

1987 October 24

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANASTASIOS ANTONIOU KOUMI.

Applicant

v

THE REPUBLIC OF CYPRUS THROUGH
THE ATTORNEY-GENERAL OF THE REPUBLIC

Respondent

(Case No 598/87)

Time within which to file a recourse -- Amendment of recourse introducing a new cause of action -- Not allowed if Art 146 3 of the Constitution will be transgressed thereby

5 *Civil Procedure -- Pleadings -- Clerical errors -- Correction of -- What amounts to a clerical error -- The Civil Procedure Rules Ord 25 r 6 -- Introduction of a new cause of action -- Can only be effected by amendment under Ord 25 r 1*

15 The applicant challenged by this recourse an order of Acquisition published on 15 5 87 The recourse was filed on 17 7 87 On 9 9 87 applicant applied for leave to amend the recourse by substituting the order of requisition of the same property for the order of acquisition Applicant contended that the application meant to remedy no more than a clerical error In support he cited Ord 25 r 6 of the Civil Procedure Rules

20 Held, dismissing the application (1) The Order of requisition is an act separate and independent from the order of acquisition The application seeks to introduce a new cause of action Allowing the amendment would be tantamount to bypassing through a circuitous route the mandatory provisions of Art 146 3 of the Constitution

25 (2) In virtue of Rule 18 of the Supreme Constitutional Court Rules 1962, the Civil Procedure Rules are applicable mutatis mutandis, to proceedings under Art 146 The power under Ord 25 r 6 of the Civil Procedure Rules is necessarily limited to corrections and ambiguities of expression The power can be invoked to correct accidental errors in expression that fail to give effect to the otherwise apparent intention of the dialter (*Preston Banking Co v*

William Allsup & Sons [1895] 1 Ch. 141 [1891-1894] All E.R. Rep. 688) as well as errors resulting from inadvertence (*Adam & Harvey Ltd. v. International Maritime Supplies Co. Ltd.* [1967] 1 All E.R. 533). For the introduction of a new cause of action, an amendment of the pleading is necessary. Such amendment may be granted as laid down in Ord. 25, r.1 upon such terms as the Court may deem necessary. In proceedings under Art. 146, the power to amend is subject to Art. 146.3.

5

Application dismissed.

Cases referred to:

Tikkirou v. Public Service Commission (1968) 3 C.L.R. 513.

10

R. v. Cripps [1984] 2 All E.R. 705;

Preston Banking Co. v. William Allsup & Sons [1895] 1 Ch. 141 - [1891-1894] All E.R. Rep. 688;

Adam & Hurvey Ltd. v. International Maritime Supplies Co. Ltd. [1967] 1 All E.R. 593;

15

Paralimni Bus Co v. Republic (1967) 3 C.L.R. 559;

John Moran v. Republic, 1 R.S.C.C. 10.

Holy See of Kitium v. Municipal Council of Limassol, 1 R.S.C.C. 15;

Shafkalis v. Cyprus Theatrical Organisation (1984) 3 C.L.R. 1382.

Application.

20

Application for leave to amend recourse by substituting the order of requisition as the subject for review for the order of acquisition.

Applicant appeared in person.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondent.

25

Cur. adv. vult.

PIKIS J. read the following judgment. In terms specific the applicant challenged by his recourse the legality of an order of acquisition affecting his property published in the official Gazette on 15th May, 1987, under Notification 725/87, on the ground that it contravened, inter alia, the letter and spirit of the Compulsory Acquisition Law 15/62 (as amended by Laws 25/83 and 148/85). The facts cited in support of the application revolve exclusively round the acquisition of the property. The recourse was filed on 17th July, 1987, that is, within the 75 day period ordained by para. 3 of Art. 146.

30

35

By an application made on 9th September, 1987, the applicant prays for leave to amend his recourse by substituting the order for

requisition of the property as the subject for review for the order of acquisition. Although it affects the same property, the order for requisition is a separate and independent act, the subject of separate notification in the Gazette of 15th May, 1987
5 (Notification 742/87). From whatever view point one examines the application it is intended to introduce a new cause for review in substitution of the original subject matter of the proceedings.

Counsel for the respondents says this is impermissible in view of the provisions of Art. 146.3 laying down that no recourse shall be
10 entertained unless the act is challenged within 75 days from the date the act or decision was published. Allowing the amendment would be tantamount to bypassing through a circuitous route the mandatory provisions of para. 3 of Art. 146. Applicant contended that his application is meant to remedy no more than a clerical
15 error citing in support the provisions of Ord. 25, r. 6, of the Civil Procedure Rules putting it in the hands of the Court to remedy clerical errors noticeable in judgments and orders. Rule 18 of the Supreme Constitutional Court Rules 1962 makes the Civil Procedure Rules applicable to proceedings raised under Art. 146
20 subject to necessary analogies reflecting inherent differences in the nature and objects of the two species of proceedings, namely, civil and proceedings for the review of administrative action. Moreover, general liberty is acknowledged to allow corrections of clerical errors in pleadings. In accordance with *Kiriaki Tikkirou v.*
25 *The Public Service Commission**, r. 19 of the Supreme Constitutional Court Rules 1962 acknowledges power to the Court to correct clerical errors.

The exercise of the power, however, is subject to limitations inherent in the concept of clerical errors. In *R. v. Cripps*** it was
30 pointed out that the power to make corrections of clerical errors under the slip rule is necessarily limited to corrections of ambiguities of expression. The power can be invoked to correct accidental errors in expression that fail to give effect to the otherwise apparent intention of the drafter***, as well as errors
35 resulting from inadvertence****. Otherwise there is no power to

* (1968) 3 C.L.R. 513

** [1984] 2 All E.R. 705 First instance judgment [1983] 3 All E.R. 72.

*** *Preston Banking Co v William Allsup & Sons* [1895] 1 Ch. 141. [1891-1894] All E.R. Rep. 688

**** *Adam & Harvey Ltd v. International Maritime Supplies Co Ltd* [1967] 1 All E.R. 593

amend a pleading or a judgment for that matter under the rule permitting corrections of clerical errors. A clerical error in this context is one arising from failure on the part of the framer to give effect by the employment of the appropriate word or phrase to his objectively manifest intention. For the introduction of a new cause of action, an amendment of the pleading is necessary as expressly provided in Ord. 19, r. 14, of the Civil Procedure Rules. Such amendment may be granted as laid down in Ord. 25, r. 1, upon such terms as the Court may deem necessary.

5

In proceedings for the review of administrative action the power to allow an amendment whereby a new cause is made the subject of review, is subject to the provisions of para. 3 of Art. 146 prohibiting the institution of proceedings for the review of administrative action after the lapse of 75 days from communication. Upon that ground an application for amendment of the prayer of the recourse was refused by Triantafyllides, J., as he then was, in *Paralimni Bus Co. Ltd. v. Republic**. If by the amendment the provisions of para. 3 of Art. 146 are not transgressed the Court may, depending on the merits of the case, allow the amendment of the cause including the introduction of a new cause for review.

10

15

20

The mandatory nature of the provisions of para. 3 of art. 146 has been acknowledged time and again**. The 75-day rule is inflexible tied to the need to sustain certainty in the administrative process. However liberally we apply the concept of a clerical error, it cannot embrace the application in this case. In essence applicant seeks to raise for review a decision other than that challenged by his recourse and the exercise is pursued after the lapse of 75 days from the publication. The application must necessarily be dismissed and I so direct.

25

30

Application dismissed.

* (1967) 3 C.L.R. 559

** See *John Moran v Republic*, 1 R.S.C.C. 10, *Holy See of Kitum v Municipal Council of Limassol*, 1 R.S.C.C. 15; *Shalkalis v Cyprus Theatrical Organisation* (1984) 3 C.L.R. 1382.