

1985 June 8

[L. LOIZOU, J.]

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE EDUCATIONAL SERVICE COMMISSION,  
2. THE MINISTRY OF EDUCATION,

*Appellants,*

v.

NICOS LIVERDOS,

*Respondent.*

*(Application in Revisional  
Jurisdiction Appeal No. 487).*

---

*Stay of execution pending appeal—Revisional jurisdiction case  
—Judgment annulling promotions of educational officers—  
Binding when pronounced—Modes of execution provided  
by Order 40 of the Civil Procedure Rules not applicable—  
What Court is asked to do is to temporarily revoke or 5  
suspend the judgment—Grave doubts whether this can be  
done otherwise than by a judgment of the Court of Appeal  
—Stay of execution on ground that appeal, if successful,  
will be rendered nugatory refused because if appeal is 10  
successful the interested parties will have to be reinstated  
to the status they held prior to the annulment of their pro-  
motions—Article 146.5 of the Constitution, section 47 of  
the Courts of Justice Law, 1960 (Law 14/60) and rules  
18 and 19 of the Civil Procedure Rules.*

Upon a recourse by the respondent (applicant in the re- 15  
course) the Court annulled the promotion of the three in-  
terested parties to the post of Assistant Headmaster in  
the Secondary Education. As against the annulment an ap-  
peal was filed by the Republic together with an applica-  
tion\* for an order of the Court suspending “the annulling 20

---

\* The application was based on Order 35, rules 18 and 19 of the Civil Procedure Rules and section 47 of the Courts of Justice Law, 1960 (Law 14/60).

effects” of the first instance judgment until the final determination of the appeal.

5 The application was based on the ground that the applicant in the recourse had been promoted on the 19th December, 1983, and that his promotion was with retrospective effect as from the 15th November, 1981, and thus he has lost his legitimate interest; that as a result of a mistake and/or oversight on the part of the applicant and/or counsel appearing for him they failed to take the  
10 necessary steps for the withdrawal of the recourse; and that the first instance judgment does not serve any legitimate interest of the applicant and it will only cause derangement of the harmonious functioning of education.

15 *Held*, (1) that as the judgment appealed against has by virtue of Article 146.5 of the Constitution and s. 47 of the Courts of Justice Law, 1960, become binding when pronounced and as none of the modes of execution for which provision is made under Order 40 of the Civil Procedure Rules is applicable or can be invoked as a means  
20 of “executing” the judgment, what this Court is in fact asked to do is to temporarily revoke or suspend the judgment, which is quite a different thing from a stay of execution and there are grave doubts whether this can be done otherwise than by a judgment of the Court of appeal.  
25

(2) That a Court hearing an application of this nature ought to see that the appeal, if successful, will not be rendered nugatory and this seems to be the most material consideration; that such possibility does not exist  
30 in the present application because, quite clearly, if the appeal is successful and the first instance judgment is set aside the interested parties—who incidentally are not parties to this application—will have to be reinstated to the status they held prior to the annulment of their promotions; and that, accordingly, the application must fail.  
35

*Application dismissed.*

Cases referred to:

*Yerasimou v. Republic* (1978) 3 C.L.R. 36;

*Bar Association of Nicosia v. Republic* (1975) 3 C.L.R. 24;

*Veis v. Republic* (1979) 3 C.L.R. 537 at p. 538;

*Republic v. Petrides* (1981) 3 C.L.R. 246;

*Katarina Shipping Inc. v. The Cargo on Board the Ship  
"Poly"* (1978) 1 C.L.R. 355;

5

*Christoforou and Others v. Republic* (1985) 3 C.L.R. 676.

**Application.**

Application by the Republic for an order suspending the "annulling effects" of the judgment in Revisional Jurisdiction Case No. 292/82, given on the 23rd May, 1985, whereby the decision of the Educational Service Commission to promote the interested parties to the post of Assistant Headmaster in the secondary education was annulled, until the final determination of the appeal filed against the above judgment.

10

15

*R. Vrahimi (Mrs.)*, for the applicants.

*A. S. Angelides*, for the respondents.

*Cur. adv. vult.*

L. LOIZOU J. read the following decision. This is an application for an order of the Court suspending "the annulling effects" of the first instance judgment against which there has been filed an appeal until final determination of such appeal.

20

At the commencement of the hearing learned counsel for the respondent in the appeal made a statement to the effect that the reason he did not file an Opposition was the fact that as stated in the affidavit filed on behalf of the appellants—applicants in this application—his client has been promoted and has no further interest in the case. He also stated that upon being notified that the judgment would be delivered he tried to communicate with his client, the respondent, but due to the fact that he had changed his telephone number he could not trace him. Finally, he applied for the leave of the Court to withdraw from the case as he had no instructions from the respondent. His application was granted.

25

30

35

Counsel for the appellants—applicants in the present application—in arguing her case adopted the contents of the affidavit filed in support of her application and cited certain cases such as *Yerassimou and The Republic* (1978) 5 3 C.L.R. 36 and *The Bar Association of Nicosia v. The Republic* (1975) 3 C.L.R. 24 all of which related to applications for provisional orders. After a short break at the request of learned counsel she cited the case of *Veis v. The Republic* (1979) 3 C.L.R. 537 at p. 538 in order to 10 satisfy the Court that rules 18 and 19 of Order 35 were applicable to the present case. She also cited the case of *The Republic of Cyprus through The Public Service Commission v. Savvas Petrides*, (1981) 3 C.L.R. 246 and submitted that the present case is distinguishable from the 15 *Petrides* case in the sense that the respondent in the present case had no legitimate interest in so far as the annulment of the decision of the Educational Service Commission was concerned. The interested parties on the other hand, she argued, will have to be candidates for promotion again if 20 it is considered necessary to fill the vacant posts at some future time.

The application is in effect based on Order 35, rules 18 and 19 of the Civil Procedure Rules and s. 47 of the Courts of Justice Law, 1960.

25 The judgment the suspension of “the annulling effects” of which is sought was given in Case No. 292/82 on the 23rd May, 1985.

The applicant in that case by his recourse challenged the validity of the decision of the Educational Service Commission in promoting the three interested parties to the 30 post of Assistant Headmaster in the Secondary Education in preference and instead of him and prayed for a declaration that such decision was null and void and of no legal effect whatsoever.

35 By the judgment of this Court the decision of the respondent Commission was annulled for the reasons stated therein.

This application is supported by an affidavit sworn by the Secretary of the Educational Service Commission in 40 which he, inter alia, states that the applicant in the re-

course had been promoted on the 19th December, 1983, and that his promotion was with retrospective effect as from the 15th November, 1981, and thus he has lost his legitimate interest; that as a result of a mistake and/or oversight on the part of the applicant and/or counsel appearing for him they failed to take the necessary steps for the withdrawal of the recourse; and the affiant concludes by saying that the first instance judgment does not serve any legitimate interest of the applicant and it will only cause derangement of the harmonious functioning of education.

5  
10

What should be put on record is that both parties had been notified through their counsel three days in advance that the judgment would be delivered on the 23rd May, 1985, and on that date counsel for the applicant in the recourse was represented in Court and counsel for the respondent was actually present in Court but neither of them either at any time before or on that day mentioned anything about applicant's promotion or about any intention of withdrawing the recourse. It seems to me that the reasonable inference is that counsel for the respondents in the recourse was not aware either of the position probably through lack of instructions from them.

15  
20

As stated above the application is, in effect, based on Order 35, rules 18 and 19 of the Civil Procedure Rules, which relate to stay of execution. But in view of the nature of this judgment and of judgments under Article 146 of the Constitution generally I find it difficult to see what execution this Court is asked to stay. The modes of execution envisaged by the rules cited are no doubt those for which provision is made under Order 40 of the Civil Procedure Rules but it does not seem to me that any of them are applicable to the present case.

25  
30

As the judgment appealed against has by virtue of Article 146.5 of the Constitution and s. 47 of the Court of Justice Law, 1960, become binding when pronounced and as, as stated earlier on, none of the models of execution for which provision is made under Order 40 of the Rules is applicable or can be invoked as a means of "executing" the judgment it does seem to me that what I am in fact asked to do is to temporarily revoke or suspend the judgment, which is quite a different thing from a stay of execution.

35  
40

And I have grave doubts whether this can be done otherwise than by a judgment of the Court of appeal.

But, be that as it may, I propose, nevertheless, to consider the application on its merits.

5 As it emerges from a line of authorities including *Katari-  
na Shipping Inc. v. The Cargo on Board the ship "Poly"*  
(1978) 1 C.L.R. 355; *The Republic of Cyprus through the  
Public Service Commission v. Savvas Petrides* (1981) 3  
10 C.L.R. 246 and *Alexia Christoforou and Others v. The  
Republic* (delivered on 26.4.85 not yet reported)\* a Court  
hearing an application of this nature ought to see that the  
appeal, if successful, will not be rendered nugatory. And  
this seems to be the most material consideration. It does  
not seem to me that such possibility exists in the present  
15 application because, quite clearly, if the appeal is success-  
ful and the first instance judgment is set aside the interested  
parties—who incidentally are not parties to this applica-  
tion—will have to be reinstated to the status they held prior  
to the annulment of their promotions.

20 Useful reference may be made to the approach to this  
matter adopted in the *Petrides* case (*supra*), a similar case  
to this, where Triantafyllides, P., had this to say at p. 248:

25 "Once the appointments made by the Commission  
to such posts have been annulled it is quite probable  
that the Commission, in the normal course of events,  
will, eventually, deal again with the filling of the  
said posts; but, in view of the nature of the jurisdic-  
tion under Article 146 of the Constitution, there is  
not, as already stated, anything in the judgment com-  
30 plained of which compels the appellant Commission  
to reconsider the filling of the posts in question, im-  
mediately or at any specified time in the future; and,  
therefore, if the Commission decides either on its own  
or on being moved accordingly by the—under the  
35 Public Service Law, 1967 (Law 33/67)—appropriate  
authority to allow these two posts to remain vacant  
pending the determination of the present Revisional  
Jurisdiction Appeal, it could not, in my view, be con-

---

\* Reported in (1985) 3 C.L.R. 676.

tended that the Commission, by not proceeding to fill the two posts in the meantime, is acting in disobedience to the appealed from judgment of the trial Judge in this case.”

In the present case one may usefully add that the applicant who challenged the promotion of the interested parties and sought their annulment by the recourse, has, as stated in the affidavit, already been promoted, prior to the annulment of the decision by virtue of which the interested parties were promoted.

For the above reasons and, in the light of all the circumstances of this case, I do not think it proper to exercise my discretion in favour of granting the application.

Needless to say that in so far as the applicants are concerned this is not the end of the matter as there are other legal remedies open to them which they may choose to pursue.

In the result this application is dismissed. There will be no order as to costs.

*Application dismissed  
with no order as to costs.*