

[TRIANAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION.

NIKI CHR. GEORGHIOU (No. 1)

Applicant,

and

THE REPUBLIC OF CYPRUS THROUGH

1. THE MINISTER OF THE INTERIOR
2. THE IMMIGRATION OFFICER,

Respondents.

(Case No. 254/68).

1968
July 26

NIKI CHR.
GEORGHIOU
(No. 1)

v.

REPUBLIC
(MINISTER OF THE
INTERIOR
AND ANOTHER)

Provisional Order—Expulsion from Cyprus—Recourse against decision to expel Applicant from Cyprus—Application for a provisional order restraining the Respondents from taking any measures to expel Applicant pending final determination of recourse—Provisional order granted—Factors taken into account—This is a case where, if the provisional order applied for is granted, proper administration will not be interfered with—Whereas if it is refused then the Applicant may suffer damage of an irreparable nature—Indeed, in the circumstances of this case proper administration does not urgently require that the Applicant should not be allowed to remain in Cyprus pending the determination in the very near future of her recourse—Whereas the personal liberty of Applicant as well as her right to have access to the Cyprus Courts will be seriously interfered with if she is now expelled from Cyprus—She will, thus suffer damage not only of a financial nature, but also damage which cannot be easily estimated or adequately compensated for, in terms of money—Especially if she is prevented by her absence from Cyprus from duly pursuing her present recourse.

Alien—Expulsion—Order of expulsion—Recourse against such expulsion—Provisional order suspending the effect of such order of expulsion, granted—See, also, above.

Expulsion—See above.

Practice—Provisional order in proceedings on a recourse under Article 146 of the Constitution—See above.

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This is an application for a provisional order restraining the Respondents from expelling the Applicant from Cyprus pending final determination of her recourse, already filed under Article 146 of the Constitution against the decision of the Respondents to expel her. The Applicant was the wife of a Cypriot citizen until the 31st May, 1968, when her marriage was dissolved by decision of the Limassol Ecclesiastical Court. By letter of Respondent 2—who comes under Respondent 1—dated the 15th July, 1968, the Applicant was asked to leave Cyprus within seven days, and was informed that if she failed to do so she would be expelled. The reason for which the Respondents wanted the Applicant to leave Cyprus was that they were of the opinion that her marriage was merely a marriage of convenience to enable her to stay in Cyprus, where she has formed an illicit relationship with a married man, with the result that she has broken up his marriage.

Granting the provisional order the Court:—

Held, (1)(a). At this stage, I have some doubt as to whether it is up to the Respondents to take care of situations as the one created by the illicit relationship of the Applicant.

(b) In any case, I cannot hold that proper administration urgently requires that the Applicant should not be allowed to remain in Cyprus until her recourse has been heard and determined in the near future.

(2) On the other hand, I have no doubt that the personal liberty of the Applicant, and her right to have access to the Cyprus Courts, will be seriously interfered with if she is, at this stage, expelled from Cyprus; and as, in the circumstances, she will suffer damage not only of a financial nature, but also damage which cannot be easily estimated, or adequately compensated for, in terms of money later, especially if she is prevented from duly pursuing her present recourse, I do not think that I should allow the expulsion of the Applicant until this recourse has been heard and determined.

(3) I have decided, therefore, to make the provisional order and I direct that the opposition to the recourse be filed and delivered within four days from today, and that this case be fixed for hearing at 10 a.m. on the 2nd August, 1968. The matter of costs is reserved.

Order in terms.

Application.

Application for a provisional order restraining Respondents from taking any measures to expel Applicant from Cyprus pending the final determination of a recourse against the decision of the Respondents to the effect that Applicant's stay in Cyprus without a permit is illegal.

Ch. Kyriakides, for the Applicant.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

The following Decision was delivered by:-

TRIANTAFYLIDIS, J.: The Applicant by an application dated the 24th July, 1967, seeks a provisional order restraining the Respondents from taking any measures to expel her from Cyprus; as a matter of fact by a letter, dated the 15th July, 1968 (see *exhibit 1*), of Respondent 2, who comes under Respondent 1, the Applicant was asked to leave Cyprus within seven days, and was informed that if she failed to do so she would be expelled.

The Applicant, who comes from Greece, was the wife of a Cypriot citizen until the 31st May, 1968, when her marriage was dissolved by decision of the Limassol Ecclesiastical Court; the dissolution of the marriage came to the knowledge of Respondents on or after the 1st July, 1968.

It is a strongly disputed issue whether or not as a result of her marriage, or, at any rate, as a result of the terms under which the Applicant withdrew a previous recourse (141/68) in the matter of her residence (see *exhibit 2*), she has become entitled to reside, and work, permanently in Cyprus.

According to her counsel, the Applicant no longer has any ties with Greece, she has settled here and she is working as a singer at Limassol; on the other hand counsel for the Respondents has informed the Court that the Applicant has quite recently ceased to work as a singer and she is about to open a bar in Limassol.

According, again, to her counsel, the Applicant is a person who does not have the financial means to go to Greece and to stay there awaiting the outcome of this recourse; moreover,

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while being in Greece she will not be in a position to instruct properly her counsel about the further prosecution of this recourse.

According to counsel for the Respondents, the reason for which the Respondents want the Applicant to leave Cyprus is that they are of the opinion that her marriage was merely a marriage of convenience, which took place in order to enable the Applicant to stay in Cyprus, where she has formed an illicit relationship with a married man, with the result that she has broken up his marriage. It is not alleged, in the least, that the Applicant is anything such as a common prostitute, but the Respondents regard her stay here, in the circumstances of the said illicit relationship, as a matter offending against morality.

At this stage, and as at present advised, I have some doubt as to whether it is up to the Respondents to take care of situations such as the one created by the illicit relationship of the Applicant; I cannot, in any case, hold that proper administration urgently requires that the Applicant should not be allowed to remain in Cyprus until her recourse has been heard and determined in the near future.

On the other hand, I have no doubt that the personal liberty of the Applicant, and her right to have access to the Cyprus Courts, will be seriously interfered with if she is expelled from Cyprus; and as, in the circumstances, she will suffer damage not only of a financial nature, but also damage which cannot be easily estimated, or adequately compensated for, in terms of money later, especially if she is prevented by her absence from Cyprus from duly pursuing the present recourse, I do not think that I should allow the expulsion of the Applicant from Cyprus until this recourse has been heard and determined; of course, if it is found, eventually, that she has no right to be here, and that the Government is properly entitled not to allow her to stay in Cyprus, then she will have to go, no matter what the consequences may be for her.

This is, indeed, a case where, if the provisional order applied for is granted proper administration will not be interfered with, whereas if it is refused then the Applicant may suffer damage of an irreparable nature.

In the circumstances, I have decided, therefore, to make a provisional order restraining both Respondents, and anybody acting under their orders or on their behalf, or as their agent or servant, from taking any step whatsoever with a view to expelling the Applicant from Cyprus before the determination of the present recourse.

In view, on the other hand, of the nature of this case, I am not prepared to allow it to remain pending, in the ordinary course of things, until after the summer vacations; I have, therefore, decided to direct an early hearing of this case and I shall try to decide it as soon as possible thereafter. It is ordered, thus, that the Opposition be filed and delivered within four days from to-day, and that this case be fixed for hearing at 10.00 a.m. on the 2nd August, 1968.

The matter of costs for to-day is reserved to be decided later, at the end of the proceedings.

Order, and order for costs, in terms.

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