

1988 September 24

(PIKIS, J.)

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF  
YIANNAKIS P. ELLINAS OF LIMASSOL, FOR LEAVE TO APPLY FOR  
AN ORDER OF CERTIORARI AND/OR MANDAMUS AND/OR  
PROHIBITION AGAINST THE ADJOURNMENT BY THE LIMASSOL  
ASSIZE COURT OF CRIMINAL CASE NO. 23802/87 TO THE 26.9.88  
FOR TRIAL THEREOF BY THE NEXT ASSIZE COURT SITTING IN  
LIMASSOL .

(Civil Application No. 140/88).

*Prerogative Orders — Certiorari/Prohibition — Leave to apply for —  
Principles applicable — Prima facie case.*

5 *Criminal Procedure — Assize Court adjourning case, without consent of  
accused, to the next Assize Court in view of the appointment to the  
Supreme Court of the Presiding Judge — Prima facie case justifying  
leave to apply for certiorari/prohibition.*

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

10 *Leave to apply for certiorari  
and prohibition granted.*

*Cases referred to:*

- 15 *Republic v. Panayi, alias Kakos and Others* (1988) 2 C.L.R. 124;  
*R. v. Cambell* [1959] 2 All E.R. 557;  
*R. v. Thatcher* [1958] 3 All E.R. 410;  
20 *Connelly v. D.P.P.* [1964] 2 All E.R. 401;  
*Re Kakos* (1985) 1 C.L.R. 250.

**Application.**

20 Application for leave to apply for an order of certiorari to bring  
~~to quash~~ quash an order of the Assize Court of Limassol made on  
26.8.88 in Criminal Case No. 23802/87 whereby the trial of the  
accused was adjourned to the next Limassol Assize Court.

*G. Cacoyannis with M. Coukidou (Miss), for the applicant.*

*Cur. adv. vult.*

PIKIS J. read the following judgment. This is an application of Yiannakis P. Ellinas for leave to apply for certiorari to bring up and quash an order of the Assize Court of Limassol made on 26/8/88 whereby the trial of the accused in Criminal Case No. 23802/87, pending before the Assize Court then in session, was adjourned to the next Limassol Assize Court due to be convened on 26/9/88. Also, application is made for leave to apply for mandamus to order the Assize Court of Limassol that was in session on 26/8/88 to hear and determine preliminary objections of the applicant and, lastly, leave to apply for an order prohibiting the Assize Court, before which the case was adjourned, from taking cognizance of it.

The factual background to the application elicited in an affidavit sworn to by Marion Coukidou, so far as immediately relevant to the present stage of the proceedings, is briefly the following:

The applicant was committed to trial before the Summer Assize Court of Limassol on a number of charges. Following the committal order an information was filed by the Attorney-General whereupon the case became a pending matter before the Assize Court that commenced its session in May, 1988. Criminal Case No. 23802/87 was not the only case in respect of which the appellant was committed for trial before the Assizes; he was also put upon trial in Criminal Case No. 22406/87. On 26th August, 1988, judgment was given in the latter case and the applicant was convicted and sentenced to a term of imprisonment. Notwithstanding the submission of counsel for the applicant to the contrary, the Assize Court adjourned the hearing of Criminal Case No. 23802/87 to the next Assizes, due to be convened on 26/9/88 «..... in view of the appointment to the Supreme Court, effective from 1/9/88 ..... of the Presiding Judge Chrysostomis, P.D.C.»

Counsel for the applicant submitted that the incapacitation of anyone member of the Assize Court does not entail suspension of the session, as the Full Bench of the Supreme Court recently confirmed by its unanimous judgment in *Republic of Cyprus v. Panayi, alias Kavkaris, and Others\**. Nor does such incapacitation, counsel added, provide a valid ground for the adjournment of the case. The case of *Kavkaris* supports the proposition that incapacitation of anyone member of the Assize Court does not

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~~(1988)~~ 2 C.L.R. 124.

result either in the interruption of the section or its discontinuance. Furthermore, it confirms the impersonal character of the Assize Court. The hearing of the cases listed before the Assize Court is not dependent on the amenity of the members originally  
 5 nominated, or anyone of them, to continue sitting as members of the Court. Furthermore, counsel questioned the competence of the Assize Court to adjourn without the consent of the accused the hearing of a case to the next Assizes, a proposition he supported by reference to English law and practice\*.

10 In the submission of counsel, the power of the Assize Court to adjourn a case to its next session, is similarly circumscribed in Cyprus by virtue of the provisions of s.20, para. 3 in particular, of the Courts of Justice Law - 14/60, enjoining the Assize Court to carry out at the end of every session an inquiry to ensure «that no  
 15 person is detained except in accordance with the law, and that the administration of criminal justice is not unduly delayed.»

Section 48 empowers every Court to adjourn at its discretion a case. In the submission of Mr. Cacoyannis, this provision is inapplicable to cases pending before the Assizes or, more  
 20 precisely, it does not empower the Assize Court to adjourn a case for hearing to a future session of the Assizes. The word «court» encompasses every court of competent jurisdiction. Therefore, the Assize Court can adjourn cases pending before it from time to time. Whether the power vested by s.48 empowers the Assize  
 25 Court to adjourn a case to a future session of it, and under what circumstances this power may be exercised, has not been canvassed in any decided case; at least so far as I am aware. The test for leave to apply for a prerogative writ is that of a prima facie case. What is connoted by a prima facie case, was discussed *In Re*  
 30 *Kyriacos Georghiou Kakos\*\**. Legal propositions can, of course, be readily explored at any stage of the proceedings and leave will not be granted merely because the statement of the law on a subject is complicated or its elicitation laborious.

Addressing myself to the issues before me, guided by the above  
 35 principles, I am of opinion that applicant has made out a prima

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\* (See, *Archbold*, 4th ed., para. 4-36; *Archbold - Criminal Pleading, Evidence and Practice*, 37th ed., para. 241. *Halsbury's Laws of England*, 4th ed., Vol. 11, para. 1458, also para. 216. *R v. Campbell* (1959) 2 All E.R. 557; *R. v. Thatcher* (1967) 3 All E.R. 410; *Connelly v. D.P.P.* (1964) 2 All E.R. 401).

\*\* (1985) 1 C.L.R. 250.

facie case that the order of the Court entailing the adjournment of the case to a future session of the Assize Court for reasons of incapacitation of one of its members, is fraught with an error apparent on the face of it, such as to prima facie cast doubts on the validity of the order. That being the case I consider it inopportune to debate at this stage any of the remaining legal issues affecting the power of the Assize Court to adjourn a case to a future session of it. These questions will be answered in the context of the application for the issue of the prerogative writs sought for in these proceedings. Leave is granted to the applicant to apply for certiorari, mandamus and prohibition, as sought for in the application. Meantime, criminal proceedings in Criminal Case No. 23802/87 (Limassol District Court) are stayed. The applicant is directed to file his application within five days. The application will be served upon the respondents.

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The case is fixed before the Court for further directions on 14/10/88 at 9 a.m.

*Application granted.*