1985 October 7

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS G. DANOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE COMMANDER OF POLICE,

Respondents.

(Case No. 794/85).

Practice—Service upon interested parties to a recourse—Application for substituted service upon such parties—The Supreme Constitutional Court Rules, 1962, r. 18—Prerequisites for the applicability of the Civil Procedure Rules—"So long as circumstances permit" and "unless the Court or Judge otherwise directs".

This is an application for leave to effect substituted service upon the 36 interested parties members of the Police Force by authorising the substitution of the Chief of the Police for the process server. The application is based on 0.5 and 5A of the Civil Procedure Rules. No suggestion was made that personal service is impossible.

Held, (1) The practice was evolved to serve, without exception, parties with a direct interest in the outcome of the recourse. Natural Justice if no other consideration warrants the course approved by the Court.

(2) The crucial question in these proceedings is whether the Civil Procedure Rules do apply; if yes, it is difficult to justify substituted service as such service under Orders 5 and 5A is only permitted when there is an inability to effect personal service.

(3) Regulation 18 of the Supreme Constitutional Court Rules 1962 provides that the Civil Procedure Rules with necessary adjustments apply subject to the following conditions, i. e. "so long as circumstances permit" and "unless the Court or Judge otherwise direct".

(4) As personal service can be effected upon the interested parties the applicability of the Civil Procedure Rules cannot be doubted on the basis of the first of the above two conditions; regarding the second of the above conditions though it is impossible to contemplate exhaustively the circumstances under which the Court may direct deviation or departure from the rules, generally the Court will be disinclined to sanction such a departure unless the interests of Justice so require. Uniformity in the judicial process should not be disturbed except in the face of compelling circumstances. And none were cited in this case.

Application dismissed.
No order as to costs.

Cases referred to:

Josephides and The Republic, 2 R.S.C.C. 72;

Theodorides and Others v. *Ploussiou* (1976) 3 C.L.R. 319;

Vorkas and Others v. *The Republic* (1984) 3 C.L.R. 87;

Christoudias v. *The Republic* (1985) 3 C.L.R. 1615.

Application.

Application by applicant for leave to effect substituted service upon the 36 interested parties, members of the Police Force, in a recourse against the promotion of the interested parties to the post of Acting Chief Inspector.

A. S. Angelides, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following ruling. I am concerned with an application for leave to effect substituted service upon the

36 interested parties members of the Police Force. We are asked to authorise the substitution of the Chief of the Police for the process server. Asked whether the Chief of the Police is agreeable to the offer of his service counsel replied that he was not consulted. However, he added, we may readily infer that he will raise no objection considering he will be doing no more than bring to the notice of the interested parties that their promotion, approved by himself, has come under challenge before the Court.

Although the application is founded inter alia on Ord. 5 and 5A of the Civil Procedure Rules counsel doubted their applicability in view of (a) the nature of the process of judicial review of administrative action and (b) the provisions of r. 4(3) of the Supreme Constitutional Court Rules, 1962. Counsel argued that interested parties are not stricto senso parties to the proceedings in the sense defendants are parties to a civil action; therefore the applicant should not be burdened with the cost of service of the process upon them. In Greece parties interested in judicial review are appropriately styled interveners, as he stressed, a fact signifying that their participation in the process is largely a matter for their initiative. Of course in Greece there are specific provisions regulating the joinder of parties interested in the review while in Cyprus the subject is regulated by the practice of the Courts. On the other hand r. 4(3) does suggest, in the contention of counsel, that the onus for service on the applicant is limited to service upon the public authorities whose decision is called into question. I am unable to uphold this proposition in view of the discretion vested in the Registrar to require the production of additional copies of the application a provision linked in the context of the regulation to service on parties other than those specified in the title of the recourse.

Soon after the establishment of administrative juridiction as a separate branch of the judicial process the Court acknowledged the right of parties with an interest in the proceedings, likely to be affected thereby, to join as parties thereto(1). Natural justice if no other consideration warrants the course approved by the Court. It is natural

(1) Ninos F. Josephides and the Republic, 2 R.S.C.C. 72, 75.

for every party likely to be affected by the judicial process to be given an opportunity to take part and be heard in the proceeding. Indisputedly parties like the interested parties in the present case whose promotion is challenged have an undoubted right to be heard in the cause. The practice was evolved to serve, without exception, parties with a direct interest in the outcome of the recourse. Their right was reiterated by the Full Bench in *D. Theodorides and Others* v. *S. Plousiou*(1). More recently I had opportunity to examine the interest necessary to justify the acknowledgement of a right to take part in the proceedings - *Vorkas and Ohers* v. *The Republic* (2).

The crucial question in these proceedings is whether the Civil Procedure Rules do apply; if they do it is difficult to raise cogent argument in justification of substituted service. The principle upon which substituted service is permitted under the Civil Procedure Rules (Ord. 5 and 5A) is inability to effect prompt personal service. No suggestion was made, here, that personal service is impossible. The expense of personal service is never a ground for allowing its substitution. Moreover there is no certainty that the method suggested will necessarily bring the proceedings to the knowledge of every interested party. Hence, if the rules are applicable, there is no latitude for substituting personal service. Regulation 18 provides that the Civil Procedure Rules with necessary adjustments, (3) reflecting the distinct nature of revisional jurisdiction, apply subject to the following conditions: (a) "so long as circumstances permit"; the test here is, objective feasibility. As personal service can be effected upon the interested parties the applicability of the Civil Procedure Rules cannot be doubted on this ground. (b) "Unless the Court or a Judge otherwise direct." It is impossible to contemplate exhaustively the circumstances under which the Court may direct deviation or departure from the rules. Generally, the Court will be disinclined to sanction such course unless the interests of justice so require. The interests of justice are inextricably

(1) (1976) 3 C.L.R. 319.
(2) (1984) 3 C.L.R. 87.
(3) See Christoudias v. The Republic decided on 12th August, 1985, and published (1985) 3 C.L.R. 1615 on difference between civil and revisional jurisdiction.

tied to the demands of justice in the particular case. The rules lay down the procedural norm for the pursuit of justice in the context of the judicial process. Uniformity in the judicial process should not be disturbed except in the face of compelling circumstances. And none were cited in this case. The reservations of counsel for the Republic about the justification of the course proposed are, it appears to me, well founded. I find no merit in the application and as such must be dismissed.

As a matter of principle the avenue of judicial review of administrative action must be kept widely open; as accessible to the ordinary citizen as possible. Keeping the cost of litigation as low as possible is a factor of cardinal importance for the entrenchment of the right to judicial review. Although the present cost of litigation is by no means excessive there may be a case of bringing it down where there are many interested parties and the cost of service rises above a certain level. There may be a case for the Supreme Court in the exercise of its rule making power(1) to provide for the reduction of the cost of service where there are say ten or more interested parties.

In the result the application for substituted service is dismissed with no order as to costs.

Application dismissed with no order as to costs.

(1) Articles 135 and 163 of the Constitution.