SUPREME COURT OF CYPRUS

APPELLATE JURISDICTION

(*Civil Appeal No. 379/2012*)

February 3rd, 2020

[M.M. NIKOLATOS, P., A.R. LIATSOS, P.O. BOX oikonomou, DIRECTORS]

1. xxx PAINTER

2. XXX WASP

3. ADAMKO CONSTRUCTIONS LIMITED

Appellants

AND

DROSONERI FARM LTD

Respondents

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K. Messios, for appellants 1 and 2.

A. Hadjisergis, for appellant 3.

Fr. Frakalas for Ioannidis, Demetriou LLC, for respondents.

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P.M. NIKOLATOS, P.: The unanimous decision of the Court will be given by T.O. Box Economou, D.

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DECISION

T.TH. OIKONOMOU: Appellants 1 and 2 have issued, as arbitrators, an award in an arbitration procedure between appellant 3 on the one hand and the respondent on the other, against the latter.

The respondent has asked the District Court to set aside the decision, claiming "misconduct" by the arbitrators (Article 20(2) of the Arbitration Law, Chapter 4).

The First Instance Court did not accept that the suggested claims could ground a reason to sideline the arbitration decision. Nevertheless, it did sideline the arbitration decision on account of an event which had not been presented in the respondent's claims or furthered through her testimony. It was mentioned by one of the two arbitrators, appellant 2, during his main examination of a meeting he had with the director of the respondent, during the ongoing arbitration procedure. The appellant himself informed the Court of this matter, following a relevant question by his lawyer and went on to say that he attended the meeting held by the director with no knowledge of its purpose and in the impression that there was to be no discussion of the arbitration procedure under any circumstances. However, he revealed that the director did ask him to act positively biased for his company, whereupon the appellant replied that he could not be bribed and ended the meeting immediately.

The First Instance Court considered that the arbitrator's acceptance to meet with one of the parties tended to objectively upset confidence in the procedure and the justice of the decision and saw fit to cancel the decision of the two arbitrators.

As the first reason of appeal, the Court held under consideration matters which were not triable and registered, referring to the tangent by appellant 2 in relation to the meeting.

The procedure was founded on an application of Originating Summons, which is one of the ways to initiate a civil procedure. The Originating Summons defined D.1 Ch.2 as "any summons other than a summons to an outstanding procedure or issue" is counterposed to the application of D.48, which is intermediary, deals with outstanding procedure and concerns, and incidental issue of the main case. If the issue is not incidental to outstanding procedure, then it cannot be raised before the Court except only as provided by the Institutions, namely, either by a Summoning Writ or, in extraordinary cases, by an Originating Summons (Hdjchambis v. Attorney General (1986) 1 CLR 386). In this case, it was also decided that if the relevant legislation intended for a "summons", the only way the procedure could start is through an Originating Summons.

Here, the way of instituting the procedure was not a matter of doubt nor, more specifically, the fact that the originating application was always accompanied by valid statements under oath. Instead, it was common ground that the statements under oath were the triable and registered boundaries of the case. Thus, it proves a crucial issue to deliberate that the First Instance Court moved outside of those boundaries, according to the fundamental principle that the trial is imperatively

limited to the realm of issues prescribed by the registered statements (among others: Courtis and others v. Iasonides (1970) 1 C.L.R. 180, Papageorgiou v Klappa (1991 1 ΑΑΔ 24).

However, the respondent's reply stated that the issue at hand was introduced by appellant 2 himself, following a question by his own lawyer, despite the objection by the respondent's lawyer. It could be said that appellant 2 was surely not ambushed out of the blue by a sudden remark of the opposite side. In the Papageorgiou case, it was suggested that the need for clear demarcation of the justiciable issues is directly related to the adversarial system and intends to safeguard the right of a party, as a matter of natural justice, not to find itself, without the opportunity of response, confronted with new claims from the opposite side.

This discussion is not about the introduction of witness testimony not included in the original registered plan. It is a completely autonomous issue which was introduced by appellant 2, certainly, to exhibit the bad behavior of the complainant in juxtaposition to his own standing. The first reaction of the First Instance judge was in fact to criticise the effort of the respondent to call upon the issue of the meeting, commenting in regard to her director that "it's not enough that he let him in his house, now he is also complaining about it". Nevertheless, despite rejecting all the grounds, the respondent herself had claimed to set aside the decision of the arbitrators, he used this event outside of the pre-drawn justiciable boundaries and in an unjust manner, as it is now determined, to set aside the decision. The first ground of appeal is successful, hence there is no need to study the appeal as to the substance of the case.

The appeal is permitted with costs, plus VAT, to be granted as calculated by the Registrar and approved by the Court.