

1988 November 7

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TTTT ABDEL AZIZ MOHAMED,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. DIRECTOR-GENERAL, MINISTRY OF INTERIOR,
3. THE IMMIGRATION OFFICER,

Respondents.

(Case No. 860/88).

Provisional orders—Aliens—Expiration of applicant's permit to stay in the country—Deportation made after such expiration—Cannot be suspended by a provisional order, because, in such a case, the order will be an instrument of perpetuating an illegality—Moyo and Another v. The Republic (1988) 3 C.L.R. 1203 applied.

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

Recourse dismissed.

No order as to costs.

Cases referred to:

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

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Application for a provisional order.

Application for a provisional order staying applicant's deportation pending the final determination of the recourse filed against the decision of the respondents to deport applicant.

5. *N. Papamiltiadous*, for the applicant.

P. Clerides, for the respondents.

Cur. adv. vult.

10 PIKIS J. read the following judgment. This is an application of Titi Abdel Aziz Mohamed for a provisional order staying his deportation. The application is made in the cause of a recourse challenging a decision of the respondents whereby he was detained with a view to being deported. Since his arrival in Cyprus he was christened to his marriage to Maria Onisiforou, a citizen of the Republic. A child born to Maria was recognised after wedlock by
15 the applicant as his own. They acquired another child after their marriage and presently Maria is expecting their third child.

I stayed the order for a few days in order to elicit the facts relevant to the application, primarily whether an order of deportation has been issued and such other facts relevant to his status in Cy-
20 prus.

The application was served on the respondents. Counsel for the Republic objected to the issuance of the order sought. He submitted that nothing in the nature of a flagrant illegality has been established before the Court; nor will the applicant suffer irreparable
25 damage if the order is refused.

It is an undisputed fact that the permit of the applicant to stay in the Republic has expired. The inevitable inference is that his continued stay in the country is unauthorised. Seemingly the applicant was declared a prohibited immigrant after his conviction
30 and sentence to a term of imprisonment on a charge of indecent

assault. In the contention of the applicant, he was discouraged by the Authorities from making an application for the extension of his permit. So far as may be discerned from statements made on behalf of the applicant, an application to that end was made coincidentally with the institution of the present proceedings. 5

The application for a provisional order must necessarily be dismissed for the reason that the preservation of the status quo would not legitimise the stay of the applicant in the country. A provisional order cannot be made an instrument for the perpetuation of illegal stay in the country. Such action would amount to a usurpation of administrative power by the Court stepping into the administrative process. In similar circumstances, in *Moyo and Another v. Republic* (1988) 3 C.L.R. 1203 the Full Bench refused to contemplate the making of a provisional order in circumstances where this would lead to the extension of illegal stay in the country. No useful purpose would be served by repeating the principles espoused in the above case, either with regard to the prerequisites for the grant of a provisional order, or the implications of suspending an order of deportation where the applicant has no legal right to stay in the country. Those principles are adopted and shall be followed in this case. The application of the ratio in *Moyo*, supra, leads inexorably to the dismissal of this application. 10 15 20

We may note that question marks were raised in *Moyo* respecting the legitimacy of the interest of a party impugning a deportation order when he has no legal right to stay in the country. 25

I am not unmoved by the family circumstances of the applicant or the plight of his family. All I can say is that these are matters for consideration and evaluation by the Immigration Authorities. No doubt the Republic, if the order of deportation is enforced, will allow the applicant to return to the country for the purpose of prosecuting his recourse. 30

In the result, the application is dismissed. No order as to costs.

Application dismissed. 35
No order as to costs.