

1985 August 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHRISTOS CHRISTOUDIAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 159/84).

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*Revisional Jurisdiction—Practice—Stay of enforcement of judgment given by a Judge of the Supreme Court in proceedings under Art. 146 of the Constitution pending appeal—Principles applicable—Rule 3 of the Appeals (Revisional Jurisdiction) Supreme Court Rules 1964—Order 35, r. 18 of the Civil Procedure Rules—Inherent differences between Civil and Revisional Jurisdiction—Power of Court to attach terms on stay of enforcement of judgment.*

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In proceedings under Article 146 of the Constitution initiated by Mr. Christoudias the Court annulled the appointment of Mr. Loizides, an interested party, to the post of Attaché in the Foreign Service for non possession of all the requisite qualification. The decision was appealed against by the Republic as erroneous. The appeal was followed by the present application for stay of enforcement of the judgment, pending the determination of the appeal.

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Mr. Loizides was serving at the Cyprus High Commission in Australia. Immediate enforcement of the judgment will not only entail severance of his links with the Public Service but return of himself and his family to Cyprus. If the appeal succeeds, it will be impossible for him to recoup the vast expenses involved in the resettlement of himself and his family to Cyprus or be recompensed for the grave personal and family hardship.

25 The present application is based on rules 13, 17 and

19 of the Supreme Constitutional Court Rules, on s. 47 of Law 14/60 and on rule 3 of the Appeals (Revisional Jurisdiction) Supreme Court Rules 1964.

*Held*, allowing the application and granting stay on terms:

(1) None of the above rules is applicable to in proceedings for stay, except rule 3 of the 1964 Rules, making applicable Order 35 of the Civil Procedure Rules. 5

(2) Order 35, rule 18 of the Civil Procedure Rules confers discretion to stay execution of a judgment in an appropriate case pending appeal. A balance must be struck between the rights of a successful litigant to the fruits of litigation and the rights of an appellant not to have his right of appeal stripped of its potency. 10

(3) The transplanted provision of 0.35, r.18 in the domain of public Law must be made with due awareness of the inherent differences between the nature and objects of the two jurisdictions. While Civil Jurisdiction primarily aims to vindicate private rights, the principal object of revisional jurisdiction is the sustenance of legality in public administration. Suspension of a judgment of a Court of revisional jurisdiction entails sufferance of the continuance of a state of illegality. Therefore, only in exceptional circumstances will a Court countenance this eventuality by granting stay. 15 20

(4) Such exceptional circumstances exist in the present case. If Mr. Loizides is successful on appeal his success will leave him with a vast financial loss that he will be unable to recover from any source. In these circumstances success on appeal would only formally restore his rights to the detriment of the efficacy of the right of appeal. 25 30

(5) The Court has discretion to attach terms to stay; the terms should safeguard the right of the successful litigant to a speedy reconsideration of his application for appointment. The application for stay would be granted, provided the Public Service Commission gives an undertaking in writing within 30 days that they will, in the event 35

of dismissal of the appeal, reconsider the matter the soonest and, in any event, within 45 days from dismissal.

*Application granted.*

*Stay on terms as above.*

*Costs in cause but in no event against Mr. Christoudias.*

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**Cases referred to:**

*Katarina Shipping v. Ship "Poly" (1978) 3 C.L.R. 355;*

10 *Christoforou (No. 2) v. Republic (1985) 3 C.L.R. 676;*

*Republic v. Liverdos (1985) 3 C.L.R. 936.*

**Application.**

Application by respondents for the stay of enforcement of the judgment whereby the appointment of Mr. S. Loizides to the post of Attaché in the Foreign Service was annulled pending the determination of the appeal against the said judgment.

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A. *Papasavvas*, Senior Counsel of the Republic, for the applicants-respondents.

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C. *Loizou*, for the respondent-applicant.

*Cur. adv. vult.*

PIKIS J. read the following judgment. In proceedings under Article 146 initiated by Mr. Christoudias, an unsuccessful candidate for the post of Attaché in the Foreign Service, the Court annulled the appointment of Mr. S. Loizides, an interested party in the proceedings. The decision leading to his appointment was discharged for non possession of all the requisite qualifications to the aforementioned first entry post. The decision was appealed against by the Republic as erroneous. The gravamen of the appeal is that the Court failed to appreciate correctly the qualifications of Mr. Loizides and, for that reason, the judgment of the trial Court is vulnerable to be set aside. The appeal was followed by an application for stay of enforcement of the judgment pending the determination of the appeal. This is the subject matter of the present proceedings. Suspension in sought on account of the special circumstances of the case, particularly the implications of immediate implementation of the judgment, viewed in juxtaposition to the possibility of a successful outcome of the appeal. Mr. Loizides

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was serving at the Cyprus High Commission in Australia. Immediate enforcement of the judgment will not only entail severance of his links with the Public Service but return of himself and his family to Cyprus. If his appeal is successful, it will be impossible for Mr. Loizides to recoup the vast expense involved in the resettlement of himself and his family in Cyprus or be recompensed in any way for the grave personal and family hardship. 5

The application is founded on regulations 13, 17 and 19, Supreme Constitutional Court Rules, s.47 of the Courts of Justice Law and rule 3 of the 1964 Rules<sup>1</sup>, making applicable Order 35 of the Civil Procedure Rules regulating the exercise of the right to appeal and matters incidental thereto, with regard to first instance judgments of the Supreme Court in the exercise of its revisional jurisdiction. To my comprehension, none of the above rules is applicable in proceedings for stay, except for r. 3 of the 1964 Rules. The application of r. 13 is confined to the issue of a provisional order pending the determination of proceedings at first instance, whereas r. 17 is solely concerned with the jurisdiction of the Supreme Court at first instance to make an order warranted by the facts of the case, independently of a formal prayer to that end. Likewise, the ambit of r. 19 of the 1962 Rules is confined to interlocutory proceedings pending the determination of the case. Section 47 of the Courts of Justice Law is, it seems to me, inapplicable to proceedings under Article 146. This appears from the definition of "Court" in s.2 of Law 14/60. "Court" means the Supreme Court in the exercise of its civil jurisdiction and subordinate civil Courts. 10  
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Order 35, r. 18 of the Civil Procedure Rules, made applicable to appeals from judgments of the Supreme Court in the exercise of its revisional jurisdiction, while it affirms that an appeal does not stay execution, it confers discretion to suspend execution in an appropriate case, subject to terms that may be approved by the Court. The principle underlying Ord. 35, r. 18 is that a successful litigant is entitled to the fruits of litigation; the exercise of the statutory right to appeal does not of itself limit or qualify this finality. On the other hand, discretion is vested in the Court to safeguard the effective exercise of the right to appeal. It must not be allowed to be rendered a fruitless exercise where 35  
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<sup>1</sup> Appeals (Revisional Jurisdiction) Supreme Court Rules, 1964.

5 success on appeal would be rendered nugatory or superfluous by the immediate implementation of the judgment. For in that case, the right to appeal would be stripped of its potency. A balance must be struck between the rights of a successful litigant and those of an appellant. The principles relevant to the exercise of the discretionary powers of a civil Court in this area, evolved by a series of English decisions, were reviewed, *inter alia*, by Triantafyllides, P., in *Katarina Shipping v. Ship "Poly"*.<sup>1</sup>

10 It must be said that Ord. 35, r.18 is primarily fashioned to the exigencies of civil litigation. Its transplantation in the domain of public Law must be made with due awareness of the inherent differences between the nature and objects of the two jurisdictions. While civil jurisdiction primarily aims  
15 to vindicate private rights, the principal object of revisional jurisdiction is the sustainance of legality in public administration. A successful litigant in proceedings under Article 146, is only indirectly benefited from the decision; certainly, he is not the beneficiary of the decision in the sense  
20 that a successful plaintiff is when he obtains a money judgment. The foremost object of an annulling decision of a Court of revisional jurisdiction is the restoration of legality. Suspension of the judgment necessarily entails sufferance of the continuance of a state of illegality. Therefore,  
25 only in the most exceptional circumstances will a Court of Law countenance this eventuality. Do such circumstances exist in the present case?

After careful consideration of the facts, I think the answer is in the affirmative. If Mr. Loizides is successful on  
30 appeal, his success will leave him with a vast financial loss that he will be unable to recover from any source, as well as grave personal hardship. In those circumstances success on appeal would only formally restore his rights to the detriment of the efficacy of the right to appeal. I am, therefore, disposed to uphold the application for stay provided  
35 this can be accomplished without injury to the rights of Mr. Christoudias who is entitled, under the judgment given, to a speedy reconsideration of his application for appointment.

<sup>1</sup> (1978) 1 C.L.R. 355. See, also, *Christophorou (No. 2) v. Republic* (1985) 3 C.L.R. 676, and *Republic v. Liverdos* (1985) 3 C.L.R. 936.

The Court has discretion to attach terms to stay, considered necessary for the safeguard of the rights of the successful litigant at first instance. On the one hand, I have no doubt the Supreme Court will, in view of the order for stay, give every priority to the hearing of the appeal anxious as they will be that the state of illegality, resulting from the non immediate implementation of the judgment, will be as brief as possible. On the other hand, it must be ensured that the Public Service Commission will, under any circumstances, reexamine the matter if the appeal is dismissed, without any delay whatsoever.

In light of the above, I have come to the conclusion to direct stay of the enforcement of the judgment of first instance, provided the Public Service Commission gives an undertaking in writing within 30 days that they will, in the event of dismissal of the appeal, reconsider the matter the soonest and, in any event, within 45 days from dismissal.

After hearing counsel the following order is made as to costs: Costs will be in cause but in no event against Mr. Christoudias.

*Stay of enforcement granted.  
Order for costs as above.*