

1979 May 9

[TRIANTAFYLIDIS, P.]

ATTORNEY-GENERAL OF THE REPUBLIC AND ANOTHER  
(No. 1),

*Applicants,*

v.

GEORGE SAVVIDES,

*Respondent.*

(Application No. 18/79).

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*Practice—Certiorari—Application for certiorari while appeal is pending  
—Reserved judgment on application not issued pending the disposal  
of the appeal.*

5 Along with the filing of the present application for an order  
of certiorari for the purpose of quashing an interim order, made  
*ex parte* on the application of the respondent, the applicants  
filed, also, an appeal against the said interim order. A perusal  
of the grounds on the basis of which the order of certiorari was  
10 being applied for and of the Notice of Appeal showed that, in  
effect, all the grounds on the strength of which the order  
of certiorari was applied for were included in the Notice of  
Appeal. At the time when the Court was about to deliver its  
reserved judgment in this application the appeal in question had  
15 not yet been fixed for hearing as counsel for the applicants  
stated, during the hearing of this application, that for the time  
being, he was not asking that this appeal should be fixed for  
hearing.

20 *Held*, that where the proceeding is subject to appeal and time  
is limited by law for the bringing of the appeal the Court may  
adjourn the application for an order of certiorari until the appeal  
is determined or the time for appealing has expired (see Hals-  
bury's Laws of England, 4th ed. Vol. 11 p. 813 para. 1546); and  
that, therefore, in the light of the foregoing and, especially, in  
view of the fact that the validity of the interim order in question

can be examined as regards all relevant aspects from a wider jurisdictional point of view in the said appeal, the reserved judgment in this case should not be issued until the said appeal has been disposed of.

Order accordingly. 5

Cases referred to:

*Rex v. Barnes and Others; Ex parte Lord Vernon*, 102 L.T. Rep. 860 at p. 861.

**Application for an order of certiorari.**

Application for an order of certiorari to remove into the Supreme Court and quash an interim order made by the District Court of Nicosia (Stylianides, P.D.C.) on the 3rd April, 1979 in civil action No. 1530/79. 10

*K. Kallis*, for the applicants.

*Ant. Lemis with D. Savvides (Mrs.)* for the respondent. 15

*Cur. adv. vult.*

TRIANTAFYLIDIS P. read the following decision. The applicants are the defendants in action No. 1530/79, in the District Court of Nicosia, and the respondent is the plaintiff in the same action. 20

By means of their present application the applicants seek an order of certiorari for the purpose of quashing an interim order made in the said action *ex parte* on the application of the respondent on April 3, 1979.

The applicants were granted leave to apply for an order of certiorari on April 13, 1979, in civil application No. 16/79; the order granting such leave reads as follows:- 25

“The Statement and the affidavit, both dated April 13, 1979, having been read, it is hereby ordered as follows:-

1. The applicants are granted leave to apply in this case for an order of certiorari within six days from today. Any opposition to be filed within six days thereafter. 30
2. All proceedings in relation to the interim order, dated April 3, 1979, in civil action No. 1530/79 in the District Court of Nicosia, by way of execution or otherwise, are hereby stayed for six days as from today, and if the 35

applicant applies within that period for an order of certiorari, then such stay shall continue to be operative until further order of this Court; provided that any party affected by the stay of proceedings, ordered as above, shall be at liberty to show cause, at any time, why such stay should not continue to be operative.

3. Copy of this order to be delivered to the Registrar of the District Court of Nicosia."

Pursuant to such leave the present application was filed on April 17, 1979. An opposition thereto was filed by the respondent on April 24, 1979, and, then, this case was heard on April 25 and 27, 1979, when judgment was reserved.

On April 17, 1979, the applicants filed, also, an appeal against the said interim order (civil appeal No. 5945) which has not yet been fixed for hearing, as counsel for the applicants, during the hearing of the present application, stated that, for the time being, he was not asking that this appeal should be fixed for hearing.

A perusal of the grounds on the basis of which the order of certiorari is being applied for, as they are set out in the Statement dated April 13, 1979, and of the Notice of Appeal in civil appeal No. 5945, shows that, in effect, all the grounds on the strength of which the order of certiorari is applied for are included in the grounds set out in the said Notice of Appeal, in which there is set out a further ground by means of which it is contended that the interim order in question is the result of a wrong exercise of the relevant discretionary powers of the trial Court.

It is well settled, and, actually, it does not appear to be disputed by either side in the present case, that, as it is stated in Halsbury's Laws of England, 4th ed., vol. 11, p. 805, para. 1528 "There is no rule in regard to certiorari, as there is with mandamus, that it will lie only where there is no other equally effective remedy; and, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute".

It appears, however, to be equally well established that "Where the proceeding is subject to appeal and time is limited by law for the bringing of the appeal, the Court or Judge may

adjourn the application for leave to apply for an order of certiorari until the appeal is determined or the time for appealing has expired." (see Halsbury's, *supra*, p. 813, para. 1546, as well as The Supreme Court Practice, 1979, vol. 1, p. 830, 53/1-14/18).

In *Rex v. Barnes and others; Ex parte Lord Vernon*, 102 L.T. Rep. 860, Lord Alverstone C. J. stated (at p. 861) in relation to an application for certiorari:—

" If at the time this rule was moved I had known that the defendant was appealing to quarter sessions, I am sure that I should not have granted this rule. The authorities show that in such a case as this, where there is a limited time for appealing and the party has appealed, no certiorari will be granted until the appeal has been disposed of, because in one event the certiorari may be useless."

In the light of the foregoing and, especially, in view of the fact that the validity of the aforementioned interim order can be examined as regards all relevant aspects from a wider jurisdictional point of view in civil appeal No. 5945, I have decided that I should not issue the reserved judgment in this case, in order to pronounce whether the order of certiorari, applied for by the applicants, should or should not be made, until the said civil appeal has been disposed of.

Counsel for the applicants is, therefore, expected to inform, in writing, the Registry of this Court not later than May 14, 1979, whether he wishes the said civil appeal to be fixed for hearing or whether he wishes to withdraw it; if the appeal is withdrawn, then I shall proceed to give judgment regarding the present application for an order of certiorari; if the appeal is to be proceeded with and it is fixed for hearing, then I shall fix the present case in order to hear arguments whether there should be continued in force, pending the determination of the appeal, the order which I have made, as aforesaid, on April 13, 1979, staying proceedings, by way of execution or otherwise, in action No. 1530/79, in the District Court of Nicosia; and, of course, in the meantime, the applicants are at liberty to seek a stay of execution of the interim order concerned, pending the determination of their appeal against it, by taking the necessary steps for this purpose under rules 18 and 19 of Order 35 of the Civil Procedure Rules.

Before concluding this Decision I should point out that the District Court of Nicosia, on April 11, 1979, dismissed two *ex parte* applications by the applicants, as defendants in that action, for the discharge of the aforementioned interim order; and  
5 against the said dismissal another appeal, civil appeal No. 5946, was filed on April 19, 1979, which is still pending and in respect of which counsel for the applicants has, also, stated that, for the time being, it need not be fixed for hearing. Though  
10 this second appeal relates, too, in a way, to the validity of the interim order in respect of which an order of certiorari is being sought by means of the present application, I do not regard it as being a proceeding of such a nature that it should prevent me from giving my reserved judgment in the present application until that appeal has been disposed of also.

15 *Order accordingly.*