

1987 June 2

[A LOIZOU, MALACHTOS, LORIS, PIKIS, KOURRIS, JJ]

THE PUBLIC SERVICE COMMISSION (NO 3),

*Appellant - Respondent,*

v.

MARINA POTOUEDES AND OTHERS,

*Respondents-Applicants*

*(Revisional Jurisdiction Appeal No 680)*

5 *Revisional Jurisdiction Appeal — Issues not raised by the notice of appeal — Whether such issues can be raised — Subject to exceptions enumerated in Maratheftis and Another v The Republic (1986) 3 C L R 1407 and Republic v Lefkos Georghiades (1972) 3 C L R 594, the question is answered in the negative*

*Revisional Jurisdiction appeal — Order 35 of the Civil Procedure Rules — Applicable mutatis mutandis in virtue of the Appeals (Revisional Jurisdiction) Rules, 1964*

10 The question in issue is the amenity of an interested party, arguing in support of an appeal, filed by the respondents in the recourse (appellants before this Court) to take up a point not raised in the notice of appeal

Held, (1) The relevant rules\* make applicable mutatis mutandis Order 35 of the Civil Procedure Rules

15 (2) The fact that the appeal is by way of rehearing does entail that the issues in the appeal are identical to those of the recourse Subject to the exceptions enumerated in *Republic v Maratheftis and Another* (1986) 3 C L R 1407 and *Republic v Lefkos Georghiades* (1972) 3 C L R 594 the issues in a revisional appeal are confined to those raised by the notice of appeal

*Cases referred to*

20 *Republic v Maratheftis and Another* (1986) 3 C L R 1407,

*Branco Salvage Ltd v Republic* (1967) 3 C L R 213,

*Georghiou v Republic* (1968) 1 C L R 411,

*Cyprian Seaway Agencies Ltd v Republic* (1981) 3 C L R 271,

*Christou v Republic* (1982) 3 C L R 634,

\* *The Appeals (Revisional Jurisdiction) Rules, 1964*

*Republic v. Liverdos* (1985) 3 C.L.R. 935;

*President of the Republic v. Louca and Another* (1984) 3 C.L.R. 241;

*Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594.

**Application.**

Application by interested parties arguing in support of an appeal taken by respondents at the trial Court, now appellants, to take up a point not raised in the notice of appeal. 5

A. *Vladimirou*, for the appellant.

A. *Angelides*, A. *Ladas* and N. *Papaefstathiou*, for the respondents. 10

L. *Papaphilippou*, for the interested parties.

A. LOIZOU J.: The Interim Decision of the Court will be given by Pikis, J.

PIKIS J.: What is immediately at issue is the amenity of an interested party arguing in support of an appeal taken by the respondents at the trial Court, appellants before us, to take up a point not raised in the notice of appeal. Relying on the authority of *Republic v. Maratheftis and Another*\* counsel submitted that the proposed course is feasible considering that everything is in issue on appeal and that the proceedings in essence involve reassessment of the factual and legal implications of the sub judice decision. The point decided in *Maratheftis* (supra) is a narrower one confined to the proposition that a point taken up before the trial Court and left undecided because of the disposal of the case on other grounds, may be pursued on appeal. 15  
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The rules regulating the exercise of revisional jurisdiction on appeal\*\* make applicable mutatis mutandis the provisions of Order 35 of the Civil Procedure Rules. The decisions of the Supreme Court in *Branco Salvage Ltd. v. Republic*\*\*\* and *Niki Chr. Georghiou v. Republic*\*\*\*\* decide that Ord. 35 finds 30

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\* (1986) 3 C.L.R. 1407, 1413.

\*\* 1964 Appeals (Revisional Jurisdiction) Rules - Official Gazette No. 368, 19th November, 1964.

\*\*\* (1967) 3 C.L.R. 213.

\*\*\*\* (1968) 1 C.L.R. 411.

application in appellate revisional proceedings in much the same way as it does in civil appeals (Also see *Cyprian Seaway Agencies Ltd. v. The Republic\**; *David Christou v. The Republic\*\**; *Republic v. Liverdos\*\*\**; *The President of the Republic v. Yiannakis Louca and Another\*\*\*\** - Full Bench).

5 *In Republic v. Lefkos Georghiades\*\*\*\*\** it was decided that a first instance Court of revisional jurisdiction may, if it is considered unnecessary for the purposes of determination of the case, refrain from determining all grounds put forward in support  
10 of the motion for annulment. But the successful party may, if faced with an appeal, seek the determination of unresolved issues by way of cross-appeal.

In the present case the issue that counsel for the interested party wishes to raise is wholly outside the grounds of appeal and on that  
15 account it cannot be heeded. The fact that proceedings on appeal are by way of rehearing does not entail that the issues on appeal are identical to those raised before the trial Court. They are confined to those issues made the subject of appeal in the notice of appeal subject to the exceptions enumerated in *Maratheftis* and  
20 *Georghiades* (supra).

Counsel will not be allowed on behalf of the interested party to raise the point he wishes to take as it is not a ground raised in the notice of appeal.

*Order accordingly.*

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\* (1981) 3 C.L.R. 271.

\*\* (1982) 3 C.L.R. 634.

\*\*\* (1985) 3 C.L.R. 935.

\*\*\*\* (1984) 3 C.L.R. 241.

\*\*\*\*\* (1972) 3 C.L.R. 594.