

1984 August 28

[PIKIS, J.]

IN THE MATTER OF AN APPLICATION BY COSTAS  
HJICOSTAS, FOR LEAVE TO APPLY FOR AN  
ORDER OF PROHIBITION AND CERTIORARI

(Civil Application No. 21/84).

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*Practice—Certiorari—Ex parte application for leave to apply for order of—Treated as a substantive proceeding for the issue of a writ of certiorari with the concurrence of the parties.*

5 *Rent Control Law, 1983 (Law 23/83)—Statement of a case for the decision of the Supreme Court—Confined to pure questions of Law—Section 7 of the Law—Question whether “oversight or default of applicant as to the date of hearing constituted an omission or an oversight within the provisions of section 6 of Law 23/83” raised a pure question of law—Decision of Rent Tribunal refusing to state*  
10 *a case on the ground that such point was not a pure question of law quashed by means of an order of certiorari.*

*Question of Law—Meaning—When does an issue raise a question of law.*

15 *Prohibition—When does it lie—Ejectment order—Not issued in excess of jurisdiction—No application for stay of execution—Its enforcement cannot be prohibited by a writ of prohibition.*

20 Following the dismissal of his application by the Rent Tribunal to set aside a default judgment the applicant moved the Tribunal in the manner envisaged by the Rent Control Law, 1983 (Law 23/83) to state a case for the decision of the Supreme Court. The application was dismissed for the reason that the point raised was not confined to pure questions of Law and as such could not be made the subject of a case stated under section 7\*

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\* Under section 7 only a pure question of law can be stated to the Supreme Court by way of Appeal and the point raised reads as follows:—

“The trial Court (meaning the Rent Tribunal) wrongly decided that the oversight or default (αβλεπία ή παραδρομή) of the applicant as to the date of hearing of the case constituted an omission or an oversight within the provisions of section 6 of Law 23/83”.

of Law 23/83. Hence an application for leave to apply for the issue of a writ of prohibition in order to prohibit the enforcement of an ejectment order-which was given in default of appearance- for the issue of a writ of certiorari seeking the quashing of the above order of the Tribunal dismissing the application for statement of a case. 5

Although an application for leave to apply for the issue of an order of certiorari was made *ex parte* the Court judged it expedient to invite the views of all concerned in view of the novelty of the issue raised, particularly with regard to the ambit of section 7 of Law 23/83; and having heard the parties it decided to treat the *ex parte* application as a substantive proceeding for the issue of a writ of certiorari and make a final resolution of the matter. In adopting this course the Court had the concurrence of the parties. 10 15

*Held*, (1) that prohibition lies to restrain an inferior Court from embarking upon, continuing or resuming a proceeding in excess of jurisdiction or in contravention of or defiance to the fundamental laws of the land; that no suggestion was made that the issue of an order of ejectment was outside the jurisdiction of the Rent Tribunal or that in making the order the Court ignored a fundamental rule of law; that, further, the order of ejectment is not the subject-matter of these proceedings; that in the absence of an order of stay of execution, - here there was none-it is perfectly legitimate for officers of the Rent Tribunal to proceed upon application with the execution of both the ejectment and money orders given in favour of the owners; accordingly the application for leave to apply for an order of prohibition must fail. 20 25

(2) That whenever an issue revolves round the application of the law to given facts, it raises a pure question of law; that so long as the facts to which the Court is required to apply the law are not called in question, the point is a legal one; that it merely raises questions bearing on the interpretation and the scope of the law; exploration of the ambit of the law is always a question of law; and that, therefore, the point raised here, though it might have been more happily formulated, raised a pure question of law; accordingly the order of the Rent 30 35

Tribunal refusing the statement of a case to the Supreme Court must be quashed.

*Order accordingly.*

Cases referred to:

- 5        *Ex parte Efrosyni Michaelidou* (1969) 1 C.L.R. 118.

**Application.**

Application for leave to apply for the issue of writs of prohibition and certiorari in order to prohibit the enforcement and seek the quashing of an order of the Rent Tribunal, whereby an application for the statement, by way of appeal, of a case for the decision of the Supreme Court was dismissed.

A. *Efthychiou*, for the applicant.

M. *Photiou*, for the respondents.

C. *Velaris*, for the owner.

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*Cur. adv. vult.*

PIKIS J. read the following judgment. The applicant moved the Court for leave to apply for the issue of writs of prohibition and certiorari in order to prohibit the enforcement and seek the quashing respectively of an order of the Rent Tribunal dismissing an application for the statement, by way of appeal, of a case for the decision of the Supreme Court. The application was dismissed for the reason that the points raised were not confined to pure questions of law and as such could not be made the subject of a case stated under section 7 of the Rent Control Law, 1983. It is the case of applicant that the order is wrong in law, an error apparent on the face of the record. Prohibition is sought as an ancillary measure to restrain officers of the Rent Tribunal from enforcing the order in question until its discharge by this Court. I fail to see the relevance or usefulness of an order of prohibition considering that the order sought to be quashed is not the order of ejection but the order declining the statement of a case for the decision of the Supreme Court. No suggestion was made that the issue of an order of ejection was outside the jurisdiction of the Rent Tribunal or that in making the order the Court ignored a fundamental rule of law. The order of ejection is not the subject-matter of these proceedings.

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On the other hand the exercise of a right to appeal conferred by section 7 of the Rent Control Law - 23/83 - does not suspend the execution of a judgment. As in the case of judgments of

District Courts the taking of an appeal leaves execution unaffected<sup>1</sup>. Thus neither the discharge of the order under consideration nor the statement of a case by way of appeal under section 7 would have any bearing on the right of the owners to pursue execution. Consequently, prohibition is, in the context of these proceedings, a misconceived remedy. 5

Prohibition lies to restrain an inferior Court from embarking upon, continuing or resuming proceedings in excess of jurisdiction or in contravention of or defiance to the fundamental laws of the land - See *ex parte Efrosyni Michaelidou* (1969) 1 C.L.R. 118, and *Halsbury's Laws of England*, 3rd Ed., Vol. 11, para. 211. In the absence of an order of stay of execution - here there was none - it is perfectly legitimate for officers of the Rent Tribunal to proceed upon application with the execution of both the ejection and money orders given in favour of the owners. I shall not, therefore, concern myself further with this aspect of the application i.e. the part directed towards the issue of a writ of prohibition. 10 15

Although an application for leave to apply for the issue of an order of certiorari was made *ex parte*, and is ordinarily dealt with on that basis<sup>2</sup>, I judged it expedient to invite the views of all concerned in view of the novelty of the issue raised, particularly with regard to the ambit of section 7 of Law 23/83. Having heard the parties I decided to treat the *ex parte* application as a substantive proceeding for the issue of a writ of certiorari and make a final resolution of the matter. In adopting this course I had the concurrence of the parties. 20 25

The jurisdiction of the Supreme Court to issue an order of certiorari or an order in the nature of certiorari was extensively discussed by Josephides, J., in *Re Efrosyni Michaelidou* (*supra*)<sup>3</sup>. Certiorari was one of the remedies available to the superior Courts at common law to oversee the legality of the action of inferior Courts of record or other bodies exercising 30

1. See Rules of Court published in the Gazette of 31st December, 1983, No. 1818—Rule 11(a) in particular and Ord. 35, rr. 18 & 19, of the Civil Procedure Rules.

2. See *Halsbury's Laws of England*, 3rd Ed., Vol. 11, para. 128.

3. For a detailed discussion of the jurisdiction to grant certiorari and circumstances of its application, see *Halsbury's Laws of England*, 3rd Ed., Vol. 11, para. 230, *et seq.*

judicial or quasi judicial power. Subject to certain exceptions<sup>1</sup> that need not concern us here, certiorari is a discretionary remedy. It is primarily intended to ensure that inferior Courts operate within the bounds of their jurisdiction and observe  
5 fundamental rules of law. The jurisdiction of superior Courts is not confined to common law Courts of record but extends to newly created statutory inferior Courts, provided their jurisdiction is within the scope of the High Court<sup>2</sup>. In this connection the term "jurisdiction" is used in the sense of the  
10 remedial powers within the compass of the High Court of Justice in England. The jurisdiction of the Supreme Court of Cyprus to issue certiorari is analogous to that of the High Court of Justice in England. Consequently, inasmuch as an order of ejectment can be issued by the Supreme Court, jurisdiction can  
15 be exercised to oversee the legality of ejectment orders made by the Rent Tribunal.

It is noteworthy that in England the jurisdiction to issue certiorari and other prerogative writs or orders in the nature thereof, is in certain areas superseded by statute, particularly by  
20 the terms of the Inferior Courts Act, 1779. Under this Act amenity to invoke certiorari in aid of execution is not unlimited; ejectment orders cannot be reviewed by way of certiorari - *Halsbury's Laws of England*, 3rd Ed., Vol. 11, paras. 241 & 242. For the purposes of this judgment it is unnecessary to decide  
25 whether these or other statutory limitations to the issue of certiorari apply in Cyprus. Article 155.4 of the Constitution conferring jurisdiction on the Supreme Court to issue, inter alia, an order of certiorari is general in terms and does not appear to be subject to the statutory limitations applicable in England.  
30 However, I must not be taken as deciding the matter one way or the other for in this case we are not concerned with the review by way of certiorari of an ejectment order but with an order refusing the statement of a case by way of appeal for the consideration of the Supreme Court. I am of opinion there is jurisdiction to  
35 review the decision under consideration in the context of the proceedings before me. The question to be resolved is whether there is an error apparent on the record. To answer that we must refer to the facts forming the background of the case.

1. See para. 263 of *Halsbury's* (supra).

2. See para. 253 of *Halsbury's* (supra).

The owners applied to the Rent Tribunal for an ejectment order and the recovery of arrears of rent as well as mesne profits. When the case was mentioned to the Court in the presence of the parties, directions were given for the submission of pleadings. Also a date was set for the hearing of the case, namely, the 10th November, 1983. The tenant, applicant in these proceedings, was present in Court and made a note of the date of hearing. Belatedly he filed his defence, one day before the hearing, but failed to attend the Court on the date of hearing. The Court proceeded, as it was entitled to, to hear the case in the absence of the tenant. Having done so, it made an order of ejectment and gave judgment for the owners for the recovery of arrears of rent and mesne profits. A few days later, on the 19th November, 1983, the tenant made application to the Court to have the order and judgment set aside, attributing his non-attendance to a mistake on his part in noting the date of hearing. He recorded it to be the 11th instead of the 10th of November. After hearing evidence, the Rent Tribunal concluded the mistake was genuine but nevertheless inexcusable in view of the provisions of section 6(d) of Law 23/83. It provides that default judgment shall not be set aside if the default is due to an act of omission or neglect on the part of the person in default. In the judgment of the Court the mistake of the applicant, though genuine, amounted to an act of omission or neglect on his part. Moreover, the Court was poorly impressed with the defence of the applicant articulated before the Court, lacking in merit.

Following the dismissal of his application to set aside the default judgment, the applicant moved the Court in the manner envisaged by Law 23/83 and the Rules of Court earlier mentioned to state a case for the decision of the Supreme Court. The Rent Tribunal was asked to state three questions, supplemented by a fourth one orally formulated before the Court. As counsel for the applicant rightly acknowledged before me, three of the questions raised did not refer exclusively to points of law. Consequently, the Court was right to refuse to state them. Under section 7 of Law 23/83, only a pure question of law can be stated to the Supreme Court by way of appeal. The expression "legal point only" (νομικό σημείο μόνο) appearing in section 7, leaves no room for any other interpretation. The fourth question, counsel submitted, notably question 2 of the questionnaire, raised a pure question of law and as such it ought

to have been made the subject of a case stated to the Supreme Court. The statement of a case to the Supreme Court on a point of law is not dependent on the exercise of any discretionary powers on the part of the Rent Tribunal. It is obligatory. The  
5 Rent Tribunal decided that question 2 as well was not confined to a pure point of law but raised mixed questions of law and fact; therefore, it refused to state it for the decision of the Supreme Court. It becomes necessary to recite the question under consideration in order to decide whether the decision of  
10 the Rent Tribunal is, as suggested, obviously wrong in law. Translated in English the question reads: "The trial Court (meaning the Rent Tribunal) wrongly decided that the oversight or default (αβλεψία ή παραδρομή) of the applicant as to the date of hearing of the case constituted an omission or an  
15 oversight within the provisions of section 6 of Law 23/83".

What amounts to a pure question of law is perhaps easy to define but hard to apply to the particular circumstances of a case. The question of law raised, whatever its nature, must necessarily  
20 be one relevant to the facts of the case. A pure question of law cannot be one extricated or detached from the facts of the case for in those circumstances it would be an academic question of law. It appears to me that whenever an issue revolves round the application of the law to given facts, it raises a pure question of  
25 law. So long as the facts to which the Court is required to apply the law are not called in question, the point is a legal one. It merely raises questions bearing on the interpretation and the scope of the law. Exploration of the ambit of the law is always a question of law.

In my judgment the question asked here, though it might have  
30 been more happily formulated, raised a pure question of law. It was to this effect: Whether the concept of omission or neglect in the context of section 6(d) of the law encompassed genuine mistakes of the character of the mistake made by the applicant in this case. It would be a usurpation of the functions  
35 of the Court of Appeal, on my part, to attempt to answer the question. It suffices to state that section 6(d) of Law 23/83 has not been, so far, judicially interpreted by the Supreme Court, so far as I am aware.

Furthermore, I see no reason for withholding the exercise of  
40 my discretion in favour of the applicant. Had quashing of the

order of the Rent Tribunal entailed stay of execution, I might view the matter otherwise in the light of the continuing omission of the applicant to pay rent and the consequential accumulation of arrears. As I pointed out at the outset of this judgment, there is no legal obstacle to the execution of judgment. If application is made to the Rent Tribunal for stay pending appeal, appropriate terms will no doubt be imposed safeguarding the interests of the owners. 5

For the reasons indicated above I quash, in the exercise of my discretion, the order of the Rent Tribunal refusing the statement of a case to the Supreme Court. Following my order the case will necessarily have to go back to the Rent Tribunal. The applicant has not moved the Court to issue an order of mandamus that would empower this Court to direct the Rent Tribunal to state a case for the decision of the Supreme Court, but I am in no doubt that the Rent Tribunal will proceed accordingly and state the question raised for the decision of the Supreme Court. In all the circumstances I shall make no order as to costs. 10 15

*Order accordingly. No order as to costs.* 20