SUPREME COURT OF CYPRUS

FAMILY COURT OF SECOND INSTANCE

(Appeal No. 1/20)

September 28th, 2021

[PARPARINOS, OIKONOMOU, POUGIOUROU, DIRECTORS]

xxx NEOPHYTOU,

Appellants,

v.

xxx VLAMIS NEOPHYTOU,

Respondent.

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M. Andreou (Mrs.), for the appellant.

No. Vryonidis, for the respondent.

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L. PARPARINOS, D.: The Court's decision is unanimous and will be given by T.O. Box Economou, D.

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DECISION

OIKONOMOU.D: The hearing of the appellant for an order modification of sustenance and the counter-claim by the respondent were conducted on the basis of "written testimony", according to D.30 ch 5(5). However, the written declarations deposited for this purpose did not provide statements under oath, nor of legal confirmation, as it is indicated in subsection (5)(i) of the relevant regulation. As a result, the Court [of First Instance?] rejected both the first application and the counterclaim, deeming that there was no witness material before it.

The appellant is challenging the rejection of his application with this appeal, arguing that the Court had discretionary powers to salvage the procedure and it was due to act on it, as the

Court had determined the case for concluding oration without previously brining up this issue. According to the appellant's overture, this is an oversight which should be amended. Simultaneously, the appellant argues that he had been sworn at the time of registering his statement. This goes against the first branch of his argument and no support was found on the records.

It was unfortunate that the case was allowed to proceed to its final stage with no written testimony duly procured. Specifically, the appellant's testimony was registered as a written statement on 11 February 2019 and the respondent's testimony was registered in the same way on14 March 2019. Following that, the Court received concluding oration and determined the case for clarification on 3 June 2019. At that date, the Court did not make any observation regarding non-compliance with the Institutions and the soundness of the whole procedure and reserved its decision. Over six months later, on 12 December 2019, the Court issued a decision by referring to D.30 ch. 5(5), rejecting the aforementioned application and countersuit on account of the fact that the written "testimony" was submitted with a sworn declaration or statement of legal confirmation. The Court should have located the issue earlier in order to reregister or revalidate the statements with sworn declaration or legal confirmation. The way the Court let things carry on, raising the issue only at the very end, it resulted in a rejection six months later, without properly examining the substance of the rights and obligations between the parties. This is a heartbreaking image.

Furthermore, since this issue progressed and the process was concluded, the rejection of suit and countersuit was inevitable without the existence of a witness before the court. This is not just a discrepancy anymore, but an irremediable nullity. As was suggested in Andreas Themistokleous and Sons etch. v. Arizona Trading Co Ltd (1997) 1 ΑΑΔ 1354, in connection to the related issue of absence of certification by jurat from a sworn declaration "D.64 is not a panacea for any kind of flaw, illegality and irregularity". Subsequently, the flawed declaration was deemed to be a document with no evidentiary value and no possibility of salvation. We consider that the same approach is required now. The Court had no discretion to salvage matters, as witness testimony must by definition be registered under oath or legally certified. This is according to the general principle as codified in the foundational Article 50 of the Law of Courts (N. 14/60).

The appeal is dismissed. Considering that the error was originally joint, and the procedure was allowed to continue until its ultimate stage on a wrongful and non-existent basis, we will give no order for costs.