

1988 September 23

(PAPADOPOULOS J)

IN THE MATTER OF AN APPLICATION BY MICHAEL A PETRIS
AND OTHERS FOR LEAVE TO APPLY FOR AN ORDER OF
CERTIORARI AND PROHIBITION

and

IN THE MATTER OF AN ORDER GIVEN BY THE DISTRICT COURT OF
NICOSIA IN ACTION NO 5827/88 WHEREBY THE HEARING OF THE
APPLICATION FOR CONTEMPT FILED ON THE 16 9 88 WAS FIXED
FOR HEARING ON THE 24 9 88

and

IN THE MATTER OF THE AFORESAID ACTION AND APPLICATION
FILED IN CONNECTION THERETO

and

IN THE MATTER OF AN ORDER OF THE TRIAL COURT OF THE
SAME DAY ASSUMING JURISDICTION TO TRY THE CASE

(Application No 146/88)

*Prerogative Orders — Certioran/Prohibition — Leave to apply for —
Principes applicabile*

The facts of this case appear sufficiently in the Judgment of the
Court

*Leave to apply for Certioran 5
and Prohibition granted*

Cases referred to

Attorney - General v Chnstou, 1962 C L R 129,

Re Nina Panaretou (1972) 1 C L R 165,

Ex parte Costas Papadopoulos (1981) 1 C.L.R 66, 10

Re Kakos (1985) 1 C.L R 250

Application.

Application for leave to apply for an order of certioran for the
purpose of quashing the order of the Distnct Court of Nicosia

made on 17.9.88 in Action No. 5827/88 fixing the hearing of an application for contempt on the 24.9.1988.

R. Stavrakis, for the applicants.

Cur. adv. vult.

- 5¹ PAPAPOPOULOS J. read the following decision. This is an application for leave to apply for (a) An Order of Certiorari for the purpose of quashing the Order made on the 17/9/88 by a Judge of the District Court of Nicosia, whereby the hearing of the application for contempt in case 5827/88 of the District Court of
10 Nicosia was fixed for the 24/9/88 AND (b) An Order prohibiting the trial Judge from further proceeding with the trial of the applicants in the said action and the applications pending in connection thereto and generally an order prohibiting the aforesaid Judge from exercising jurisdiction in the above cause or
15 causes.

The very brief facts of the case that transpire from the affidavit in support of the application of Mr. Michael Petris, are the following:-

- The plaintiff in action 5827/88 was found guilty by the Turf Club of dishonest activities and he was «warned off» for a period of six
20 months. As he felt aggrieved with the decision of the Turf Club, he filed the above action in the District Court of Nicosia praying for the cancellation of the decision of the Turf Club. At the same time, he also filed an ex parte application for an interim order for the stay of execution of the decision of the Turf Club until the final
25 determination of the action. His application for stay was granted and made returnable. As it was opposed, it came up for hearing on the 17/9/88.

- The plaintiff relying on Turf Club regulations applied to the Club for a licence as a racing horse trainer for the period 4/9/88 until 4/
30 9/89 but his application was rejected. It appears that the plaintiff considered that the rejection of his application for registration as a racing horse trainer by the Turf Club, amounted to a contempt of Court in view of the Order of the Court for the stay of the execution of the decision of the Turf Club pending the final determination of
35 the action. So, he filed an application for contempt of Court. This application has been fixed for hearing on the 17/10/88.

When the application for an interim order came up for hearing on the 17th of September, 1988, there was an application for adjournment after the 17th of October, 1988, when the other

application was also fixed and because one of the respondents had not been served with the order. The advocate of the other side, not only agreed, but also applied for such an adjournment. The Judge insisted on hearing the application prior to the 17th of October and fixed it for hearing on the 24/9/88.

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Further to the above, there are numerous allegations which associate the trial Judge with the plaintiff and that the Judge was so involved in the proceedings that it would not be in accord with the Rules of Natural Justice that he should proceed with the case himself, as such involvement might possibly impair his impartiality.

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The question which falls for consideration and decision at this stage, is whether there is a prima facie arguable case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an Order of Certiorari. It is not necessary for me to go into the matter thoroughly, but it is only sufficient if on the basis of the applicant's statement and affidavit in support, the Court is satisfied that such leave should be granted. (See *A.G. v. Panayiotis Christou*, 1962 C.L.R. 129 at pp. 133 and 134; *ex parte Costas Papadopoulos*, (1968) 1 C.L.R. 66; in re *Nina Panaretou* (1972) 1 C.L.R. 165; in re *Kakos* (1985) 1 C.L.R. 250).

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In the light of the contents of the affidavit filed in support of this application, and having heard arguments by the counsel for the applicants, I am satisfied that a prima facie arguable case has been made out for granting the application.

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I, therefore, make the following order:

(1) The applicant is granted leave to apply for an Order of Certiorari and Prohibition within 15 days from today. Any opposition to be filed within 21 days thereafter.

(2) All proceedings related to Civil Action No. 5827/88 of the District Court of Nicosia by way of application for disobeying the Court's order or for contempt of Court or otherwise, are stayed for 15 days as from today. If the applicants apply within that period hereinabove provided or such extended time as the Court may order for an order of Certiorari, then the stay shall continue to be in operation until further order of the Court.

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Copy of this order to be served on the Registrar of the District Court.

Application granted.