1985 February 15

[TRIANTAFYLLIDES, P., A. LOIZOU, DEMETRIADES, SAVVIDES, PIKIS, JJ.]

KYRIAKOS GEORGHIOU KAKOS,

Appellant-Applicant,

—AND—

AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

—AND—

IN THE MATTER OF A JUDGMENT BY CONSENT ISSUED BY THE DISTRICT COURT OF LIMASSOL ON 11.1.84 IN ACTION No. 2120/83,

—AND—

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION,

—AND—

IN THE MATTER OF THE REFUSAL OF A JUDGE OF THE SUPREME COURT TO GRANT LEAVE FOR THE ISSUE OF A CERTIORARI ORDER.

(Civil Appeal No. 6809).

Certiorari—Leave to apply for—Prima facie case—Concept of.

Jurisdiction—Ejectment order—May be issued both by the District Court and the Rent Control Court—Action for an injunction restraining interference with immovable property—Counterclaim for an order of ejectment on the ground that plaintiff was a trespasser—District Court had jurisdiction to make the ejectment order.

The appellant has since 1974 been the occupant of a hut, and the land on which it stood, within the compound of the Nautical Club of Limassol. In 1981, a dispute arose between the possessor and the Nautical Club,

respecting the continuance of the occupation of the property by the appellant; and the appellant raised an action before the District Court of Limassol for an injunction to restrain the Nautical Club from upsetting his possession. The latter resisted the action and counterclaimed for an order of ejectment, on the ground that he was a trespasser. At the date of the hearing and before its commencement, a settlement was reached whereby the appellant agreed to vacate the premises, subject to nine months stay of the implementation of the agreement. The settlement was declared in Court, whereupon an order was made, directing the appellant in terms to vacate the property suspended for the agreed period of nine months.

A few days before the expiration of the period of stay, the appellant moved the Court for leave to apply for an order of certiorari to quash the aforesaid order of eviction for lack of jurisdiction and manifest illegality. The trial Judge refused leave, holding that the District Court of Limassol had jurisdiction to issue the order, an order that was in no sense illegal; and that given the dispute of the parties as defined by the pleadings, it was perfectly competent for the District Court of Limassol to order the appellant to vacate the land and issue an order to that end. Hence this appeal.

Held, (A) *per A. Loizou, J., Triantafyllides, P., Demetriades and Savvides JJ. concurring,* that certiorari lies where it appears on the face of the record that the decision was erroneous in point of Law; that the District Court had jurisdiction to make such an order as this was not a case that came under the Rent Control Law in which case the Court set up thereunder would have to deal with the question as provided by the Law itself (Law No. 23 of 1983), but it was a subject that inherently could be dealt with by the Court as directed against a trespasser and secondly the judgment and order which the parties themselves had agreed to and consented to its form did not constitute as such an error of Law apparent on the face of the proceedings.

(B) *Per Pikis, J., Triantafyllides P., Demetriades and Savvides JJ. concurring,* after dealing with the concept of

prima facie case; that it was perfectly competent for the District Court to make an order of ejectment; that an order of ejectment may, in varied circumstances, be issued both by the District Court and the Rent Control Court; and that, therefore, the District Court had jurisdiction to make an order of ejectment; accordingly the submission going to jurisdiction must necessarily be dismissed; and that equally liable to be dismissed is the submission for manifest illegality because the record discloses no illegality whatsoever.

Appeal dismissed.

Cases referred to:

Sidnell v. *Wilson and Others* [1966] 1 All E.R. 681;

Land Securities plc v. *Receiver for the Metropolitan Police District* [1983] 2 All E.R. 254 at p. 258;

R. v. *Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711;

R. v. *Newcastle-Under-Lime JJ* [1952] 2 All E.R. 531;

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

Ex parte Maroulleti (1970) 1 C.L.R. 75;

In re Nina Panaretou (1972) 1 C.L.R. 165;

Zenios and Another v. *Disciplinary Board* (1978) 1 C.L.R. 382;

In re HjiCostas (1984) 1 C.L.R. 513 at p. 517.

Appeal.

Appeal by applicant against the judgment of a Judge of the Supreme Court of Cyprus (Stylianides, J.) dated the 4th October, 1984 (Application No. 66/84) whereby his application for leave to issue an order of certiorari was dismissed.

L. N. Clerides, for the appellant.

TRIANTAFYLLIDES P.: We are unanimously of the opinion that this appeal must be dismissed. Our reasons for its

dismissal will be given by Justices A. Loizou and Pikis.

A. LOIZOU J.: The appellant, who in 1974 was displaced from his home and business in Famagusta, has been in occupation of a hut standing on Government land by the seaside in the outskirts of Limassol town that had been let by it on a long lease to the Nautical Club of Limassol. The said lease was duly registered by the latter under the relevant Law with the District Lands Office.

When they sought to recover possession of this hut and land in 1983 the appellant instituted in the District Court of Limassol a civil action claiming an injunction restraining the said Club from trespassing on the hut and land in question, and damages. The defendants by their defence denied the claim of the appellant, contended that they had exclusive right of possession over these premises by virtue of the aforementioned long lease and contended that the appellant had been originally an invitee and afterwards a trespasser thereon and that they were entitled to possession. The appellant being a trespasser intended to continue his acts of trespass, and by counterclaim they sought two alternative injunctions, and any other relief or order that the Court might deem fit in the circumstances.

When the case came up for hearing a consent judgment was issued as follows:

> "This action coming on for hearing in the presence of Mr. Vassiliades and Mr. Papakyriacou, advocates for the plaintiff, and Mr. Agapiou with Mr. Touleki and Mr. Tsikkinis, advocates for the defendants, and after hearing what was said by and on behalf of the parties respectively, this Court doth hereby order that-
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> (1) The action be dismissed and is hereby dismissed;
>
> (2) The plaintiff to vacate and deliver to the defendants free possession of the space on which a Nissen hut is standing, between the Nautical Club of Limassol and the Nautical Club of Famagusta, with stay of execution until 30th September, 1984, when the plaintiff is bound to deliver the space with the premises thereon to the defendants;

(3) Each party to pay its own costs."

Just a few days before the expiration of the period of stay, the appellant sought from a Judge of this Court leave to apply for an order of certiorari, the relief sought being as follows:

"An order of Certiorari to remove into the Supreme Court of Cyprus for the purpose of its being quashed:-

The judgment by consent issued by the District Court of Limassol on the 11th January 1984 in Civil Action No. 2120/83 on the grounds of:

(a) Want of jurisdiction.

(b) Manifest illegality on the face of the record of the judgment issued by the District Court of Limassol."

The learned trial Judge dealt in his elaborate judgment with both the factual and the legal aspect of the case and in particular the principles pertaining to the prerogative order of certiorari and its ambit and posed for determination at that stage the question whether there was a prima facie case made out sufficiently to justify the granting of leave to the applicant to move the Court in due course to issue an order of certiorari. In that respect he said that on the basis of the Case Law of this Court, it was sufficient if on the face of the applicant's statement and the affidavits in support, the Court was satisfied that such leave should be granted.

He then dealt with the question of the jurisdiction of the District Courts vis a vis the Rent Control Court set up specifically by section 4(1) of the Rent Control Law, 1983, (Law No. 23 of 1983). This section he pointed out defines its jurisdiction as being confined to cases referred to it with regard to any matter arising out of the application of the said Law. Unquestionably it does not include causes of action based on trespass, a matter that comes within the jurisdiction of the District Courts and which by no stretch of imagination could be considered to have been taken away from them by the Rent Control Law. He then concluded that no prima facie case had been made out having dismissed also the ground that there was manifest illegality,

an allegation based on the fact that the wording of the order for recovery of possession made by consent by the trial Court, was identical or similar to the wording of section 11(1) of the Rent Control Law, so as to bring it within the orders that are exclusively within the jurisdiction of the Rent Control Court and not of the ordinary District Courts. He in fact refused to give leave on the ground that "no arguable issue arose out of these submissions".

We need not deal at length with the meaning of the term "prima facie case" and its exact relation to the term "arguable case", as these matters do not arise in this case. On this point, however, useful reference may be made to the case of *Sidnell* v. *Wilson and Others* [1966] 1 All E.R. p. 681, where in connection with the provisions of the *Leasehold Property (Repairs) Act* 1938, Diplock, L. J. made certain observations at p. 686, he said:

> "I agree with my brethren that the Court must be satisfied that there is material on which, if it were accepted as accurate, an arguable case can be put forward that the conditions set out in the subsection are fulfilled. I use the expression 'arguable case' rather than the expression 'prima facie case', because the difficulty of the latter expression seems to me to be that it invites an enquiry at the hearing of the application itself into evidence contradicting what in the first instance is a prima facie case and therefore would lead to a complete trial of the action or is capable of leading to a complete trial of the action on the application for leave. It is sufficient that the landlord should show that there is a bona fide arguable case that the conditions or one or other of them set out in the paragraphs of the subsection are fulfilled, and that if he does that, it is no function of the county Court Judge on the application for leave to go into the merits of the matter and hear rebutting evidence, as if the trial were taking place then."

Whilst on this point, it may be mentioned that this passage was commented upon by Megarry V-C in *Land Securities plc* v. *Receiver for the Metropolitan Police District* [1983] 2 All E.R. p. 254, at p. 258 where he says:

"If the term 'prima facie case' is used, I think that this is to be understood in the sense of a case made out by the landlord, without the need to go into any rebutting evidence put forward by the tenant. That is why Diplock L. J. used the term 'bona fide arguable case' (see [1966] 1 All E.R. 681 at 686, [1966] 2 Q. B. 67 at 80), and the unanimous view of the Court that the point ought not to be tried twice over seems to point strongly to the phrase 'prima facie case' bearing the meaning that I have indicated."

In the present case everything appeared on the face of the record and there was no need at all to consider at that stage any rebutting evidence. The conduct of the parties, the agreement reached and the order granted by consent, left no doubt that the whole issue whether to grant leave or not was the legal meaning and effect of these admitted facts and in essence firstly the fact that the applicant was a trespasser and secondly the similarity of the order made to an order that the Rent Control Court may issue under section 11(1) of Law No. 23 of 1983.

Certiorari lies where it appears of the face of the record, that the decision was erroneous in point of Law *R.* v. *Northumberland Compensation Appeal Tribunal* [1951] 1 K. B. 711 and if there is an admission of such an error an order may even be made peremptorily on the application for leave, *R.* v. *Newcastle—Under—Lyme JJ* [1952] 2 All E. R. 531. Likewise when there are undisputed facts and the matter turns on the regal situation which can be readily examined and answered against an applicant, then there cannot be said that a prima facie case has been made out for leave to be given.

To my mind the District Court had jurisdiction to make such an order as this was not a case that came under the Rent Control Law in which case the Court set up thereunder would have to deal with the question as provided by the Law itself (Law No. 23 of 1983), but it was a subject that inherently could be dealt with by the Court as directed against a trespasser and secondly the judgment and order which the parties themselves had agreed to and consented to its form did not constitute as such an error of Law ap-

parent on the face of the proccedings. The matter has been so admirably dealt by the learned trial Judge that I feel I should not deal with the rest of the issues here, or say anything more.

For these reasons the appeal is dismissed.

PIKIS J.: Exposition of the facts brings immediately to the fore the weakness of the case of the appellant for leave to apply for an order of Certiorari, and the consequential untenability of the appeal.

The appellant was the occupant of a hut, and the land on which it stood, within the compound of the Nautical Club of Limassol. He was in occupation since 1974. In 1981, a dispute arose between the possessor and the Nautical Club, respecting the continuance of the occupation of the property by the appellant. Before the threat of eviction the appellant raised an action before the District Court of Limassol for an injunction to restrain the Nautical Club from upsetting his possession. The latter resisted the action and counterclaim for an order of ejectment, on the ground he was a trespasser. At the date of the hearing and before its commencement, a settlement was reached whereby the appellant agreed to vacate the premises, subject to nine months stay of the implementation of the agreement. The settlement was declared in Court, whereupon an order was made, directing the appellant in terms to vacate the property suspended for the agreed period of nine months.

A few days before the expiration of the period of stay, the appellant moved the Court for leave to apply for an order of certiorari to quash the aforesaid order of eviction for lack of jurisdiction and manifest illegality. In a carefully considered judgment, a Judge of the Supreme Court refused leave, holding the District Court of Limassol had jurisdiction to issue the order, an order that was in no sense illegal. Given the dispute of the parties as defined by the pleadings, it was perfectly competent for the District Court of Limassol to order the appellant to vacate the land and issue an order to that end. The appeal is directed against the order dismissing the application for leave to apply for an order of certiorari.

Counsel for the appellant argued before us, as he had done earlier before the single Judge, that a prima facie case was made that the Court lacked jurisdiction to make the order and that the order was, on the face of the proceedings, illegal. At this stage the test, it was stressed, is not whether a case for the issue of an order of certiorari was established, but whether a prima facie case had been made out. Our attention was drawn to a number of decisions of the Supreme Court, indicating the nature of the case that must be made out to justify leave. All revolve round the definition and application of the concept of a prima facie case.[1] Without exhaustively defining a prima facie case, they support the proposition that the disclosure of a sufficiently arguable case is tantamount to a prima facie case.

We remain wholly unconviced that a prima facie case was made for leace to apply for an order of certiorari. As the expression "prima facie" suggests, a convincing enough case must be made on first view. On second view, formed after hearing the other side, this impression may dissipate. A prima facie case is not an unanswerable one but one sufficiently cogent, or arguable, to merit an answer. On numerous occasions Courts were concerned to elicit and apply the concept in diverse circumstances. A particularly instructive approach to analysis of the concept, I found, with respect, that of Megarry, V. C., in *Land Securities* v. *Metropolitan Police* [1983] 2 All E. R. 254, 258. According to this approach, a prima facie case is made out if an arguable case is disclosed, without need arising at this initial or preliminary stage for consideration of any rebutting evidence.

As A. Loizou, J. hinted in the judgment delivered, the implications of a legal proposition may readily be explored, with a view to determining their validity, at any stage of the proceedings. Certainly no prima facie case can be grounded on an erroneous legal proposition. Application for leave in this case rested on two legal propositions:

[1] See, Costas Papadopoullos (Ex Parte) (1968) 1 C.L.R. 496; Ex Parte Loucia Kyriacou Christou Maroulleti (1970) 1 C.L.R. 75; In Re Nina Panaretou (1972) 1 C.L.R. 165; Zenios & Another v. Disciplinary Board (1978) 1 C.L.R. 382.

(a) Lack of jurisdiction or competence on the part of the Court, and

(b) manifest illegality.

Consequently, their soundness could be examined as a matter of law upon examination of the record of the proceedings and the nature of the order made. Hence, the learned trial Judge was perfectly right to ponder the validity of the legal submissions at the stage of application for leave. If erroneous, they could not ground a case for leave and, far less, a case for an order of certiorari.

Certiorari lies primarily to ensure that an inferior Court operates within the bounds of its jurisdiction and observes fundamental rules of Law.[1] In answering the plea relevant to jurisdiction, the test is whether the order made was within the jurisdiction of the Court that issued it. The absence of competence, if any, must be apparent on the record of the proceedings, as well as the illegality, manifest, as alleged. The process is intended to subject to scrutiny the assumption of jurisdiction and the legality of the order made, as opposed to its correctness. It is perfectly competent for the District Court to make, in a proper case, an order of ejectment. We have heard no suggestion to the contrary, and none could be entertained. Respecting illegality, the gravement of the argument of counsel is that the order made was more in the nature of an order that the Rent Control Court may issue under s. 11(1) of Law 23/83. I truly fail to comprehend the essense of this submission. Two or more Courts may possess jurisdiction to issue in different circumstances similar orders. An order of ejectment may, in varied circumstances, be issued both by the District Court and the Rent Control Court. Once the District Court had jurisdiction to make an order of ejectment, the submission going to jurisdiction must necessarily be dismissed. Equally liable to be dismissed, is the submission for manifest illegality. The record discloses no illegality whatsoever. An order within the jurisdiction of the Court was made in circumstances that cast no doubt on its legality. The learned trial Judge did not confine himself to the legality of the order,

[1] In re HjiCostas (1984) 1 C.L.R. 513, 517.

but went a step further and inquired into the amenity the Court had to make such order given the framework of the case, as defined by the pleadings. And concluded, the order was not liable to be faulted on that ground either.

At the end, we find ourselves, with respect to counsel, wholly unconvinced that there is anything before us to justify the Court to grant leave to apply for an order of certiorari. The appeal fails. It is dismissed.

Appeal dismissed.