1986 December 4

[STYLIANIDES, J.]

IN THE MATTER OF AN APPLICATION BY GEORGE LYRAS FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

and

IN THE MATTER OF AN ORDER DATED 1st NOVEMBER, 1986, MADE BY HIS HONOUR MR. JUSTICE D. DEMETRIADES IN APPLICATION No. 672/86 BETWEEN THE SAID APPLICANT AND THE MUNICIPALITY OF PANO AND KATO LAKATAMIA.

(Civil Application No. 91/86).

Prerogative Orders—Certiorari—It is, always, addressed to an "inferior" Court—What is an "inferior" Court—Test applicable—Judge of Supreme Court exercising original jurisdiction under Article 146 of the Constitution—Not an inferior Court, notwithstanding that his judgments are amenable to appeal.

Courts of Justice—"Inferior" Courts—See, Prerogative Orders, ante.

The applicant filed a recourse under Article 146 of the Constitution and applied ex-parte under rule 13(1) of the Rules of the Supreme Constitutional Court for a provisional order. The application was presented to a Justice of the Supreme Court by the Registrar. The Justice wrote down: "The application should be made by summons. This application is, therefore dismissed"

The applicant, being aggrieved, filed the present application for leave to apply for an order of certiorari to bring up and quash the said order of Mr. Justice X.

Counsel for the applicant argued that Mr. Justice X in this case is an inferior Court in the sense that as he was exercising original revisional jurisdiction and his

judgments were amenable to appeal before the Full Bench of this Court, he cannot be treated as a Superior Court.

Held, dismissing the application: (1) There is no authority that there is jurisdiction in this Court to issue an order of Certiorari against a superior Court. Certiorari is addressed only to an inferior Court. "Inferior", as applied to Courts of Law in England, had been used with at least two different meanings. Some assert that the test is whether a Court can be stopped from exceeding its jurisdiction by a writ of prohibition issued out of the King's Bench. The other test is whether in its proceedings and in particular in its judgments, it must appear that it was acting within its jurisdiction. Indeed, this is a characteristic of an inferior Court, whereas in the proceedings of a superior Court it will be presumed that it acted within its jurisdiction, unless the contrary should appear either on the face of the proceeding or aliunde.

(2) The revisional jurisdiction introduced by Article 146 of the Constitution was vested exclusively in the Supreme Constitutional Court. The Rules of the Supreme Constitutional Court were enacted in virtue of its powers under Article 135. The said jurisdiction is exercised by the present Supreme Court (Section 9(a) of Law 33/64). There is no doubt that the Supreme Constitutional Court was a superior Court. The present Supreme Court is a superior Court. Mr. Justice X is a Judge of the Supreme Court. In dealing with the ex parte application he was exercising the jurisdiction provided in s. 11(2) of Law 33/64. The fact that an appeal lies against his judgment does not in the slightest change or affect his position. The judgments of the Hight Court of England and even of the Court of Appeal are subject to appeal to higher Courts and, yet, these Courts were never degraded to inferior Courts.

Application dismissed.

Cases referred to:

Imbrahim v. *Attorney-General,* 1964 C.L.R. 195;

R. v. *Northumberland Compensation Appeal Tribunal—Ex-parte Shaw* [1952] 1 All E. R. 122;

In re Kakos (1984) 1 C.L.R. 876;

Rex v. *Chancellor of St. Edmundsbury and Ipswich Diocese—Ex-parte White* [1948] 1 K. B. 195;

Skinner v. *Northallerton County Court Judge and Others* [1899] A. C. 439;

R. v. *Cripps, ex-parte Muldoon and Others* [1983] 3 All E R. 72.

Application.

Application for leave to apply for an order of certiorari to bring up and quash an order of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given in dismissing the ex parte application of the applicant for an interim order in Recourse No. 672/86.

K. Talarides, for the applicant.

Cur adv. vult.

STYLIANIDES J. read the following judgment. The applicant filed a recourse under Article 146 of the Constitution by means of which he seeks the annulment of the decision of the Municipality of Pano and Kato Lakatamia to allocate temporarily the duties of Town Clerk to a certain Aristos Melis. He applied also ex-parte under r. 13(1) of the Rules of the Supreme Constitutional Court for a provisional order. This ex-parte application, filed on 1.11.86, was presented to a Justice of the Supreme Court by the Registrar on the same day. In his own handwriting the Justice put down: "The application should be made by summons. This application is, therefore, dismissed."

The applicant, being aggrieved, by the present application seeks leave to apply for an order of certiorari to bring

up and quash the order made by H. H. Mr. Justice X. on the 1st November, 1986, dismissing the ex-parte application of the applicant for an interim order in Recourse No. 672/86.

The grounds on which the said relief is sought are set out in the application.

Before, however, dealing with the substance of this application, the question arises whether certiorari can go to a Justice of the Supreme Court of Cyprus. The power which the applicant is asking this Court to exercise is that conferred on the High Court under the provisions of Article 155.4 of the Constitution whereby it is provided that:-

> "The High Court shall have exclusive jurisdiction to issue orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari".

These orders were not unknown to the Courts of this country. The Courts of Justice Law, 1953 (No. 40 of 1953) (Cap. 8 of the 1959 edition of the Laws of Cyprus) by s. 20, paragraph (d), gave exclusive original jurisdiction to the Supreme Court of the then Colony of Cyprus to issue prerogative orders and exercise .... the powers of the High Court of Justice in England.

The jurisdiction of the Hight Court envisaged in the Constitution is exercised in virtue of the provisions of s. 9(a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33 of 1964) by the Supreme Court established under the said legislation. The constitutionality of the said Law was upheld in the case of *Mustafa Ibrahim* v. *The Republic*, 1964 C.L.R. 195.

Certiorari is an order which is addressed to an inferior Court. By order of certiorari the Supreme Court controls all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, of-

fends against the law. This Court does not substitute its own views for those of the tribunal, as a Court of Appeal would do—(See, inter alia, *R.* v. *Northumberland Compensation Appeal—Tribunal—Ex parte Shaw*, [1952] 1 All E.R. 122; In re Kakos (1984) 1 C.L.R. 876).

The history of the Common Law writs of certiorari and prohibition were reviewed extensively in England in *Rex* v. *Chancellor of St. Edmundsbury and Ipswich Diocese—Ex-parte White*, [1948] 1 K. B. 195; (1947) 2 All E.R. 170).

The Courts of this country persistently adopted and applied, in exercising jurisdiction for the issue of prerogative orders, the Common Law of England. This is in accord both with the principle governing the interpretation and application of the Constitution as well as with the express statutory provision of s. 29(1)(c) of the Courts of Justice Law, 1960 (No. 14 of 1960) in the absence of other statutory provision in this country.

Learned counsel for the applicant submitted that Mr. Justice X. in this case is an inferior Court in the sense that as he is exercising original revisional jurisdiction, whose judgments are amenable to appeal before the Full Bench of this Court, he cannot in any way be treated as a superior Court. He invited the Court to trim off this prerogative order of its history, its English history in medieval England, and to apply it in the structure of our Courts as set up by the Law in operation—Law No. 33/64. In his argument. all Courts which are subject to appeal, are subordinate courts because there is no finality from their decisions.

H. H. Justice X. is a Judge of the Supreme Court. the superior Court of the Republic. If in issuing the order he did in the application for provisional order, he was a superior Court, then admittedly certiorari does not lie.

It is to me clear, whether I consider the origin: the history, the procedure or the jurisdiction of the superior Court for the issue of the prerogative writ, now order, of certiorari, that a Court classed as a superior Court of a high order is not amenable to such an order. There is no

precedent in the long history, which I need not recapitulate, of prerogative writ or order addressed to a superior Court. There is no authority that there is jurisdiction in this Court to issue an order of certiorari against a superior Court. Certiorari is addressed only to an inferior Court. "Inferior", as applied to courts of law in England, had been used with at least two very different meanings. As some assert, the question of inferiority is determined by ascertaining whether the Court in question can be stopped from exceeding its jurisdiction by a writ of prohibition issuing from the King's Bench. But there is another test by which to distinguish a superior from an inferior court, namely, whether in its proceedings, and in particular in its judgments, it must appear that the Court was acting within its jurisdiction. This is the characteristic of an inferior Court, whereas in the proceedings of a superior Court it will be presumed that it acted within its jurisdiction unless the contrary should appear either on the face of the proceedings or aliunde—(*Rex* v. *Chancellor of St. Edmundsbury and Ipswich Diocese*, (supra), at p. 205).

In *Skinner* v. *Northallerton County Court Judge and Others*, [1899] A. C. 439, at 441—[1895-1899] All E.R. Rep. 1288, at p. 1289—a County Court sitting in Bankruptcy possessed all powers and jurisdiction of the High Court. An order for certiorari was sought to quash a decision of a County Court exercising bankruptcy jurisdiction. The Earl of Halsbury, L.C., said:-

> "This county court judge was sitting in Bankruptcy, and the confusion which is imported into the case is that because, as I will assume for the moment, the judge issued a warrant which in form was wrong, but could have been put right, therefore it should have been put right, not in the court in which it was issued, but in the High Court. The absurdity of that is that the statute itself has made the county court the High Court for this purpose. You might just as well argue that a warrant defective in form issued by the Court of Queen's Bench could be set

right by certiorari. Of course that is absurd. This is the High Court for this purpose".

In *R.* v. *Cripps, ex-parte Muldoon and Others,* [1983] 3 All E.R. 72, in dealing with an application for certiorari to quash a slip correction by an Election Court in which powers of the High Court were conferred, Robert Goff, L. J., said at p. 83:-

"From these cases, it is difficult to extract any precise principle. The most that can be said is that it is necessary to look at all the relevant features of the tribunal in question, including its constitution, jurisdiction and powers and its relationship with the High Court, in order to decide whether the tribunal should properly be regarded as inferior to the High Court, so that its activities may appropriately be the subject of judicial review by the High Court. As we have already indicated, in considering that question the fact (if it be the case) that the tribunal is presided over by a High Court Judge is a relevant factor, though not conclusive against the tribunal being classified as an inferior court; just as relevant are the powers of the tribunal and its relationship with the High Court, which can ordinarily be ascertained from the statute under which the tribunal is set up. But, as is demonstrated in particular by the approach adopted by the Court of Appeal in *R.* v. *St. Edmundsbury and Ipswich Diocese (Chancellor), ex-parte White,* [1949] 2 All E. R. 170, [1948] 1 K. B. 195, and by the Privy Council in *Willan's* case [1874] L. R. 5 P. C. 417, at 440 (following and adopting the view of Holt, C. J., in the *Glamorganshire* case (1700) 1 Ld Raym 580 at 581, 91 E.R. 1287 at 1288), there is an underlying policy in the case of tribunals of limited jurisdiction, whether limited by area, subject matter or otherwise, that, unless the tribunal in question should properly be regarded in all the circumstances as having a status so closely equivalent to the High Court that the exercise of power of judicial review by the High Court is for that reason inappro-

priate it is in the public interest that remedies by way of judicial review by the High Court should be available to persons aggrieved, although in some cases there may be special reasons why such remedy should be available only to curb an excess of jurisdiction but not to review and correct an error of law committed within the jurisdiction".

The revisional jurisdiction was introduced in this country by Article 146 of the Constitution and was vested exclusively in the Supreme Constitutional Court set up under Article 133. The Supreme Constitutional Court issued, in virtue of its powers under Article 135 of the Constitution, Rules of the Supreme Constitutional Court. Rule 13 reads:-

"13.-(1) The Court, or in proceedings under Article 146 any two Judges acting in agreement, may, at any stage of the proceedings, either *ex proprio motu* or on the application of any party, make a provisional order, not disposing of the case on its merits, if the justice of the case so requires.

(2) A provisional order made under this rule may, either on the ground of urgency or of other special circumstances, be made without notice and upon such terms as it may be deemed fit in the circumstances:

Provided that all parties affected by an order made under this paragraph shall be served forthwith with notice thereof so as to enable them to object to it and upon such an objection the Court, after hearing arguments by or on behalf of the parties concerned, may either discharge, vary or confirm such order under such terms as it may deem fit".

The jurisdiction of the Supreme Constitutional Court is exercised by the present Supreme Court—(Section 9(a) of Law No. 33/64).

Section 11(2) of Law No. 33/64 provides that the revisional jurisdiction, including the trial of recourses against an act or omission of any organ, authority or person, exercising any executive or administrative authority, may be

exercised subject to any Rules by any Judge or Judges (of the Supreme Court) as the Court may decide. Provided that subject to any Rules of Court, an appeal lies before the Court against the decision issued by a Judge or Judges.

Mr. Justice X. is a Judge of the Supreme Court. In dealing with the ex-parte application for provisional order he was exercising the jurisdiction provided in s. 11(2) of Law No. 33/64. There is no doubt that the Supreme Constitutional Court was a superior and not an inferior Court. The present Supreme Court is not an inferior Court. The jurisdiction exercised at the material time by Justice X. was that of a Judge of a superior Court. Therefore, the fact that an appeal lies against his judgment does not in the slightest change or affect his position. The judgments of the High Court in England and even of the Court of Appeal are subject to appeal to higher Courts. Nevertheless, the Hight Court has not been degraded to an inferior Court. The argument of counsel was very ingenious but unconvincing.

For the aforesaid reasons this Court has no jurisdiction to issue an order of certiorari to bring up and quash any judicial act of another member of this Court. This application has to be dismissed.

Before concluding, however, and having regard to the provisions of r. 13 which is quoted above, it seems to me that this is a very plain case, and I am somewhat surprised that it should have been brought here, because it seems to me that the order given by Judge X. is perfectly satisfactory and depends upon very plain principles.

Application dismissed.