

1983 June 25

[TRIANTAFYLLOIDES, P.]

IN THE MATTER OF AN APPLICATION BY
PETROS YEROLEMIDES, FOR AN ORDER OF CERTIORARI
AND AN ORDER OF PROHIBITION.

(Application No. 4/79).

Prerogative Orders—Certiorari—Prohibition—Article 155.4 of the Constitution—Practice—Not permissible for an applicant to alter radically the basis on which leave was granted to him to apply for prerogative orders—Court has no jurisdiction to examine in proceedings for prerogative orders, under the above Article, the validity of a final judgment of the Supreme Court given in a criminal appeal in the exercise of the jurisdiction under Article 155.1 of the Constitution.

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After Counsel for the applicant had been heard in support of applicant's application for orders of certiorari and prohibition, he applied for leave to amend the Statement which was filed in relation to his earlier application for leave to file the present application, which has, also, been based on the contents of such Statement.

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By means of the application as originally framed applicant sought orders of certiorari and prohibition in respect of a warrant for his arrest which was issued because of his failure to pay an amount of C£6,207 which he was ordered to pay by the District Court of Nicosia in criminal case No. 7780/81. By means of the amendment applied for he sought to be allowed to test in these proceedings the validity of the judgment of the Supreme Court, which has been given in Criminal Appeal No. 3272, on appeal from the judgment of the District Court of Nicosia in the said Criminal Case No. 7780/81.

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On the application for amendment:

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Held, that this Court does not possess jurisdiction to examine in proceedings for prerogative orders, under Article 155.4 of the Constitution, the validity of a final judgment of the Supreme Court given in a criminal appeal in the exercise of the

jurisdiction under Article 155.1 of the Constitution; and it is quite clear from the order of this Court granting leave to the applicant to apply for orders of certiorari and prohibition in the present instance that it was never intended to grant leave to him to test thereby the validity of the judgment of the Supreme Court in the aforesaid criminal appeal; and that had such leave been applied for it would, and could, never have been granted; accordingly the application must fail.

Held, further, that it is not permissible for an applicant to alter radically the basis on which leave was granted to him to apply for prerogative orders, such as are the orders of certiorari and prohibition which are being sought on the present occasion because according to the existing practice, the Statement filed in support of the application for leave to apply for a prerogative order, under Article 155.4 of the Constitution, is, also, relied on in support of the application for such an order which is filed after leave has been granted in this respect; and that, thus, any radical amendment of the Statement at the stage of the hearing of the application for the prerogative order concerned would, in effect, result in rendering nugatory the prerequisite of leave and the proceedings for obtaining such leave.

Application dismissed.

Application.

Application for leave to amend the statement filed in relation to applicant's earlier application whereby he applied for leave to file an application seeking orders of certiorari and prohibition.

L.N. Clerides, for the applicant.

L. Georghiadou (Mrs.), for the respondent.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. After this application, by means of which the applicant seeks orders of certiorari and prohibition, was filed, and after counsel for the applicant had been heard in support of it, he applied for leave to amend the Statement which was filed in relation to his earlier application for leave to file the present application, which has, also, been based on the contents of such Statement.

Counsel for the respondent opposed the applied for, by counsel for the applicant, amendment of the said Statement.

In the form in which the present application is framed, pursuant to the leave granted by this Court, it is an application for orders of certiorari and prohibition in respect of a warrant for the arrest of the applicant which was issued because of his failure to pay an amount of C£6,207 which he was ordered to pay by the District Court of Nicosia in criminal case No. 7780/71. 5

By means of the application for the amendment of the Statement the applicant seeks to change radically the basis on which leave was granted to him to apply for the aforementioned two prerogative orders. The applicant is now asking, in effect, to be allowed to test in the present proceedings the validity of the judgment of our Supreme Court which has been given in Criminal Appeal No. 3272, on appeal from the judgment of the District Court of Nicosia in the said criminal case No. 7780/71. 10 15

This Court does not possess jurisdiction to examine in proceedings for prerogative orders, under Article 155.4 of the Constitution, the validity of a final judgment of the Supreme Court given in a criminal appeal in the exercise of the jurisdiction under Article 155.1 of the Constitution; and it is quite clear from my order granting leave to the applicant to apply for orders of certiorari and prohibition in the present instance that it was never intended to grant leave to him to test thereby the validity of the judgment of the Supreme Court in the aforesaid criminal appeal; and had such leave been applied for it would, and could, never have been granted. 20 25

Moreover, it is, in any event, not permissible for an applicant to alter radically the basis on which leave was granted to him to apply for prerogative orders, such as are the orders of certiorari and prohibition which are being sought on the present occasion. It must be borne in mind, in this respect, that, according to the existing practice, the Statement filed in support of the application for leave to apply for a prerogative order, under Article 155.4 of the Constitution, is, also, relied on in support of the application for such an order which is filed after leave has been granted in this respect. Thus, any radical amendment of the Statement at the stage of the hearing of the application for the prerogative order concerned would, in effect, 30 35

result in rendering nugatory the prerequisite of leave and the proceedings for obtaining such leave. So if in a case it is intended to seek a prerogative order on a radically different basis from that on which leave was granted to apply for such an order.

5 a new application for leave to apply for that order, supported by an appropriately amended Statement, should be filed all over again.

In the light of all the foregoing, I dismiss the application for leave to amend the Statement in this case and, consequently,

10 the present application has to be determined on the basis of the Statement which was filed initially and on the strength of which leave was granted to file the present application.

I do not propose to make an order as to the costs of the just dismissed application for amendment.

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Application dismissed with no order as to costs.