

1988 July 26

(STYLIANIDES, J.)

IN THE MATTER OF AN APPLICATION BY LOUIS
TOURIST AGENCY LTD FOR LEAVE TO APPLY
FOR ORDERS OF CERTIORARI AND MANDAMUS

and

IN THE MATTER OF THE JUDGMENT OF INDUSTRIAL DISPUTES
COURT DATED 24.6.88, IN APPLICATION NO.215/86.

(Civil Application No.116/88).

*Prerogative Orders — Certiorari/Mandamus — Leave to apply for —
Principles applicable — «Arguable point», «prima facie case».*

Question of law — What is considered to be a question of law.

*Industrial Disputes Court — Appeal from its decisions — «On any ground
involving a point of law only» — What is considered to be a question
of law.* 5

The facts of this case sufficiently appear in the judgment of the
Court.

*Leave to apply for orders of
Certiorari and Mandamus granted.* 10

Cases referred to:

Sidnell v. Wilson and others [1966] 1 All E.R. 681;

Land Securities Plc v. Receiver for the Metropolitan Police District
[1983] 2 All E.R. 254;

In re Costas Papadopoulos, (1968) 1 C.L.R. 496; 15

Ex Parte Maroulleti (1970) 1 C.L.R. 75;

In re Nina Panaretou (1972) 1 C.L.R. 165;

Zenios and Another v. Disciplinary Board (1978) 1 C.L.R. 382;

In re Azinas (1980) 1 C.L.R. 466;

In re Malikides and Others (1980) 1 C.L.R. 472; 20

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

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

In re Argyrides (1987) 1 C.L.R. 23;

Christofides v. Redundant Employees Fund (1978) 1 C.L.R. 208;

Constantinidou v. Woolworth (1980) 1 C.L.R. 302;

5 *Stylianides v. Paschalidou* (1985) 1 C.L.R. 49;

A.C.T. Textiles Ltd v. Zodhiatis (1986) 1 C.L.R. 89;

Edwards v. Bairstow [1955] 3 All E.R. 48.

Application.

10 Application for leave to apply for an order of certiorari to bring up and quash the decision of the Industrial Disputes Court in Appl. No. 215/86 dated 24.6.1988.

N. Papaefstathiou, for the applicants.

Cur. adv. vult.

15 STYLIANIDES J. read the following decision. By means of this application the applicants seek leave to apply for an order of certiorari to bring up and quash:-

20 (i) The decision of the Industrial Disputes Court of 24th June, 1988, in Application No. 215/86, whereby their request to state the questions of law set out in the appendix attached, for the determination of the Supreme Court was partly refused; and

(ii) The memorandum stating the questions of law by the Industrial Disputes Court for the opinion of the Supreme Court, in which only three questions were referred, different from the questions of law requested to be stated.

25 Applicants, also, seek leave to issue an order of mandamus, ordering the Industrial Disputes Court to state the case for the determination by the Supreme Court as per request of the applicants dated 10th June, 1988.

30 The applicants were respondents in Application No. 215/86 filed before the Industrial Disputes Court (the «Court»). On 23rd May, 1988, that Court delivered its reserved judgment whereby it ordered and adjudged the applicants to pay to the claimant wages in lieu of notice, damages under section 3(1) of the Third Schedule (paragraph 4) of Law 24/67 -88).

On 10th June, 1988, counsel for the applicants filed an appeal by way of case stated pursuant to the provisions of section 12(13)(b)(ii) of The Annual Holidays with Pay Law, 1967 (Law No. 24/67), as amended by section 3 of Law 5/73 and Rule 17(1) of the Rules of Procedure published in the Official Gazette of 28th February, 1968, under Notification 151, Supplement II(I), which continue to be in force by virtue of section 7 of Law 5/73. 5

On 20th June, 1988, counsel for the applicants were invited to address the Court in support of their application, before the Court proceeded under Rule 17(2) to state the case. 10

On 24th June, 1988, the Court issued a decision whereby the request of the applicants was partly accepted on only three of the legal points set out in their application and the said questions stated are allegedly different from those the Court decided to state and/or at any rate not as requested. 15

The five questions requested to be stated by the Court are Exhibit B, the decision of the Court dated 24th June, 1988, Exhibit Γ and the memorandum prepared by the Court Exhibit Δ to the affidavit sworn by Nairy Merheje, an internal legal adviser of the applicants, in support of the present application. 20

The Supreme Court at this stage must be satisfied by the material before it, if accepted as accurate, that a prima facie case is made out or an arguable point is raised. A prima facie case should be made out sufficiently to justify the granting of leave to the applicant to move this Court to issue a prerogative order. The expressions «arguable point» and «prima facie case» are used in the sense of a case that it is sufficient that the applicant should show that there is a bona fide arguable case without the need to go into any rebutting evidence put forward. It is a case which is sufficiently arguable and merits an answer. (*Sidnell v. Wilson and Others* [1966] 1 All E.R. 681, at p. 685; *Land Securities Plc v. Receiver for the Metropolitan Police District* [1983] 2 All E.R. 254, at p. 258; *Costas Papadopoulos (Ex Parte)* (1968) 1 C.L.R. 496; *Ex Parte Loucia Kyriacou Christou Maroulleti* (1970) 1 C.L.R. 75; *In re Nina Panaretou* (1972) 1 C.L.R. 165; *Zenios & Another v. Disciplinary Board* (1978) 1 C.L.R. 382; *In re Azinas* (1980) 1 C.L.R. 466; *In re Malikides and Others* (1980) 1 C.L.R. 472; *In re Kakos* (1984) 1 C.L.R. 876; *In re Kakos* (1985) 1 C.L.R. 250; *In re Argyrides* (1987) 1 C.L.R. 23.) 25 30 35

Counsel for the applicants submitted that the Court misinterpreted and misapplied the law which is an error of law and acted in excess of power and in an arbitrary manner. The case was stated by the Court in apparent excess of power and on the face of
5 the record it is contrary to law and the decision of that Court. There is an error of law on the face of the record, both in the interim decision and the case stated.

An appeal from a judgment of the Court lies on «any ground involving a point of law only» and it is made by way of case stated
10 as provided by the Rules.

The Supreme Court has pointed out in a number of cases that it is desirable that in case stated the question submitted for the decision of this Court should be clearly formulated and embodied in the statement of the case so that the very purpose of stating the
15 case, i.e., of having well defined legal issues, can be achieved - (Christofides v. Redundant Employees Fund (1978) 1 C.L.R. 208, at p. 214; *Constantinidou v. Woolworth* (1980) 1 C.L.R. 302, at p. 313).

The trial Court has to state definable points of law for the
20 decision of this Court and not questions of fact. «Question of law» is a very general term. Without attempting an exhaustive definition of what is a question of law, I may say that, whenever an issue revolves round the application of the law to given facts it raises a pure question of Law and so long as the facts, on which the Court is
25 required to apply the law, are not called in question, the point is a legal one. Exploration of the ambit of the law is always a question of law, as well as questions of interpretation and the scope of law, (*Stratis Stylianides v. Phaedra Paschalidou* (1985) 1 C.L.R. 49). Acting on no evidence, or acting on evidence which ought to have
30 been rejected, or failing to take into consideration evidence which ought to have been considered, are matters of law - (*A.C.T. Textiles Ltd. v. Georghios Zodhiatis* (1986) 1 C.L.R. 89, at p. 104. See, also, *Edwards v. Bairstow* [1955] 3 All E.R. 48, at pp. 56, 57).

Having examined the questions appearing in Exhibit B, I have
35 reached the conclusion that prima facie all the questions requested to be stated for the determination by the Supreme Court are questions of law. Prima facie the three questions stated in Exhibit Δ by the Court are different from those decided to be stated in the decision of 24th June, 1988 and definitely do not encompass the

whole question of each of the three questions requested by applicants.

In view of the above, I think that the material before me justifies the conclusion that an arguable case has been made sufficiently to merit further consideration after leave is given to the applicants to apply for an order of certiorari as per present application and an order to move this Court for the issue of mandamus order as applied. 5

Leave granted.

Proceedings in Application No. 215/86 of the Industrial Disputes Court are hereby to be stayed until further order of this Court. 10

The application for certiorari and mandamus to be filed within 14 days from today.

Application granted. 15