

IN THE MATTER OF AN *EX PARTE* APPLICATION BY
NINA PANARETOU, FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI AND MANDAMUS.

IN RE NINA
PANARETOU

(Civil Application No. 6/72).

Certiorari—Mandamus—Application for leave to apply—Principles applicable—Whether there has been made out sufficiently an arguable case so as to justify the granting of leave—Direction regarding recovery of arrears of maintenance due under a maintenance order—Given by the trial Judge in the District Court of Nicosia contrary to the rules of natural justice viz. in the absence of applicant or her counsel—Leave granted to apply for an order of certiorari—Leave for an order of mandamus refused.

The facts sufficiently appear in the decision of the learned President of the Supreme Court granting leave to apply for an order of *certiorari*.

Cases referred to :

Ex parte *Papadopulos* (1968) 1 C.L.R. 496 ;

Ex parte *Marouletti* (1970) 1 C.L.R. 75.

Application.

Application for leave to file applications for orders of *certiorari* and *mandamus* in respect of a direction given by a District Judge of the District Court of Nicosia regarding the recovery of arrears of maintenance due under a maintenance order made on the 12th October, 1961.

E. Markidou (Mrs.), for the applicant.

The following decision was delivered by :—

TRIANTAFYLLIDES, P.: By this application the applicant seeks leave to apply for orders of *certiorari* and *mandamus* in respect of a direction given by a District Judge of the District Court of Nicosia regarding the recovery of arrears of maintenance due under a maintenance order made on the 12th October, 1961.

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IN RE NINA
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The said direction of the District Judge is undated but from the contents of the relevant file it appears that it must have been given between the 9th May, 1972, when the matter of the recovery of the arrears was placed before the District Judge, and the 26th May, 1972, when counsel for applicant was informed about such direction. The direction was given in the following circumstances : An affidavit had been filed by the applicant in the Registry of the District Court of Nicosia in which it was stated that the ex-husband of the applicant, Lellos Georghiades, of Nicosia, had failed, for a period of nearly ten years, to comply with the afore-mentioned maintenance order ; the matter was placed on the 9th May, 1972, before the District Judge concerned, by the Registry, with a request for instructions “ as to what amount is collectible ” ; and the direction made by the Judge was : “ Maintenance for one year only ”.

It has been submitted, in view of the fact that the ex-husband of the applicant had been abroad for part of the past ten years, that the direction was made on the basis of a wrong application to the facts of the case of section 40(5) (b) of the Courts of Justice Law, 1960 (14/60) ; and furthermore, that the direction was given in a manner contravening the rules of natural justice because the applicant or her counsel were not afforded, before the direction was given, an opportunity to be heard on the issue of the amount of arrears of maintenance that was recoverable.

This Court has to exercise a discretion in granting or refusing an application for leave to apply for an order of certiorari or an order of mandamus in a case of this nature.

In deciding whether or not to grant such leave I have taken into account that no appeal has been made against the direction concerned ; but, in the particular circumstances of this case, I have decided that I should not regard this as a factor preventing me from granting the leave applied for, inasmuch as *prima facie* I entertain some doubts as to whether an appeal would be the appropriate remedy in respect of the direction complained of.

It is well settled that an order of certiorari may be made on the ground that there has been a breach of the rules of natural justice, *e.g.* where a party has not been given a full and fair opportunity of being heard (see Halsbury’s Laws of England, 3rd ed., vol. 11, p. 145, para. 272).

At this stage—of the application for leave—all that I have to examine is whether there has been made out sufficiently an arguable case so as to justify the granting of leave (see *Ex parte Papadopoulos* (1968) 1 C.L.R. 496 ; and *Ex parte Marouletti* (1970) 1 C.L.R. 75).

I am, indeed, satisfied that such an arguable case has been made out, in relation, at any rate, to the issue of a breach of a rule of natural justice, in view of the fact that because of the procedure followed the District Judge did not afford at all to the applicant or her counsel an opportunity to be heard before giving the direction complained of and I, therefore, have decided to grant leave to the applicant to apply for an order of certiorari. At this stage I will not limit the grounds on which the application is to be based and so counsel for the applicant is allowed to rely on the other ground, too, upon which an order of certiorari has been sought ; I have allowed her to do so because I am not pronouncing at this stage as to whether on such ground there might properly be granted an order of certiorari.

Regarding the question of leave to apply for an order of mandamus I cannot see what useful purpose would be served in the circumstances of this case by granting it, since I have granted leave to apply, *in respect of a direction already given*, for an order of certiorari ; I, therefore, refuse such leave.

Application partly granted.