

1986 February 12

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 155.4 OF THE  
CONSTITUTION AND SECTION 3 OF THE COURTS OF  
JUSTICE (MISCELLANEOUS PROVISIONS) LAW, 1964,

- a n d -

IN THE MATTER OF AN APPLICATION BY LOUCIS  
P. LOUCAIDES LTD., OF NICOSIA, FOR LEAVE TO  
APPLY FOR AN ORDER OF CERTIORARI

- a n d -

IN THE MATTER AND/OR ORDER OF 2ND JULY, 1985  
OF THE DISTRICT COURT OF LIMASSOL MADE BY  
H.H. JUDGE ELEFThERIOU IN CRIMINAL CASE  
14008/84 BETWEEN THE CHAIRMAN AND MEMBERS  
OF THE MUNICIPAL COMMITTEE OF LIMASSOL v.  
LOUCIS P. LOUCAIDES LTD., OF LIMASSOL.

*(Civil Application No. 110/85).*

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*Prerogative Orders—Certiorari—Application for leave—A prima  
facie case should be made out—What constitutes a prima  
facie case.*

The applicants were charged for failure to pay refuse  
collection fees. On 2.10.84 the trial Court adjourned the  
case sine die due to the fact that a number of recourses  
challenging the validity of such fees were pending before the  
Supreme Court. The case came up before the trial Court on  
2.7.85 in the absence of the applicants or their advocate.  
Counsel for the prosecution upon filing the affidavit of ser-  
vice. that the original summons had been served, proceeded

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to call evidence upon which the trial Judge found the accused, i.e. the applicants, guilty and sentenced them to pay £30.- fine, £500.- refuse fees and £4.- costs.

5 The applicants, who according to their contention, were tried and convicted without having been informed as to the date of trial, came to know about such conviction when a notice dated 14.10.85 was sent to them by the Police. As a result they filed the present application.

10 *Held*, granting leave to apply for an Order of Certiorari: (1) The question at this stage is whether on the material before the Court there is a prima facie case made out sufficiently to justify the granting of leave to move this Court for an order of certiorari. What constitutes a prima facie case has been considered by the Full Bench  
15 *In Re Kakos* (1985) 1 C.L.R. 250.

(2) On the material before the Court a prima facie arguable case has been made out.

*Leave to apply for an order of certiorari granted.*

20 Cases referred to:

*Ex parte Costas Papadopoulos* (1968) 1 C.L.R. 496;

*Ex parte Loucia Kyriacou Christou Maroulleti* (1970) 1 C.L.R. 75;

*In Re Nina Panaretou* (1972) 1 C.L.R. 165;

25 *In Re Kakos* (1985) 1 C.L.R. 250;

*Sidnell v. Wilson and Others* [1966] 1 All E.R. 681;

*Re HjiSoteriou and Another* [1985] 1 C.L.R. 387;

*Re Mobil Oil Cyprus Ltd.* (1985) 1 C.L.R. 781.

**Application.**

Application for leave to apply for an order of certiorari for the purpose of quashing the decision of the District Court of Limassol in the exercise of criminal jurisdiction in Case No. 14008/84 whereby applicants were found guilty in their absence of a charge of failing to pay refuse collection fees and were sentenced to pay £30.- fine, £500.- fees and £4.- costs. 5

*Chr. Clerides*, for the applicants.

SAVVIDES J. read the following ruling. This is an application for leave to apply for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Limassol in the exercise of criminal jurisdiction in Case No. 14008/84 whereby the applicants were found guilty in their absence on a charge of failing to pay refuse collection fees and were sentenced to pay £30.- fine, £500.- fees and £4.- costs. 10 15

The facts of the case as emanating from the affidavits filed in support of the application and the documents attached thereto, are briefly as follows: 20

The applicants as occupiers of business premises in Limassol were assessed by the Municipality of Limassol to pay for the year 1983 the sum of £500.- as refuse collection fees. The applicants failed to pay such fees and as a result a criminal case was filed against them in the District Court of Limassol calling upon them to appear before the Court on 27.8.1984 to answer a charge accusing them for failing to pay refuse collection fees for the year 1983. The applicants appeared before the Court on 27th August, 1984 through their advocate Mr. Chr. Clerides and according to an affidavit sworn by him and annexed to the present application, the case was adjourned to the 2nd October, 1984 when due to the fact that a number of recourses was filed before the Supreme Court challenging the validity of such fees, the case was adjourned sine die pending the result of such recourses. As it appears from 25 30 35

an office copy of the record of the proceedings the case came up before the Court on 2.7.1985 in the absence of the applicants or their advocate when counsel for the prosecution, upon filing of the affidavit of service, that the original summons had been served, proceeded to call evidence upon which the trial Judge found the applicants guilty on the charge and sentenced them to pay £30.- fine, £500.- refuse fees and £4.- costs. The applicants came to know about such conviction when a notice was sent to them by the Police dated 14.10.1985 informing them that a warrant had been issued for the collection of the sum of £534.- and that if they failed to attend at the Police Station on or before the 26.10.1985 to pay such amount, the police would proceed with the execution of such warrant.

The applicants who, according to their contention, were tried and convicted without having been informed as to the date of the trial, in view of the fact that the case had been adjourned sine die, had been deprived of their constitutional right to defend themselves and in consequence their conviction was the result of abuse and or wrong exercise of powers by the trial Judge.

On the office copy of the proceedings (Annex B to the affidavit of 28th November, 1985 in support of the application) nothing is recorded about the appearance of the accused or their advocate on 27th August, 1984 or the 2nd October, 1984 but there is only a record of the proceedings on the 2nd July, 1985, when the charge was proved by evidence and the accused were convicted.

The grounds upon which leave is sought, are the following:

(a) The trial Court wrongly and/or in abuse of powers proceeded to hear the case without any prior notice of the date of trial having been given to the applicants or their advocate.

(b) The trial Court wrongly and/or in abuse of powers

proceeded and delivered judgment without a previous notice of the date of hearing to the applicants or their advocates.

(c) The Honourable Court and/or His Honour Judge P. Eleftheriou acted in abuse of power.

Under Article 155.4 orders of certiorari are amongst the prerogative orders which are within the exclusive jurisdiction of the High Court. 5

In granting or refusing an application for leave to apply for an order of certiorari in a case of this nature the Court has to exercise a discretion. 10

The question which I have to decide at this stage is not as to whether the order applied for should be issued but whether on the material before me there is "a prima facie case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an order of certiorari". (Per Josephides, J. in *Ex-parte Costas Papadopoulos* (1968) 1 C.L.R. 496 at p. 498. See, also, in *Ex-parte Loucia Kyriacou Christou Marouletti* (1970) 1 C.L.R. 75, 77, and *In Re Nina Panaretou* (1972) 1 C.L.R. 165). 15 20

What constitutes a prima facie case has been considered by the Full Bench in the recent case of *In Re Kakos* (1985) 1 C.L.R. 250, in which reference is made to the following observations of Diplock, L.J. in *Sidnell v. Wilson and Others* [1966] 1 All E.R. p. 681 at p. 686: 25

"I agree with my brethren that the Court must be satisfied that there is material on which, if it were accepted as accurate, an arguable case can be put forward that the conditions set out in the subsection are fulfilled. I use the expression 'arguable case' rather than the expression 'prima facie case', because the difficulty of the latter expression seems to me to be 30

5 that it invites an enquiry at the hearing of the application itself into evidence contradicting what in the first instance is a prima facie case and therefore would lead to a complete trial of the action or is capable of leading to a complete trial of the action on the application for leave. It is sufficient that the landlord should show that there is a bona fide arguable case that the conditions or one or other of them set out in the paragraphs of the subsection are fulfilled, and that if he does that, it is no function of the county Court trial Judge on the application for leave to go into the merits of the matter and hear rebutting evidence, as if the trial were taking place then."

15 The principles governing the granting of leave to apply for an order of certiorari have also been expounded in the most recent decisions of this Court in *Re HjiSoteriou and Another* (1985) 1 C.L.R. 387 and in *Re Mobil Oil Cyprus Ltd.* (application No. 49/85 in which the decision was delivered on 1st November, 1985 and will be reported in (1985) 1 C.L.R.).\*

In the light of the material before me, I am satisfied that a prima facie arguable case has been made out and I make the following order:

25 (a) The applicants are granted leave to apply in this case for an order of certiorari within one month from today. Any opposition to be filed within one month from service of such application.

30 (b) Any proceedings in execution of the judgment in Criminal Case No. 14008/84 of the District Court of Limassol and any warrant issued by virtue thereof are hereby stayed for one month from today and if the applicants apply within that period for an order of certiorari, then such stay shall continue to be operative until further

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\* Now reported in (1985) 1 C.L.R. 781.

*order of this Court, provided that any party affected by the stay of the execution ordered as above shall be at liberty to show cause at any time why such stay should not continue to be operative.*

(c) Copy of this order to be sent to the Registrar of the District Court of Limassol. 5

*Order accordingly.*