

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU,
JJ.]

1971
July 5

TIMOTHEOS DEMETRIOU,

TIMOTHEOS
DEMETRIOU

Applicant,

and

REPUBLIC
(DISTRICT
OFFICER
NICOSIA—
KYRENIA
AND
ANOTHER).

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DISTRICT OFFICER, NICOSIA-KYRENIA,

2. THE MINISTRY OF AGRICULTURE,

Respondents.

(*Revisional Jurisdiction Appeal No. 80*).

Recourse under Article 146 of the Constitution—Legitimate interest required under Article 146.2—Dismissal of recourse by a Judge of this Court in the first instance on the ground of absence of such interest—Appeal against dismissal—Existence or not of such interest found to be closely connected with factual issues regarding which no findings were made by trial Judge—It being impossible and unsafe for the Supreme Court to make on appeal such findings on the basis of the record, new trial ordered before another Judge of this Court.

*Legitimate interest—Article 146.2 of the Constitution—See supra.
Practice—New trial ordered—See supra.*

The facts sufficiently appear in the judgment of the Court allowing this appeal by the applicant in the recourse and directing a new trial before another Judge of this Court.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 11th February, 1971, (Revisional Jurisdiction Case No. 98/66) dismissing applicant's recourse against the decision of the respondents to issue a covering permit for a well to the Interested Party C. Theocleous.

A. Triantafyllides, for the appellant.

L. Loucaides, Senior Counsel of the Republic, for the respondents.

K. Michaelides, for the Interested Party.

Cur. adv. vult.

* Reported in this Part at p. 1 *ante*.

1971
July 5

TIMOTHEOS
DEMETRIOU
v.
REPUBLIC
(DISTRICT
OFFICER
NICOSIA—
KYRENIA
AND
ANOTHER).

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P : At this stage, having heard counsel for the appellant, the respondents and the interested party on the issue of the existence or not of appellant's legitimate interest (in the sense of Article 146.2 of the Constitution), we agree with counsel for the appellant and the respondents that the view about the absence of such legitimate interest, on the basis of which the recourse of the appellant was dismissed, is closely connected with factual issues regarding which no findings were made by the judgment appealed from ; and, in our opinion, it is impossible and unsafe for this Court to make such findings on the basis only of the record before us, especially as there are involved, *inter alia*, questions of credibility of witnesses.

Counsel on both sides agree that the best course out of this difficult situation would be a new trial of the case. Counsel for the interested party is today absent abroad—(with our permission)—but we think that the interests of his client will be sufficiently safeguarded if the new trial takes place on the basis of the existing record subject to the right of all parties to have recalled any witness, call any new oral evidence, produce further documentary evidence, and advance any arguments properly open to them within the framework of the case.

We, therefore, order that the judgment appealed from be set aside and that there shall be a new trial before another Judge of this Court, with all costs of the first trial, other than any costs for which a specific order was made, being costs in the cause at the new trial.

We have decided to make no order as to the costs of this appeal.

Appeal allowed ; new trial ordered ; order for costs as aforesaid.