

1967
July 10

[HADJIANASTASSIOU, J]

IN THE MATTER
OF ANDREAS
DEMOSTHENOUS

IN THE MATTER OF ANDREAS DEMOSTHENOUS,

Applicant.

and

IN THE MATTER OF AN APPLICATION FOR A WRIT
OF HABEAS CORPUS AD SUBJICIENDUM,

(Civil Application No 6/67).

Prerogative Writs—Habeas Corpus—Writ of Habeas Corpus ad subjiciendum—Applicant detained in a ship—Urgency of case—Writ ordered to issue on an ex parte application, instead of the usual summons—To avoid possible defeat of justice—See, also, below

Prerogative Orders—Habeas Corpus—Exclusive jurisdiction of the Supreme Court under paragraph 4 of Article 155 of the Constitution and under section 14 of the Courts of Justice Law, 1960 (Law of the Republic No 14 of 1960)

Practice—Habeas Corpus—Writ of—Issued on an ex parte application in view of the urgency of the case—See, also, above.

Habeas Corpus Ad Subjiciendum—See above

By the present application the applicant A D, a citizen of the Republic, applied to the Supreme Court for an order directed to the Master D M of the steamship "Venus", a Cyprus ship under Cyprus flag duly registered under the laws of the Republic, lying in the port of Limassol, to show cause why an order or a writ of *habeas corpus ad subjiciendum* should not be issued directing the said Master to have the body of the above-named applicant before the Supreme Court, immediately on receipt of such order.

It is obvious from the affidavit relied upon in this application, sworn by the applicant's sister, that the facts in this case presented features of such extreme urgency that the Court thought fit in the interest of justice to order on an *ex parte* application that a writ be issued instead of the usual summons.

Held, (1) the Court on the evidence has reached the conclusion that time in the present case is of importance and that as it

is an urgent case, I have decided to order the issue of the writ immediately in an *ex parte* application, I am aware of course that a writ will not normally be ordered *ex parte* to issue, but in the present case I am of opinion that had I ordered the issuing of a summons instead of the writ it would have been likely to result in a defeat of justice *Vide Re Klimowicz* (1954), 31st July, unreported, Halsbury's Laws of England, 3rd ed vol 11, p 39 (p)

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(2) The Court in exercising its exclusive jurisdiction under the provisions of section 14 of the Courts of Justice Law, 1960 (Law of the Republic No 14 of 1960) and of paragraph 4 of Article 155, of the Constitution has granted leave to issue the writ of *habeas corpus ad subjiciendum* directed to the Master of the steamship "Venus" to have the applicant before this Court immediately on receipt of the Order of the Court. making a normal return to the writ to-day, the 10th July, 1967

(3) As it appears from the affidavit that the applicant—who is now before the Court—is a citizen of the Republic and since the Master failed to show any cause why he has unlawfully detained the applicant, I hereby order that the applicant be discharged from custody immediately with costs against the Master of the said ship

*Order and order as to costs as
aforesaid*

Cases referred to

Re Klimowicz (1954) 31st July, unreported, quoted in Halsbury's Laws of England, 3rd ed vol 11, p. 39 (p)

Application.

Application for an order directed to the Captain of the steamship "Venus" to show cause why an order or a writ of *habeas corpus ad subjiciendum* should not be issued directing the said captain to have the body of the above-named Applicant A.D, before the Supreme Court, immediately on receipt of such order

Ph Clerides, for the Applicant

G. Tornaritis, for the Master of the Steamship "Venus".

The following Judgment was delivered by .

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HADJIANASTASSIOU, J. : In the present Application, the Applicant Andreas Demosthenous of Nicosia, has applied to the Supreme Court for an Order directed to the Master Demetris Marinakis of the steamship "Venus", lying in the port of Limassol, to show cause why an order or a writ of *habeas corpus ad subjiciendum* should not be issued directing the said person to have the body of the above-named Applicant before the Supreme Court, immediately on receipt of such Order.

The facts relied upon appear in the affidavit of the sister of the Applicant Mrs. Chrysoulla Demosthenous of Nicosia, dated the 7th day of July, 1967. The affidavit reads as follows :

"3. My brother departed from Piraeus—Greece for Limassol, Cyprus, with the Steamship "Venus".

4. The said Steamship "Venus" arrived in Limassol on the 6th July, 1967 and though my brother was ready to leave the Steamship "Venus" in Limassol port complying with all necessary passport and other formalities was illegally detained by the Captain of the said steamship "Venus".

5. The said Steamship left Limassol port for Haifa in the morning of the 7th July, 1967, and will return to Limassol port at 9.30 to-night and will depart for Athens at 10.30 to-night approximately.

6. Although I protested to the Captain of the ship for the illegal detention and/or imprisonment of my brother and demanded his release the said captain Demetrios Marinakis refused to accede to my request, and unless the order prayed for is granted my brother will continue being illegally detained as a prisoner in the said steamship.

7.

8. The said steamship "Venus" is duly registered under the Cyprus Laws and uses the Cyprus flag".

The Court having heard counsel for the Applicant, and having considered carefully the facts in the affidavit, has reached the conclusion that time in the present case is of importance and that as it is an urgent case, I have decided to order the issue of the writ immediately in an *ex parte* application; the Court is aware of course that the writ will not normally

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be ordered *ex parte* to issue; but in the present case I am of the opinion that had I ordered the issuing of a summons instead of the writ it would have been likely to result in a defeat of justice. Vide *Re Klimowicz* (1954), unreported, 31st July, Halsbury's Laws of England, 3rd ed., 11, p. 39 (p).

The Court in exercising its exclusive jurisdiction under the provisions of section 14 of the Courts of Justice Law 1960 (Law 14/60) and of paragraph 4 of Article 155 of our Constitution has granted leave to issue the writ of *habeas corpus ad subjiciendum* directed to the Master of the steamship "Venus" to have the Applicant before the Supreme Court immediately on receipt of the Order of the Court. The Court thought fit to make a normal return to the writ to-day, the 10th July, 1967.

Mr. Tornaritis, on behalf of the Master of the steamship "Venus", informed the Court that the Applicant is now released and is before the Supreme Court; he offered the sincere apologies of the Master, and his assurance that he was not opposing the Application because he has already complied with the Order. He further argued that the Master has acted in good faith, although mistakenly, that he had power under the rules of the Maritime Law to detain the Applicant in the ship.

As it appears from the affidavit that the Applicant is a citizen of the Republic and since the Master of the ship has failed to show any cause why he has unlawfully detained the Applicant, I hereby order that the Applicant Andreas Demosthenous be discharged from custody immediately, with costs against the Master of the ship to be assessed by the Registrar of the Court.

The Order of the Court is, therefore, that the Applicant is discharged from custody immediately with costs.

*Order and order as to costs, as
aforesaid.*