

## Litigation - Cyprus

### Assessing credibility and intervention by the Supreme Court

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Background

**Decision**

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#### Background

Assessing credibility is a delicate and complex task which courts undertake every time they are called upon to deliver a judgment. As an essential element of its deliberations, the court must assess the credibility of each witness it hears and the evidence that has been presented, and decide whether that evidence is credible. The rationale behind any conclusions made by the court when assessing credibility and the reasoning for accepting or rejecting any evidence must be sufficiently set out in its judgment, taking into account not only the witness's demeanour and the consistency of the testimony, but also all other evidence placed before the court.

The task of assessing credibility lies principally with the first-instance court, which has the advantage of hearing the witnesses and observing their conduct and demeanour. However, it is a well-established principle that in certain circumstances the appellate court may intervene in the conclusions and findings of the first-instance court, including those on the credibility of witnesses.

In practice, based on the body of case law, the appellate courts in Cyprus are generally loth to interfere with the findings of the first-instance court. This is particularly the case when the matter turns on the credibility of witnesses, since it is well established that the first-instance court is in a better position to judge the value of the testimony than the appellate court, unless some very strong ground is put forward showing that the findings of the first-instance court are contrary to the weight of the evidence,<sup>(1)</sup> among other things.

#### Decision

This approach was recently confirmed by the Supreme Court in *Panayiotis Parlata v Stella Demetriou*.<sup>(2)</sup> The appellant argued that the reasoning behind the findings of the first-instance court was unsatisfactory, and that the findings were not warranted by the evidence when considered as a whole. The Supreme Court – guided by the general principle that "[i]nterference is possible where the findings of the court either contradict the facts, or are in conflict with any other admissible evidence, or the defective assessment of evidence is ascertained"<sup>(3)</sup> – decided that it was appropriate to intervene in the findings of the first-instance court on the credibility of the witnesses and the valuation of the testimony. The Supreme Court considered the following main principles in reaching this conclusion:

- The pleadings in an action are the foundations of the litigation, which set out the direction on which the case is argued. Thus, since a case is decided on its pleaded facts, both the evidence to be adduced before the court and the findings of the court must be consistent with the pleadings.
- Where admissions are made in the pleadings and any party places evidence before the court which is inconsistent with those admissions, that evidence cannot be accepted by the court. No weight can be attributed to it and no conclusions or findings can be based on it.
- In civil actions the standard of proof is on the balance of probabilities and, as a rule of thumb, the burden of proof lies with the plaintiff to set before the court such evidence that its claim is established on the balance of probabilities when the case is considered as a whole.<sup>(4)</sup> Thus, the court's task is to assess the credibility of the witnesses testifying on behalf of the plaintiff on a 'standalone' basis, not to compare the credibility of the evidence adduced by the plaintiff's witnesses against that of the defendant's witnesses.<sup>(5)</sup> In this respect, the rules defining the burden of proof and the circumstances

of its discharge have nothing to do with the credibility of witnesses and the question of discharge of the burden of proof can arise only if there is credible evidence to weigh on both sides.

- Intervention is justified where:
  - the findings of fact of the first-instance court depend on the credibility of witnesses;
  - the first-instance court has failed to take account of circumstances that are material to an assessment of the evidence; or
  - the first-instance court has believed testimony which is inconsistent with itself or with the evidence adduced as a whole or with indisputable facts.<sup>(6)</sup>

In the case in question, a perusal of the record of the first-instance proceedings satisfied the Supreme Court that the findings of the first-instance court, including those on credibility, justified intervention.

### Comment

Notwithstanding the appellate courts' reluctance to intervene in the findings of the first-instance court (especially those on credibility) where the appellant with which the burden of proof lies in such cases satisfies the appellate court that the findings of the first-instance court are inconsistent with and contrary to the well-settled principles of law set out above, the appellate court may either reassess the testimony itself or give directions for the action to be re-tried.

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### Endnotes

- <sup>(1)</sup> *Polykarpou v Polykarpou* (1982) 1 CLR 182.
- <sup>(2)</sup> Civil Appeal No 387/2009, dated April 21 2014.
- <sup>(3)</sup> *M Avramides & Co v Kithreoti & Co ao* (2011) 1 CLR 2106.
- <sup>(4)</sup> *Panayiotis Parlata v Sella Demetriou* Civil Appeal No 387/2009, dated April 21 2014 page 5.
- <sup>(5)</sup> *Kades v Nicolaou ao* (1986) 1 CLR 212.
- <sup>(6)</sup> See *M Adamides & Co v Kithreoti & Co ao*.

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