

1984 December 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS ROUSOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTRY OF INTERIOR,

Respondents.

(Case No. 538/84).

5 *Practice—Default of appearance of applicant and his Counsel—Advocate absent due to general strike of advocates in protest at certain decisions of the Supreme Court unconnected with the facts of this or any particular case—Extra-judicial causes cannot be taken into consideration in the administration of justice—Absence of Counsel inexcusable—Recourse dismissed for want of prosecution.*

Advocates—Right to strike.

Judges and advocates—Their role in the administration of justice.

10 The Cyprus Bar Council invited advocates to abstain from appearing before the Courts on the 21st December, 1984, in order to protest at certain decisions of the Supreme Court unconnected with the facts of the above or any particular case; and when the above recourse was called both applicant and his
15 counsel, as well as Counsel of the Republic, were absent.

Held, that bearing in mind the stage of the proceedings and the burden lying on the applicant to prosecute his case with a view to facilitating proper inquiry into the merits, the case must, in the exercise of the Court's discretion, be dismissed.

unless absence of Counsel is for any reason justified; that extra judicial causes, that is, causes unconnected with the merits of the case, are not relevant and cannot be taken into consideration in the administration of justice; that the fact that both Judges and advocates play a part in the administration of justice does not reduce the issue to one between Judges and Advocates; and that, therefore, the absence of Counsel and the applicant are inexcusable and, on account of that reason, the recourse of the applicant must be dismissed. 5

Application dismissed. 10

Per Pikiis, J.: The right to strike is a fundamental human right that deserves due protection. Our Courts are, as they ought to be, vigilant in the protection of human rights. Only if the right of audience of advocates bound up with their clients' constitutional right to have an advocate of their choice to represent them, is violated or denied, can they have a personal grievance respecting their participation in the administration of justice. The services of advocates are not employed by the Courts or Judges for that matter, but by their clients. 15

Cases referred to: 20

Efstathios Kyriacou and Sons v. Mouzourides (1963) 2 C.L.R. 1;

Charalambous v. Charalambous and Another (1971) 1 C.L.R. 284;

Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63;

Police v. Georghiades (1983) 2 C.L.R. 33; 25

Theofilou v. Republic (1984) 2 C.L.R. 114;

Evgeniou v. Police (1984) 2 C.L.R. 327.

Recourse.

Recourse against the decision of the respondents to promote the interested party to the post of Land Officer, 1st Grade, in the Department of Lands and Surveys, in preference and instead of the applicant. 30

Applicant and his Counsel *A.S. Angelides* absent.

Respondents absent.

No appearance on behalf of the Attorney-General of the Republic.

Cur. adv. vult.

5 PIKIS J. read the following judgment. The unexplained
 absence of a party signifies indifference to the cause propounded
 before the Court and disregard of the judicial process. And
 as such, it is inexcusable. In such circumstances, the Court
 is justified to deal with the case in the absence of the defaulting
 party and make an appropriate order. Precedent establishes*
 10 that discretion to adjourn is interwoven with the exercise of
 the judicial duty to administer justice according to law; there-
 fore, it must be exercised judicially by reference to the facts
 of the case, especially facts put forward in support of an ad-
 15 journment. Where no explanation is given for the absence
 of a party and his counsel, as in this case, the Court may
 proceed and deal with the case in the absence of the defaulting
 party, by dismissing the case for want of prosecution, or hearing
 the cause in the absence of the respondent, as the case may be.
 Application of these principles to the facts of the case before
 20 me, considering the burden cast on the applicant to prosecute
 his case, would inevitably entail the exercise of my discretion
 by dismissing the recourse for want of prosecution. Never-
 theless, I consider it my duty to notice the facts relevant to the
 absence of counsel for the applicant, despite failure of the appli-
 25 cant or his counsel to bring them to the notice of the Court,
 because they have become common knowledge by the publicity
 given them in the press and elsewhere. Hence, I shall notice
 them in order to decide whether they make the absence of appli-
 cant and his counsel excusable and, as a result, justify the ad-
 30 journment of the case.

It is common knowledge to everyone concerned with the
 administration of justice that the Cyprus Bar Council invited
 advocates to abstain from appearing before the Courts, yester-
 35 day, 21st December, 1984, in order to protest at certain decisions
 of the Supreme Court unconnected with the facts of this or any
 particular case. The one cause of complaint of the Council,
 more closely connected with the administration of justice,

* See, inter alia, *Efstathios Kyriacou & Sons v. Mouzourides* (1963) 2 C.L.R. 1; *Charalambous v. Charalambous & Another* (1971) 1 C.L.R. 284.

concerns a recent circular of the Supreme Court addressed to Judges of the District Courts, reminding that justice must be publicly administered in open Court. An approach to the administration of justice dictated, by the provisions of Article 30.2 of the Constitution, and the need to ensure that justice is not only done but is seen to be done. Judging from the failure of counsel of the Republic to appear and represent the Republic on behalf of the Attorney-General, in this and other cases pending before me, it seems that at least some of the officers serving in the Office of the Attorney-General joined the strike action declared by the Cyprus Bar Council.

Bearing in mind the stage of the proceedings and the burden lying on the applicant to prosecute his case with a view to facilitating proper inquiry into the merits, the case must, in the exercise of my discretion, be dismissed, unless absence of counsel is for any reason justified. Is, then, the failure of counsel for the applicant to appear, excusable? The answer depends upon proper appreciation of the role of Judges and advocates in the judicial process. That both play a part in the administration of justice does not reduce the issue to one between Judges and advocates. If that were the case, it would relegate the issues in the cause to a secondary place and divert the course of justice to areas unconnected with the merits of the case. What if Judges had complaints against members of the Bar? Would they have a right to refuse to hear advocates in any judicial cause? The answer is no.

It would involve a flagrant violation of the constitutional duty of Judges to safeguard unimpeded access to Courts of law and breach of the constitutional right of audience of the litigant and his advocate before the Court.

Judges are dutybound to administer justice according to law. In exercise of this power they are the mouthpiece of the law itself. It is the responsibility of Judges to uphold the judicial process not only for the protection of the rights of individual litigants but also those of the public in the due administration of the law. For, it is through the efficacy of the judicial process that the rule of law can be sustained. Advocates, too, have an important part to play in the administration of justice, as we heard the learned Attorney-General, Mrs. Soulioti, remind yesterday on the occasion of the admission of new

members to the Cyprus Bar. They are, she told them, under a twofold duty to protect the interests of their clients and aid the Court in the administration of justice¹. Discharge of these duties binds advocates, as indeed Judges are bound, to participate in the judicial process not for any cause of their own but for the common cause of sustaining the efficacy of the judicial process.

It may be argued that advocates have, like everyone else, a right to strike, constitutionally safeguarded by Article 27 of the Constitution. The right to strike is a fundamental human right that deserves due protection. Our Courts are, as they ought to be, vigilant in the protection of human rights². Only if the right of audience of advocates bound up with their clients' constitutional right to have an advocate of their choice to represent them, is violated or denied, can they have a personal grievance respecting their participation in the administration of justice. The services of advocates are not employed by the Courts or Judges for that matter, but by their clients. And, as earlier explained, the administration of justice in individual cases can never be allowed to become a matter between the Bench and the Bar.

Judges and lawyers have a common mission to see that justice is done in the particular case in vindication of the law. Consequently, unless we recognise that strike action by advocates against the judicial process itself is for any reason permissible, I must adjudge the absence of counsel of applicant inexcusable and, given the absence of his client as well, dismiss, in the exercise of my discretion, the recourse. The unimpeded administration of justice is the pillar of constitutional order, and the basic safeguard for the protection of human rights, including the right of access to the Courts of law. The machinery of the law cannot be allowed or suffered to come to a halt for any reason. It is the foremost duty of Judges to maintain this order and sustain the judicial process free from every obstruction. No consideration can prevail over the discharge of this duty. Judges cannot abdicate their solemn responsibility to sustain the judicial process and strive to ensure that the stream of justice flows perennially.

¹ See, s. 15 — Advocates Law, as amended by s. 7 Law 40/75.

² See, inter alia, *Police v. Ekdoriki Eteria* (1982) 2 C.L.R. 63; *Police v. Georgiades* (1983) 2 C.L.R. 33; *Theofilou v. The Republic* (1984) 2 C.L.R. 114; *Evgeniou v. The Police* (1984) 2 C.L.R. 327.

At the root of the matter is whether extra judicial causes, that is, causes unconnected with the merits of the case, are relevant and can be taken into consideration in the administration of justice. In my judgment, the answer is in the negative. Acknowledgment of extra judicial causes as relevant to the exercise of the discretionary powers of the Court, would subordinate the judicial process to considerations extraneous to the administration of justice. Such acknowledgment would, I believe, undermine the foundations of the administration of justice to the detriment of everyone; particularly Judges and lawyers who are pledged to sustain the administration of justice according to law. 5 10

I took time to consider my decision and reserved judgment overnight in order to reflect upon every aspect of the matter. I confess I faced a personal dilemma lest the impression is given that I join issue in my judicial capacity with members of the Bar, considering that the strike action is directed against the Supreme Court, of which I am a member. Reasons of personal sensitivity have tempted me to let the matter pass and refrain from exploring the issue at depth. But my duty to administer justice according to law, allowed me no such option. Before discharge of this duty, all my hesitations subsided, as they should. Having duly reflected on the matter before me, I find the absence of counsel and the applicant inexcusable and, on account of that reason, the recourse of the applicant liable to be dismissed. And I order its dismissal. 15 20 25

I have not overlooked in reaching my decision that applicant may have been unaware of the failure of his advocate to appear and represent him. That is just a supposition; there are no facts to support it. The relationship between client and advocate is confidential. Before the eyes of the law, there is a unity of purpose between client and advocate. The absence of both made inevitable the dismissal of the case. Whether circumstances exist that make necessary, in the interests of justice, the reinstatement of the case, is something I am not presently concerned to decide. 30 35

Recourse dismissed.