

1988 July 30

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NAFEI K. IESHOO,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND OTHERS,

Respondents.

(Case No. 572/88).

5 *Provisional order—The two prerequisites for granting an order suspending the effect of the sub judice act pending determination of the recourse—Sub judice act must be tainted with flagrant illegality and the applicant must show that, if the order is not granted, he will suffer irreparable damage—In determining the issue of flagrant illegality the Court must avoid going into the merits of the recourse.*

The facts of this case need not be summarized. Suffice it to say that the applicant failed to satisfy the Court that the aforesaid two prerequisites were satisfied.

10 *Application dismissed.
No order as to costs.*

Cases referred to:

Sofocleous v. The Republic (1971) 3 C.L.R. 345;

Moyo and Another v. The Republic (1988) 3 C.L.R. 1203;

15 *Karaliotas v. The Republic* (1987) 3 C.L.R. 1701.

Application for provisional order.

Application for a provisional order for the removal of applicant's name from the stop list and for an order directing the respondents not to prohibit applicant's free entry in Cyprus.

G. Serghides, for the applicant.

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P. Clerides, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant, a citizen of Iraq, arrived in Cyprus on the 11th February, 1988, and was given a visitor's permit to stay in the island till the 29th of that month. On the 4th March, he submitted an application to the Immigration Authorities for the extension of his temporary stay for a month and in support of his application he appended a letter dated the 3rd March, addressed by the Chief of the Special Mission in Cyprus of the United Nations High Commissioner for Refugees to the Director General of the Ministry of Interior by which the latter was informed that the applicant had applied for recognition as a refugee and that his application was under consideration. The Chief of the Mission by his said letter further requested that the applicant's stay in Cyprus be extended for a period of one month.

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On the 8th March, the applicant visited the Immigration Authorities and handed to them a cutting from "Phileleftheros" daily in which it appeared that he had exchanged with a certain Miss Sofia Demosthenous a promise of marriage.

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The Chief of the Police who was asked to examine the application of the applicant, did not recommend the extension of his stay in Cyprus, one of his grounds being that the passport of the applicant, after it was examined by an expert, was found to be forged.

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On the 2nd April, the Immigration Authorities informed the applicant that his application for the extension of his stay in Cyprus was not approved and he was asked to make all necessary arrangements to depart from Cyprus. The applicant did not leave
5 Cyprus and on the 24th May, he married the said Sofia Demosthenous at the Municipality of Stroyolos. After the celebration of their marriage the couple left for Greece. After he left Cyprus the name of the applicant was placed on the stop list as a prohibited immigrant.

10 Against this decision of the administration the applicant filed the present recourse. At the same time he filed an application by which he seeks a provisional order for the removal of his name from the stop list and further for an order directing the respondents not to prohibit his free entry into Cyprus.

15 For a Court to grant a provisional order, an applicant has to prove that the act or decision sought to be stayed is tainted with
flagrant illegality. One further element that has to be examined is whether the applicant will suffer irreparable damage if the order is not granted. (See, inter alia, the case of *Sofocleous v. Republic*,
20 (1971) 3 C.L.R. 345 and the very recent one *Sidney Alfred Moyo & Another v. The Republic* (1988) 3 C.L.R. 1203.

In deciding whether flagrant illegality was committed, the Court must avoid going into the merits of the recourse as by doing so the case may be disposed of there and then on its merits.

25 No flagrant illegality is relied upon by the applicant.

The case for the applicant, as advanced by his counsel, is that if the applicant is not allowed to come to Cyprus, he will suffer irreparable damage. In support of this argument he mentioned a number of situations that affect or will affect the applicant and his
30 wife. Amongst others, he alleged that the wife, if she does not return to Cyprus, will lose her job, that the couple will not be able to celebrate a religious marriage, that the wife is pregnant, that if the applicant is not allowed to return to Cyprus that means that

eventually the marriage will break down and this will lead to a divorce.

Considering the arguments advanced and having in mind that the burden of proof lies on the applicant, I find that I have not been persuaded that he will suffer irreparable damage.

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Before concluding, I would like to say that I do not at this stage consider it necessary to deal with the rights of the State of the Republic of Cyprus to allow or prohibit an alien to enter into the Republic, an issue that has been fully discussed in two very recent judgments of the Full Bench of the Supreme Court, namely *Yiannis Karaliotas v. The Republic* (1987) 3 C.L.R. 1701 and the case of *Sidney Alfred Moyo and Another v. The Republic*, (supra).

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In the result, the provisional order applied for is refused, but in the circumstances, I make no order as to costs.

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*Application refused.
No order as to costs.*