

1986 December 23

[A. LOIZOU, DEMETRIADIS, PIKIS, JJ.]

E.Y.R.I.K. AND OTHERS.

*Appellants.*

v.

ANGELOS KOTSONIS.

*Respondent.*

*(Civil Appeal No. 7245).*

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*Judgments and orders—Stay of execution pending appeal—  
Principles governing the exercise of the Court's discretion.*

Appellants 2 and 3 were elected as members of the Executive Council of the appellant trade union. In fact  
5 appellant 2 became the chairman and appellant 3 the  
organising secretary. The respondent, who was an un-  
successful candidate in the relevant elections, filed an  
action against the appellants, complaining that the Articles  
10 of Association of the appellant Trade Union regarding  
formalities for the candidature of appellant's 2 and 3 were  
not complied with and claiming a declaration of invalidity  
of the elections and an order excluding the aforemen-  
tioned successful candidates. He, also, applied by sum-  
mons for an interim order restraining appellants 2 and 3  
15 from performing their duties in the Executive Council of  
the Trade Union.

On 22.9.86 the said interim order was granted and an  
appeal from that order was filed two days later. More-  
over, the appellants applied for stay of execution of the  
20 interim order pending appeal, but, as such application  
was dismissed, the present application was filed not by  
way of appeal, but by way of original application under  
Order 35, rule 19.

In support of the application the applicants contended  
25 that, unless stay is granted, irreparable damage will be

caused as in result of the order the Executive Council is rendered leaderless at a moment when negotiations with the employers were at a delicate stage.

It appears that respondent's action was filed in order to safeguard his interest, the allegation being that appellants may agree to a restructuring of positions in the C.B.C. hierarchy, detrimental to his interests. This allegation was denied. 5

Finally it should be noted that in accordance with the Articles of Association of the Trade Union the general council of the Union has power to interpret the Articles and that such Council decided that the nomination of the two appellants was in order, a view backed by the Registrar of Trade Unions. 10

*Held*, granting the application: (A) Per A. Loizou, J.: 15  
(1) The principles governing the exercise of the discretion of the Court for stay of execution pending appeal have been well established and in essence they consist of a balance between protecting a successful litigant, who is entitled to the fruits of litigation, on the one hand and that the appeal, if successful, must not be allowed to be rendered nugatory, on the other hand. 20

(2) In the circumstances of this case and having weighed the pros and cons the conclusion is that the discretion should be exercised in favour of stay. 25

(B) Per Pikis, J.: (1) The interim order in question does not aim to preserve the status quo, but to upset it in the manner sought by the action. Reference to this fact merely intends to indicate that the appeal is not frivolous, a matter to which this Court may properly have regard at this stage. 30

(2) An equilibrium must be maintained between the principle of finality of first instance judgments and the preservation of the efficacy of the right to appeal. This question very much depends on the facts of each case. The discretion conferred on the Court is very wide. 35

(3) In the circumstances of this case what is largely

at risk is the efficacy of the right of the appellants to question the interim order in question. The possibility of damage, being suffered by the respondent, on the other hand, by reason of the derogation from the principle of finality of first instance judgments appears to be remote. Consequently, the scale is tipped in favour of stay.

*Application granted.*

Cases referred to:

- 10 *Katarina Shipping v. The Ship "POLY"* (1978) 1 C.L.R. 355;
- Katarina Shipping v. The Ship "POLY"* (1978) 1 C.L.R. 486;
- Papastratis v. Petrides* (1979) 1 C.L.R. 23;
- Ioannou v. Demetriou and Others* (1980) 1 C.L.R. 425;
- 15 *Gruno v. The Ship "ALGAZERA"* (1980) 1 C.L.R. 595;
- "Phoenix" Greek General Insurance Co. S. A. v. Al Klaf Exhibition* (1981) 1 C.L.R. 673;
- Christophorou and Others (2) v. The Republic* (1985) 3 C.L.R. 676;
- 20 *Erinford Properties Ltd. v. Cheshire County Council* [1974] 2 All E. R. 448;
- Mozley v. Alston*, 41 E. R. 833;
- Edwards and Another v. Halliwell and Others* [1950] 2 All E. R. 1064.

25 **Application.**

Application for the stay of execution of an order of the District Court restraining appellants 2 and 3 from taking part in the deliberations or decision making of appellant 1 pending the determination of the appeal.

- 30 A. *Constantinou*, for the applicants.
- C. *Clerides*, for the respondents.

The following judgments were given.

A. LOIZOU J.: At the conclusion of the hearing of this application we gave the result in the following terms which are self explanatory:

“In view of the urgency of the matter we have 5  
thought it appropriate to follow the course of giving  
the result in this application now and deliver our  
full reasons later. The conclusion to which we have  
come having heard both counsel and having gone 10  
through the material placed before us, is that a stay  
should be ordered pending the determination of the  
appeal.

On the other hand, as the issues raised are of considerable importance as they affect the functioning of a trade union obviously at a crucial period in its relations with the management, we direct that the action itself before the District Court be given a short date of trial independently of the pendency of the appeal against the interim order and that it be determined with the utmost speed which its very nature merits. 20

Costs will be costs in the cause but in any event not against the applicants.”

The relevant facts as they appear from the affidavits filed are these. On the 14th March, 1983, elections were held for members of the Executive Council of the appellant Trade Union. In these elections Yiannis Karaolis and Stavros Panayides were successful and as Chairman and Organising Secretary respectively of the said Trade Union. The respondent was one of the candidates. On the 22nd April 1986, he filed an action against the Trade Union and the two officers and on the same day he filed an application by summons by which he sought an interim order restraining the two said officers from performing their duties in the Executive Council of the Trade Union. On the 22nd September, 1986, the said interim order was granted and an appeal from that order was filed two days later. 35

An application for a stay of execution based on Order

35, rule 18 was made in the first instance as it ought to, to a Judge of the District Court of Nicosia which was dismissed on the ground that the learned District Judge had not been persuaded "that there existed in that application  
5 the special circumstances which justify the stay of the interim order against which an appeal was filed". For that reason he concluded by saying that he could not exercise his discretionary power in favour of the applicants and he dismissed the application with no order as to costs.

10 In fact, two such applications were filed in the District Court of Nicosia, one by the Trade Union and the other by the two officers, and both were dismissed. This therefore opened the way to a similar application to a Judge of this Court or to the Court itself under the provisions of  
15 Order 35 rule 19, by way of original application and not as an appeal from the refusal of the stay by the District Court.

The ground upon which this application is sought is that irreparable damage is caused both to the two applicants and the Trade Union impending its function by denying participation to two officers holding key positions in its executive council with the result of rendering it in the last analysis without leadership. This situation becomes obvious when one thinks of the possibility of some members  
25 being unable to attend the Council meeting in which case no quorum can be found. Moreover, the industrial relations between employees and employment at the Cyprus Broadcasting Station have been going for some time now through delicate negotiations, reaching also some form or  
30 other of industrial action, that the full force of the leadership of the Trade Union is most essential, both for the sake of the interests of its members but also for, hopefully, achieving industrial peace in this establishment for the functioning of which there is so much public concern.

35 In a line of cases the principles governing the exercise of the Courts discretion for a stay pending appeal have been well established and in essence they consist of a balance between protecting a successful litigant who is entitled to the fruits of the successful outcome of his action

and on other hand, that the appeal if successful, must not be allowed to be rendered nugatory.

Having weighed the pros and cons I have come to the conclusion that in the special circumstances of this case outlined above I should exercise my discretion in favour of a stay. It is for the above reasons that I joined my brethren on the Bench in unanimously ordering as we did on the 24th November, 1986, a stay of the interim order appealed from with costs in the cause but in any event not against the applicants.

PIKIS J.: In exercise of the powers vested in the Supreme Court under Ord. 35, r 18 we were moved by the applicants to stay the execution of an order of the District Court restraining appellants 2 and 3 from taking part in the deliberations or decision-making of the first appellants, one of the two Trade Unions of the employees of the Cyprus Broadcasting Corporation. A similar application earlier made to the District Court was refused. Hence there was no procedural impediment to heeding the application (Ord 35, r. 19)

Proceedings for stay before the Supreme Court, raised subsequently to a negative decision of the District Court, are not of an appellate but of an original nature, involving the exercise of discretionary powers akin to those vested in the District Court. Numerous Cyprus and English cases<sup>1</sup> establish the principles that should govern the exercise of the power and illustrate its application in parti-

<sup>1</sup> See, inter alia, *Katarina Shipping v The Ship «POLY»* (1978) 1 CLR 355, at pp 360-361, *Katarina Shipping v The Ship «POLY»* (1978) 1 CLR 486, at pp 517-519, *Papastratis v Petrides* (1979) 1 CLR 23, *Ivoni Ioannou v Andreas Demetriou and Others* (1980) 1 CLR 425, at p 429, *Gruno v The Ship «ALGAZERA»* (1980) 1 CLR 595, at p 598, *«Phoenix» Greek General Insurance Co SA v Al Khalaf Exhibition* (1981) 1 CLR 673, 676-677, *Alexia Christophorou and Others (2) v Republic* (1985) 3 CLR 676 at pp 682-684, *The Annual Practice 1960* 1695-1697, at pp 345, 348 & 1183, *Erinford Properties Ltd v Cheshire County Council* [1974] 2 All ER 448, at pp 450, 454, *Palmer's Company Law, 5th Cumulative Supplement to the 21st Edition, 1968*, at p 496 *Palmer's Company Law, 21st Edition, 1968*, at p 503, *Mozley v Alston*, 41 ER 833

cular cases. Two are the competing principles that should in each case be weighed in the light of the facts of the case. The first aims to protect the rights of the successful litigant. He is entitled to the fruits of his success notwithstanding the challenge of the decision by way of appeal. The finality attached to first instance judgments is not suspended when challenged by appeal. The imprint of finality attaches thereto unless reversed by the Court of Appeal. Under our judicial system finality is not dependent upon confirmation on appeal.

On the other end of the scale there is the right of appeal. This is the second basic principle to which the Court should have regard in exercising its discretion under Ord. 35 r. 18. It is a right given by law<sup>2</sup> and its efficacy must be sustained. Its exercise must not be allowed to dwindle into a theoretical measure. In the time honoured expression the right to appeal must not be allowed to be rendered nugatory.

An equilibrium must be maintained between the principle of finality of first instance judgments and the preservation of the efficacy of the right to appeal. The establishment of this balance is very much dependent on the facts of the individual case. Wide discretion is conferred to the Court in the matter, and there is power to impose appropriate terms apt to do justice to competing claims within the framework of our adversary system. Therefore, we must turn to the facts.

Angelos Kotsonis, the respondent, is a member of SY-TIRIK, one of two Unions of employees of the Cyprus Broadcasting Corporation. In the last elections for a return of the governing committee of the Union the applicant was one of the unsuccessful candidates. In point of fact, he was the ninth unsuccessful candidate. Yiannis Karaolis and Stavros Panagides were two of the successful candidates in the seven-member Committee. In fact, they served in the previous committee of the Union and their mandate was renewed by a strong majority. A. Kotsonis raised the present proceedings before the District Court of Nicosia,

<sup>2</sup> Section 25(1) — Courts of Justice Law 14/60.

seeking a declaration of invalidity of the elections and an order excluding the aforementioned successful candidates. In support of both remedies he pleaded the Articles of Association of the Union that were allegedly breached. The regulation concerns the formalities for the candidature of Karaolis and Panagides, in particular, whether their nomination ought to be backed by the various branches of the Union notwithstanding signification of such support on the immediately preceding occasion of their election. The Articles confer competence on the general council of the Union to interpret its constitution. They decided the nominations were in order, a view supported by the opinion of the Registrar of Trade Unions.

The action is propounded, as it appears from the claim, in the name of the interest of Kotsonis as a member of the Union in order to safeguard financial interest that may be prejudiced by the participation of Karaolis and Panagides in the Union committee. The allegation is that they may agree to a restructuring of positions in the C.B.C. hierarchy, detrimental to his interests.

The interim order made by Hadjiconstantinou, S.D.J., was designed to protect this interest of the applicant by the exclusion of Karaolis and Panagides from the affairs of the Union committee. Why a distinction was made between the legality of the elections of the aforesaid two members and the committee in its entirety, is nowhere made clear in the judgment.

Karaolis and Panagides appealed against the above order. Pending its determination they applied to the District Court for a stay of the order. Kronides, S.D.J., dismissed the application that was repeated before us pursuant to the provisions of Ord. 35 r. 19. In his judgment, Hadjiconstantinou, S.D.J., found that the complaint of the plaintiff is, on the authority of *Edwards and Another v. Halliwell and Others*,<sup>1</sup> actionable and the interim injunction a measure necessary for the protection of the financial interest of Kotsonis. As may be gathered from its tenor, the order made does not aim to preserve the status quo but

<sup>1</sup> [1950] 2 All ER 1064.



to upset it in the manner sought in the statement of claim. In effect, the basic remedy sought in the action was granted. No attention was given to this aspect of the matter or the apparent anomaly created by the fact that with the exclusion of Karaolis and Panagides the committee would be compelled to function below the strength laid down in the constitution of the Union. We are not presently concerned with the merits of the appeal. Reference to the above is merely intended to indicate that the appeal is not frivolous, a matter to which we may properly have regard at this stage, and that the appellants have an arguable case.

Affidavits sworn to by members of the Union who were not excluded, deny every suggestion that the committee has any intention of prejudicing, by the handling of the negotiations, the interests of Kotsonis. On the other hand, the exclusion of its two members does prejudice the functioning of the committee and is likely to undermine the effectiveness of the Union as a representative of the interests of its members in negotiations in which it is presently locked with the management of C B C. Moreover, any agreement that may be reached will be subject to approval by the plenum of Union members. Success on appeal, it was argued, will not undo the wrong that may be done in the meantime to the Union or the discharge of the responsibilities of Karaolis and Panagides as Union members. They submitted that success on appeal will be largely nugatory.

Balancing the considerations indicated at the outset of this judgment as they emerge through analysis of the facts of the case what is largely at risk is the efficacy of the right of the appellants to question the order of Hadjiconstantinou SDJ. The possibility of damage being suffered by Kotsonis, on the other hand because of derogation from the principle of finality of first instance judgments is, as it appears to us, remote.

Consequently, the scale is tipped in favour of stay and

we so ordered immediately after the conclusion of the hearing. Hereinabove, we indicate the reasons for so directing.

DEMETRIADES, J.: I have already read the judgments given by my two brothers. I agree and have nothing to add. 5

*Application granted.*