

1984 January 9

[TRIANTAFYLLOIDES, P.]

THE SHIP "FORUM STAR" AND HER CARGO,

*Appellants-Applicants,*

v.

KOTHARI TRADING CO. AND OTHERS,

*Respondents.**(Application in Civil Appeal No. 6654).*

*Civil Procedure—Jurisdiction—Interlocutory order made by a Judge of this Court—Appeal against it—Another Judge of this Court has no jurisdiction to suspend its operation whilst its fate is still being examined and is going to be decided by the Judge who made it—Section 32 of the Courts of Justice Law, 1960 (Law 14/60).* 5

On the 26th November, 1983 another Judge of this Court (Mr. Justice Loris) made an interlocutory order in an Admiralty Action. On the 10th December, 1983 the applicants applied for the suspension of the interlocutory order and, also, filed notice of a motion for the setting aside of such order. The hearing as regards the setting aside of the interlocutory order took place on various dates in December 1983 and was adjourned for continuation on the 10th January, 1984. The application for the suspension of the operation of the interlocutory order was heard on the 28th December, 1983 and dismissed on the following day. As against this dismissal an appeal was filed and by means of an application which was filed in the appeal on the 3rd January, 1984 it was, in effect, being sought to stay the execution, or suspend the operation, pending the determination of the appeal, of the interlocutory order which was made as above on the 26th November, 1983. 10 15 20

*On the application of the 3rd January, 1984:*

*Held*, that this Court is, in effect, being asked, while the hearing as regards the fate of the interlocutory order made on the 26th November 1983 is fixed for continuation on the 10th January 1984 before Loris J., to make itself, because of the filing of the present 25

appeal, an order, under section 32 of Law 14/60, suspending the operation of the said interlocutory order; that it has no jurisdiction to suspend the operation of an interlocutory order which was made by another Judge of this Court and the fate of which is still being examined and is going to be decided by him; and that, accordingly, the application must fail.

*Application dismissed.*

Cases referred to:

- 10 *Katarina Shipping Inc. v. The Cargo on Board the Ship "Poly"*  
(1978) 1 C.L.R. 355; (1978) 1 C.L.R. 486;
- The Ship "Algazera" v. John French-Paris* (1980) 1 C.L.R. 619;
- "Phoenix" Greek General Insurance Co. S.A. v. Al Khalaf Exhibition (1981) 1 C.L.R. 673;
- 15 *Erinford Properties Ltd. v. Cheshire County Council* [1974]  
2 All E.R. 448 at p. 454;
- Distos Compania Naviera S.A. (No. 4) v. The Cargo on Board the Ship "Siskina"* (1976) 1 C.L.R. 405;
- 20 *Tafco (Foreign Trade Organization for Chemicals and Food-stuffs) of Syria (No. 2) v. The Ship "Lambros L" and her cargo* (1977) 1 C.L.R. 159;
- London and Overseas (Sugar) Co. v. Tempest Bay Shipping Co. Ltd.* (1978) 1 C.L.R. 367;
- Scheepswerf Bodewes-Gruno v. The Ship "Algazera"* (1980)  
1 C.L.R. 595;
- 25 *Essex Overseas Trade Services Ltd. v. The Legent Shipping Co. Ltd.* (1981) 1 C.L.R. 263.

### Application.

30 Application by appellants for an order staying execution or suspending the operation, pending the determination of the appeal, of an interlocutory order made in Admiralty Action No. 358/83 on the 26th November, 1983.

*M. Montanios* with *E. Montanios*, for the applicants.

*L. Papaphilippou* with *Chr. Christophides*, for the respondents.

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*Cur. adv. vult.*

TRIANAFYLIDIS P. read the following decision. By means of the present application which was filed in this appeal on the 3rd January 1984 it is, in effect, being sought to stay the execution, or suspend the operation, pending the determination of the appeal, of an interlocutory order made by another Judge of this Court, my brother Judge Mr. Justice Loris, in Admiralty Action No. 358/83, on the 26th November 1983. 5

The same application was made by the applicants before Loris J. who, on the 29th December 1983, refused to grant it: and against his decision the present appeal was filed. 10

It is quite clear that it is not being sought now to stay execution of the decision of Loris J., given on the 29th December 1983, which is the subject-matter of the appeal. Had that been the position I would have had to approach the matter before me in the exercise of the relevant powers of this Court under rule 18 of Order 35 of the Civil Procedure Rules (see, inter alia, in this respect, *Katarina Shipping Inc. v. The Cargo on Board the Ship "Poly"*, (1978) 1 C.L.R. 355, *The Ship "Algazera" v. John French-Paris*, (1980) 1 C.L.R. 619, *"Phoenix" Greek General Insurance Company S.A. v. Al Khalaf Exhibition*, (1981) 1 C.L.R. 673). 15 20

Nor, when Loris J. issued the interlocutory order of the 26th November 1983, was there and then made to him any application in an effort to stay execution of such interlocutory order pending an appeal, or to secure under section 32 of the Courts of Justice Law, 1960 (Law 14/60) an order preserving the status quo pending an appeal, or an order based on the relevant principle expounded in, inter alia, *Erinford Properties Ltd. v. Cheshire County Council*, [1974] 2 All E.R. 448, 454 (see, in this respect, inter alia, *Distos Compania Naviera S.A. (No. 4) v. The Cargo on Board the Ship "Siskina"*, (1976) 1 C.L.R. 405, *Tafco (Foreign Trade Organization for Chemicals and Foodstuffs) of Syria (No. 2) v. The Ship "Lambros L" and her cargo*, (1977) 1 C.L.R. 159, *London and Overseas (Sugar) Co. v. Tempest Bay Shipping Co. Ltd.*, (1978) 1 C.L.R. 367, *Katarina Shipping Inc. v. The Cargo now on Board the Ship "Poly"*, (1978) 1 C.L.R. 486, 511, *Scheepswerf Bodewes-Gruno v. The Ship "Algazera"*, (1980) 1 C.L.R. 595 and *Essex Overseas Trade Services Ltd. v. The Legent Shipping Co. Ltd.*, (1981) 1 C.L.R. 263). 25 30 35

The application before Loris J. for the suspension of the interlocutory order which he had made on the 26th November 1983 was made later, on the 10th December 1983, at the same time when the applicants, as defendants in the Admiralty Action  
5 in question, filed notice of a motion for the setting aside of the said interlocutory order, which had been made returnable on the 12th December 1983; and as it appears from the decision of Loris J., of 29th December 1983, against which the present appeal was made, the hearing before him as regards  
10 the setting aside of the interlocutory order of the 26th November 1983 took place on the 16th, 20th and 22nd December 1983 and it has been adjourned for continuation on the 10th January 1984.

The application for the suspension, in the meantime, of  
15 the operation of the interlocutory order of the 26th November 1983 which was filed, as already stated, on the 10th December 1983, remained in the file and it was not pursued by the applicants until the 27th December 1983 when it was placed by the Registrar, at the request of the applicants, before Loris J.  
20 who heard it on the 28th December 1983 and dismissed it on the 29th December 1983.

I am now, in effect, being asked, while the hearing as regards the fate of the interlocutory order made on the 26th November 1983 is fixed for continuation on the 10th January 1984 before  
25 Loris J., to make myself, because of the filing of the present appeal, an order, under section 32 of Law 14/60, suspending the operation of the said interlocutory order.

I have reached the conclusion that I have no jurisdiction as one Judge of this Court to suspend the operation of an interlocutory order which was made by another Judge of this Court  
30 and the fate of which is still being examined and is going to be decided by him.

I would like to stress that this case is clearly distinguishable from a case in which a Judge of this Court who has issued an interlocutory order in respect of a ship or her cargo has decided  
35 later to either discharge it or make it final and it is being sought, pending the determination of an appeal against his said decision, to preserve the status quo by means of either a stay of execution or an order under section 32 of Law 14/60 or in accordance  
40 with the principles expounded in the *Erinford* case, *supra*.

For all the foregoing reasons this application is dismissed with costs.

Since I have found that I do not possess jurisdiction to intervene in favour of the applicants as applied for by them by means of their present application which I have just dismissed, it is not necessary for me to consider at all whether or not I was prevented from dealing with the present application because there is pending an application of the respondents, filed on the 31st December 1983, for an order staying all proceedings in this appeal on the ground that the appellants are guilty of contempt of the trial Judge, Loris J. The application of 31st December 1983 will be dealt with later, if necessary, in the appropriate manner.

*Application dismissed with costs.*