1983 June 21

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

ALECOS CONSTANTINIDES,

Appellant-Plaintiff,

v.

1. EKDOTIKI ETERIA VIMA LTD.,
2. GEORGIOS XENOFONTOS (ALIAS G. SERTIS),
3. TYPO PRESS LTD.,
4. GENIKON PRAKTORION TYPOU POULIA & KONIARI LTD.,

Respondents-Defendants.

(Civil Appeal No. 6487).

Abuse of the process of the Court—Inherent power of the Court to restrain abuse of its process—Dismissal of libel action instituted by chief editor of newspaper—Appeal against dismissal—Between dismissal and filing of the appeal, appellant publishing articles in his newspaper portraying, inter alia, the trial Court and the judiciary in its entirety as guilty of lack of impartiality—Thus seeking to vindicate himself by a process of trial through the press—Though Court of Appeal cannot take cognizance in these proceedings of accusations that appellant committed criminal or civil contempt, the exercise by him of his statutory right of appeal, while questioning the impartiality of the judiciary amounts to a gross abuse of the process of the Court—Appeal stayed until appellant restores the Authority of the Court.

The appellant, who was the editor-chief of "Simerini", a daily newspaper, took exception to an article by a columnist of "Nea" daily newspaper and instituted a libel action against the author, publishers and distributors of the newspaper. Following the dismissal of his action he filed an appeal challenging the findings of the trial Court, the inferences drawn therefrom and disputing the validity of the reasoning of the trial Court. Between the delivery of the judgment by the trial Court and the filing of the appeal the appellant wrote five articles, in "Simerini" newspaper, under his name having directly or in-

directly as their subject-matter the judgment of the trial Court These articles contained a scurrilous attack on the Judges who tried the case and accused them of dishonesty. They, also, questioned the impartiality of the trial Court as well as the Judiciary. By isolating certain passages of the judgment out of context, the author tried to ridicule the trial Court, as well as hold the Judges to public contempt and he, also, assented in effect that he was the victim of a judiciary lacking impartiality.

Upon an application by the respondents, based on the provisions of Article 162 of the Constitution, section 44 of the Courts of Justice Law, 1960 (Law 14/60) and on the inherent powers and practice of the Court, there was sought an order staying the proceedings pending redress by the appellant.

Held, (1) that though this Court cannot take cognisance in these proceedings of accusations that appellant committed criminal or civil contempt it has inherent power not only to restrain abuse of process but also to secure obedience to the law; that associated with the power to restrain abuse is the undoubted power of the Court to control proceedings before it; that not only conduct diminishing the authority and constitutional role of the Courts may be stopped in the exercise of the inherent powers of the Court, but the exercise of rights given by law as well, whenever fraught with an ulterior motive; that the jurisdiction to restrain abuse of process is the only power available to the Court to stop a party from subverting the course of justice.

(2) The appellant sought to vindicate himself by a process of trial through the press; that vindication was sought by portraying the trial Court and the Judiciary in its entirety as guilty of lack of impartiality of which he claimed to be the victim; that the deployment of means of this kind for self vindication, would destroy the Judiciary as an institution of the State; that what appellant has done, is to seek the intervention of this Court on appeal, for the sustainance of his rights while disputing the inclination of the Judiciary to administer justice; that a litigant cannot seek the intervention of the Court in the interests of justice while questioning the impartiality of the Court for, a corrupt Judiciary does not administer justice according to law but justice according to convenience; that unless the grave abuse of process is restrained, the floodgates of abuse of the

process of the Court by trial through the press, would be opened to the detriment of the Judiciary; that the exercise by the appellant of his statutory right of appeal, while questioning the impartiality of the judiciary in the manner above stated, amounts to a gross abuse of the process of the Court; and that, therefore, unless the appellant first restores the authority of the Court, it would be an abuse on his part to invoke its powers to obtain justice in the case; accordingly, the appeal should be stayed.

Appeal stayed.

Per curiam:

Nothing said in this judgment is designed to limit the right of the public to criticize judicial action. Not only the public - especially the press - has a right, but a duty as well to criticize judicial action whenever they think that criticism is merited in the public interest.

Cases referred to:

Hadkinson v. Hadkinson [1952] 2 All E.R. 567 (C.A.);

Mavrommatis & Others v. Republic (1967) 1 C.L.R. 266;

Athlitiki Efimeris "O Filathlos" & Another v. The Police (1967) 2 C.L.R. 249;

Mouzouris & Another v. Xylophaghou Plantations (1977) 1 C.L.R. 287;

R. v. Bloomsbury [1976] 1 All E.R. 897 (C.A.);

Castanho v. Brown & Root (U.K.) Ltd. & Another [1981] 1 All E.R. 143 (H.L.);

Church of Scientology v. D.H.S.S. [1979] 3 All E.R. 97 (C.A.);

Goldsmith v. Sperrings Ltd. [1977] 2 All E.R. 566 (C.A.);

Midland Bank Trust Co. Ltd. v. Green [1979] 1 All E.R. 726;

Hammersmith v. Magnum Automated Forecourts [1978] 1 All E.R. 401 (C.A.);

A.-G. v. Chaudry [1971] 3 All E.R. 946 (C.A.);

R. v. Metropolitan Police Comr. [1968] 2 All E.R. 319 (C.A.);

Police v. Ekdotiki Eteria [1982] 2 C.L.R. 63;

A.-G. v. Times Newspapers Ltd. [1973] 3 All E.R. 54 (H.L.);

Re Raphael (deceased) [1973] 3 All E.R. 19;

5 *Pitsillos v. HadjiNicolaou* (1981) 1 C.L.R. 642.

Application.

Application by respondents 1 and 2 requesting that the Court should not take cognizance of the appeal against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C. and 10 Ioannides, D.J.) dated the 24th September, 1982 (Action No. 5692/77) because of the allegedly contemptuous statements made by the appellant in "Simerini" newspaper.

E. Efstathiou with *N. Stylianidou (Miss)*, for applicants-respondents 1 and 2.

15 *X. Syllouris*, for respondent–appellant.

A. Indianos with *S. Macheriotou (Mrs.)*, for respondents 4 in the appeal.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be 20 delivered by Mr. Justice Pikis.

PIKIS J.: The appellant was the editor-chief of "SIMERINI"; a daily newspaper, whereas respondent 2 - Georghios Xenofontos, alias Sertis - a columnist of "NEA", another daily newspaper. There were virulent exchanges between them from the 25 columns of the respective newspapers with little effort made on either side to restrain impassioned feelings. The appellant took exception to an article of Sertis published in the issue of "NEA" of 13.11.77 and instituted a libel action against the author, publishers and distributors (Civil Action No. 5692/77 30 before the District Court of Nicosia).

The appellant averred that the publication was defamatory of himself, falsely and maliciously, accusing him directly and by necessary implication of collaboration with the Turks and promotion of their interests, grave accusations in the context of

Cyprus tragedy. He claimed damages for the smear on his reputation and, an injunction restraining repetition as well as any other remedy the Court might consider appropriate.

The author and publishers made a joint defence denying liability, in particular they denied that the article was motivated by malice or written in bad faith. It was, in their contention, written in the discharge of their journalistic duty. In their view, what it contained was a fair comment on a matter of public interest. Further, they pleaded that allegations of fact set out therein were true and comments made thereupon fair. Their defence amounted to what is known in libel law as a rolled up plea. The distributors entered a separate defence, denying liability on different grounds.

The case proceeded to trial before the Nicosia District Court - the Full Court because of the height of the claim - composed of Artemides, Ag. P.D.C. and Ioannides, D.J. It was a hotly contested action. At the end of the trial the Court reserved judgment for consideration. The judgment of the Court was delivered on 24.9.82. It was prepared by the Presiding Judge Artemides, Ag. P.D.C. It is unnecessary at this stage to refer in detail to the judgment. We shall note the result and the underlying reasoning.

The Court found for the defendants, holding the comments made therein to have been fair on a matter of public interest. Shortly before the expiration of the time limited for appeal under 0.35, r.2, the appellant lodged the present appeal (the appeal was filed on 5.11.82).

The appellant challenged the findings of the Court, the inferences drawn therefrom and, disputed the validity of the reasoning of the trial Court. We may fairly presume it was all along within his contemplation to appeal against the decision of the trial Court. What happened between the delivery of judgment on 24.9.82 and the filing of the appeal on 5.11.82, is the subject-matter of an application by the respondents, notably the newspaper publishers and the author of the article complained of, based on the provisions of Article 162 of the Constitution, s.44 of the Courts of Justice Law - 14/60 and the inherent powers and practice of the Court. The pith of the application is that the Court should not take cognizance of the appeal

because of the allegedly contemptuous statements made by the appellant in "SIMERINI" newspaper, bringing to contempt the Judges who tried the case and, the Judiciary, as an important Institution of the State. Therefore, the Court is asked to stay 5 the proceedings pending redress and strike out the appeal or make any other order deemed appropriate in the event of the appellant failing or refusing to retract the grave accusations made against the trial Judges and the Judiciary.

It is admitted that between the period that elapsed between 10 the judgment of the trial Court and the lodgment of the appeal, the appellant wrote five articles under his name, apparently in the space reserved for editorial comments, having directly or indirectly as their subject-matter the judgment of the trial Court, adverse to the appellant as it was.

15 It is the case for the respondents/applicants, that the contents of these articles constituted contempt upon the trial Court and the Judiciary as a whole, so much so that applicant ought not to be heard before he retracts them in a manner restoring the dignity and authority of the Courts. The English case of 20 *Hadkinson v. Hadkinson* [1952] 2 All E.R. 567 (C.A.) and the decisions of the Supreme Court in *Theofylactos Mavrommatis and 2 Others v. Cyprus Hotels Co. Ltd.* (1967) 1 C.L.R. 266 and *Athlitiki Efimeris "O Filathlos and Another v. The Police* (1967) 2 C.L.R. 249, were quoted in support of the submission 25 that the Court ought not to hear the appellant because of his grave contempt upon the Court. To a question of the Court, whether he brought the complaints of his clients to the notice of the Attorney-General, counsel for the respondents/applicants replied, somewhat to our surprise, in the negative. The case of 30 *Hadkinson,* supra, affirms the rule that a party in civil contempt forfeits his right to a hearing by the Court. There are exceptions to the rule, mainly in two situations: Where an audience is sought for the purpose of purging the contempt and, secondly, when the right is sought in order to defend fresh proceedings in 35 the cause. In *Theofylactos Mavrommatis,* supra, the Supreme Court gave unqualified approval to the rule that a party in contempt should not be heard until the contempt is first purged. *Vassiliades,* P., speaking on behalf of the Court, conveyed the stand of the Court in these words:

40 "We are not prepared to listen to any argument in this

case, before we are assured that the order of the Court has been complied with."

The third decision relied upon by applicants - *Athlitiki Efimeris "O Filathlos" and Another*, supra, is of no direct relevance. It is a criminal case of contempt of Court, arising from the publication of an article capable of prejudicing the fair trial of pending judicial proceedings, in contravention to the provisions of s.44(1)(c) of the Courts of Justice Law - 14/60. 5

Mr. Syllouris for the appellant submitted, we have no jurisdiction to deal with allegations of contempt of Court, a criminal 10 matter exclusively amenable to the jurisdiction of a criminal Court. Section 44 of the Courts of Justice Law cannot be invoked by the applicants for it is solely concerned with the commission of the crime of contempt of Court, as defined therein*; nor was the alleged contempt committed in the face of the 15 Court in the manner envisaged by s.44(2) of Law 14/60. Section 44 limits freedom of expression safeguarded by Article 19 for maintaining the authority and impartiality of the Judiciary, a permissible limitation of the right in accordance with the final provisions of Article 19.3 of the Constitution. 20

Mr. Syllouris is right in submitting that we cannot take cognizance in these proceedings of the accusation that appellant committed a contempt of Court, a crime under s.44 of Law 14/60. Only a criminal Court can competently seize of the matter after a charge is properly preferred against the appellant. 25

There remain two other aspects of the application that merit closer examination. These are -

(A) Allegations of civil contempt and,

(B) Abuse of the process of the Court.

(A) *Civil Contempt:* 30

Civil contempt is committed, as the authorities establish, whenever a party disobeys an order of the Court. It is an extraordinary process designed to equip a civil Court with the armoury of a criminal Court in the interests of the efficacy of

* The statutory offence of contempt follows upon the lines of the common law offence of scandalising the Court.

the civil jurisdiction of the Courts. The cases relied upon by counsel for the applicants, notably *Hadkinson* and *Mavrommatis*, supra, go no further than establishing that civil contempt is committed whenever a party disobeys an order of the Court. 5 The exercise of the jurisdiction is procedurally regulated by Ord.42A of the Civil Procedure Rules. The decision in *Antonis Mouzouris and Another v. Xylophaghou Plantations Ltd.* (1977) 1 C.L.R. 287, establishes that civil Courts in Cyprus have, as in England, jurisdiction to deal with civil contempt, exercisable 10 very much along the lines approved in *Hadkinson*, supra. Proceedings for civil contempt are quasi criminal and the accusation must be proved with the same strictness as a criminal charge and, it is likewise subject to the same procedural safeguards. A civil Court has no jurisdiction to deal with acts undermining 15 the judicial process, unless committed in the face of the Court and always subject to the provisions of s.44(2) of the Courts of Justice Law.

It becomes apparent from the above that, many of the arguments raised in support of the application are irrelevant and 20 rest on a misconception of the law. We cannot take cognizance in these proceedings of accusations that appellant, Alecos Constantinides, committed criminal or civil contempt. There remains to decide whether the conduct of the appellant was such as to make it an abuse, on his part, of the process of the 25 Court to seek judicial review of the judgment of the trial Court by way of appeal. Consequently, we shall examine the nature of the jurisdiction vested in the Court to stop abuses of the judicial process and, whether the conduct of the appellant amounted to an abuse.

30 (B) *Abuse of the Process of the Court:*

The power of the Court to control judicial proceedings and restrain abuse of process, is an attribute of the autonomy of the Judiciary and a necessary tool for the efficacy of the judicial process. The decisions in *Mavrommatis* and *Mouzouris*, supra 35 though bearing on a different subject, are nonetheless illustrative of the need to stop a party to a proceeding from undermining the authority of the Court and making nonesense of the judicial process.

The administration of justice in Cyprus is modelled on the 40 administration of justice under the common law judicial system,

subject to this clarification: The autonomy and separateness of the Judiciary in Cyprus is entrenched by a written constitution. A Court of law has inherent power to control proceedings before it - *R. v. Bloomsbury* [1976] 1 All E.R. 897 (CA) - as well as restrain abuse of the judicial process - *Castanho v. Brown & Root (U.K.) Ltd. and Another* [1981] 1 All E.R. 143 (HL). Abusive acts or conduct are easy to identify but hard to encompass in an apriori definition. Abuse of process of the Court may take a variety of forms and may on occasion be subtle to the point of deception. It is, therefore, best to concentrate on instances of abuses of process judicially recognised, in order to distil therefrom the prevailing judicial trends, as well as ascertain the ambit of the power of the Court to restrain abuses.

Not only conduct diminishing the authority and constitutional role of the Courts may be stopped in the exercise of the inherent powers of the Court, but the exercise of rights given by law as well, whenever fraught with an ulterior motive. In *Church of Scientology v. D.H.S.S.* [1979] 3 All E.R. 97 (CA), the right to discovery was held to be subject to control in the exercise of the powers of the Court, to suppress the abusive exercise of rights. Another example is the case of *Goldsmith v. Sperrings Ltd.* [1977] 2 All E.R. 566 (CA), where it was proclaimed that the exercise of a right may be restrained if pursued not for its vindication but in order to secure a collateral advantage. Also the exercise of a right may be restrained if calculated to cause injustice to the other party. Thus, in *Castanho v. Brown & Root (U.K.) Ltd. and Another* [1981] 1 All E.R. 143 (HL), the right to serve notice of discontinuance, unfettered under the rules, was restrained in the interests of justice. As *Oliver, J.* pointed out in *Midland Bank Trust Co. Ltd. v. Green* [1979] 1 All E.R. 726, the jurisdiction to restrain abuse of process is the only power available to the Court to stop a party from, and I paraphrase, subverting the course of justice.

Associated with the power to restrain abuse, is the undoubted power of the Court to control proceedings before it.

The Supreme Court has inherent power not only to restrain abuse of process but also to secure obedience to the law - *Hammersmith v. Magnum Automated Forecourts* [1978] 1 All E.R. 401 (CA). Its power may be exercised whenever the justice of the case so requires - *A-G v. Chaudry* [1971] 3 All E.R. 946 (CA).

The above list of authorities is but a short list of cases, bearing on the subject of abuse of process. They illustrate the breadth of the discretion as well as its utility for the proper administration of justice.

5 What must next be decided is, whether the facts put before us, uncontested as they are, merit the intervention of the Court and, if so, whether they warrant one or more of the remedies sought by the applicants.

On any view of the articles complained of, however bene-
10 volently one may interpret them, they contain a scurrilous attack on the Judges who tried the case and, the Judiciary as well. Mr. Constantinides, under the guise of criticism, in the first article published three days after the delivery of judgment, questioned the impartiality of the trial Court, as well as the
15 Judiciary. He went further and sought to ridicule the trial Court as well, in a most unfair manner, designed to undermine the authority of the Courts. By isolating certain passages of the judgment out of context, the author tried to ridicule the trial Court, as well as hold the Judges to public contempt. The
20 trial Judges in their effort to demonstrate the different meaning imported by "public interest" in the field of libel law, made reference to a disputed penalty award in a football match, in order to illustrate that, whereas the matter was not in itself of public interest, the public had shown exceeding interest in the
25 matter, in consequence of which the matter had become of interest to the public. Mr Constantinides portrays this illustration as a central theme of the judgment, irrelevant in the context of the libel issues of the case, in an attempt to cast doubts on the seriousness of the Court and ridicule the admi-
30 nistration of justice.

The articles that followed, reveal that the first attack upon the trial Court and the Judiciary, was not an outburst of the moment but part of a sustained effort to undermine the authority of the Judiciary. In the article published a few days later, on 1.10.82,
35 the appellant under the pretext of passing comment on an article published in another daily newspaper, accuses the trial Judges of dishonesty. Two days later, on 3.10.82, he reverted to the theme of the judgment, proclaiming the right of the public to criticize judicial action, quoting a passage from Lord
40 Denning to the effect that, silence ought not to be the choice.

We fully endorse the right of the public to criticize judicial action. The public - and that includes the press - is the watchdog of judicial standards, as well as the standards in every aspect of public life. Freedom of speech is the pillar of freedom itself, the birthright of man, to repeat what was said in *R. v. Metropolitan Police Comr.* [1968] 2 All E.R. 319 (CA). However rigorous criticism may be, it will not constitute contempt as it was pointed out in the above case, always provided that criticism is made bona fide in the interests of the public. However, it is worth reminding of what was also stressed in the same decision that, those who criticize Judges must never forget that Judges cannot answer back. In Cyprus freedom of speech is constitutionally entrenched. Freedom of speech is a fundamental aspect of liberty, as the Supreme Court unanimously pronounced in *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63. It is a right that can only be limited in the circumstances specifically envisaged by the Constitution. Such limitations may be imposed to restrain acts undermining the authority and impartiality of the Courts.

In the last mentioned article the appellant tried to convey the impression he was doing no more than exercise the right of the press to criticize judicial action. Was the appellant a pressman detached from the facts, criticizing public action? The question has only to be asked for the answer to become apparent, he was not. Again, under the guise of exercising a public duty, he ventilated a personal grievance notwithstanding his right of appeal and his intention to exercise it. He vindicated his cause through the press, by asserting in effect - and this is the combined effect of his articles - that he was the victim of a Judiciary lacking impartiality.

To complete the picture, brief reference shall also be made to the remaining two articles written, the first on 3.11.82 - two days before lodging the appeal - and the second, about 15 days after the notice of appeal was filed, on 23.11.82. The subject of the articles is again Judge Artemides and the pretext, a painting exhibition of his works. The object of the author is transparent, to ridicule the Judge who gave judgment against him. These sarcastic articles end by advice given to Judge Artemides to give up his judicial office and devote himself exclusively to painting, thereby giving Cyprus its chance "to acquire its Picasso."

In our judgment, the appellant sought to vindicate himself by a process of trial through the press. Vindication was sought by portraying the trial Court and the Judiciary in its entirety as guilty of lack of impartiality of which he claimed to be the
5 victim. The deployment of means of this kind for self vindication, would destroy the Judiciary as an institution of the State. Certainly the adoption of such surreptitious methods of self vindication cannot coexist with the bona fide exercise of rights given by law, in this case the right to appeal. Trial
10 through the press was condemned as a totally unacceptable procedure by the highest English Court, the House of Lords - *A-G v. Times Newspapers Ltd.* [1973] 3 All E.R. 54 (HL). If one was allowed to exercise a right given by law while pre-empting the outcome one way or another by means similar to those chosen
15 by the appellant in this case, the constitutional role of the Judiciary, as the arbiter of the rights of the subject, would be destroyed. Worse still, self vindication would come to depend on the access of a party to the press, something that would put chief editors, as Mr. Constantinides, effectively above the law.
20 What appellant has done, is to seek our intervention on appeal, for the sustainance of his rights while disputing the inclination of the Judiciary to administer justice. A litigant cannot seek the intervention of the Court in the interests of justice while questioning the impartiality of the Courts. For, a corrupt
25 Judiciary does not administer justice according to law but justice according to convenience.

The pertinent question is, what should be done in the face of the unacceptable conduct of the appellant. Certainly the Courts are not powerless to act. We noted earlier the breadth of our
30 jurisdiction to restrain abuses. In *Re v. Raphael (deceased)* [1973] 3 All E.R. 19, it was held that a Court of law has power to adjourn the hearing of a case if it is expedient in the interests of justice. Afortiori, a similar power vests in the Supreme Court as well. Access to the Courts must not be unjustifiably
35 impeded. In *Pitsillos v. HadjiNicolaou* (1981) 1 C.L.R. 642 we declared that a Court of law had no right to stop a litigant from prosecuting a civil action to its conclusion because of inappropriate remarks made by a litigant in the course of cross-examination of a witness. There the Judge had ample powers to
40 deal with the litigant, under s.44(2) of Law 14/60, if his conduct amounted to contempt in the face of the Court. Also the

Judge could have restrained the litigant from abusing the process, by disallowing the question. The present case is different. Unless the grave abuse of process is restrained, the floodgates of abuse of the process of the Court by trial through the press, would be opened to the detriment of the Judiciary. 5

We have examined the case with very great care, not least because it is the first of its kind to come before the Supreme Court. We are unanimously of the opinion that the exercise by the appellant of his statutory right of appeal, while questioning the impartiality of the Judiciary in the manner above stated, 10 amounts to a gross abuse of the process of the Court. Therefore, unless the appellant first restores the authority of the Court, it would be an abuse on his part to invoke its powers to obtain justice in the case. If we were powerless to act in these circumstances, the authority of the Courts would be muted. 15

In our judgment the appeal should be stayed.

Nothing said in this judgment is designed to limit the right of the public to criticize judicial action. Not only the public - especially the press - has a right, but a duty as well to criticize judicial action whenever they think that criticism is merited in 20 the public interest. Nobody is above the law. Least of all the Judges. We are dutybound to administer justice according to law. The administration of justice is all important to the well-being of society and concerns everyone. We are not here confronted, as noted above, with a bona fide criticism of a judgment 25 of the Court, but with a litigant attempting to vindicate his proclaimed rights through the press, by destroying the premises upon which justice is administered, that is, the impartiality of the Judiciary.

In the result the appeal is stayed. The order for stay shall 30 cease to operate if and when the appellant restores by appropriate action the authority of the Court to do justice in the case. Thereafter, it may be fixed for hearing on the application of any party to the cause. The costs of the present proceedings shall be borne by the appellant. 35

Order accordingly.