

1988 July 12

(SAWIDES J)

IN THE MATTER OF ARTICLE 155 4 OF THE CONSTITUTION

IN THE MATTER OF AN APPLICATION BY KERMIA PALACE ENTERPRISES LTD. FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND MANDAMUS TO THE DISTRICT COURT OF NICOSIA

and

IN THE MATTER OF A RULING DATED 23 6 88 MADE AND/OR ISSUED BY DISTRICT COURT OF NICOSIA (HADJICONSTANTINOUS D J)

(Application No 114/88)

*Prerogative orders — Certiorari — Leave to apply for — Principles applicable — «Prima facie» case*

*Immovable property — Assessment of value of, by Director of Department of Lands and Surveys — Appeal under section 80 of Immovable Property Law, Cap 224 — Decision that once section 69(1)(4) of said law is not applicable, the decision is not executory and therefore, neither the District Court nor the Supreme Court under Art 146 1 of the Constitution has jurisdiction in the matter — Leave to apply for an order of certiorari quashing such decision granted* 5 10

*Jurisdiction — Constitution, Art 146 1 — The Immovable Property Law Cap. 224, s.80 — See Immovable property, ante.*

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

*Leave to apply for an Order of Certiorari granted* 15

*Cases referred to*

*Re Savva «Pambos» (1986) 1 C L R 518*

*Re Kotsonis and Another (1986) 1 C L R 634.* 20

*Re Kakos (1985) 1 C L R 250*

**Application.**

Application for leave to apply for an order of certiorari to bring up and quash the ruling of the District Court of Nicosia in Appeal/ Application No. 43/86 dated 23.6.88 and for an order of  
 5 mandamus directing the District Court Nicosia (Hadjiconstantinou, S.D.J.) to hear and determine according to law the above Appeal/Application.

*P. Polyviou*, for the applicant.

*Cur adv. vult.*

10 SAVVIDES J. read the following decision. By the present application applicant seeks leave to apply for-

(a) An order of certiorari to remove in the Supreme Court and quash a ruling and/or decision issued by the District Court of Nicosia dated 23rd June, 1988, by means of which the District  
 15 Court of Nicosia dismissed appeal/application No 43/86 by means of which applicants had challenged a valuation decision and/or notice issued by the District Lands Office. Nicosia

(b) An order of mandamus directed to the District Court of Nicosia (Hadjiconstantinou, S.D.J.) requiring him to hear and  
 20 determine according to law appeal/application No. 43/86 filed before the District Court of Nicosia.

The facts relevant to the present application are briefly as follows:

Applicants are a company registered in Nicosia and deal, inter  
 25 alia, with immovable property and the development thereof.

Applicants are the owners of property under registration 298 at Ayios Andreas quarter of Nicosia, plot 34, of an extent of two donums, 2 evleks and 2300 square feet. The Director of Lands and Surveys assessed the value of such property as at 1st January,  
 30 1980 at £215,000. Applicants objected to such valuation and by letter dated 1st July, 1985, requested the reassessment of the value of the property.

On the 24th May, 1986, the Director of Lands and Surveys informed them that he revalued the property at £300,000.- as at  
 35 1st January, 1980 as against the alleged by the applicants value of £550,000.- Applicants as a result filed an appeal by way of an application No 43/86 in the District Court of Nicosia challenging

the decision of the Director of Lands and Surveys. Evidence was given on the part of both sides and eventually the learned Judge after both sides had closed their case asked that written addresses should be filed

On or about the 3rd June, 1988, the Court addressed a notice to the sides inviting argument whether the challenged decision was an administrative one or not, a question which was touching the jurisdiction of the Court to adjudicate in the matter. The District Court asked that on 13th June, 1988, both sides should address argument with regard to the matter of jurisdiction. Both counsel representing applicants and respondents, respectively, appeared before the Court and argued that there was no question of an administrative act and/or decision, that the Supreme Court had no jurisdiction in the matter and that jurisdiction in respect of the matter in issue was vested in the District Court in accordance with the provision of s.80 of the Immovable Property Law, Cap.224. as amended.

On 23rd June, 1988 the District Court of Nicosia delivered its reserved ruling in the matter by means of which it held that no Court had jurisdiction in the matter with the result in effect that applicants are without a remedy.

The reasons for concluding as above, as appearing in the judgment of the learned trial Judge read as follows:

«Therefore, once the sub judice decision of the Director according to paragraph 4 of s.69(1) of the law has no application it is not executory and it does not create or vary a legitimate result or interest, I find that the company has no cause which can be tried either by this Court or by the Supreme Court by virtue of the provisions of Article 146.1 of the Constitution.»

Counsel for applicants in arguing he submitted that the ruling of the District Court of Nicosia is vitiated by errors of law on the face of the record in that it holds that the District Court has no jurisdiction in the matter in question in obvious disregard of s.80 of the Immovable Property Law. Also it goes on to hold that no Court has jurisdiction in the matter with the result that applicants are left without a remedy, notwithstanding the fact that the Attorney-General's department, who appeared for the respondents, is in full agreement with the position adopted by the applicants.

The question which has to be considered by me at this stage is not whether the orders applied for should be issued but whether on the material before me there is a prima facie case sufficiently to justify the granting of leave to apply for orders of certiorari and mandamus bearing in mind the meaning that should be attributed to the word «prima facie». Useful reference may be made in this respect to the case of *In Re Savva (Pambos)* (1986) 1 C.L.R. 518 at p. 522, *In Re Kotsonis and Another* (1986) 1 C.L.R. 634 as to the principles governing the issue of certiorari and also to the decision of the Full Bench in the case of *In re Kakos* (1985) 1 C.L.R. 250 as to what constitutes a prima facie case for an order of certiorari and mandamus to be made.

In the light of the material before me I am satisfied that a prima facie arguable case has been made out and I will make the following order:

- (a) The applicants are granted leave to apply for orders of certiorari and mandamus within one month from today. Any opposition to be filed within one month from service of such application.
- (b) Copy of this order to be sent to the Registrar of the District Court of Nicosia and be communicated to the judge concerned.

*Application granted.*