

[JOSEPHIDES, J.]

THE ATTORNEY-GENERAL OF THE REPUBLIC

Applicant.

PANAYIOTIS CHRISTOU.

Respondent.

(Civil Application No. 3/62).

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Maintenance—Jurisdiction—Confirmation by the Cyprus Courts of a provisional maintenance order made by an English Court—The Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, section 6—Object of the provisions in that section different from that of the Courts of Justice Law, 1960, (Law of the Republic No. 14/60), section 40(1) dealing with applications in the first instance to District Courts for a maintenance order—Therefore, the decision of the Supreme Constitutional Court in the case of Myrianthi Tyllirou and Charalambos Tylliros 3 R.S.C.C. 21, declaring section 40(1) of the Courts of Justice Law, 1960, unconstitutional, has no application in matters within section 6 of Cap. 16—On the contrary, on the face of it Cap. 16 appears to give jurisdiction to the District Courts.

Certiorari—Emanates from the High Court under article 155. 4 of the Constitution—Grounds of quashing inferior court's decision—Error of law apparent on the face of the record—Scope of certiorari.

Section 40(1) of the Courts of Justice Law, 1960 (Law of the Republic No. 14/60) reads as follows: "If any ecclesiastical tribunal of the Greek-Orthodox Church or of a Church to which the provisions of paragraph 1 of article 111 of the Constitution apply (hereinafter referred to in this section as "the Church") would have power to entertain a matrimonial cause brought by a wife in respect of her marriage, and the husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or infant children of the marriage, a President of a District Court or a District Judge, on application by the wife, may make a maintenance order directing the husband to make to her such periodical payments as may be just"

Section 6 of Cap. 16 (*supra*) provides for application to the District Courts in Cyprus for confirmation of maintenance orders made in England or Ireland.

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On the 25th January, 1962, the Assistant Secretary to the Ministry of Justice sent to the Registrar of the District Court of Larnaca under the provisions of section 6 of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16 a certified copy of a provisional maintenance order against Panayiotis Christou (respondent) of Larnaca for the benefit of his wife Myrianthi P. Christou and his infant children, of London, made by the Clerkenwell Magistrate's Court, London, England, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed with a requisition that a summons be issued calling upon the said Panayiotis Christou to show cause why that order should not be confirmed by the District Court of Larnaca.

On the 17th February, 1962, the District Court of Larnaca authorised the issue of the summons applied for which was duly issued and served upon the respondent. On the date of the hearing of the aforesaid application the respondent although duly served with the summons failed to appear, but the Court, instead of proceeding to deal with the application before it, held that, in view of the decision of the Supreme Constitutional Court in the case *Myrianthi Tyllirou and Charalámbos Tylliros* 3 R.S.C.C. 21, it had no jurisdiction to deal with the application. In that decision the Supreme Constitutional Court held that an application for maintenance under section 40(1) of the Courts of Justice Law, 1960 (*supra*) is, by its very nature, a matter of civil dispute "relating to personal status" in the sense of articles 87, 152 and 160 of the Constitution, and consequently, the enactment of a provision such as section 40(1) (*supra*) was, in view of those articles, expressly reserved to the Communal Chambers, and not within the competence of the House of Representatives and that, therefore, the aforementioned section 40(1) is unconstitutional.

The Attorney-General applied for an order of *certiorari* to remove into the High Court and quash the said order made by the District Court of Larnaca upon the ground that—

- (a) The said order was wrong in law
- (b) There was an error of law apparent on the face of the record ; and
- (c) The said order was contrary to the provisions of the Maintenance Orders (Facilities for Enforcement) Law, Cap.16.

Held : (1) The proceedings before the District Court of Larnaca was not an application for a maintenance order under the provisions of section 40(1) of the Courts of Justice Law, 1960, (Law of the Republic No. 14/60) but proceedings under section 6 of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, for confirmation of a provisional maintenance order made by a Court in England according to the Laws of England.

(2) Therefore, the decision of the Supreme Constitutional Court in *Myrianthi Tyllirou and Charalambos Tylliros* 3 R.S.C.C. 21 (*supra*) was not an authority for the trial Court to hold that it had no jurisdiction to entertain the application. On the other hand, the decision of the Supreme Constitutional Court just referred to is a decision under paragraph 2 of article 144 of the Constitution and is only binding on the Court by which the question has been reserved and on the parties to the proceedings and it operates as to make section 40(1) of the Courts of Justice Law, 1960, inapplicable to such proceedings only.

(3) Under the legislation in force in the Republic only the District Courts and no other Courts or tribunals have the power and machinery to enforce maintenance orders made by a Court of the U.K. as provided by section 8 of Cap.16 and the Maintenance Orders (Facilities for Enforcement) Rules made under the Law.

(4) Since no objection was raised as to the jurisdiction and in the absence of any express provision ousting jurisdiction or any direct authority declaring that the District Court had no jurisdiction in the matter, it was incumbent on the District Court to proceed and deal with the matter before it under the provisions of section 6 of Cap. 16.

(5) For the above reasons, there is an error of law apparent on the face of the record of the District Court of Larnaca and, therefore, the proceedings reviewed must be quashed.

Order of certiorari to issue.

Cases referred to :

Myrianthi Tyllirou and Charalambos Tylliros 3 R.S.C.C. 21,
distinguished :

Rex v. Northumberland Compensation Appeal Tribunal. Ex-parte Shaw (1952) 1 K.B. 338 (C.A.), principles laid down by Lord Denning at p.p. 347 and 348, and Lord Morris at p.357, *applied*.

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Application for an Order of Certiorari.

Application for an order of *certiorari* to remove into the High Court and quash the order made by the District Court of Larnaca (Vassiliades, D.J.) on the 3rd March, 1962, in Maintenance Application No. 1/62.

A. Gavrielides with *A. Frangos* for the applicant.

Respondent in person.

JOSEPHIDES, J. : This is an application for an order of *certiorari* to remove into this Court and quash the order made by the District Court of Larnaca on the 3rd March, 1962, in Maintenance Application No. 1/62 upon the ground that—

- (a) the said order was wrong in law ;
- (b) there is an error of law apparent on the face of the record ; and
- (c) the said order was contrary to the provisions of the Maintenance Orders (Facilities for Enforcement) Law, Cap.16.

The order of the District Judge as drawn up reads as follows :

“Upon the presentation of an application for confirmation of a Maintenance Provisional Order made on the 5th December, 1961, at the Clerkenwell Magistrates’ Court, in the County of London, England, the respondent not appearing although duly served with a summons to appear and show cause why the said Provisional Order should not be confirmed, this Court Doth Hereby Order that, in view of the decision of the Supreme Constitutional Court in Case No. 128/61, it has no jurisdiction to hear this application”.

The Supreme Constitutional Court in Case No.128/61, (*Myrianthi Tyllirou* and *Charalambos Tylliros*), dated the 22nd January, 1962, declared that “subsection (1) of section 40 of the Courts of Justice Law, 1960 (Law No. 14 of 1960 enacted on the 17th December, 1960) is unconstitutional as being contrary to, and inconsistent with, articles 61, 87, 152 and 160”.

The question which was referred by the District Court of

Nicosia to the Supreme Constitutional Court, under the provisions of article 144, paragraph 1, of the Constitution, was "whether having regard to article 111, paragraph 1 of the Constitution.....subsection (1) of section 40 of the Courts of Justice Law No. 14 of 1960 is wholly or partially unconstitutional....."

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The facts in the present case, as appearing in the affidavit filed in support of the application for leave to apply for an order of certiorari, are that on the 25th January, 1962, the Assistant Secretary to the Ministry of Justice sent to the Registrar of the District Court of Larnaca, under the provisions of section 6 of the Maintenance Orders (Facilities for Enforcement) Law, Cap.16, a certified copy of a provisional maintenance order against Panayiotis Christou of Larnaca (the present respondent) for the benefit of his wife Myrianthi P. Christou and his infant children, of London, made by the Clerkenwell Magistrates' Court, London, England, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, with a requisition that a summons be issued calling upon the said Panayiotis Christou (respondent) to show cause why that order should not be confirmed by the District Court of Larnaca.

On the 17th of February, 1962, the District Court of Larnaca authorized the issue of the summons applied for which was duly issued and served upon the respondent on the 19th February, 1962. On the date of the hearing of the aforesaid application, i.e. on the 3rd March, 1962, the respondent, although duly served with the summons, failed to appear but the Court instead of proceeding to deal with the application before it held that, in view of the aforesaid decision of the Supreme Constitutional Court in Case No. 128/61, it had no jurisdiction to hear the application.

I shall first deal with the law applicable to proceedings for *certiorari*. *Certiorari* issues out of the High Court of Cyprus (under article 155.4 of the Constitution), in the same way as it issues out of the High Court in England, against any inferior Court or body or person having legal authority to determine questions affecting the rights of citizens and having the duty to act judicially. It orders the removal of the record to the High Court, which will, if a defect of process is disclosed, order that the proceedings reviewed be quashed. The

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grounds on which the decision will be quashed include any excess or want of jurisdiction, error of law on the face of the record, bias or interest on the part of the persons making the decision, and the obtaining of the decision by fraud or perjury. This is a power conferred on the High Court in the exercise of its supervisory jurisdiction and controlling powers over inferior Courts. In the case of *Rex v. Northumberland Compensation Appeal Tribunal. Ex parte Shaw* (1952) 1 K.B. 338 (C.A.) Lord Justice Denning said (at page 348) :

“Of recent years the scope of certiorari seems to have been somewhat forgotten. It has been supposed to be confined to the correction of excess of jurisdiction, and not to extend to the correction of errors of law; and several Judges have said as much. But the Lord Chief Justice has, in the present case, restored certiorari to its rightful position and shown that it can be used to correct errors of law which appear on the face of the record, even though they do not go to jurisdiction”.

Lord Justice Denning also said (at page 347):

“The King’s Bench does not substitute its own views for those of the tribunal, as a Court of Appeal would do. It leaves it to the tribunal to hear the case again, and in a proper case may command it to do so”.

Lord Justice Morris in the same case, at page 357, said: “It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it”.

Now, with those authorities in mind I shall proceed to deal with the points raised in the present case.

It was submitted on behalf of the Attorney-General that this was an application made under the provisions of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16 for confirmation of a maintenance order made by an English

Court and that the District Judge was wrong in refusing to hear the application relying on the decision of the Supreme Constitutional Court in Case No.128/61. It was further submitted that that decision concerned the constitutionality of the provisions of sub-section (1) of section 40 in the Courts of Justice Law, 1960. Here, it was said, we are concerned with the enforcement of a provisional maintenance order made by an English Court and that the competent Court to deal with the question of confirmation of the order is the District Court and not a Court established under a communal law, or the Ecclesiastical Tribunal of any Church. As this was not an application under the provisions of section 40 of the Courts of Justice Law, the aforesaid decision of the Supreme Constitutional Court was irrelevant and inapplicable to the present proceedings. It was further contended on behalf of the Attorney-General that the provisions of Cap.16 are not within the competence of the Communal Chamber or any communal Court or Ecclesiastical Tribunal as these Tribunals have no jurisdiction to confirm or enforce an order made by a foreign Court.

Finally, it was contended that the provisional maintenance order made by an English Court does not come within the meaning of the expression "civil dispute relating to personal status" which occurs in articles 87, 152 and 160 of the Constitution ; and that the maintenance obligation which is being enforced by the English Court is not an obligation envisaged by the Canon Law of the Greek-Orthodox Church but an obligation imposed by the provisions of the law in force in England ; and that, consequently, the confirmation of the English Maintenance order under the provisions of Cap.16 by the District Court does not come within the ambit of article 111 or articles 87, 152 and 160 of the Constitution.

The respondent, who appeared in person, did not oppose the application nor did he make any submission on the point of law involved in this case.

In the formal order of the District Court of Larnaca it is stated, "this Court Doth Hereby Order that, in view of the decision of the Supreme Constitutional Court in Case No. 128/61, it has no jurisdiction to hear this application". But, with great respect to the trial Judge, the proceeding before him was not an application for a maintenance order under the provisions of section 40, sub-section (1) of the Courts of

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Justice Law, 1960, but proceedings under section 6 of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, for confirmation of a provisional maintenance order made by a Court in England, according to the laws of England, and it would appear, therefore, that this is a different proceeding. This is not the case where an application is made in the first instance to the District Court to make a maintenance order. The original proceedings here are taken before the English Court which has made the provisional maintenance order, and what the District Court of Larnaca is required to do, under the provisions of Cap.16, is to decide whether to confirm or otherwise the maintenance order made by the English Court.

Under the provisions of sub-section (3) of section 6 of Cap.16, at the hearing before the District Court it is open to the respondent to raise a defence which he might have raised in the original proceedings before the English Court, under the English Law, but no other defence; and the certificate from the English Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the respondent had been a party to the original proceedings is conclusive evidence that those grounds are grounds on which objection may be taken.

Sub-section (4) of section 6 provides that if the respondent does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either with or without modification. If, on the other hand, the respondent satisfies the Court that for the purpose of any defence it is necessary to remit the case to the English Court which made the provisional order for the taking of any further evidence, the Court may so remit the case (sub-section (5) of section 6).

By statute maintenance orders may be enforced reciprocally between the United Kingdom and most countries of the Commonwealth, including the Republic of Cyprus, and between different parts of the Commonwealth. The whole basis of the enforcement of these orders is reciprocity. If English maintenance orders are enforced in Cyprus then the English Courts will reciprocate in the case of maintenance orders made by the Cyprus Courts. This is provided under the English Maintenance Orders (Facilities for Enforcement) Act, 1920, section 12, and S.R. & O. 1921 No. 1395, which

continue to apply in relation to the Republic of Cyprus, under the provisions of the English "Cyprus Act, 1960".

Section 6 of our Cap.16 reproduces the provisions of section 4 of the aforesaid English Act of 1920. The object of the confirmation of a maintenance order is to have it enforced in Cyprus in like manner as if the order were for the payment of a civil debt, and the officers of the Court are enjoined to take all such steps for enforcing the order as provided in section 8 of Cap.16 and the Maintenance Orders (Facilities for Enforcement) Rules made under that Law (see Rules Book (1955), page 385). Under the legislation in force in the Republic only the District Courts, and no other Courts or tribunals, have the power and the machinery to execute such orders.

As the proceedings before the District Court of Larnaca was not an application under the provisions of section 40, sub-section (1), of the Courts of Justice Law, 1960, the decision of the Supreme Constitutional Court in Case No. 128/61 was no authority for the trial Judge to hold, as indeed he did hold, that in view of that decision he had no jurisdiction to hear the application. Furthermore, as the decision of the Supreme Constitutional Court in that case is a decision under paragraph 2 of article 144 of the Constitution it is only binding on the Court by which the question has been reserved and on the parties to the proceedings, and it operates as to make section 40(1) of the Courts of Justice Law, 1960 inapplicable to such proceedings only (see paragraph 3 of Article 144).

It was the duty of the trial Judge to proceed to deal with the application for the confirmation of the provisional maintenance order, under the provisions of Cap.16, subject to any submissions which might have been made by the parties. No question of the lack of jurisdiction of the District Court was raised by any party. In fact the respondent did not appear before the Court. If any relevant and material questions were raised by any party then it was for the District Judge to consider the matter and to apply all the relevant provisions of the laws and the Constitution, including the provisions of paragraph 4 of article 188 regarding the laws saved under the Constitution, if applicable. On the face of it Cap.16 appears to give jurisdiction to the District Court to deal with this matter and, without any submission being made by any party as to the lack of jurisdiction and in the absence of any express

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provision ousting this jurisdiction or any direct authority declaring that the District Court had no jurisdiction in the matter, it was incumbent on the District Judge to proceed to deal with the matter before him under the provisions of section 6 of Cap.16.

For all these reasons I hold that there is an error of law apparent on the face of the record of the District Court of Larnaca and I, therefore, direct that the proceedings reviewed be quashed.

*Order of certiorari to issue.
No order as to costs.*