

1988 March 5

(DEMETRIADES, J)

IN THE MATTER OF ARTICLE 155(4) OF THE CONSTITUTION

AND

IN THE MATTER OF THE APPLICATION OF IOANNIS
KOLOKOUDIAS AND OTHERS FOR LEAVE TO APPLY FOR AN
ORDER OF CERTIORATI,

AND

IN THE MATTER OF CASE NO. E180/86 OF THE RENT
CONTROL COURT OF NICOSIA.

(Application No. 151/87).

*Prerogative orders — Certiorari — Leave to apply for — Principles
applicable — Applicant should make out a prima facie case.*

The facts of this case appear sufficiently in the judgment of the Court.

*Leave to apply for an
order of certiorari granted.* 5

Application.

Application for leave to apply for an order of certiorari to bring
up and quash the judgment and/or order of the Rent Control
Court of Nicosia in Application No. E. 180/86 dated the 28th
August, 1987. 10

E. Odysseos, for the applicants.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. This is an
application by which the applicants seek leave to apply for an
order of certiorari for the removal from the Rent Control Court of
Nicosia to the Supreme Court of the proceedings in Application E.
180/86 before that Court and for the quashing and/or setting aside
of the judgment and/or order of that Court given in that
application on the 28th August, 1987. 15

The grounds on which the applicants base their application are that -

(a) the Court had no jurisdiction to deal with the application before it in view of its contents, and

5 (b) the Court acted on an error of law.

According to the petition filed in Application E.180/86, the applicants alleged the following facts:

(i) The applicants are the owners of the «LOUCOUDI HOTEL» situate at Kakopertia;

10 (ii) the respondents in that case were in possession of the said premises during the period between 1.5.65 - 30.4.68 as contractual tenants under a tenancy agreement dated the 21st May, 1965, the yearly rent being agreed at £400 (sterling pounds);

15 (iii) after the expiration of the said tenancy agreement, the tenants continued to possess the premises as tenants from year to year until the 8th July, 1977;

(iv) the tenants were converted into statutory tenants under the provisions of the Rent Control Law 1975 (Law 36/75) and the Regulatory Administrative Act No 154/77, by which Kakopertia was declared as an area where the aforesaid law would apply;

20 (v) during the period in which Law 36/75 continued to be in force, the tenants were statutory tenants; and

(vi) as from the date on which the new law, i.e. the Rent Control Law 23/83, came into operation, the respondents ceased to be statutory tenants although they were such tenants by virtue of the repealed Law 36/75, because lettings of hotels, according to the allegation of the applicants, do not fall within the meaning of the term «tenancy» as this is defined in section 2 of Law 23/83, although such tenancies were covered by Law 36/75.

30 As a result of the facts set out in the petition to the Rent Control Court, counsel for the present applicants submitted to that Court that it had no jurisdiction to entertain the application since -

(a) the respondents (applicants in these proceedings) had ceased to be statutory tenants after the coming into force of law 35 23/83,

(b) there was no tenancy within the meaning of section 2 of Law 23/83 and, therefore,

(c) the premises are not controlled premises by virtue of the said law.

The Court refused to deal with the preliminary issue raised by counsel for the present applicants - respondents in the application before the Rent Control Court - as to its jurisdiction. Counsel for the respondents in that application then withdrew from the case, whereupon the Court proceeded in the absence of the respondents to hear the case on the merits and deliver its judgment. 5

As it has been repeatedly said, this Court in granting or refusing an application for leave to apply for an order of certiorari, has to exercise a discretion and that what it has to decide at this stage is not whether the order applied for should be issued but whether, on the material before it, there is a prima facie case made out sufficiently to justify the granting of leave to the applicants to move the Court to issue the order of certiorari. 10 15

In the light of the contents of the affidavit filed in support of the petition of the applicants for leave to apply for an order of certiorari and having carefully considered the arguments of counsel for the applicants which are set out in his written address, I am satisfied that the applicants have made a prima facie arguable case for granting the application. 20

In view of the above, I have come to the conclusion that the following order should be made:

(1) The applicants shall be granted leave to apply for an order of certiorari within fifteen days from today. Any opposition to it must be made and filed within twenty-one days thereafter. 25

(2) The judgment and/or order of the Rent Control Court given and/or made on the 28th August, 1987, in Application E.180/86, and any steps taken in execution of same, be stayed for fifteen days as from today. If the applicants apply within the period hereinabove provided, or such extended time as the Court may order, for an order of certiorari, then the stay shall continue to be in operation until further order of the Court. 30

(3) Copy of this order to be served on the Registrar of the Rent Control Court. 35

Application granted.