

1987 July 29

[KOURRIS J]

IN THE MATTER OF THE APPLICATION OF
PHAEDROS ZOGRAPHOU AND SOFOULA PH ZOGRAPHOU,
OF NICOSIA FOR LEAVE TO APPLY FOR AN ORDER
OF MANDAMUS,

AND

IN THE MATTER OF THE PROCEEDINGS PENDING BEFORE
THE DISTRICT COURT OF NICOSIA, IN ADOPTION
APPLICATION NO 9/79 RELATING TO MARIA DEMOSTHENOUS

(Civil Application No 88/87)

Prerogative Orders — Mandamus — Does not lie against Judge who failed to deliver a ruling in a case for a considerable time — Assuming that it lies, the discretion would have been exercised against granting leave to apply for such an order, because there exists an alternative remedy

5 On 18 12 85 a District Judge reserved a ruling on the issue whether he had jurisdiction to hear and determine an application by the present applicants to set aside an adoption

10 The aforesaid ruling was not delivered till the filing of this application, whereby the applicants seek leave to apply for an order of mandamus directing the said Judge to deliver the aforesaid ruling

Held, dismissing the application (1) As at present advised no order of mandamus would lie against a Judge, who failed to deliver a ruling for a considerable time

15 (2) Assuming that it lies, the remedy is discretionary and the discretion in this case would not have been exercised in favour of the applicants, because of the existence of an alternative remedy*

Application dismissed

Cases referred to

In the matter of Andreas Azinas (1980) 1 C.L.R. 466,

20 *In the matter of Malikides (1980) 1 C.L.R. 472,*

In the matter of Savvas Athanassiou (1969) 1 C.L.R. 439

* Regulation 3 of the Regulations issued by the Supreme Court on 10 12 86 and published in Supplement 2 of the Official Gazette No 2193

Application.

Application for leave to move the Court to issue an order of mandamus directing Mr. G. Michaelides, a District Judge of the Nicosia District Court to deliver a ruling in an Adoption Application which he reserved as from 18th December, 1985 and to fix the said application for further hearing. 5

Chr. Christofides for L. Papaphilippou, for the applicant.

Cur. adv. vult.

KOURRIS J. read the following judgment. This is an application for leave to apply for an order of mandamus directing Mr. G. Michaelides, a District Judge of the District Court of Nicosia, to deliver a ruling in an Adoption Application which he reserved as from 18th December, 1985 and to fix the said application for further hearing. 10

The facts of this application as they appear from the affidavit sworn in support of the application, briefly are as follows:- On the 15th September, 1984 the affiant and her husband filed an application in the District Court of Nicosia under No. 9/79 to set aside an adoption which was opposed by the natural mother of the adopted child. 15

During the hearing of the application the learned trial Judge raised the issue whether he had jurisdiction to try the application or whether the Supreme Court had jurisdiction to hear it, whereupon he called upon counsel appearing for the parties to argue this issue. Counsel advanced arguments on this issue and the learned Judge reserved the ruling of the said issue as from 18th December, 1985 and failed to deliver it till the filing of this application. 20
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Counsel for the applicant argued the case before me and cited in support of his argument certain passages from *Halsbury's Laws of England*, 3rd Edn., Vol. 11 and the Cyprus cases of, *In the matter of Andreas Azinas* (1980) 1 C.L.R. 466 and *In the matter of Malikides* (1980) 1 C.L.R. 472. He also referred the Court to the case of *Savvas Athanassiou* (1969) 1 C.L.R. 439 which was an application for leave to apply for prohibition and cited to the Court to the passage at p.445 where the Court observed that it is in the public interest that there should be finality in litigation and that delay in litigation is undesirable. He did not, however, cite any cases where the Supreme Court of Cyprus or the High Court of 30
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Justice in England was asked to issue a mandamus order directing a Judge of an inferior Court to deliver a ruling which he had reserved for consideration.

5 In Halsbury's Laws of England, 3rd Edn., Vol. 11, paragraph 159 is stated:-

10 «The order of mandamus (b) is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right (c); and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual (d).»

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20 The other two cases referred to by counsel related to orders of certiorari and prohibition and they do not help me in the present application.

25 As I am at present advised, no order for mandamus would lie against a Judge who failed to deliver a ruling for a considerable time. Further, the grant of an order of mandamus is, in general rule, a matter for the discretion of the Court and it is not granted as of right and it is not issued as a matter of course.

30 Assuming that an order of mandamus lies against a Judge, as in the present circumstances, then, in the exercise of my discretion, I would not have granted leave to file an order for mandamus because there is a specific remedy for enforcing the right of the applicant in order to oblige the learned Judge to deliver his ruling; and these are the regulations issued by the Supreme Court of Cyprus on the 10th December, 1986 and published in Supplement No. 2 of the Official Gazette of the Republic No. 2193 at p. 25. Regulation 3 provides that every judgment is delivered as soon as possible after the conclusion of the proceedings and it is not reserved for a period longer than six months. And when a Court fails to comply with this, every interested litigant may, by an application to the Supreme Court, ask for any remedy mentioned in paragraph 5 of this regulation.

For these reasons I am of the opinion that the applicant failed to make a prima facie arguable case sufficiently to justify the granting of leave to him to move this Court in due course to issue an order of mandamus.

Before concluding I would like to express my anxiety for the delay of the delivery of the ruling in the Adoption Application and to reiterate what the Court said in the case of *Savvas Athanassiou* (supra) that delay in litigation is undesirable and that it is in the public interest that there should be finality in litigation and I hope that the learned Judge should proceed and deliver his ruling forthwith and fix the Adoption Application for further hearing.

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In the circumstances the application is dismissed.

Application dismissed.