

[TRIANTAFYLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, MALACHTOS, JJ.]

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LOUKIA
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CHRISTOU
MAROULETTI
v.
REPUBLIC

LOUKIA KYRIACOU CHRISTOU MAROULETTI,
Appellant (Applicant),

v.

THE REPUBLIC,
Respondent.

(Civil Appeal No. 4987).

Restitution Order—Section 171 of the Criminal Procedure Law, Cap. 155—Criminal Court empowered thereunder in a proper case to direct the cancellation of registration of immovable property—Even during the pendency of an appeal to the District Court under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, regarding the same property—The two sections are distinctly different in nature—Cf. further immediately herebelow.

Restitution Order—Section 171 of Cap. 155 (supra)—Discretion of the Criminal Court—Principles governing the exercise of that discretion—Restitution order to be made only in the plainest cases—Not in cases involving difficult legal issues—In the instant case the criminal court properly acting ordered the cancellation of the registration in the name of the appellant of the immovable property concerned—Upon her conviction of securing said registration by false pretences—Consequently order of the District Court in its criminal jurisdiction directing cancellation of said registration a valid one—And rightly a Judge of the Supreme Court refused an order for certiorari regarding said cancellation—Cf. further immediately herebelow.

Restitution order—Section 171 of Cap. 154 (supra)—Cancellation of registration of immovable property by the Criminal Court under section 171—Does not contravene the provisions of Article 30.1 of the Constitution in the sense that appellant has been denied access to the Court assigned to her by the said Article—Namely to the District Court of Famagusta, in its civil jurisdiction, on appeal under section 80 of the Immovable Property etc. etc. Law, Cap. 224 (supra).

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Immovable Property—Section 80 of Cap. 224 (supra)—Section 171 of Cap. 155 (supra)—Restitution order directing cancellation of registration—Certiorari—See supra ; see also infra.

Criminal Procedure Law, Cap. 155—Section 171—Restitution order regarding immovable property—See supra.

Certiorari proceedings—Before a Judge of the Supreme Court in the first instance—Appeal—See supra.

Costs—Certiorari proceedings—Successful party in part—Ordered to pay half of the costs of the other side—Trial Court's discretion exercised in a manner with which the Court of Appeal is not prepared to interfere in view of the conduct of the appellant.

The District Court of Famagusta acting as a criminal court in criminal case No. 9093/68 convicted the appellant on October 3, 1969, on a charge for obtaining by false pretences registration in her name No. 8257 of a piece of land situate at Famagusta ; moreover, the District Court ordered under section 171 of the Criminal Procedure Law, Cap. 155, that the aforesaid registration in the name of the appellant be cancelled and that the property covered thereby be registered in the name of the Republic of Cyprus. On an application by the present appellant for an order of *certiorari* quashing the aforesaid order of the District Court of Famagusta, a Judge of the Supreme Court issued an order of *certiorari* quashing only that part of the aforesaid order of the District Court directing registration of the aforementioned property in the name of the Republic, but kept in force the other part of the same order cancelling the registration in the name of the appellant as aforesaid. (See this order of *certiorari* in (1971) 1 C.L.R. 226). The appellant took this appeal against this order of *certiorari*, her contention being that the whole of the aforesaid order of the District Court of Famagusta ought to have been quashed.

The Supreme Court dismissing the appeal held that the District Court has discretionary power to order the cancellation of the said registration and that it exercised properly and judicially such discretion.

The appeal was fought on two main grounds :—

1st Ground : Inasmuch as the validity of the aforesaid registration No. 8257 in the name of the appellant was already the subject matter of proceedings *viz.* an appeal to the District Court under section 80 of the Immovable Property (Tenure,

Registration and Valuation) Law, Cap. 224, it was not lawful or proper for the District Court to order in the aforesaid criminal proceedings the cancellation of the said registration ;

2nd Ground : That part of the order of the District Court which has not been quashed by *certiorari* as aforesaid, *i.e.* the cancellation of the said same registration, results in a contravention of Article 30.1 of the Constitution in the sense that the appellant has been denied access to the Court assigned to her by or under the Constitution, namely to the District Court of Famagusta, on appeal, as aforementioned, under section 80 of Cap. 224 (*supra* and *infra*).

Section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, reads as follows :

“ 80. Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

Provided that the Court may, if satisfied that owing to the absence from the Colony, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit.”

Section 171 of the Criminal Procedure Law, Cap. 155, reads as follows :

“ 171. Where any person is convicted of any offence by which any other person has been deprived of any property whatever, the Court may order that such property or any part thereof be restored to the person who appears to it to be the owner thereof, either without payment or on payment by such owner to the person in whose possession such property or a part thereof then is, of any sum named in such order :

Provided that this section shall not apply to—

(a) any valuable security which has been *bona fide* paid

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or discharged by any person liable to pay or discharge the same ;

- (b) any negotiable instrument which shall have been *bona fide* received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen or otherwise feloniously taken ;
- (c) any goods or documents of title entrusted to, or under the control of, by documents of title or otherwise, any trustee, banker, merchant, attorney, factor, broker or other agent convicted as such of any offence in respect of the same ;
- (d) any movable property purchased in good faith in an open market from a person dealing in such market in this kind of property or in any shop where property of the same kind as the one in question is usually sold and from the person usually in charge thereof.”

Article 30.1 of the Constitution provides :

“ 1. No person shall be denied access to the Court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional Courts under any name whatsoever is prohibited.”

Dismissing the appeal and affirming the order of *certiorari* appealed from, the Supreme Court :—

Held, I. As to the 1st Ground (supra) :

(1) In our view the provisions of section 80 of Cap. 224 (*supra*) and those of section 171 of the Criminal Procedure Law, Cap. 155 (*supra*) are distinctly different in nature. Section 80 provides for an appeal to the District Court against administrative decisions of the Director of Lands and Surveys regulating, *inter alia*, private rights in property ; section 171 provides for restitution after a person has been found guilty of a particular offence.

(2) Therefore, no legal impediment exists preventing a criminal Court from making an order of restitution of property under section 171 during the pendency of an appeal under section 80 of Cap. 224 (*supra*) regarding the same property.

(3) Of course, a criminal Court should not exercise its discretionary powers under the said section 171 to make a restitution order when difficult questions of law affecting title to the property concerned arise ; such questions can be more suitably dealt with by a civil Court (see *Stamp v. United Dominions Trust (Commercial) Ltd.* [1967] 1 Q.B. 418, at p. 428).

(4) In the light of the above we think that the learned Judge of the Supreme Court who has dealt with the application for *certiorari* quite rightly refused to quash the cancellation of the registration of the property concerned in the name of the appellant, because it was plainly obvious that such registration was secured by false pretences.

Held, II. As to the 2nd Ground (supra) :

The appellant is not being denied access to the District Court of Famagusta regarding her appeal under section 80 of Cap. 224 (*supra*) ; she is still at liberty to pursue such appeal. It may well be that as a result of her conviction in question by the District Court, and of the part of the order made by such Court under section 171 which has not been quashed by *certiorari (supra)*, the appellant's position in pursuing her said appeal under section 80 of Cap. 224 (*supra*) has been rendered more difficult ; but this does not amount to a denial of access to the District Court of Famagusta under section 80, in the sense of Article 30.1 of the Constitution.

Appeal dismissed with costs.

Cases referred to :

Stamp v. United Dominions Trust (Commercial) Ltd. [1967]
1 Q.B. 418, at p. 428 ;

Ferguson, 54 Cr. App. R. 410, at p. 413.

Appeal.

Appeal by applicant against the judgment of a Judge of the Supreme Court of Cyprus (Josephides, J.) dated the 31st May, 1971, (Civil Application No. 3/70) by virtue of which part of an order made by the District Court of Famagusta in Criminal Case No. 9093/68 was quashed.

L. Papaphilippou, for the appellant.

A. Frangos, Senior Counsel of the Republic with *C. Kypridemos*, for the respondent.

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The judgment of the Court was delivered by :—

TRIANTAFYLIDIS, P. : This is an appeal from an order* of *certiorari*, issued by a Judge of this Court, by virtue of which there was quashed *part* of an order made by the District Court of Famagusta in criminal case No. 9093/68, on the 3rd October, 1969. The appellant contends that the *whole* of the said order of the District Court ought to have been quashed.

The District Court had ordered, under section 171 of the Criminal Procedure Law, Cap. 155, that registration No. 8257 (dated 20th April, 1960) of the Lands Office of Famagusta, in the name of the appellant, be cancelled and that the property to which such registration related (plot 92, Block B, Ayios Ioannis Quarter, Famagusta) be registered in the name of the Republic of Cyprus. By the order of *certiorari* the learned Judge who issued it quashed the part of the *sub judice* order directing registration in the name of the Republic, but kept in force the part of such order directing the cancellation of the registration in the name of the appellant ; it is the contention of the appellant that this part of the *sub judice* order ought to have been quashed too.

The salient facts of this case appear sufficiently in the judgment appealed from and we shall refer to them only briefly :

The appellant was convicted in the said criminal case on three counts, as follows : (a) Of conspiring with another person, namely the at the time District Lands Officer of Famagusta, to obtain registration of the property concerned in her name by false pretences ; (b) of obtaining registration of the said property by false pretences ; and (c) of conspiring with the same Lands Officer to defraud the Government of Cyprus by obtaining registration of such property in her name.

The President of the District Court of Famagusta, who tried the criminal case, sentenced the appellant to pay a fine of £300 and proceeded then to make the order that was challenged by the application for an order of *certiorari*.

About two years before the trial of the criminal case, the Director of Lands and Surveys had sent a notice to the appellant, under the provisions of section 61 of the

* Reported in (1971) 1 C.L.R. 226.

Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, informing her that the registration in question (No. 8257) had been made in her name erroneously and that, therefore, he intended to correct the error by cancelling the registration. The appellant objected to such correction. The Director decided to reject the objection and upon that the appellant lodged an appeal, under section 80 of Cap. 224, before the District Court of Famagusta, against the decision of the Director. That appeal (No. 6/68) was pending when the criminal case was tried, and is still pending, having been adjourned *sine die*.

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The present appeal, in respect of the order of *certiorari*, was based on several grounds, but in the course of the argument a number of such grounds were abandoned and, so, we need not deal with them.

The main ground on which this appeal has been argued was that since the issue of the validity of registration No. 8257 in the name of the appellant was already the subject matter of proceedings under section 80 of Cap. 224 it was not lawful or proper for the District Court to order, in the criminal proceedings, the cancellation of such registration.

In this connection it has been submitted by counsel for the appellant that the Judge of this Court, who, in dealing with the application for *certiorari*, refused to quash the part of the order of the District Court directing the cancellation of the registration, erroneously rejected the argument that section 80 of Cap. 224 makes special provision regarding a particular matter whereas section 171 of Cap. 155 is a provision of general application and held that sections 80 and 171 were provisions with entirely different objects.

We find ourselves unable to agree with this submission of counsel for the appellant. In our view the two provisions in question are distinctly different in nature : Section 80 provides for an appeal against administrative decisions of the Director of Lands and Surveys regulating, *inter alia*, private rights in property ; section 171 provides for restitution after a person has been found guilty of a particular offence ; therefore, no legal impediment exists preventing a criminal Court from making an order of restitution of property under section 171 during the pendency of an appeal under section 80 regarding the same property.

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Of course, a criminal Court should not exercise its discretionary powers in order to make a restitution order when difficult questions of law affecting title to the property concerned arise; such questions can be more suitably dealt with by a civil Court. In *Stamp v. United Dominions Trust (Commercial) Ltd.* [1967] 1 Q.B.418, Widgery, J. said (at p. 428) :—

“ I think it right to add, however, that justices should hesitate before exercising this jurisdiction if the value of the goods in question is substantial, or if the application for an order is likely to raise difficult questions of law. There are many cases, and indeed this case may have been one, where the civil Courts are really better equipped to try an issue of this kind, and I would deprecate any suggestion in the future that justices should be too anxious to exercise their discretion to deal with such issues. However, in simple matters it is no doubt right that they should, and, there being no error of law in what was done in this case, I would not upset their decision on either of these grounds.”

and, in the same case, Lord Parker C.J. said (at p.431) :—

“ It seems to me that whenever difficult questions of law affecting title are likely to arise as, for instance—and this is only an illustration—by reason of the Hire-Purchase Act, 1964, no criminal Court, whether assizes, quarter sessions or magistrates, should embark on the consideration of making a restitution order.”

Also, in the case of *Ferguson*, 54 Cr. App. R.410, in which the *Stamp* case was applied, Salmon L.J. stated (at p. 413) :—

“ The principles which should be followed in considering whether or not the discretion to make the order of restitution should be exercised are set out in *Stamp v. United Dominions Trust (Commercial) Ltd.* [1967] 1 Q.B. 418. It is true that that case was decided under the Larceny Act 1916 which gave similar powers to make orders for restitution to those contained in the Theft Act, although no doubt the Theft Act extends those powers to some extent.

The same principles, however, apply as to how the discretion should be exercised. If there is any doubt at all whether the money or goods in question belong to a third party, a criminal Court is not the correct forum in which that issue should be decided. It is only in the plainest cases, when there can be no doubt

that the money belonged to the convicted man, that the Court would be justified in exercising its discretion in making an order for restitution. To do so in any case of doubt might cause the gravest injustice to a third party because the third party to whom the money may belong has no *locus standi* to appear before a criminal Court. Nor is there any appropriate machinery available in the criminal Courts for deciding the issue as to who is the true owner. Discovery is sometimes a very important part of the necessary machinery for resolving issues of that sort, and discovery for this purpose can be obtained only in the civil Courts. A civil Court is the correct forum for deciding matters of this kind."

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In the light of the above we think that the learned Judge, who has dealt with the application for *certiorari*, quite rightly refused to quash the cancellation of the registration of the property concerned in the name of the appellant, because it was plainly obvious that such registration was secured by false pretences ; he proceeded however to quash the registration thereof in the name of the Republic, as in the relevant records the property appeared recorded in the name of the " Succession of John Langdon ", and he thus left to a forum more appropriate than a criminal Court the determination of the eventual fate of the property.

Another submission of counsel for the appellant has been that the part of the order of the criminal Court, which has not been quashed by *certiorari*, results in a contravention of Article 30.1 of the Constitution, in the sense that the appellant has been denied access to the Court assigned to her by or under the Constitution, namely to the District Court of Famagusta, on appeal, as aforementioned, under section 80 of Cap. 224.

We find no merit in this submission : The appellant is not being denied access to the District Court of Famagusta regarding her appeal under section 80. She is still at liberty to pursue such appeal ; even if it were to be said—and we express no view in this respect—that as a result of her conviction in question by the criminal Court, and of the part of the order made by such Court under section 171 which has not been quashed by *certiorari*, the appellant's position in pursuing her said appeal under section 80 has been rendered more difficult, this does not amount to a denial of access to the District Court of Famagusta, in the sense of Article 30.1.

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Lastly, we have to deal with the contention of counsel for the appellant that his client was wrongly ordered to pay half of the costs of the *certiorari* proceedings to the respondent. It is quite correct that she has been successful in obtaining an order of *certiorari* quashing part of the District Court order complained of by her ; but, as stated by the Judge, the order as to costs was made “ in the circumstances of this case ” ; and we are of the opinion that, in view of the conduct of the appellant, he exercised his discretion in a manner with which we are not prepared to intervene.

The appeal, therefore, fails and is dismissed, with costs.

Appeal dismissed with costs.