

1986 December 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:
1. ANDREAS KOTSONIS, DIRECTOR OF THE
DEPARTMENT OF LANDS AND SURVEYS; AND
2. MICHALAKIS TSANGARIDES, LANDS OFFICER,
1st GRADE, FOR LEAVE TO APPLY FOR AN
ORDER OF PROHIBITION

a n d

IN THE MATTER OF AN ORDER AND/OR DECISION
DATED 27.11.1986 MADE BY THE DISTRICT COURT
OF NICOSIA IN ACTION NO. 3511/1984.

(Civil Applications Nos. 101/82 and 102/82).

*Prerogative orders—Certiorari and Prohibition—Leave to apply
for—Principles applicable—Prima facie case—Meaning of.*

On 29.5.84 the District Court, Nicosia issued in
action 3511/84 a consent order, whereby the defendants,
the Holy Monastery of Mahera, were ordered to transfer
certain immovable property in the name of the plaintiffs.
Applicant 1 is the Director of the Department of Lands
and Surveys and applicant 2 an official of the District
Lands Office. Applicant 2, relying on Article 110 of the
Constitution and on Article 119 of the Charter of the
Greek Orthodox Church of Cyprus, refused to effect the
transfer, unless the written consent of the Holy Synod of
the Church was produced. As a result counsel for the
plaintiffs in the said action wrote to applicant 1 asking
him to proceed with the registration. Applicant 1 referred

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the matter of applicant 2, who, after consulting the office of the Attorney-General, insisted on his previous decision.

5 Upon application by the plaintiffs in the said action the applicants were found by a Full District Court of Nicosia guilty of contempt of Court. The contempt proceedings were then adjourned for sentence in order to give applicants time to comply with the said order. The applicants appealed and applied for stay of execution. As, however, the Full Court dismissed the application for stay, the applicants signified to the plaintiffs their intention to effect the transfer in question. In the meantime the Holy Synod of the Church filed action 10146/86 against both parties in action 3511/84 and obtained an interim order granted by another Judge of the D.C. Nicosia directing stay of execution of the consent order in action 3511/84 and prohibiting transfer of the said property. As a result applicants informed counsel for the plaintiffs in action 3511/84 that the transfer could not be effected.

20 By means of the present application the applicants seek leave to apply for an order of prohibition prohibiting P.D.C. S. Nikitas and D.J. A. Soubashis from proceeding on imposing punishment on the applicant and for an order of certiorari quashing the decision whereby they were found guilty of contempt.

30 Counsel arguing the case on behalf of the applicants submitted that the contempt proceedings were irregular in that the applicants had never been served with an order, indorsed in the terms provided by law; he further contended that the consent order was not directed to them, that they were not parties to the action in which the consent order had been issued and that they are facing an impossible situation as compliance with the consent order would amount to contempt of Court for disobeying the interim order in action 10146/86.

40 *Held, granting the application: (1) In granting or refusing leave to apply for certiorari or prohibition the Court exercises a discretion. The question at this stage is whether "a prima facie" case has been made out sufficiently to justify leave. What constitutes such a case has*

been considered by the Full Bench of this Court in *Re Kakos* (1985) 1 C.L.R. 250.

(2) In the light of the material before the Court, the Court is satisfied that a prima facie arguable case has been made out.

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Application granted.

Cases referred to:

R. v. Electricity Commissioners [1924] 1 K.B.D. 171;

R. v. St. Edmundsbury and Ipswich Diocese (Chancellor) and Another, Ex-parte White and Another [1947] 2 All E. R. 170;

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

Sidnell v. Wilson and Others (1966) 1 All E. R. 681;

Re L. P. Loucaides Ltd. (1986) 1 C.L.R. 154;

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

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Re Psaras (1985) 1 C.L.R. 651.

Applications.

Applications for leave to apply for orders of prohibition and certiorari.

L. Loucaides, Deputy Attorney-General of the Republic with *Gl. Hji Petrou*, for the applicants.

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SAVVIDES J. gave the following decision. By the present applications, which were heard together as presenting common questions of law and fact applicants apply for:

(a) Leave to apply for an order of prohibition directed to P.D.C. S. Nikitas and D. J. A. Soupashis, prohibiting them to proceed on imposing punishment on the applicants who had been found guilty for contempt of Court in Action No. 3511/84 before the District Court of Nicosia (Application No. 101/86).

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(b) Leave to apply for an order of Certiorari to remove

into the Supreme Court and quash the decision and/or order made by the District Court of Nicosia on 27.11.86 by which the applicants were found guilty of contempt. (Application No. 102/1986).

- 5 The grounds of law on which the applications are based are as follows:

Application No. 101/86.

10 "There are in force two orders of the Court. The one was issued on 29.5.84 in Action No. 3511 and the other on 5.12.86 in Action 10146/86. The two orders appear to be conflicting and in any event the above applicants will be in contempt whatever they elect to do in either of the two orders."

Application No. 102/86

15 "(a) The trial Court was wrong in law in holding that the service contemplated by rules 1 and 2 of Order 42A of the Civil Procedure Rules does not apply to persons who are not parties to the action.

20 (b) The trial Court was wrong in law in applying in this case the English decision in *Seward v. Patterson* (1897) 1 Ch. 545.

25 (c) The applicants were not subject to the judgment in respect of which they were found guilty of contempt and have not in any way disobeyed any judicial judgment or order or otherwise acted in contempt of Court."

The facts relevant to the present applications, as emanating from the affidavits in support of the applications and the material before me are briefly as follows:

30 "Aftomata Eleourghia Lythrodonta Ltd" brought an action in the District Court of Nicosia (Action No. 3511/1984) against the Holy Monastery of Maheras praying for an order of the Court directing the defendant to register in the name of the plaintiff, certain immovable property
35 belonging to the defendant. The representative of the defendant appeared before the Court on the 29th May,

1984, and submitted to judgment, as a result of which an order was made for the transfer and registration in the name of the plaintiff of the property the subject matter of the action.

In the light of such judgment the parties to the action attended the District Lands Office of Nicosia for the purpose of giving effect to the order of the Court embodied in the aforesaid judgment. The responsible officer of the District Lands Office refused to proceed with the transfer unless the written consent of the Holy Synod of the Greek Orthodox Church of Cyprus was produced. In so acting he relied on Article 110 of the Constitution which gives exclusive jurisdiction to the autocephalous Greek Orthodox Church of Cyprus to regulate and administer its own internal affairs and its property in accordance with the Holy Canons and its Charter and on Article 119 of the Charter of the Church which provides that:

“For the purpose of alienating or mortgaging any property belonging to a monastery the approval and permission of the Bishop of the area are required and in case of “Stavropighiaka” monasteries the approval required is that of the Holy Synod.”

The Holy Monastery of Maheras falls within the category of “Stavropighiaka” monasteries, which is a privileged category of monasteries. As such, under the provisions of Article 119 of the Charter of the Church, the approval of the Holy Synod of the Greek Orthodox Church is required for the alienation of any of its property.

The Holy Synod of the Greek Orthodox Church of Cyprus was not a party to Action No. 3511/1984.

After the refusal of the responsible officer of the District Lands Office to proceed with the registration counsel for plaintiff wrote to the Director of Lands & Surveys on 13.1.1986 asking him to proceed with the registration in compliance with the order of the Court, copy of which he enclosed in his letter. The Director of Lands and Surveys, applicant 1 in these proceedings, forwarded such letter to applicant 2 for examination of the case. Applicant 2

after having consulted on the matter the office of the Attorney-General of the Republic, replied on behalf of the Director of Lands and Surveys to the letter of counsel for plaintiffs by letter dated 23rd January, 1986, informing
5 him that for the purpose of alienation of any property by the Holy Monastery of Maheras, the approval of the Holy Synod of the Church was necessary in accordance with the Charter of the Church.

As a result of the refusal of the applicants to proceed
10 with the registration, counsel for plaintiff filed on 24th February, 1986, an application in Action No. 3511/1984 for the punishment of the applicants for contempt of Court by disobeying the order and/or decision of the Court of the 29th May, 1984.

15 The order of the Court of 29th May, 1984 had not at any material time in the course of the proceedings under consideration been served upon the applicants.

The District Court of Nicosia sitting as a Full Court constituted by P.D.C. S. Nikitas and D. J. A. Soupashis
20 and after it had heard the application, found the applicants guilty of contempt and adjourned the case to a future date for sentence, to give applicants time to comply with the consent order for specific performance.

The applicants upon being informed of the decision of
25 the Court, filed an appeal and applied to the District Court for stay of execution pending the hearing of their appeal, which was refused on 3rd December, 1986 and the case was fixed for sentence on 12th December, 1986.

As a result of the refusal of the Court to grant stay of
30 execution, applicant 1 asked counsel for plaintiff to inform his clients to attend the District Lands Office for the transfer to them of the property in accordance with the order of the Court.

In the meantime the Holy Synod filed Action No. 10146
35 / 86 in the District Court of Nicosia against both the plaintiff and the defendant in Action No. 3511/1984 for the setting aside of the judgment issued on 29.5.1984 in the aforesaid action. At the same time on the application of

the Holy Synod an Interim Order was granted by the Judge who was trying the new action directing the stay of execution of the order of the Court in Action No. 3511/1984 and prohibiting the transfer of the subject matter property by the Holy Monastery of Maheras to the plaintiff in Action No. 3511/1984 as well as the issue of any title deeds in the name of any third person. Such order was made returnable on 20.12.1986. Counsel for plaintiff in Action No. 3511/1984 attended the District Lands Office on the 6th December, 1986, with his clients for the purpose of the registration of the property but was informed that the registration could not be effected due to the existence of the Interim Order prohibiting such transfer which had been issued in Action No. 10146/86.

The applicants had to appear before the District Court today to be punished for failing to purge the contempt of Court in respect of which they had already been found guilty and having failed to secure a stay of the proceedings they filed the present applications.

Counsel on their behalf in arguing the case submitted that on the face of the record the proceedings for contempt were irregular as the applicants had never been served with an order, indorsed in the terms provided by the law, directing them to comply with the order and therefore such proceedings had to be quashed. Furthermore, counsel contended that the applicants were not parties to the action which led to the decision and they are not mentioned in the decision. Also that the order was not directed to them. Counsel further added that the applicants were faced with a situation in which any action by them to purge the contempt for which they were found guilty would have amounted to contempt of the Court by disobeying the Interim Order issued in Case No. 10146/86 restraining them from effecting any registration of the subject property.

Certiorari and prohibition are prerogative orders addressed to inferior courts or to a body of persons exercising judicial power. Under Article 155.4 of the Constitution, they are amongst the prerogative orders within the exclusive jurisdiction of the Supreme Court.

In *R. v. Electricity Commissioners* [1924] 1 K.B.D. 171 Lord Atkin in dealing with the nature of the writs of prohibition and certiorari, had this to say at pp. 204-205:

5 “Both writs are of great antiquity, forming part of
the process by which the King’s Courts restrained
courts of inferior jurisdiction from exceeding their
powers. Prohibition restrains the tribunal from pro-
ceeding further in excess of jurisdiction; certiorari re-
quires the record of the order of the court to be sent
10 up to King’s Bench Division, to have its legality inquire
into, and, if necessary, to have the order quashed. It is
to be noted that both writs deal with question of
excessive jurisdiction, and doubtless in their origin
dealt almost exclusively with the jurisdiction of what
15 is described in ordinary parlance as a Court of Justice.
But the operation of the writs has extended to control
the proceedings of bodies which do not claim to be,
and would not be recognized as, Courts of Justice.
Whenever any body of persons having legal authority
20 to determine questions affecting the rights of sub-
jects, and having the duty to act judicially, act in
excess of their legal authority they are subject to the
controlling jurisdiction of the King’s Bench Division
exercised in these writs.”

25 Commenting on the above dictum Wrottesley L.J., in
R. v. St. Edmundsbury and Ipswich Diocese (Chancellor)
and Another, Ex-parte White and Another, [1947] 2 All
E. R. 170, added the following at pp. 177 - 178:

30 “As to the statement by Atkin, L. J., in *R. v.*
Electricity Commissioners, [1924] 1 K.B.D. 204) it
is sufficient to say that the Lord Justice treated the
matter as one in which the court was at liberty to
grant either writ, as indeed was the case, and merely
indicated the difference in operation between the two
35 writs, viz., that while the one prevented, the other
cured. None the less, it is the fact that the effect of
a writ of prohibition is not merely to prevent the
making of an order should it arrive in time, but is
also to prevent the enforcement of it should it arrive
40 after it has been made.”

In granting or refusing an application for leave to apply for such orders in a case of this nature the Court has to exercise a discretion. The question which I have to decide at this stage is not as to whether the orders 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 applicants to move the Court in due course to issue orders of certiorari and prohibition. 5

What constitutes a prima facie case has been considered by the Full Bench in the case of *In Re Kakos* (1985) 1 C.L.R. 250 in which reference is made to the observations of Diplock, L. J. in *Sidnell v. Wilson and Others* [1966] 1 All E. R. 681 at p. 686. There is a line of decisions of this Court which deal with the principles governing the granting of leave to apply for an order of certiorari. Suffices it to refer to the most recent ones, in *Re L. P. Loucaides Ltd.* (1986) 1 C.L.R. 154; *In Re Mobil Oil Cyprus Ltd.* (1985) 1 C.L.R. 781; in *Re Psaras* (1985) 1 C.L.R. 561. 10 15

In the light of the contents of the affidavits accompanying the applications and all other material placed before me and having heard argument from counsel for applicants, I am satisfied that a prima facie arguable case has been made out for granting the applications and I make the following order: 20 25

(a) Applicants are granted leave to apply for an order of certiorari and an order of prohibition within one month from service of such application.

(b) Any proceedings in execution of the judgment in Civil Action No. 3511/84 and any proceedings against the applicants for contempt of Court for disobeying the judgment of the Court and the order embodied therein are hereby stayed for one month from today and if the applicants apply within that period for an order of certiorari or an order of prohibition, then such stay shall continue to be operative till further order of this Court, provided that any party affected by the stay of the execution ordered 30 35

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 Nicosia for communication to the
5 Judges concerned.

Order accordingly.