

[JOSEPHIDES, J.]

REPUBLIC,

v.

DISTRICT JUDGE AT MORPHOU—EX PARTE  
LOIZOS THEOFANOUS AND OTHERS,

(Civil Application No. 10/69).

1969  
Dec. 9

—  
REPUBLIC

v.

DISTRICT  
JUDGE AT  
MORPHOU—  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

*Prohibition—Application for leave to apply for an order of prohibition directed to the District Judge sitting at Morphou and preventing him from trying two criminal cases pending determination of a recourse before the Supreme Court—Application made on two grounds: (a) excess of jurisdiction; (b) breach of the rules of natural justice—Application refused.*

*Prohibition—Grounds on which prohibition may issue—Principles applicable to issue of orders of prohibition.*

*Natural justice—Rules of—Summary of such rules.*

This is an application for leave to file an application for an order of prohibition directed to the District Judge sitting at Morphou, prohibiting him from further proceeding with the trial of two criminal cases against the applicants fixed on December 16, 1969 (the relevant charges having been filed on October 2, 1969 and on October 17, 1969 respectively). The charges are for quarrying sand and shingle without a quarry licence, contrary to sections 37(2) and 43(2) of the Mines and Quarries (Regulation) Law, Cap. 270. On November 22, 1969, the first applicant filed a recourse in the Supreme Court No. 373/69 under Article 146 of the Constitution for a declaration that he is entitled to a quarry permit or licence under the provisions of the said Law Cap. 270. Apparently no such licence (or permit) has been issued up to the present.

Counsel for applicants (accused in the aforesaid criminal cases) is now asking for the leave of this Court to file an application for an order of prohibition preventing the District Court from trying the two aforesaid criminal cases pending final determination of the recourse before the Supreme Court No. 373/69 (*supra*). The application is based on two grounds:

1969  
Dec. 9  
—  
REPUBLIC  
v.  
DISTRICT  
JUDGE AT  
MORPHOU-  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

The first ground is that the Judge would be acting in excess of jurisdiction; the second one is that the Judge in trying the criminal cases against the applicants would be acting in contravention of the rules of natural justice in the particular circumstances of these two cases set out *post* in the judgment.

Refusing the application for leave Josephides J.:

*Held*, (1). The grounds and principles on which prohibition may issue are well settled. I have dealt with those principles applicable to the issue of orders of prohibition in two recent cases and I need not now elaborate on them: see *Ex parte Efrosyni Michaelidou* (reported in this Part at p. 118 *ante*); and *Athanassiou v. The Attorney-General of the Republic* (reported in this Part at p. 439 *ante*). See also *Short and Mellor*, Crown Practice, second edition p. 252; *Halsbury's Laws of England*, 3rd edition volume 11, p. 114, paragraph 213, and p. 65 paragraph 122; cf. *Republic (P.S.C.) v. Mozoras* (1966) 3 C.L.R. 356 at p. 399 et. seq.

(2) I do not think that on the face of the records produced before this Court, the Judge at Morphou is acting in excess of his jurisdiction.

(3)(a) The next point taken by counsel for applicants is that the District Judge in trying the criminal cases against the applicants would be acting in contravention of the rules of natural justice because, he said, a government Department or a Ministry had undertaken to grant to the first applicant a licence in respect of a new place where, when he went to quarry, he was prohibited from doing so and this, counsel submitted, was unfair to the citizen.

(b) However I may sympathize with the position of the first applicant, I do not think that he succeeded in bringing himself within the ground of a departure from the rules of natural justice. A tribunal is in breach of these rules if it fails in its duty to act in good faith, and to listen fairly to both sides and to give fair opportunity to the parties in the controversy adequately to present their case and to correct and contradict any relevant statement prejudicial to their view (See *Halsbury's, supra* at p. 65; paragraph 122; for a summary of the rules of natural justice see also *Mozoras' case (supra)*).

(c) The present applicants have notice of what they are accused before the district Judge at Morphou and there is no

complaint that they have been denied a full opportunity of being heard in their defence; nor is there any complaint against the District Judge that the hearing is not a fair one. The complaint of the applicants appears to be against another authority and their remedy may possibly lie elsewhere. But in any event, it has not been established that the Court at Morphou is in breach in any way of the rules of natural justice. I therefore, refuse the leave applied for.

*Application refused.*

1969  
Dec. 9  
—  
REPUBLIC  
v.  
DISTRICT  
JUDGE AT  
MORPHOU-  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

Cases referred to:

*Republic (Public Service Commission) v. Mozoras* (1966) 3  
C.L.R. 356 at p. 399 et seq.;

*Ex parte Efrosyni Michaelidou* (reported in the Part at p. 118  
*ante*);

*Athanassiou v. The Attorney-General* (reported in this Part at  
p. 439 *ante*).

#### **Application.**

Application for leave to file an application for an order of prohibition directed to the District Judge at Morphou prohibiting him from further proceeding with the trial of two criminal cases (Nos. 2612/69 and 2725/69) against the applicants.

*Chr. Mitsides*, for *ex-parte* applicants.

The following judgment was delivered by:

JOSEPHIDES, J.: This is an application for leave to file an application for an order of prohibition directed to the District Judge sitting at Morphou, prohibiting him from further proceeding with the trial of two criminal cases (Nos. 2612/69 and 2725/69) against the applicants.

The charge in Case No. 2612/69 was filed on the 2nd October, 1969, and the first two applicants are charged with quarrying without a licence, contrary to sections 37(2) and 43(2) of the Mines and Quarries (Regulation) Law, Cap. 270. In the particulars of the offence it is stated that the accused (applicants) on the 25th August, 1969, at the locality "Livadhia", in the area of Prastio, quarried sand and shingle without a quarry licence. The second case (No. 2725/69) was filed on

1969  
Dec. 9  
—  
REPUBLIC  
v.  
DISTRICT  
JUDGE AT  
MORPHOU-  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

the 17th October, 1969, and it charges all the applicants with the same offence alleged to have been committed on the 15th September, 1969.

The first case (No. 2612/69) came on before the District Judge at Morphou on the 7th October, 1969. The first two applicants, on being charged before the Court, pleaded not guilty and their case was fixed for trial on the 16th December, 1969. The second case (No. 2725/69) came on before the District Judge at Morphou on the 10th November, 1969. The applicants were charged and they pleaded not guilty, and this case was also fixed for trial on the 16th December, 1969.

On the 22nd November, 1969, the first applicant, Loizos Theofanous, filed a recourse in the Supreme Court, under No. 373/69, against the Republic of Cyprus, for a declaration that he is entitled to a quarry permit or licence under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270, by virtue of an "arrangement" made at the Ministry of Commerce and Industry on the 12th June, 1969.

The "arrangement" stated to have been made on the 12th June, 1969, is contained in a copy of minutes of a meeting, which minutes are exhibited to the first applicant's affidavit. At the meeting there were present, among others, the Director-General of the Ministry of Commerce and Industry, the first applicant and his advocate (Mr. Mitsides). According to these minutes, the Director-General stated that the washing plant of the applicant should be removed from its position in any event; but as the Ministry was responsible for the development of the industry and as the applicant had invested a considerable sum of money, the Director-General made the following proposals for the "solution of the problem":

- (a) that the machinery of the washing plant should be removed by the 14th July, 1969, so that the washing plant should cease operating;
- (b) that within two months the whole washing plant installation should be removed;
- (c) that the applicant, Mr. Theofanous, be allowed to move away a quantity of sand and shingle within a period to be fixed by the Department of Mines; and
- (d) that a licence be granted to the applicant within the

area of Prastio, to cover an area of 35 donums for two years, with an extension for a further two years, provided that the competent Government Departments would not object to it.

These proposals were accepted by the applicant Theofanous and his advocate stated that he would withdraw his recourse which was pending before the Supreme Court.

Apparently no licence has been issued under the provisions of the Law (Cap. 270) up to the present day, and the prosecution in the two criminal cases allege that on the 25th August, 1969, and on the 15th September, 1969, the applicant Theofanous, with his drivers, quarried sand and shingle without a quarry licence.

Mr. Mitsides to-day is asking for the leave of this Court to file an application for an order of prohibition preventing the District Judge from trying the two criminal cases. His first ground is that the Judge would be acting in excess of his jurisdiction. It is submitted that the Judge should pending the final determination of the recourse before the Supreme Court (No. 373/69), stay proceedings and await the result of the recourse. I do not think that, on the face of the records produced before this Court, the Judge at Morphou is acting in excess of his jurisdiction.

The grounds on which prohibition may issue are well settled. The order is directed to "an inferior Court for the purpose of preventing the inferior Court from usurping a jurisdiction with which it is not legally vested, or, in other words, to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction." (*Short and Mellor*, Crown Office Practice, second edition, page 252). In *Halsbury's Laws*, third edition, volume 11, page 114, paragraph 213, it is stated that —

"Prohibition lies not only for excess of or absence of jurisdiction, but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice, or procedure of an inferior tribunal, or a wrong decision on the merits of proceedings."

A tribunal is in breach of the rules of natural justice if it fails in its duty to act in good faith, and to listen fairly to both sides, and to give fair opportunity to the parties in the controversy adequately to present their case and to correct or

1969  
Dec. 9  
—  
REPUBLIC  
v.  
DISTRICT  
JUDGE AT  
MORPHOU-  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

1969  
Dec. 9  
—  
REPUBLIC  
v.  
DISTRICT  
JUDGE AT  
MORPHOU-  
EX PARTE  
LOIZOS  
THEOFANOUS  
AND OTHERS

contradict any relevant statement prejudicial to their view (see Halsbury's Laws, *supra*, page 65, paragraph 122). It is also an elementary principle that no man can be a judge in his own cause. For a summary of the rules of natural justice see also *Republic (P.S.C.) v. Mozoras* (1966) 3 C.L.R. 356 at p. 399 et seq.

I have dealt with the above principles applicable to the issue of orders of prohibition in two recent cases and I need not now elaborate on them: see *Ex parte Efrosyni Michaelidou* (reported in this Part at p. 118 *ante*); and *Athanassiou v. The Attorney-General of the Republic* (reported in this Part at p. 439 *ante*).

The next point taken by Mr. Mitsides, apart from the question of excess of jurisdiction, was that the District Judge in trying the criminal cases against the applicants would be acting in contravention of the rules of natural justice, because, he said, a Government Department or Ministry had undertaken to grant to applicant Theofanous a licence in respect of a new place at Prastio where, when he went to quarry, he was prohibited from doing so and this, counsel submitted, was unfair to the citizen. However much I may sympathize with the position of Mr. Mitsides's client, I do not think that he has succeeded in bringing himself within the ground of a departure from the rules of natural justice as set out earlier in this judgment. The present applicants have notice of what they are accused before the Court at Morphou and there is no complaint that they have been denied a full opportunity of being heard in their defence; nor is there any complaint against the Judge that the hearing is not a fair one. The complaint of the applicants appears to be against another authority and their remedy may possibly lie elsewhere — as to which I express no opinion. But, in any event, it has not been shown that the Court at Morphou is in breach of any of the rules of natural justice.

For these reasons I am of opinion that the applicants have failed to make out a *prima facie* case and I accordingly refuse leave for the filing of their application for an order of prohibition.

*Application refused.*