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First-instance courts must evaluate testimony adduced during hearings



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Litigation, Cyprus

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In a recent appeal, the Supreme Court ruled that the first-instance court could not ignore testimony adduced during a hearing without having evaluated it.⁽¹⁾

Facts

The first-instance court held that the appellants had forced the appellee to resign from a nursing home. Damages for unfair dismissal were awarded in the appellee's favour. During the hearing, the appellee called the former director of the nursing home as a witness.

The decision was appealed; one of the grounds for doing so was that the first-instance court had not evaluated the former director's testimony.

In a note on its decision, the first-instance court stated that as a legal dispute between the former director and the appellants had been pending, it would have been incorrect for the court to have relied on the former director's testimony. Consequently, the court had ignored the testimony.

However, the appellee argued that the first-instance court had had the right to ignore the former director's testimony without having evaluated it in order to administer justice in the best possible way. The appellee referred to case law regarding the court's inherent powers in general to suggest that it had acted within those powers. She also justified the first-instance court's approach by stating that because all (or almost all) of the testimony had already been given in the other case, the court had attempted not to act to the detriment of the parties who had been subject to costs in the other proceedings.

According to the first-instance court, it did not evaluate the former director's testimony because the appellee had proved her case. However, in the appeal, the appellants' claimed that the testimony which the first-instance court had not evaluated strengthened their case.

They submitted that in ignoring the testimony, the court had incorrectly found that the appellee had proved her case.

Decision

The Supreme Court stressed that the first-instance court's explicit statement that it had ignored the former director's testimony confirmed that it had not evaluated said testimony.

Thus, the Supreme Court held as follows:

- The first-instance court had had the opportunity to simply reject the testimony of the former director, as well as that of any other witnesses who had testified before it. However, before doing so, it should have evaluated the testimony.
- The first-instance court could have considered the fact that another legal dispute was pending between the former director and the appellants when evaluating the former's testimony during the hearing, as this had been revealed via testimony during the first-instance proceedings.

The Supreme Court then stressed that where there is a disagreement as to the substantive facts of a case, the evaluation of testimony is the cornerstone of any decision. The absence of judgement as to whether a substantial witness has told the truth will render the court's decision incomplete.

Thus, the above ground of appeal succeeded. The Supreme Court therefore ordered the retrial of the application and deemed it unnecessary to examine the remaining grounds of appeal.

Comment

The Supreme Court's approach is reasonable. In failing to evaluate testimony adduced during the hearing in question and instead completely ignoring it, the first-instance court appears to have made an incorrect finding. Further, the fact that the court ignored the former director's testimony may have infringed her right to a fair trial.**(2)**

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Endnotes

(1) *Stegi Evgirias 'Archangelou Michael' Kaimakliou v Papageorgi*, Civil Appeal 77/2013, 9/3/2020.

(2) See Article 30 of the Constitution.

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