

[JOSEPHIDES J.]

1969  
Jan. 14

REPUBLIC,

REPUBLIC  
v.

v.

PANDELIDES  
(CORONER)

PANDELIDES (CORONER)

EX PARTE  
COSTAS

EX PARTE COSTAS PAPADOPOULLOS,

PAPADOPOULLOS

(Civil Application 13/68).

*Certiorari—Application for an order of certiorari to remove and quash (a) a charge for homicide preferred by a Coroner upon the completion of an inquest and (b) a committal for trial before the Assizes for the said charge, ordered by the same Coroner—Application withdrawn upon the filing by the Attorney - General of a nolle prosequi in the aforesaid criminal proceedings—Question of costs—Directions given—Question reserved for determination at a later stage—See also herebelow.*

*Coroners—Committal for trial—A coroner has no power under the legislation in force in Cyprus to commit a person for trial before the Assizes.*

*Committal—Coroners—Powers of a Coroner to commit for trial before Assizes—See above.*

*Criminal Procedure—Committal for trial ordered by coroner—No powers under the legislation in force—See above.*

The applicant applied to the Supreme Court for an order of certiorari to remove and quash (a) the charge of homicide preferred against him by the Coroner upon the completion of an inquest and (b) his committal for trial before the Assize Court of Nicosia for the said charge, ordered by the same Coroner. Leave to apply for the said order of certiorari in this case was granted on the 16th December, 1968 (see the report in (1968) 1 C.L.R. 496). Some time later on (on the 10th January, 1969) the Attorney - General filed a *nolle prosequi* in the aforesaid criminal proceedings. Under the circumstances, counsel for the applicant applied for leave to withdraw the application for certiorari. The learned Judge having given such leave, dismissed the application accordingly, reserved the question of costs to be determined at a later stage and stated:

1969  
Jan. 14  
—  
REPUBLIC  
v.  
PANDELIDES  
(CORONER)  
EX PARTE  
COSTAS  
PAPADOPOULLOS

“Normally the matter should end there and the Court should not say any more, but I think that in the public interest I should put it on record that, having looked into this question and as at present advised, I am of the view that the Coroner had no power under the legislation in force in Cyprus to commit the applicant for trial before the Assizes and I think that the Attorney-Generāl rightly entered a *nolle prosequi* in the matter.....”

*Application dismissed. Directions with regard to costs made, the matter to be determined later on.*

### Application.

Application for an order of certiorari to remove and quash (a) a charge of homicide preferred by a Coroner upon the completion of an inquest and (b) a committal for trial by the Assize Court for the said charge.

*L. Clerides*, for the applicant.

No appearance on behalf of the Attorney-General of the Republic, the Coroner or the Registrar District Court, Nicosia.

*Mr. Clerides*: The position is that the Attorney-General, by a notice filed in Court on the 10th of January, 1969, with copy sent to me, informed the Registrar of the Supreme Court that he has already filed a *nolle prosequi* in the proceedings against the applicant and, therefore, those proceedings have now been discontinued. Under those circumstances I apply for leave to withdraw the application for certiorari because the subject matter of the proceedings has now been removed as a result of the *nolle prosequi* and the only question which remains to be decided is the question of costs. It is a case in which the applicant should get his costs because his application was fully justified and this appears to be so from the stand taken by the Attorney-General in filing a *nolle prosequi* which, in effect, is an admission that the proceedings were misconceived. I ask for the Court to strike out the application and award the costs of ~~these~~ proceedings to the applicant.

*JOSEPHIDES, J.*: The fact that the Attorney-General has filed a *nolle prosequi* does not really determine the question

whether the Coroner made an order in accordance with the law or not, because the Attorney-General has a wide power to enter a *nolle prosequi* even in the strongest possible case against the accused person where he considers that it is in the public interest that he should not prosecute or continue the criminal proceedings.

I have before me a notice on behalf of the Attorney-General of the Republic to the Registrar of this Court, dated the 10th January, 1969, received in the registry on the 13th January, 1969, (put in and marked "A"). In that notice he informs the Court that he has entered a *nolle prosequi* against the applicant, and that he does not intend to defend the certiorari proceedings.

The Attorney-General of the Republic further informs the Court that he has asked the Registrar of the District Court of Nicosia to supply him with the notes of the evidence taken down by the Coroner "in order to study the case and decide accordingly".

On the question of costs I think that I must hear you further, because against whom are you asking the court to make an order for costs?

*Mr. Clerides:* Against the Attorney-General representing the Republic. From the third paragraph of the application it is clear that he is not discontinuing the proceedings because he does not intend to proceed against the applicant. That is why the costs should be paid. If the third paragraph was omitted yes, but he reserves the right to examine the evidence and decide whether to proceed against the applicant, which means that he agrees that the procedure followed by the Coroner is wrong.

JOSEPHIDES, J.: I do not think I shall decide finally this question of costs either in your favour or against you without giving the opportunity to the Attorney-General of being heard, because I think that once he has given you notice of what he had done, that is to say, that he had entered a *nolle prosequi*, and further that he did not intend to defend the certiorari proceedings, I think that, strictly speaking, you should have given him notice that you would have asked for costs, in fairness to him.

1969

JAN. 14

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REPUBLIC

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PANDELIDES

(CORONER)

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PAPADOPOULLOS

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Jan. 14

—  
REPUBLIC  
v.

PANDELIDES  
(CORONER)  
EX PARTE  
COSTAS  
PAPADOPOULLOS

*Mr. Clerides:* I was under the impression that the Attorney-General or any of his representatives, would have been present in Court today and that is why I did not give any notice for the claim of costs.....

JOSEPHIDES, J.: I shall adjourn the question of costs to give you an opportunity of discussing this matter with the Attorney-General of the Republic as to whether he sees fit that the applicant should be compensated in respect of his costs out of some public funds. If there is agreement as to that then the matter will end there and you will have to give notice to the court. If there is no agreement, then you will have to apply to the Registrar to put this application back in the list for hearing on the question of costs and in that case notice will have to be served on the Attorney-General and any other party who may have to be heard in the matter.

As to the application for an order of certiorari which has today been withdrawn by counsel, this Court grants leave for such withdrawal and dismisses the application. Normally the matter should end there and the Court should not say any more, but I think that in the public interest I should put it on record that, having looked into this question and as at present advised, I am of the view that the Coroner had no power under the *legislation in force in Cyprus to commit the applicant for trial before the Assizes* and I think that the Attorney-General of the Republic rightly entered a *nolle prosequi* in the matter. I have no doubt that the Attorney-General, in the exercise of his powers and discretion in the public interest, will look into the matter for the purpose of deciding whether the evidence taken down before the Coroner warrants the preferment of a charge against the applicant in the normal way before the District Court. In that case a preliminary inquiry will have to be held and the case committed to the Assizes in accordance with the machinery expressly provided under the Criminal Procedure Law.

In the result, the application for an Order of Certiorari is dismissed and a direction with regard to the question of costs is given in the above terms.

*Application dismissed;  
direction with regard  
to costs as aforesaid.*