

1985 September 4

[PIKIS, J.]

IN THE MATTER OF ARTICLE 155.4
OF THE CONSTITUTION AND S.3 OF THE
ADMINISTRATION OF JUSTICE (MISCELLANEOUS
PROVISIONS) LAW 1964,

AND

IN THE MATTER OF AN APPLICATION
BY MANOLIS CHRISTOPHI, FOR LEAVE TO APPLY
FOR AN ORDER OF CERTIORARI AND PROHIBITION,

AND

IN THE MATTER OF AN ORDER OF THE RENT
CONTROL COURT OF LIMASSOL IN APPLICATION
No. 8/85,

NINA P. IACOVIDOU,

Applicant,

v.

MANOLIS CHRISTOPHI,

Respondent.

(Application No. 55/85).

Prerogative orders—Certiorari and prohibition—Lie primarily to correct fundamental errors in judicial and other proceedings of a basically judicial character—The Rent Control Court is a judicial body—Its judicial orders are subject to review by above orders—Prima facie the issue of a warrant to enforce an eviction order under 0.43A of the Civil Procedure Rules is not a purely ministerial but of a judicial character.

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Certiorari and prohibition—Application for leave to apply for—Applicant must make a prima facie case—Prima facie case means an arguable case—Prima facie the Rent Control Court lacks jurisdiction to enforce an eviction

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order issued by a District Court—Civil Procedure Rules 0.43A and 2 and section 32 of the Rent Control Law 23/1983.

Certiorari and prohibition—Are discretionary powers—Un-justified delay in applying may justify the Court to withhold the making of an order. 5

Rent Control—Jurisdiction for—Enforcement of an eviction order issued in 1975 by a District Court—Reg. 11(a) of the Rent Control Rules 1983 and Orders 43A and 2 of the Civil Procedure Rules—Section 32 of Law 23/1983. 10

On the 7.7.1975 the District Court of Limassol ordered the applicant, the tenant of business premises belonging to the respondent, to vacate the same for failure to pay rent due. An appeal against the order was dismissed in December 1984. The owner then applied to the President of the Rent Control Court for the issue of a writ of possession pursuant to Order 43A of the Civil Procedure Rules made applicable by reg. 11(a) of the Rent Control Rules 1983. The President of the Court gave leave to execute the order of the District Court of Limassol. The execution, however, of the order remained in abeyance until 31.3.1985 by virtue of the provisions of Law 6/1985. On the expiration of Law 6/1985 a Committee of the House of Representatives held an inquiry as to the desirability of prolonging the operation of Law 6/1985. The parties to the proceedings attended and made their representation before the said Committee. The owner allegedly gave an undertaking not to proceed with the enforcement of the order until 31.8.1985. When applicant's hopes for legislative relief were frustrated he filed the present application for leave to apply for an order of certiorari to quash the warrant for recovery of possession and for an order of prohibition to restrain its enforcement. 15
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Held, (1) Orders of certiorari and prohibition lie primarily to correct fundamental defects in judicial and other proceedings of a basically judicial character. Proceedings qualify as judicial in this context if they involve an adjudication upon the rights of the litigants carried out by a tribunal or body under a duty to act judicially. The Rent 35

Control Court is a judicial body and jurisdiction vests in the Supreme Court to review the legality of judicial orders made by the said Court. The Supreme Court, however, does not have jurisdiction to review by prerogative orders purely ministerial acts, i.e. orders of a non adjudicatory nature.

(2) Prima facie the issuing of a warrant under Order 43A is a judicial act, because its provisions confer discretion on the Judge to withhold the order and require him to ensure that all parties likely to be affected by an order are given sufficient notice to enable them to apply to the Court for relief.

(3) Before leave is granted to apply for orders of certiorari and prohibition the Court must be satisfied that the applicant has made out a prima facie case. Prima facie case means an arguable case.

(4) It appears that there is a prima facie substance in the complaint that the Rent Control Court exceeded its jurisdiction in giving leave to issue a warrant for the enforcement of the order of the District Court. Jurisdiction to make an order for recovery of possession under 0.43A vests, in accordance with 0.2 of the Civil Procedure Rules, in a Court having jurisdiction in the matter. Therefore, to the extent that Order 43A vests jurisdiction in the Rent Control Court to authorise the issue of warrants for recovery of possession, such jurisdiction is limited to orders of the Rent Control Court. Section 32 of Law 23/1983 does not expand this jurisdiction.

(5) Certiorari and prohibition are discretionary powers. Unjustified delay in applying may justify the Court to withhold making the order. Some explanation has been offered for the delay to apply sufficient to justify leave to apply for certiorari and prohibition. Whether on further scrutiny, after hearing the other side as well, this delay is considered excusable is very much an open question.

Leave granted.

Cases referred to:

Liatsos v. Ponirou and Another (1985) 1 C.L.R. 168;

- In re HadjiCostas* (1984) 1 C.L.R. 513;
- In re Droushiotis* (1981) 1 C.L.R. 708;
- Hetherington v. Security Export Co.* [1924] A.C. 988;
- R. v. Lewes Justices* [1972] 2 All E.R. 1126;
- In re Kakos* (1985) 1 C.L.R. 250; 5
- Sidnell v. Wilson and Others* [1966] 1 All E.R. 681;
- R. v. Chichester Justices* [1982] 1 All E.R. 1000;
- In re Maroulletti* (1970) 1 C.L.R. 75;
- In re Panaretou* (1972) 1 C.L.R. 165;
- Land Securities v. Metropolitan Police* [1983] 2 All 10
E.R. 254.

Application.

Application for leave to apply for an order of certiorari to quash an order of the Limassol-Paphos Rent Control Court authorizing the issue of a warrant for the recovery of possession of premises, directed by the District Court of Limassol on 7.7.1975 and for an order of prohibition to restrain the enforcement of such order. 15

P. Pavlou, for the applicant.

Cur. adv. vult. 20

PIKIS J. read the following judgment. This is an application for leave to apply for an order of certiorari and prohibition to review an order of the Limassol-Paphos Rent Control Court authorizing the issue of a warrant for the recovery of possession of premises directed by the District Court of Limassol on 7th July, 1975. After a hotly contested hearing, the District Court of Limassol ordered the applicant, the tenant of business premises belonging to the owner, to vacate the same for failure to pay rent due after the expiration of the statutory period of 21 days. 25
The order was challenged in appeal proceedings concluded on 19th December, 1978, with the Court reserving its judgment. Presumably execution was stayed pending deter- 30

mination of the appeal. The appeal was dismissed in December 1984. The judgment was orally delivered; written reasons for judgment have not, as yet, been handed down.

5 Following the dismissal of the appeal the owner applied to the President of the aforementioned Rent Control Court for the issue of a writ of possession pursuant to the provisions of Ord. 43A of the Civil Procedure Rules made applicable by the provisions of reg. 11(a) of the Rent Control Court Rules, 1983. The President of the Court gave
10 leave to execute the order of the District Court of Limassol, an order served on the applicant on 22nd January, 1985. Three days later Law 6/85 was enacted suspending up to 31st March, 1985, the enforcement of eviction orders made for non payment of the rent due for the
15 months of June, July, August and September 1974. As the order of the District Court of Limassol of 1975 was founded on the non payment of the rent by the applicant during the above period or part of it, execution of the order remained in abeyance until 1st April, 1985.

20 On the expiration of Law 6/85, a Committee of the House of Representatives seemingly held an inquiry into the need or desirability of prolonging the operation of Law 6/85. Apparently the parties to the proceedings attended and made their representations before the Committee of
25 the House of Representatives examining the matter. The owner allegedly gave an undertaking not to proceed with the enforcement of the order until 31st August, 1985. It was anticipated that the House of Representatives would by then formulate its policy on the matter. Applicant, as his
30 counsel informed us, nursed the hope the legislature would provide an equitable solution that would relieve temporarily or permanently his client of the effects of the order. As the legislature remained inactive and their hopes for relief were frustrated, the Court was moved to give leave
35 for an application to review the legality of the order of the President of the Rent Control Court by way of certiorari and prohibition. An order of certiorari is sought in order to quash the warrant for recovery of possession, illegal on the face of it, as counsel for the applicant submitted; while
40 an order of prohibition is applied for to restrain enforcement of it. The central submission of applicant is that the

order of 12th January, 1985, is, on the face of it illegal for lack of jurisdiction on the part of the Court that issued it. Counsel argued jurisdiction of the Rent Control Court is confined to the making of orders ancillary to or incidental to proceedings before it. No jurisdiction vests in the Rent Control Court to authorize execution of orders made by the District Court or any other Court for that matter. The transitory provisions of s.32(1) of the Rent Control Law, 1983(1), leave the above position unaffected, their operation being restricted to pending cases. In the submission of counsel a proceeding concluded by judgment cannot, under any circumstances, be treated as a pending proceeding. Moreover, the provisions of subsection 2 of s.32 making disposal of pending appeals subject to the provisions of the 1983 legislation, in no way cast enforcement of orders of the District Court within the purview of the Rent Control Court. They had no procedural or jurisdictional repercussions, their effect was to introduce changes in the substantive law of a retrospective character, as the Supreme Court recently declared (*Liatsos v. Ponirou and Another* (1985) 1 C.L.R. 168).

Orders of certiorari and prohibition lie primarily to correct fundamental defects in judicial and other proceedings of a basically judicial character (2). Proceedings qualify as judicial in this context if they involve an adjudication upon the rights of the litigants carried out by a tribunal or body under duty to act judicially. The Rent Control Court is a judicial body and jurisdiction vests in the Supreme Court to review the legality of judicial orders made by the above Court - In *Re Hadjicostas* (1984) 1 C.L.R. 513, and *In Re Droushiotis* (1981) 1 C.L.R. 708).

The issue of an order by a judicial body does not automatically render it a judicial order liable to review. In other words, the judicial imprint does not automatically confer jurisdiction to review orders of judicial bodies. The order sought to be reviewed must, in substance, be one of judicial character in the sense above explained. Purely ministerial acts, i.e. orders of a non adjudicatory character, are

(1) Law 23/85.

(2) Halsbury's Laws of England, 4th Ed., Vol. 1, para. 81.

not subject to review by prerogative orders - *Hetherington v. Security Export Co.* [1924] A.C., p. 988 (P.C.). In the above case the Court was concerned to define the attributes of a distress warrant issued by the Provincial Secretary-Treasurer for the collection of tax levied in accordance with process under the supervision of the Attorney-General. The Court held the order was not subject to review because it was of a ministerial character. The Secretary-Treasurer merely authorized the implementation of an order made by another body. Lord Backmaster who gave the opinion of the Privy Council depicted the dividing line between judicial and ministerial acts in these terms:

“It is well established that, if the issue of a distress warrant involves a judicial act, it is subject to the procedure by which an excessive exercise of jurisdiction can be brought up and challenged. If, on the other hand, it is a mere ministerial act following on the exercise of powers possessed by other people, then the writ of certiorari is not the proper remedy to apply”.

To decide the character of the order here under consideration, we must examine the nature of the jurisdiction under Ord. 43A of the Civil Procedure Rules. Is the Court under a duty to carry out a substantive inquiry or is its jurisdiction limited to formally verifying otherwise indisputable facts? In the former case the order is judicial, in the latter ministerial. Prima facie I incline to the view that the issuing of a warrant under Ord. 43A is a judicial act. The provisions of Ord. 43A, r. 1, confer discretion on the Judge to withhold the order while those of r. 2 of the same order require him to ensure that all parties likely to be affected by an order are given sufficient notice to enable them to apply to the Court for relief. No detailed submissions were made as to the nature of the jurisdiction vested in the Court under Ord. 43A. My preliminary view that orders made under Ord. 43A are of a judicial nature is strengthened by the decision of the Divisional Court in *R. v. Lewes Justices* [1972] 2 All E.R. 1126, where it was held that the issuance of a witness summons is a judicial act liable to review by way of prerogative orders. I do not overlook that one of the members of the Court, namely,

Bridge, J. (as he then was) reserved opinion on the matter and proceeded to decide the issue on the inherent jurisdiction of the Court to control criminal proceedings⁽¹⁾. As presently advised and subject to the reservations inherent in every decision founded on arguments raised by only one of the sides involved, I incline to the view that the order of the President of the Rent Control Court is subject to judicial review.

Before leave is granted to apply for orders of certiorari and prohibition, the Court must be satisfied that the applicant has made out a prima facie case⁽²⁾. What constitutes a prima facie case was the subject of discussion by the Full Bench in the recent case of *Re Kakos* (1985) 1 C.L.R. 250. A. Loizou, J. and myself expressing the unanimous opinion of the Full Bench adverted to the meaning and implications of a prima facie case. A. Loizou, J., laid stress on the decision of Diplock, L.J., in *Sidnell v. Wilson and Others* [1966] 1 All E.R. 681 as a guide to the discernment of a prima facie case. The learned Lord Justice, as he then was, expressed the view that what we should look for is whether the applicant has made an arguable case, a concept easier to understand and apply to the diverse circumstances of cases coming before the Courts. A bona fide arguable case should entitle, according to the judgment of Diplock, L.J., a party for leave to apply for certiorari. In the same case in *Re Kakos* (supra) I depicted a prima facie case in these terms:-

“We remain wholly unconvinced that a prima facie case was made for leave to apply for an order of certiorari. As the expression ‘prima facie’ suggests, a convincing enough case must be made on first view. On second view, formed after hearing the other side, this impression may dissipate. A prima facie case is not an unanswerable one but one sufficiently cogent, or

⁽¹⁾ Another case with a bearing on the subject is that of *R. v. Chichester Justices* [1982] 1 All E.R. 1000, deciding that whereas the issue of a warrant of imprisonment is a judicial act, the activation of the order, after postponement, for non compliance with terms imposed, was not a judicial act liable to review by way of prerogative orders.

⁽²⁾ In *Re Maroulletti* (1970) 1 C.L.R. 75; In *Re Panaretou* (1972) 1 C.L.R. 165.

arguable, to merit an answer. On numerous occasions Courts were concerned to elicit and apply the concept in diverse circumstances. A particularly instructive approach to analysis of the concept, I found, with respect, that of Megarry, V. C., in *Land Securities v. Metropolitan Police* [1983] 2 All E.R. 254, 258. According to this approach, a prima facie case is made out if an arguable case is disclosed, without need arising at this initial or preliminary stage for consideration of any rebutting evidence".

Applying the above to the facts of our case, it appears there is prima facie substance in the complaint that the Rent Control Court exceeded its jurisdiction in giving leave to issue a warrant for the enforcement of an order of the District Court of Limassol. Jurisdiction to make an order for recovery of possession under Ord. 43A vests, in accordance with Ord. 2 of the Civil Procedure Rules, in a Court having jurisdiction in the matter. Therefore, to the extent that Ord 43A of the Civil Procedure Rules vests jurisdiction in the Rent Control Court to authorize the issue of a warrant for recovery of possession, its jurisdiction is limited to orders of the Rent Control Court. As earlier indicated, s.32 of Law 23/83 does not expand this jurisdiction. That being, on first impression, the case it appears the Rent Control Court lacked jurisdiction to issue the warrant in question. Therefore, leave will be granted to apply for certiorari and prohibition.

Certiorari as well as prohibition are discretionary powers. Unjustified delay in applying may justify the Court to withhold making the order⁽¹⁾. As earlier indicated some explanation has been offered for the delay to apply sufficient to justify leave to apply for certiorari and prohibition. Whether on further scrutiny, after hearing the other side as well, this delay is considered excusable, is very much an open question. If it is made to appear that the present proceedings are a last minute effort to secure postponement of the enforcement of orders of possession made long ago

(1) In England the right to apply for certiorari and prohibition is limited to six months from the date of communication of the impugned order (See R S C Ord 53, r 2(2)) Only in exceptional cases do the Courts sanction enlargement of time

or facts are disclosed establishing applicant to be guilty of contumelious conduct, the Court may refuse to exercise its discretion in his favour, notwithstanding lack of jurisdiction to issue the order.

The following directions are given as to the hearing of the application for certiorari and prohibition: 5

- (a) Application must be made within seven days.
- (b) The application must be served as expeditiously as possible upon the President of the Rent Control Court and the owner. 10
- (c) The President of the Rent Control Court and the owner will be at liberty to file an affidavit as to the facts within five days of being served with the application.

The application is fixed for hearing on 28th September, 1985, at 9 a.m. Pending the determination of the application no steps will be taken for the enforcement of the order. 15

Order accordingly.