

1985 October 9

[PIKIS, J.]

IN THE MATTER OF ARTICLE 155.4 OF THE
CONSTITUTION AND S.3 OF THE ADMINISTRATION
OF JUSTICE (MISCELLANEOUS PROVISIONS)
LAW 1964,

AND

IN THE MATTER OF AN APPLICATION BY
MANOLIS CHRISTOPHI AND OTHERS FOR AN
ORDER OF CERTIORARI AND PROHIBITION.

(Applications Nos. 58/85, 59/85 and 60/85.)

*Certiorari and Prohibition—No substitute for the ventilation of
civil rights before a competent civil Court.*

*Disobedience to an order of a Court—Does not ipso facto
preclude a party from being heard in the same or related
proceedings—Whether a party disobeying an order of the
Court will be precluded from being heard or, not is a
matter of discretion—The discretion will be exercised by
balancing the need to sustain the efficacy of the judicial
process on the one hand and the right of audience before
the Court on the other.*

In all three above applications the Court is moved
to quash by way of certiorari orders of the Rent Control
Court of Limassol, authorising execution of a correspond-
ing number of eviction orders made by the District Court,
as well as prohibit the officials of the Court from enforcing
the orders. One factor that distinguishes Application 59/
1985 from the other two is the motion of Nearchos
Vassiliou joined with that of his brother for certiorari
and prohibition. The relevant eviction order is not
addressed to him and he was not a party to the proceedings
that resulted in its making. He claims a locus standi on the
ground that he is in possession.

The owner invited the Court by way of preliminary objections to dismiss the application of Nearchos Vassiliou on the ground that he has no locus standi and to dismiss the application of the other applicants on the ground that they forfeited their right to be heard in these or in other proceedings connected with the eviction orders made in 1975 for failure to obey them. 5

Held, (A) Nearchos Vassiliou is unaffected by the order the legality of which he challenges. Any rights he may have he is free to vindicate before a competent civil Court. Orders in the nature of certiorari and prohibition are no substitute for the ventilation of civil rights before a competent Court. They are primarily intended to ensure that judicial bodies operate within the bounds of their jurisdiction and in accordance with fundamental rules of justice. The objection to the application of Nearchos Vassiliou is well founded. 10 15

(B) The efficacy of the judicial process is dependant upon the willingness and readiness of litigants to comply with the directives of the judgment of the Court. The duty of the applicants to comply with the eviction orders made by the District Court of Limassol is an obligation inherent in the Judicial process and is acknowledge as such by the provisions of Orders 40, Rule 1 of the Civil Procedure Rules. 20 25

The distinction made by applicants' counsel between disobedience of an order and obstruction of its execution or active disobedience thereto rendering one guilty of contempt is not valid. The judicial process is equally apt to be undermined by disobedience as well as active obstruction. 30

Disobedience of an order of the Court does not ipso facto preclude a party from being heard in the same or related proceedings. It is very much a matter of discretion to be exercised by balancing the need to sustain the efficacy of the judicial process on the one hand, and the right of audience before the Court on the other. The applicants are not precluded from raising the present 35

proceedings. Their conduct is a factor directly relevant to the exercise of the Court's discretion to make an order in the nature of certiorari and prohibition.

5

Application of Nearchos Vassiliou dismissed. The objections to entertaining the applications of the remaining three applicants are overruled. The Court will proceed to hear their applications.

10 Cases referred to:

In Re Efrossini Michaelidou (1969) 1 C.L.R. 118;

In Re HjiCostas (1984) 1 C.L.R. 513;

Mavrommatis and two others v. Cyprus Hotels Ltd. (1967)
1 C.L.R. 166;

15 *Mouzouris and Another v. Xylophagou Plantations Ltd.*
(1977) 1 C.L.R. 287;

Hadkinson v. Hadkinson [1952] P. 285;

Bettinson v. Bettinson [1965] 1 All E.R. 102;

20 *Midland Bank Trust Co. Ltd. v. Green* [1979] 2 All
E.R. 193;

Frangos v. The Medical Disciplinary Board (1983)
1 C.L.R. 256.

Applications.25 Applications for orders of certiorari to remove into the
Supreme Court and quash orders of the Rent Control
Court of Limassol, authorising execution of a corresponding
number of eviction orders of the District Court and for

orders of prohibition preventing officials of the Court from enforcing the orders.

P. Pavlou, for the applicants.

Ph. Pitsillides, for the respondent.

Cur. adv. vult. 5

PIKIS J. read the following judgment. The three applications raise identical issues for review and are founded on the same facts. Earlier leave was given to file them for much the same reasons. Directions were given at the outset that they be dealt with jointly. In all three applications the Court is moved to quash by way of certiorari orders of the Rent Control Court of Limassol, authorising execution of a corresponding number of eviction orders made by the District Court, as well as prohibit the officials of the Court from enforcing the orders. One factor that distinguishes Application No. 59/85 from the other two is the motion of Nearchos Vassiliou joined with that of his brother for certiorari and prohibition. The order of the District Court of Limassol is not addressed to him and he was not a party to the proceedings that resulted in its making. He claims a locus standi on the ground that he is in possession himself and is entitled to the protection of that right. The owner disputes the legitimacy of his standing in the proceedings and invited me, by way of preliminary objection, to dismiss his application. He also questioned, again by way of preliminary objection, the right of the other three applicants to pursue their motions but for a wholly different reason. In their case the contention is that they forfeited the right to be heard, in this or in other proceedings connected with the orders of the District Court of Limassol made in 1975, for failure to obey them. They cannot be heard to question the orders while defying them by refusing to comply with their provisions.

The objection to the application of Nearchos Vassiliou is well founded for the following reasons. He is an unaffected by the order the legality of which he challenges

and is in no way concerned with it. Any rights he may have he is free to vindicate before a competent civil Court. His counsel maintained he has an interest to prosecute the motion stemming from the provisions of Ord. 43A that
5 require the Court before authorising the execution to make certain that notice was served upon every party in possession. Evidently Nearchos Vassiliou has come to know of the order of the Rent Control Court and can, if he so chooses, seek to assert any rights he may have before an appropriate
10 civil Court. Orders in the nature of certiorari and prohibition are no substitute for the ventilation of civil rights before a competent Court. They are primarily intended to ensure that judicial bodies operate within the bounds of their jurisdiction and in accordance with fundamental
15 rules of justice(1). Nearchos Vassiliou has no noticeable interest in the proceedings and his motion must on that account be dismissed; more so as everybody affected by the orders namely the remaining three applicants are parties before the Court; thus there is no risk of the
20 interest of anybody affected by the order going unnoticed.

The second objection merits more detailed consideration. Conflicting submissions were made as to the right of a party *in disobedience of an order to be heard*. The applicants have undoubtedly disobeyed the orders of the District Court
25 of Limassol made and served upon them in 1975 and remained in occupation notwithstanding the dismissal of their appeal. Counsel for the owner submitted that in such circumstances they ought not to be heard; at least until they first comply with the orders. Counsel for the applicants
30 drew a distinction between disobedience of an order, mandatory though it may be, and obstruction of the execution of such order or active disobedience thereto rendering one guilty of contempt. Only in the latter case, he argued, is there discretion in the Court to refuse to hear a party

(1) In Re Efrosini Michaelidou (1969) 1 C.L.R. 118. In Re HjiCostas (1984) 1 C.L.R. 513—Halsbury's Laws of England 3rd Edition Volume 11 para. 230 etc.

flouting the order of the Court. I do not think the distinction made by counsel is valid although I must put on record that the matter was neither fully argued nor did I probe it at depth. The efficacy of the judicial process is dependant, it seems to me, upon the willingness and readiness of litigants to comply with the directives of the judgment of the Court. This is the premise upon which justice is administered in every society striving to adhere to the rule of law. The discretion vested in the Court to refuse to hear a party is designed to maintain the efficacy of the judicial process equally apt to be undermined by disobedience as well as active obstruction. Coercive action to enforce the order is another way of underpinning the efficacy of the process. Consequently I must examine whether applicants are, on account of their disobedience to the orders of the District Court of Limassol, duly served upon them, barred or disentitled from being heard in the matter of applications for orders of certiorari and prohibition to bring up and quash orders of the Rent Control Court of Limassol to enforce the above judgments. The duty of the applicants to comply with the eviction orders made by the District Court of Limassol is an obligation inherent in the judicial process and is acknowledged as such by the provisions of Ord. 40, rule 1 of the Civil Procedure Rules.

Relying on the authority of *Theofylactos Mavrommatis and Two Others v. Cyprus Hotels Co. Ltd.* (1) counsel for the owner submitted applicants forfeited their right to be heard and, in any event, ought not to be heard until they first comply with the aforesaid orders of the Court. I pointed out to counsel that I do not read the case of *Mavrommatis* (supra) as laying down a general rule that a party in disobedience of an order of the Court ought not, under any circumstances be heard until he first remedies his default. And drew his attention to the decision of the Supreme Court in *Antonis Mouzouris and Another v. Xylophagou*

(1) (1967) 1 C.L.R. 166.

5 *Plantations Ltd.*(1) setting out a definite statement of the nature and extent of the discretionary powers of the Court in this connection. Espousing the exposition of the law made in *Hadkinson v. Hadkinson* (2) they indicated that disobedience is not necessarily a bar to a party being heard. The Court has a discretion in the matter that may be exercised against the party in disobedience if his conduct makes more difficult the ascertainment of the truth or the enforcement of the order. It is upon this consideration
10 that the Court will ordinarily limit the right of a party to be heard in a cause affecting him.

Counsel for the applicants supported the statement of the law in *Hadkinson* (supra) as a correct reflection of the relevant legal principle. He made reference to a number
15 of English cases (3) suggesting that restriction of the right of audience on account of disobedience can only be imposed in proceedings initiated in the cause in which the order was made (4). In any event, he submitted, a party cannot be barred from applying to set aside a judgment
20 for lack of jurisdiction (5).

This is not the proper case to examine at depth the precise limits of the discretion of the Court. It suffices for the purposes of the present judgment to state that disobedience of an order of the Court does not ipso facto preclude a party from being heard in the same or related proceedings. It is very much a matter of discretion exercised
25 by balancing the need to sustain the efficacy of the judicial process on the one hand, and the right of audience before the Court on the other. I contend with ruling that applicants are not precluded from raising the present proceedings and prosecuting their cause before the Court. However I shall not pause to ponder their conduct; for disobedience of an order of the Court is by its nature a factor directly
30

(1) [1977] 1 C.L.R. 287, 293.

(2) [1952] P. 285.

(3) Succinctly summarized in *Borie and Lowe* p. 567.

(4) See also *Bettinson v. Bettinson* [1965] 1 All E.R. 102.

(5) *Midland Bank Trust Co. Ltd. v. Green* [1979] 2 All E.R. 193.

relevant to the exercise of the Court's discretion to make an order in the nature of certiorari and prohibition (1). The remedies may be refused notwithstanding the presence of formal grounds justifying interference in the face of contumelious conduct or inexcusable delay. 5

Consequently, the application of Nearchos Vassiliou is dismissed; the objections to entertaining the applications of the remaining three applicants are overruled. The Court will proceed to hear the applications.

Order accordingly. 10

(1) Frangos v. The Medical Disciplinary Board (1983) 1 C.L.R. 256, 263.