

1976

Sept 6

[TRIANTAFYLIDES, P.]

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DISTOS
COMPANIA
NAVIERA S. A.
(No 1)
v.
CARGO
ON BOARD
THE SHIP
"SISKINA"

DISTOS COMPANIA NAVIERA S A (NO 1),

Plaintiffs,

v

THE CARGO ON BOARD THE SHIP "SISKINA",

Defendant

(Admiralty Action No 43/76)

Admiralty—Practice—Arrest of property—Variation of terms of order of arrest—Can be made by a Judge other than the one who granted the order—Rule 211 of the Cyprus Admiralty Jurisdiction Order, 1893.

Jurisdiction—Admiralty—Arrest of property—Variation of terms of order of arrest—Can be made by a Judge other than the one who granted the order 5

The point in issue in these proceedings was whether the terms of an order of arrest of cargo could be varied by a Judge other than the one who had initially made the order. 10

Held, the Judge in an application for varying the terms of an order of arrest is not reexercising afresh the discretionary powers already exercised by another Judge of this Court, he is exercising discretionary powers on the basis of relevant circumstances as now existing, and it is not, in any way, imperative that such powers should be exercised by the same Judge of this Court who granted the order for the arrest, (see *Leftis v The Police* (1973) 2 C L R 87 and *Vrahimis and Others v. The Police* (1974) 2 C L.R 58 and rule 211 of the Cyprus Admiralty Jurisdiction Order, 1893) 15

Order accordingly 20

Cases referred to

Leftis v. The Police (1973) 2 C L R 87.

Vrahimis and Others v. The Police (1974) 2 C.L.R. 58.

Application.

Application by the owners of the cargo under arrest for an order varying paragraph 5 of the order for the arrest of the cargo, made on April 10, 1976, so as to compel the plaintiffs 25

to provide increased and better security in respect of the arrest of the cargo.

L. Papaphilippou, for the plaintiffs.

5 *G. Cacoyiannis, J. Erotokritou, E. Psillaki (Mrs.) and G. Arestis*, for owners of the defendant cargo.

P. Ioannides, for parties who have entered caveats.

The following ruling was delivered by:-

10 TRIANTAFYLLIDES, P.: Owners of the cargo under arrest in this case (which, pursuant to directions already given by the Court, was discharged and stored in bonded warehouses) have applied on August 30, 1976, for an order varying paragraph 5 of the order for the arrest of the cargo, made on April 10, 1976, so as to compel the plaintiffs to provide increased and better security in respect of the arrest of the cargo.

15 The application of August 30, 1976, was opposed in writing on September 3, 1976.

20 Today, when I was about to deal with the said application, counsel for the plaintiffs submitted that I have no competence to deal with it; he argued that as the order for the arrest was granted on April 10, 1976, and was made absolute on May 22, 1976, by another Judge of this Court, if I deal with the application seeking a variation of such order this will amount, in effect, to my sitting on appeal from an order made by another Judge of the Court; counsel for the plaintiffs submitted further that, in
25 any case, any variation of the order for the arrest is a matter to be dealt with in the exercise of the relevant discretionary powers of the Judge of this Court who granted such order initially.

30 There was, also, submitted, on behalf of the plaintiffs, that the application of August 30, 1976, should be heard together with two other applications, filed on July 12, and August 11, 1976, by means of which there are being sought orders rescinding the aforementioned order for the arrest of the cargo.

35 I am of the view that in dealing with the application of August 30, 1976, I am not in any way sitting on appeal from the order for the arrest as already made, but I am merely dealing with a new interlocutory application, which, as there appears from the affidavit in support of it, has been made on the basis that the situation has allegedly changed since the order for the arrest was initially made.

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Nor would it be correct to say that I am going to reexercise afresh the discretionary powers already exercised by another Judge of this Court; all I am going to do is to exercise discretionary powers on the basis of relevant circumstances as *now* existing, and it is not, in any way, imperative that such powers should be exercised by the same Judge of this Court who granted the order for the arrest; in this respect useful reference may be made, by analogy, to *Leftis v. The Police*, (1973) 2 C.L.R. 87, and *Vrahimis and Others v. The Police*, (1974) 2 C.L.R. 58.

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Rule 211 of our Cyprus Admiralty Jurisdiction Rules provides that "The Court or Judge may, on due cause shown vary or rescind any order previously made"; and it would amount to construing in an unduly restrictive manner rule 211 if I were to hold that the word "Judge" therein means always the same Judge who made an order initially.

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Regarding, lastly, counsel's submission that the present application for variation of the order for the arrest must be heard together with the other two applications for the rescission of such order, I think that this would not be a convenient or desirable course, because dealing with the latter two applications would involve much more protracted proceedings, pending which it is desirable that the parties should know whether the security furnished by the plaintiffs in connection with the order for the arrest is to be increased or not.

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Order accordingly.

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