

SUPREME COURT OF CYPRUS
APPELLATE JURISDICTION

(Civil Appeal No. E37/2021)

June 22nd, 2021

[PANAYI, P., YIASEMIS, POUYIOUROU, Justices]

1. PHOEBUS, CHRISTOS CLERIDES, N. PIRILIDIS & ASSOCIATES,
2. DR. CHRISTOS CLERIDES, ADVOCATE,

Appellants-Defendants 1 and 2,

v.

1. XXX CHRISTOFOROU,
2. XXX GEORGIU,
3. XXX XXXCHRISTOFOROU,

Respondents-Plaintiffs.

*Neophytos Pirilidis, together with S. Theofanous, for N. Pirirides & Associates LLC,
for the Appellants.*

Chloe Loizidou, for Christos Pourgouridis, for the Respondents.

P. PANAYI, P.: The unanimous decision of the Court of Justice will be handed down by Justice G.N. Yiasemis.

DECISION

G.N. YIASEMIS, J.: This appeal calls into question the decision of the Larnaca District Court, which decided that it has territorial jurisdiction to hear action No. 2505/2013, (the action). In the action, the plaintiffs, respondents, claim from the defendants, appellants, the payment of a certain amount, which they consider to have paid to them, without being obliged to do so, as legal costs, in relation to an action that had been completed some time ago. It should be noted that the appellants are lawyers and had represented the respondents in the said completed action before the abovementioned District Court, (the Court).

At some stage, prior to the commencement of the hearing of the action, the appellants filed an application, in which they raised the issue that the Court had no territorial

jurisdiction to proceed with its adjudication. The application was examined and dismissed. At this stage of pre-trial of the appeal, the respondents take the view that the present decision is not appealable. To that end, they rely on the provision in **section 25(1)(c) of the Courts of Justice Law of 1960, (L. 14/1960)**, (the “Law”), which was added to it by the homonymous amending **Law 109(I)/2017** and provides that: "interim decisions which are absolutely decisive as to their effect on the rights of the parties: ..." are appealable before the Supreme Court. Therefore, on the basis of the said provision, it is examined when an interim decision at first instance is appealable before the Supreme Court.

The above provision was laid down in the Law, for the purpose of limiting appeals on interim decisions, when their outcome is not absolutely decisive for the rights of the parties, all or any of them. The criterion of 'absolutely decisive', with reference to the rights, in particular, of the party attempting the appeal, is clearly different from the criterion of 'manifestly unfounded' and is in no way related to it, as it also not related to the other criteria laid down in **Article 163.2(b)** of the Constitution, on the basis of which the Supreme Court may hear an appeal summarily. To that end, the procedure, which was not invoked in the present case, is provided for in **R 10(i) of the Court of Appeal (Procedure, Skeleton Arguments, Limitation of the Time of Oral Arguments and Summary Procedure for the Rejection of Manifestly Unfounded Appeals) of the 1996 Procedural Regulation**.

As regards the 'absolutely decisive' criterion of the Law, there is a manifest weakness in it, which consists in the inherent difficulty of determining, in any event, what is, and to what extent, decisive for the rights of the parties, before the final decision on the merits of the present appeal. In any event, this was formulated on the basis adopted, in this respect, by the case-law of the Supreme Court, most determinatively by the decision of the majority of the Full Plenary in **Harous v. Harous (2003) 1 A.A.Δ. 1530**. As per the case-law which followed its adoption, this is applicable on a case-by-case basis, taking into account the circumstances of each case and the apparent rights, at the stage in issue, of the party affected by the interim decision, (see **Content Union S.A. v. CJSC "TV Company Stream" a.o. Civil Appeals No. E96/2018 and E97/2018, 21.10.19**).

The question of the jurisdiction of the court before which a case is brought for trial is of paramount importance. Its existence is a prerequisite so as for it to deal with the case. The absence of jurisdiction invalidates the proceedings. It has therefore been classified as a matter of public order. It may be raised at any stage of the proceedings, at first instance and on appeal, as well as by the court itself (see **Central Co-Operative Bank v. CY. E. M. S. (1984) 1 C. L. R. 435, Panayiotou v. H"Kyriakou (1991) 1 A.A.Δ. 362, Theocharous v. Pastelli (1993) 1 A.A.Δ. 240** and **Landou a.o. v. Symeou a.o. (2014) 1 A.A.Δ. 572**). As was said **Koukouni a.o. v. Nikolaou a.o. (2003) 1 A.A.Δ. 1766**, on page 1770, in particular, in relation to the type of jurisdiction which concerned [the Court] at first instance: *'The territorial jurisdiction of the court is*

a prerequisite for the valid assumption of jurisdiction which, as it is self-explanatory, concerns a question relating to the validity of the proceedings. It follows that the matter may be raised at any stage of the proceedings, even on its own initiative by the court itself.'

On the basis of the above, a court, in order to be permitted to hear a case before it, must have the jurisdiction defined by the Law. Where this is called into question by the parties, it must decide this before proceeding further. Its decision in this respect is absolutely decisive for the case, whatever its direction; even if it is found that it has jurisdiction to proceed with its adjudication. As was said in ***Kourou v. Konou (2014) 1 A.A.D. 2192***, on page 2202, "*... it is appropriate that the question of the lack of territorial or material jurisdiction be raised and examined as soon as possible so that the procedure does not proceed without jurisdiction.'*

The matter does not end with the interim decision at first instance when the party having the opposite opinion files an appeal against it. In such a case, it is correct that the Court of Appeal, in the light of the guidance in the last case above, decide on this matter without delay, so that there is a final decision on this, especially if the District Court has decided that it has jurisdiction to hear the case. In the latter case, if the matter is not decided, the case before the District Court will proceed to trial, under the status of uncertainty created by the challenge of its jurisdiction, with the possibility that the matter will be raised, again, this time, on appeal at the end of the first instance proceedings. Incidentally, it is noted that if, at that stage, the appeal succeeds and the judgment at first instance is set aside on the basis that the court heard it had no jurisdiction, surely, by then, unnecessary costs will have been incurred and valuable time will have been wasted for all those involved in the handling of the case.

In the light of the abovementioned case-law, it is therefore more important to establish, where it arises, that the court has jurisdiction to hear the case before it. This, as a matter of public order, certainly relates to the rights of the parties. It is precisely for this reason that it must be decided as soon as possible, in order to subsequently ensure the validity of the procedure carried out. As such, this issue clearly goes beyond the criterion of the Law.

In ***Zervos v. Vamiko Ltd (2006) 1 A.A.Δ. 1292***, a matter of territorial jurisdiction had been raised before the Court of First Instance, which decided in favour of the plaintiff. An appeal against the above interim decision, which was dismissed, was filed on the basis that '*..., none of the substantive rights of the applicant has been directly judged by that interim decision. The matter will obviously be decided by the final decision of the Court of First Instance, which, if not favourable to the appellant-defendant, is when his rights have been ascertained and the judgment of the Court will be subject to appeal.'* (pages 1295 to 1296). The above case was proposed by the respondents in order to suggest that the outcome of this appeal should be the same. Clearly, in that case, the Court of Appeal had not been called upon to examine

the parameters set out above. It is therefore justified not to apply it in the present case. It is, however, certainly correct to note in the case that it is with the final decision of the court that the rights of the parties are ascertained.

In any event, given the aspect under consideration and in the light of the criterion of the Law, a development such as that mentioned above, i.e. acceptance on appeal of the position that the hearing court does not have jurisdiction, in any event, will not be in the interest of the successful party to the appeal. In fact, it will not be in the interest of any contributor in the process. On the contrary, it is absolutely decisive for the rights at stake for each party that his case should be heard by the legally competent court, as a matter of proper administration of justice, from the outset. This is also supported by the Supreme Court's suggestion that matters of jurisdiction should be resolved definitively as soon as possible, if the circumstances of the case so permit. This course is obviously in the interests of justice.

The judgment at first instance on appeal is therefore considered appealable.

P. Panayi, P.

G.N. Yiasemis, J.

A. Pouyiourou, J.

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