

1984 September 11

[LORIS, J.]

IN THE MATTER OF AN EX PARTE APPLICATION BY
PETROS YEROLEMIDES FOR LEAVE TO APPLY
FOR ORDERS OF CERTIORARI AND PROHIBITION
(Civil Application No. 57/84).

Certiorari—Prohibition—Jurisdiction—Article 155.4 of the Constitution—Execution of warrants for the levy of penalties imposed in a criminal case—After six years have elapsed since the imposition of the penalties—Prima facie arguable case that warrants ought not to have been issued without prior compliance with the provisions of Order 40, rule 8 of the Civil Procedure Rules, which are applicable to warrants issued under section 120 of the Criminal Procedure Law, Cap. 155, as envisaged by section 121 of Cap. 155—Leave to apply for an order of certiorari quashing and an order of prohibition preventing execution of the said warrants.

The applicant sought leave to apply for an order of certiorari quashing, and an order of prohibition preventing, the execution of two warrants issued by the District Court of Nicosia, in Nicosia Criminal Case No. 7780/71 for the levy of penalties totalling £12,948.

Counsel for applicant contended that the said warrants which were based on judgment and/or order given on 9.7.1971 were issued in direct violation of the Law and the relevant Rules made thereunder in view of the fact that no leave was ever obtained or even applied for, prior to the issue of the said warrants, as required by Order 40, rule 8 of the Civil Procedure Rules which are applicable to the execution of any warrant issued under the provisions of s.120 of the Criminal Procedure Law, Cap. 155, by virtue of the provisions of s.121 of Cap. 155.

Held, (1) that this Court has jurisdiction under Article 155.4 of the Constitution to deal with the present application.

(2) That at this stage it would appear that the applicant has a prima facie arguable case that the two warrants attached to the present application ought not to have been issued without prior compliance with the provisions of Order 40, rule 8 of the

Civil Procedure Rules, which are applicable to warrants issued under s.120 of the Criminal Procedure Law, Cap. 155, as envisaged by s.121 of Cap. 155; and that, accordingly, the applicant is granted leave to apply for orders of certiorari and prohibition within 7 days from today.

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Application granted.

Cases referred to:

Yerolemides v. Municipality of Nicosia (1971) 10 J.S.C. 1347;
Ramadan v. Electricity Authority of Cyprus and Another, 1
R.S.C.C. 49 at p. 54;

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Zenios and Another v. Disciplinary Board (1978) 1 C.L.R. 382;
Republic v. Demetriades (1977) 3 C.L.R. 213;

Vassiliou and Another v. Disciplinary Committee (1979) 1 C.L.R.
46 at p. 49;

In re Panaretou (1972) 1 C.L.R. 165;

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In re Roushiats (1981) 1 C.L.R. 703.

Application.

Application for leave to apply for an order of certiorari quashing and an order of prohibition preventing, the execution of two warrants issued by the District Court of Nicosia in Nicosia Criminal Case No. 7780/71 for the levy of penalties totalling £12,948.-.

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L.N. Clerides with *C. Clerides*, for the applicant.

Cur. adv. vult.

LORIS J. read the following decision. By means of the present application, the above named applicant seeks leave to file an application for an order of certiorari quashing, and an order of prohibition preventing, the execution of two warrants issued by the District Court of Nicosia, in Nicosia Criminal Case No. 7780/71 for the levy of penalties totalling £12,948 as herein-below stated.

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The application is accompanied by an affidavit dated 16.8.1984 sworn by the ex-parte applicant to which photocopies of the warrants in question are attached which are referred to in the affidavit as exhibits 4 and 5.

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Both these warrants are "warrants of execution on movables", obviously issued pursuant to the provisions of s. 120 of our

Criminal Procedure Law, Cap. 155, and they refer to Nicosia, Criminal Case No. 7780/71; they are purported to have been signed by different judges of the District Court of Nicosia.

5 Exhibit 4 which bears Sheriff No. 2549/78 was issued on 7.2. 1978 and the penalty therein shown is £6,207.-; at the bottom thereof it is indorsed: "Fine payable to Municipality of Nicosia, for the period 28.5.1972—25.1.1978".

10 Exhibit 5 with Sheriff No. 1031/84 was issued on 27.4.1984 and the penalty therein indicated is £6,741.-; it is likewise indorsed "Fine payable to Municipality, for the period 26.1.1978 -5.4.1984".

15 Leading counsel for the applicant addressing me in support of his client's present application elaborated on the contents of the affidavit and referred me to the case of *Petros Yerolemides v. The Municipality of Nicosia* cited only in (1971) 10 J.S.C. 1347 decided by the Court of Appeal on 9.7.1971, pointing out that the said appellant is his client in the present application, and that the amount of the penalty referred to in both said warrants emanates from the substitution of the original sentence
20 of 1 month's imprisonment (imposed by a Judge of the District of Nicosia, in Nicosia Criminal Case No. 7780/71) with a fine per day as stated at page 1349 of the report, the relevant part of which reads as follows:

25 "Having taken into account..... we have decided to sentence him to pay a fine of 500 mils per day (instead of the maximum of £3.- per day) as from the 19th March, 1971, until the 31st July, 1971, and thereafter, if he still fails to obey the Court Order in question, £3.- per day until full compliance therewith".

30 Learned counsel for applicant further stated that inspite of the fact that warrant exh. 4 was issued as early as 7.2.1978 and exh. 5 on 27.4.1984, it was only as late as the beginning of August 1984, few days prior to the filing of present application, when P.C. 223 of Omorphita Police Station visited the store
35 of applicant at Nicosia armed with the two warrants as afore-said and asked applicant to pay; this was the first effort—counsel concluded—for the execution of the warrants and on applicant's indicating his intention to resort to Court the police constable

refrained from proceeding any further; few days later the present application was filed.

Relying on the above facts counsel for applicant submitted that both aforesaid warrants which were based on a judgment and/or order given on 9.7.1971 were issued in direct violation of the Law and the relevant Rules made thereunder in view of the fact that no leave was ever obtained or even applied for, prior to the issue of the said warrants, as required by Order 40, rule 8 of our Civil Procedure Rules which are applicable to the execution of any warrant issued under the provisions of s. 120 of the Criminal Procedure Law, Cap. 155, by virtue of the provisions of s. 121 of Cap. 155.

Section 121 of the Criminal Procedure Law, Cap. 155 reads as follows:

“121. Subject to the provisions of section 120 of this law, the provisions relating to execution of judgment debts in civil proceedings under any enactment in force for the time being, shall apply to the execution of any warrant issued under the provisions of section 120 of this Law”.

Order 40, rule 8 of our Civil Procedure Rules reads as follows:

“8. Where six years have elapsed since the judgment or date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case the Court or Judge may impose such terms as to costs or otherwise as shall be just”.

Concluding leading counsel for applicant invited me

- (a) to find that I have jurisdiction to deal with the present application stating that “anything emanating from a Court is a judicial Act”.
- (b) to grant the leave applied for the filing of application for Orders of Certiorari and Prohibition as a prima

facie case was made out sufficiently justifying the granting of the leave requested.

The power of the Court to issue orders of certiorari and prohibition emanates from the provisions of Article 155.4 of our Constitution which reads as follows:

“4. The High Court shall have exclusive jurisdiction to issue orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari”.

“The jurisdiction of the Supreme Court under Article 155.4 is exclusive of the jurisdiction specifically entrusted to the Supreme Constitutional Court, and now to the Supreme Court in virtue of Law 33/64, under Article 146” (vide *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256 at p. 259 (25–30).

The above principle was laid down by the then Supreme Constitutional Court as early as 1961 in the case of *Hussein Ramadan v. Electricity Authority of Cyprus and another*, R.S.C.C. 49 where at p. 54 the following are stated:

“In the opinion of this Court the powers of the High Court to issue the orders set out in paragraph 4 of Article 155 extend only to such matters which are within the jurisdiction of the High Court and which are not already within the jurisdiction of the Supreme Constitutional Court under paragraph 1 of Article 146”.

With the above principles in mind I shall now proceed to examine whether I have jurisdiction to grant the leave applied for, in this particular instance, as I was invited to hold by learned counsel for applicant. It is true that my task should be limited at this stage in view of the decision in the case of *Zenios and Another v. Disciplinary Board* (1978) 1 C.L.R. 382 where the majority of the Full Bench expressed the view (at p. 387) that as the issue of jurisdiction is interwoven with other issues which go to the merits of the application, it should be left to be decided together with all other relevant issues when deciding the main application for the issue of the order.

I have studied carefully the above decision—that binds me (*Republic v. Demetriades* (1977) 3 C.L.R. 213)—and I incline to the view that the interpretation that can be placed on the

said opinion as above, is to the effect that in applications of this nature the trial Judge should not indulge into the merits of the application in order to decide complicated issues interwoven with jurisdiction, but they do not exclude an examination on the issue of jurisdiction when confined on undisputed facts apparent on the face of the proceedings. 5

This view of mine is strengthened by the decision of the learned President of this Court in the case of *Vassiliou & Another v. Disciplinary Committee* (1979) 1 C.L.R. 46—delivered a year after *Zenios* case (supra)—where at p. 49 he has stated the following: 10

“I must be satisfied, at least prima facie, that under the circumstances, I possess jurisdiction under Article 155.4 of the Constitution to issue the orders of Certiorari and Prohibition which are applied for by the applicants”. 15

Having considered what is apparent on the face of the record of the proceedings before me and bearing in mind that in parallel occasions to the present one leave was granted for the filing of applications for issue of orders of certiorari, (vide: In re *Pamirciou* (1972) 1 C.L.R. 165, In re *Roussias & Co.* (1981) 1 C.L.R. 703) I hold that I have jurisdiction under Article 155.4 of the Constitution to deal with present application. 20

The question which now remains for determination at this stage is whether a prima facie case was made out sufficiently to justify the granting of leave to the applicant to move this Court to issue orders of certiorari and prohibition. 25

“It is not necessary for me to go now, into the matter thoroughly, but is sufficient if on the face of the applicant’s statement, and the affidavit in support the Court is satisfied that such leave should be granted (*Ex Parte Marsilleti* (1972) 1 C.L.R. 75). 30

At this stage it would appear that the applicant has a prima facie arguable case that the two warrants exh. 4 and exh. 5 attached to the present application ought not to have been issued without prior compliance with the provisions of Order 40, rule 8 of the Civil Procedure Rules, which are applicable to warrants issues under s. 120 of Cap. 155, as envisaged by s. 121 of Cap. 155. 35

In the result, the applicant is granted leave to apply for orders of certiorari and prohibition within 7 days from today.

Opposition to be filed seven days thereafter.

The application is fixed for hearing on 12.10.1984 at 10.00
5 a.m.

In the meantime the execution of warrants marked exh. 4 and exh. 5 in the present proceedings is hereby stayed.

Application granted.