

1985 March 9

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ELENI THEODOSSIADOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF THE PRESIDENCY,
2. THE MINISTER OF FINANCE,

Respondents.

(Case No. 416/84).

NICOS ROUSOS,

Applicant,

v.

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

Respondents.

(Case No. 538/84).

THEODOROS MARINOS,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 560/84).

GAVRIEL P. LOUCAIDES,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 607/84).

Practice—Reinstatement of recourses—Dismissal of recourses due to absence of applicants and their advocates—Applicants having no notice of the intention of their advocates not to attend—And have done nothing personally to halt the judicial process—Equity operating in personam so the inquiry into fault, delay or disregard to the process of justice confined to their person and acts of their advocates of which they had proper notice—Nothing done by applicants falling short of the standards of probity required by equity—Equitable to reinstate the recourses.

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Following the absence of the applicants and their advocates the above recourses were dismissed for lack of interest in the holding of the inquiry necessary to test the

validity of the administrative action challenged by the
recourses. The reasons of absence of the advocates was
the call of the Bar Council to its members to refrain
from appearing before the Courts on the 21st December,
5 1984, but no notice was given to the applicants of the in-
tention of their advocates not to attend the Court on the
above date.

Upon an application for reinstatement of the recourses:

10 *Held*, that the non appearance of the applicants was
not intended to signify any lack of interest in the promo-
tion of their cause, nor did it reflect any disrespect to the
process; that a basic precept of equity is that those who
seek redress from the Courts must come with clean hands;
15 that the applicants have done nothing personally to halt
the judicial process; that equity operates in personam, so
the inquiry into fault, delay or disregard to the process of
justice must be confined to their person and acts of their
advocates of which they had proper notice; that nothing
20 done by any of the applicants falls short of the standards
of probity required by equity; and that, therefore, it is
equitable, in the circumstances of the case, to reinstate the
recourses.

Recourses reinstated.

Cases referred to:

- 25 *Rousos v. Republic* (1984) 3 C.L.R. 1437;

 Rousos v. Republic (1985) 3 C.L.R. 119;

 Lambrakis v. Republic (1970) 3 C.L.R. 72;

 Razis and Another v. Republic (1982) 3 C.L.R. 45;

 Tsingi v. Republic (1984) 3 C.L.R. 1262;

30 *Evagorou v. Christodoulou and Another* (1982) 1 C.L.R.
 771.

Applications.

Applications by applicants for the reinstatement of their recourses which had been dismissed due to their absence and the absence of their advocates.

- A. Liatsos for K. Michaelides*, for applicant in Case No. 416/84. 5
- A. S. Angelides*, for applicant in Case No. 538/84.
- M. Spanos with M. Spanos (Miss)*, for applicant in Case No. 560/84.
- D. Papachrysostomou*, for the applicant in Case No. 607/84. 10
- G. Erotokritou, (Mrs.)*, Counsel of the Republic, for respondents in Case No. 416/84.
- R. Gavrielides*, Senior Counsel of the Republic, for respondents in Cases Nos. 538/84, 506/84 and 607/84. 15

Cur. adv. vult.

PIKIS J. read the following judgment. Time will be saved if the four applications for reinstatement of the corresponding recourses are dealt with at the same time. The recourses were dismissed for similar reasons, while their reinstatement is sought on virtually identical legal and factual considerations. The reasons for the dismissal of the recourses are indicated in my judgment of 22.12.84.¹ In face of the unexplained absence of advocates and their clients, the recourses were dismissed for lack of interest, in the holding of the inquiry necessary to test the validity of the administrative action challenged by the recourses. As far as the reasons of absence of the advocates could be discerned, from events judicially noticed, namely, the call 20 25 30

¹ See, *Rousos v. Republic* (1984) 3 C.L.R. 1437.

of the Bar Council to its members to refrain from appearing before the Courts of the country on 21st December, 1984, they were found to offer no valid excuse for not appearing before the Court. In the affidavits sworn to in support of the applications for reinstatement, it is confirmed that the reasons of absence of counsel on the above date, were those inferred by the Court. Appeals taken by the applicants in two of the four recourses, notably Recourses Nos. 538/84 and 607/84, were held to be unsustainable because the order of 22.12.84 was not a final one and, in consequence, no appeal lay. In view of applications pending before this Court for reinstatement, the fate of the proceedings is in the hands of the Court of first instance, charged to decide whether the absence of counsel and parties on 21.12.84 betrayed abandonment of the proceedings or whether it is explicable on some other ground justifying reinstatement.

The sole issue before me is whether the reasons disclosed in the affidavits accompanying the applications, respecting non attendance of the parties other than non appearance of their counsel, justify reinstatement. As I explained in a ruling pertaining to an application of the Bar Council to be heard in the capacity of amicus curiae, I am not here concerned to review the validity, soundness or correctness of the reasons given in support of my decision of 22.12.84. Therefore, argument was confined to facts and reasons associated with the non appearance of the parties on 21.12.84, and their intentions as to the fate of the proceedings. In dismissing the two appeals, aforementioned, the Full Bench affirmed that reinstatement, like other procedural matters not specifically dealt with by the Supreme Constitutional Court Rules 1962, is governed by the Civil Procedure Rules, subject to modifications necessary to reflect the object and pattern of proceedings for administrative review under Article 146¹. This adjustment requires that in applying

¹ See, Rousos v. Republic (1985) 3 C.L.R. 119.

the provisions of Ord. 33, r. 1 of the Civil Procedure Rules, providing for reinstatement, following dismissal consequent on non appearance, at issue are the intentions of the parties relevant to the fate of the proceedings.

Counsel drew attention to decided cases ¹ giving expression to the principle of administrative Law that, in proceedings for administrative review under Article 146, the Court is primarily concerned to probe the legality of the action and only secondarily, and incidentally thereto, the prejudice to the rights of the applicant. 5 10

I examined the applications before me with great concern because of the extraordinary circumstances surrounding the dismissal of the recourses and, the effect of the principles under consideration on the administration of justice. In *Tsingis v. Republic*, ² *Triantafyllides, P.*, pointed out that the Court has jurisdiction under the relevant Rules, as well as inherent jurisdiction, to reinstate a recourse not truly abandoned. No doubt it is a discretionary jurisdiction to be exercised in the light of the facts of the case and public interest in the administration of justice. 15 20

Failure to appear before the Court and aid in the holding of an inquiry in proceedings raised under Article 146 of the Constitution, constitutes conduct from which the Court may infer abandonment. The burden of disturbing the presumption of regularity of administrative acts, lies on the applicant who moves for the inquiry. Unless faced with a flagrant illegality the Court cannot assume an administrative act challenged to be illegal. Consequently, lack of interest in seeking the necessary directions for an inquiry designed to substantiate the invalidity of the act, omission or decision, betrays abandonment (*ναπαίτηση*) of the recourse, in face of which a Court may dismiss the recourse because of the presumed legality of the act and absence of any material casting doubts on its validity. 25 30

¹ See, *Nicos Lambrakis v. Republic* (1970) 3 C.L.R. 72; and *Razis And Another v. Republic* (1982) 3 C.L.R. 45.

² (1984) 3 C.L.R. 1262.

Despite differences between civil and administrative proceedings, lack of diligence in the pursuit of a judicial cause may result in the dismissal of both a civil action for
5 lack of prosecution, and a recourse for abandonment. In *Bremer Vulkan v. South India Shipping* [1981] 1 All E.R. 289, 295, weighty pronouncements were made in relation to the object of the judicial process and constitutional function of the Courts of Law that find me, with
10 respect, in total agreement. "Every civilised system of government requires", it was said, "that the State should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights." This is a proposition of universal
15 application, equally applicable to every recourse to the Courts of the land. That the observations were made in relation to civil proceedings does not limit their significance or value. They reflect correctly the position of Courts of justice under the Constitution in every field of jurisdiction.
20 As it emerges from other observations made in the above case, the constitutional right of access of a citizen to the Courts of the country must be reasonably used in the interest of the efficacy of the judicial process and the need to prevent its abuse to the detriment of justice.

25 Failure to appear before the Court on the day appointed, is not a matter of formality but a matter that goes to the root of the administration of justice. Rules of procedure are designed to ensure the meaningful exercise of the right of access to the Court; they must be adhered to not only
30 in the interest of the efficacy of the process but, ultimately, as a potent means too, for the meaningful pursuit of rights given by Law. No litigant can defy the rules regulating the procedure of the Court and seek, as of right, its remedial powers. The orderly conduct of judicial business is
35 one of the pillars of the administration of justice.

Order 33, r. 1 of the Civil Procedure Rules¹ has no precise counterpart in the English Rules. It is very broadly worded and confers almost unlimited discretion on the court

¹ Relied upon in all applications in support of reinstatement.

to reinstate a cause if the merits of the case so justify. Reinstatement can be ordered, as the concluding part of Ord. 33, r. 1 reads, “on ground that it is equitable so to do in the circumstances of the case.” Equity, as the yardstick of the exercise of discretionary powers, confers unlimited discretion to do what the Court regards just in the particular circumstances of the case. The discretion is not exercisable by reference to any body of rules but according to the intrinsic merits of a factual situation.

What are then the facts relied upon in support of the application? The recourses were fixed before the Court on 21.12.84 for directions, a stage at which the presence of the parties is not ordinarily necessary and, they were informed accordingly by their counsel although told they were free to attend, if they so chose. As may be inferred from the affidavits, no notice was given to the applicants of the intention of their advocates not to attend on 21.12.84. Consequently, their non attendance was not deliberate. Moreover, they could confidently assume, in virtue of the relationship between advocate and client, formalised by the execution of a retainer, envisaged by the Rules¹, that their advocates would represent them in Court. Not only the relationship of client and advocate but also the Rules of Etiquette of the legal profession of 1966² bind advocates to make punctual appearance before the Court (rule 5(3)).

In light of the above, failure of the parties to attend, was not deliberate but incidental, on reasonable expectations that they would be duly represented. It could be argued they are bound by the acts of their representatives—their advocates—as they are ordinarily bound by the acts and representations of their counsel. But the matter does not fall to be resolved by reference to specific rules of Law;

¹ Ord.2 r.14 of the Civil Procedure Rules.

² Published in the official gazette dated 19.11.66 under Not. 839.

it is solely governed by equity, making it incumbent on the Court to examine the merits of a factual situation without regard to specific rules. ¹

5 Now that the facts relevant to the non appearance of
the parties are known, their effect must be evaluated res-
pecting the intentions of the parties as to the fate of their
recourses and their impact on the administration of justice.
Certainly, their non appearance was not intended to signify
any lack of interest in the promotion of their cause, nor did
10 it reflect any disrespect to the process. If they were aware
of the inclination of their advocates not to appear and re-
frained from appearing themselves before the Court, their
absence might be construed as a defiance of the judicial
process, abuse of the right of access to the Court and, ul-
15 timately, justify non reinstatement. That they may have a
grievance against their counsel, does not absolve me, under
Ord. 33, r. 1, of the duty to examine the facts in order to
weigh their effect in equity. A basic precept of equity is
that those who seek redress from the Courts must come
20 with clean hands. The applicants have done nothing per-
sonally to halt the judicial process. Equity operates in
personam, so our inquiry into fault, delay or disregard to
the process of justice, must be confined to their person
and acts of their advocates of which they had proper no-
25 tice. Nothing done by any of the applicants falls short of
the standards of probity required by equity. Therefore, it
is equitable, in the circumstances of the case, to reinstate
the recourses. The cases will be listed afresh for Direc-
tions. Order accordingly. They will come up before the
30 Court on 18.3.85 at 9 a.m.

Recourses reinstated.

¹ For a discussion of the breadth of the discretion of the Court to reinstate in civil cases, see *Evagorou v. Christodoulou And Another* (1982) 1 C.L.R. 771.