:- 5

«With regard to the objection that the Nicosia District Court had no jurisdiction to try the case, properly speaking the objection should have been not that the Court had no jurisdiction, but that the action was irregularly instituted. The Order in Council which confers on the District Courts jurisdiction to try all Ottoman actions, does not limit their jurisdiction to matters arising, or persons residing within the special district of the Court. 10

Order II., Rule 2, which declares that every action (other than an action relating to immovable property) shall be instituted 'either in the District Court of the District within which the Defendant or any Defendant resides, or in the District Court of the District within which any breach of contract, or any wrongful act on which the action is founded is alleged to have occurred' is a rule of procedure. 15 20

A rule of procedure cannot either confer jurisdiction or take away jurisdiction already existing. Its function is to regulate the exercise of jurisdiction. This rule must therefore be interpreted not as limiting the jurisdiction of the District Courts but as regulating its exercise.» 25

In *Kyriacos Theofanous v. Artemis Georghiou* (1969) 1 C.L.R. 203, no objection to the jurisdiction was taken before the District Court, but it was raised for the first time in the appeal. At p. 205 of the report it was said:- 30

«The question as to the territorial jurisdiction was not raised in the course of the hearing and it was raised for the first time as a ground of appeal. It is well settled that a point as to jurisdiction may be taken at any stage if all the facts are before the Court; *Norwich Corporation v. Norwich Electric Tramways Co., Ltd.* [1906] 2 K.B. 119; *Westminster Bank Ltd. v. Edwards* [1942] A.C. 529.» 35

The Court of Appeal dealt with the issue of jurisdiction, but on the facts of the case it found that the trial Court had territorial jurisdiction to deal with that case.

5 In the criminal case *Vasilios Lazarou Mouyios and Others v. The Police* (1974) 2 C.L.R. 23, the accused were charged before the District Court of Nicosia for offences committed at Larnaca and Paphos. They pleaded guilty and were sentenced. They raised the question of the territorial jurisdiction for the first time before the Appeal Court. It was contended by learned counsel for the  
10 respondents that it is too late for the appellants to raise on appeal the issue of jurisdiction and that by the appeal they were precluded from raising such a point. The Court of Appeal relying on the English authorities and particularly on *R. v. Dennis* [1924] 1 K.B. 867, decided that counsel for the appellants could not be  
15 prevented from raising the issue as to the jurisdiction of the trial Court, even though such issue was not raised at the trial. On the substance of the objection it was decided that the District Court of Nicosia did not possess jurisdiction to deal with the counts to which the appellants pleaded guilty, and therefore the  
20 proceedings were a nullity.

The question of jurisdiction is a matter of public policy and cannot be waved by the parties. The parties cannot confer jurisdiction upon a Court that it does not possess same by virtue of the statute establishing it - (*Simpson & Another v. Crowle &*  
25 *Others*, [1921] 3 K.B. 243).

It was submitted that an action for damages caused by fire to immovable property is outside the ambit of «any other matter relating to immovable property». Reference was made to *Cyprus Hotels Co. Ltd. v. Hotel Plaza Enterprises Ltd. and Others* (1968)  
30 1 C.L.R. 423.

We agree with the trial Court that «any other matter relating to immovable property» in section 21 subsection (2) do not refer to things ejusdem generis with «partition or sale of immovable property», because the Legislature by using the words «any other  
35 matter» intended to show that a wider sense was intended.

The present case is clearly distinguishable from that of *Cyprus Hotels* (supra), where it was held, by majority, that an action commenced in the District Court of Nicosia, by means of which there was claimed (a) an injunction restraining the defendants from



taking any further steps for the purposes of arbitration proceedings between the parties to that action under an arbitration clause in a written agreement concerning immovable property in Limassol, (b) a declaration that the matters contained in a «notice for arbitration» served by the said defendants on the plaintiffs in that action did not fall within the arbitration clause in question, and (c) a declaration that the aforementioned agreement was valid, subsisting and binding, was an action within the jurisdiction of the District Court of Nicosia under the provisions of subsection (1) of section 21 of Law 1460 and that such jurisdiction was not excluded by the provisions of subsection (2) of the same section.

The second subsection of section 21 was considered by Triantafyllides, P. in *Attorney-General & Another (No. 2) v. Savvides* (1979) 1 C.L.R. 349.

The claim for damage to immovable property by fire is both a civil wrong, but at the same time is a claim relating to immovable property. On either view the District Court of Larnaca lacked territorial jurisdiction to deal with this claim.

The conspiracy was committed in Nicosia.

Having regard to what we have said earlier about the claims of the appellant in the action, the pleadings, the findings of the trial Court and bearing in mind the definition of «cause of action» in section 2 of Law 1460, we are firmly of the view that the trial Court lacked territorial jurisdiction to try the action.

Order 33, rule 10 of the Civil Procedure Rules provides that where on the trial of any action it appears to the Court before which such action is being tried that it should have been instituted in another Court, the Court trying the action shall not dismiss it but shall stay the proceedings therein and order the plaintiff to pay the defendants' costs.

The District Court of Larnaca did not stay but dismissed the action.

The next question that arises, therefore, is what order is to be made by us?

We have to set aside the Judgment dismissing the action and make an Order consonant to the Rules, staying the proceedings.

Mechanism is provided in the Courts of Justice Law 1460 for the transfer of the case to the appropriate District Court.

In the result the appeal is allowed as above with costs.

*Appeal allowed with costs.*