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Absence of claimant, who was the only witness, results in dismissal of claim



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Litigation, Cyprus

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Introduction

In a recent case the Supreme Court upheld a lower court's decision to dismiss the appellant's claim in the first-instance proceedings. **(1)** The first-instance case had been scheduled for hearing at the District Court of Paphos and the claimant was the only witness for her case. She did not attend the hearing on the appointed date but had requested an adjournment of the case through her lawyers, on the grounds that she was unable to attend due to absence abroad for health reasons. The lawyer representing the defendant had not initially raised any objection to the proposal to adjourn.

First-instance decision

The first-instance court rejected the claimant's request for an adjournment on three grounds. First, although the claimant's lawyers were aware that their client had left the country to undergo medical examinations and receive treatment, they failed to provide any documentation or medical reports to confirm this. Second, they had taken no steps to inform the court that the claimant would not be available for the hearing, although they had informed the defendant's lawyer. Finally, the case had been adjourned many times previously, and was among the oldest cases scheduled for the court to hear on the day in question. The court held that any approval of the request would make the court itself an abettor in further delaying the case. Accordingly, it accepted the defendant's lawyer's objection to adjournment and dismissed the claim for want of prosecution.

Supreme Court decision

The Supreme Court first dealt with the procedural framework of Order 33, Rule 6 of the Civil Procedure Rules, which regulates the procedure regarding adjournment of hearings. The court stated that according to case law, the question of whether to adjourn is a matter for the discretion of the court to which the request is made, which should be exercised on the basis of the facts of the particular case and the reasons underlying the request. In exercising its discretion, the court should balance the rights of the parties and the objective of achieving justice within a reasonable time, so as to best serve the interests of justice.

In its decision, the Supreme Court referred to *Fatsita v Fatsita*, **(2)** in which the Supreme Court of the time emphasised that the resolution of cases within a reasonable time is not only a right of the parties under Article 30.2 of the Constitution but also in the interests of the state in general under the maxim of *interest reipublicae ut sit finis litium* (ie, that in the interest of society as a whole, litigation must be concluded).

The Supreme Court further held that it was apparent from the transcript of the proceedings that the first-instance court was not persuaded that the reason put forward for the adjournment was strong enough to justify the exercise of its discretion to approve the request. No evidence had been put before the court to support the claimant's lawyers' assertions that their client was abroad for medical examinations, or to justify the adjournment, in particular regarding the time of the claimant's departure overseas and whether this was due to an urgent and unforeseen need which made it impossible for her to attend the hearing. The Supreme Court stated that all these elements were necessary to support the request and to assist the court in exercising its discretion, particularly as the case was old and had already been adjourned many times, which made any further delay undesirable. The fact that there had been no objection from the defence was of no consequence. As was decided in the case of *Konstantinos Saskaros v Anna Michailidis*:

*the issue is not based on the absence of objection by the opposing party whether to adjourn the hearing or to reinstate the action. It is in any case for the Court which hears the case to consider an adjournment or a reinstatement in the light of specific reasons put forward in each case and of its obligation to carry out its judicial work within a reasonable time to ensure the effectiveness and credibility of the judicial system.***(3)**

The Supreme Court saw no reason to intervene in the manner in which the first-instance court exercised its discretion, and the appeal was dismissed with costs against the appellant.

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Endnotes

(1) *Constantinou v Mavronikola*, Civil Appeal 509/2012, 5 December 2018.

(2) *Fatsita v Fatsita* (1988) 1 CLR 210.

(3) *Konstantinos Saskaros v Anna Michailidis*, Civil Appeal 182/2014, 18 July 2017.

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