

1985 November 1

[SAVVIDES, J.]

IN THE MATTER OF AN APPLICATION BY MOBIL OIL
CYPRUS LTD., FOR LEAVE TO APPLY FOR AN ORDER
OF CERTIORARI AND/OR MANDAMUS.

AND

IN THE MATTER OF A RULING AND/OR DECISION
DATED THE 20TH JUNE, 1985 MADE BY THE PRESI-
DENT, DISTRICT COURT LARNACA, REFUSING TO
GIVE DIRECTIONS AS TO THE DISCOVERY OF DOCU-
MENTS IN ACTION NO. 1965/81.

(Application No. 49/85).

*Prerogative Orders—Certiorari and mandamus—Application for
leave to apply for orders of certiorari and mandamus—
Applicant should establish that he has a prima facie case,
i.e. that on the material before the Court, if it were true,
he has an arguable case.*

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The applicants seek leave to apply for an order of cer-
tiorari to quash a ruling of the trial Judge whereby he
refused to give directions as to discovery of documents
and for an order of mandamus directing the trial Judge
to comply with the directions of the Supreme Court given
in Civil Appeal 6764.

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Upon hearing a summons for directions by the plain-
tiffs (the present applicants) the trial Judge issued direc-
tions for discovery of documents. As the defendant failed
to comply, the plaintiffs applied for striking out the defence
and for judgment as per claim. This application was dis-
missed by the trial Judge on the ground that after its filing
the defendants by forwarding to the plaintiffs' advocate
a list of documents setting out 14 items of various docu-
ments complied with the directions as to discovery

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On appeal by the plaintiffs the Supreme Court ruled as
follows:

“We direct that the trial Court should fix again the

summons for directions before it so as to deal with any directions necessary in relation to items 13 and 14 on the list in question and to make other directions that may appear to be necessary.

The Ruling of the trial Court is remaining in force in so far as items 1 to 12 on the said list are concerned".

As a result the plaintiffs applied for the fixing of the Summons for Directions dated 12.2.1983 before the Court so as "to deal with the directions necessary" in compliance with the order of the Supreme Court.

In his ruling on the summons the trial Judge stated, inter alia, that:

"I regret to say that I can find nothing to have intervened between my ruling of the 19.5.1984 and the ruling of the Supreme Court dated 21.10.1984 which might be considered as a factor that would invite the Court to make additional directions regarding items 13 and 14 of the list of documents".

Held, granting leave to apply for certiorari and mandamus:

(1) The question for determination is not whether the orders applied for should be issued, but only whether on the material before the Court there is a prima facie case made out sufficiently to justify the granting of leave applied for.

(2) In granting or refusing an application for leave to apply for an order of certiorari or mandamus in a case of this nature the Court has to exercise a discretion. In the light of the material before the Court there is a prima facie arguable case that the trial Judge may not have complied with the directions of the Supreme Court in appeal 6764.

Application granted.

Cases referred to:

Ex-parte Costas Papadopoulos (1968) 1 C.L.R. 496;

Ex-parte Loucia Kyriacou Christou Maroulleti (1970) 1
C.L.R. 75, 77;

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

Re Kakos (1985) 1 C.L.R. 250;

5 *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.

Application.

10 Application for leave to apply for an order of certiorari
to remove into the Supreme Court and quash the ruling
or decision of the President of the District Court of Larnaca
dated 20.6.85 whereby he refused to give directions as to
discovery of documents and for an order of mandamus
15 directed to the President of the District Court of Larnaca
to comply with the directions of the Supreme Court of
Cyprus in Civil Appeal No. 6764 dated 31.10.84.

A. Dikigoropoulos, for the applicants.

Cur. adv. vult.

20 SAVVIDES J. read the following judgment. Applicants in
the present application seek leave to apply for orders of
certiorari and mandamus for the following purposes:

(A) An Order of Certiorari to remove into the Supreme
Court for the purpose of its being quashed the ruling
or decision of the President of District Court, Larnaca
25 allegedly dated 20.6.1985 whereby he refused to give
directions as to the discovery of documents.

(B) An Order of Mandamus directed to the President of
the District Court Larnaca requiring him to comply
with the Directions of the Supreme Court in Civil
30 Appeal No. 6764 dated 31.10.1984.

The facts of the case as emanating from the material
before me, are as follows:

By a Summons for Directions taken out by the above-
named applicants as plaintiffs in Action No. D. C. Larnaca

1965/81 on 12.2.1983 an order for directions for the discovery and inspection of documents was prayed for. After hearing of the summons, the President District Court Larnaca on 29.11.1983 made the following directions:

“I am of the opinion that in present case it will be in the interest of justice if the following directions are given with regard to the prayer of Discovery and Inspection of documents:

The defendants to prepare a list of all the documents in their possession and or custody which are connected with the case. Such list may contain classes or groups of documents.

The defendants also to state which documents they are willing to let their opponents to inspect and which they are not willing to let their opponents to inspect and the reasons of such refusal.

Such lists to be prepared and given to the other side within six weeks from today. So this summons will be brought before the Court after six weeks for further directions if it will be considered necessary.

As to the other remaining prayers I am of the opinion that they can be dealt with at a later stage”.

The defendants in the above action failed to comply with the aforesaid Directions within the time limited by the Court. On 7.3.1984 the plaintiffs filed an application under Order 28, rule 12 of the Civil Procedure Rules praying that the defence of the defendants be struck out and that judgment be entered against the defendants as per the statement of claim. Prior to the hearing of such application the defendants by letter dated 7.3.1984 signed by their advocate, which was received on 10.3.84 forwarded a list of documents, allegedly in compliance with the directions of the Court of 29.11.1983 setting out 14 items of various documents. The application of plaintiffs for striking out the defence and for judgment as per claim was determined by the Court on 19.5.1984 when by his ruling the President District Court Larnaca dismissed the application having

found that the defendants had complied with his directions of 29.11.1983. The plaintiffs appealed against such ruling and their appeal came up for hearing before the Court of Appeal on 31.10.1984 when by consent of counsel of both parties the Court of Appeal ruled as follows:

“We consider that counsel have chosen, by accepting the proposal of the Court, a reasonable and practical approach to this complicated procedural matter and we direct that the trial Court should fix again the summons for directions before it so as to deal with any directions necessary in relation to items 13 and 14 on the list in question and to make other directions that may appear to be necessary.”

The Ruling of the trial Court is remaining in force in so far as items 1 to 12 on the said list are concerned.”

The suggestion of the Court of Appeal to which reference is made in the above ruling reads, according to the record of the proceedings, as follows:

“At this stage counsel accept a suggestion of the Court that the Ruling of the trial Court dated 9.5.1984, against which this appeal was made, should not be disturbed in so far as are concerned items 1 to 12 on the list of documents filed by counsel for the respondents on the 9.3.1984, but that the trial Court should decide, in dealing with the summons for directions which is still pending before it, what other directions are necessary in relation to items 13 and 14 on the said list.”

It is to be understood that the acceptance by the parties of this proposal of the Court does not imply acceptance by counsel for the appellants that there has been compliance with the order for discovery, except to the extent of the aforesaid items 1 to 12.

It is further agreed that, subject to any further order of the trial Court, the defence of the respondents is not to be struck out on the basis of the application filed by the appellants on the 7th March, 1984.”

As a result the plaintiffs applied for the fixing of the Summons for Directions dated 12.2.1983 before the Court so as "to deal with the directions necessary" in compliance with the order of the Supreme Court. The Summons for Directions was refixed for hearing on 1.6.1985 and the decision which was reserved was delivered on 20.6.1985. The material part of the ruling of the President of the District Court of Larnaca, reads as follows:

"I have heard both counsel on the issue, who have done their utmost to assist the Court in dealing with this problem. What I have gathered from the ruling of the Supreme Court is that I should go back to my ruling dated 19.5.1984 and re-examine the list of documents prepared by Mr. T. Papadopoulos in compliance with an order of the Court dated 29.11.1983. I must say that I am rather confused because I have already dealt with this list of documents. I am of the opinion that it was a good list and it did not need any amendment but the door was left open for future reference if anything cropped up and needed the intervention of the Court. I regret to say that I can find nothing to have intervened between my ruling of the 19.5.1984 and the ruling of the Supreme Court dated 21.10.1984 which might be considered as a factor that would invite the Court to make additional directions regarding items 13 and 14 of the list of documents.

I think that if I did anything else without any new developments in the matter it would amount to a re-examination of these matters not in the course of first instance Court but of a Court of appellate jurisdiction, which I am not. The question in my opinion should remain open for re-examination if need be in the future when there will be some kind of developments".

As a result, the plaintiffs filed the present application and counsel on their behalf raised the following grounds in support of the application:

- (1) The Ruling of His Honour, allegedly dated 20.6.1985,

refusing to deal with the Summons for Directions in the manner set out in the Directions of the Supreme Court aforesaid is wholly erroneous.

5 (2) His Honour's refusal to give Directions for Discovery as to the documents referred to in the Supreme Court's directions aforesaid are based upon an erroneous understanding of the purpose of orders 28 and 30 of the Civil Procedure Rules and to the criteria applicable for determining whether documents should be discovered and is
10 tantamount to a denial of justice.

Under Article 155.4 orders of certiorari and mandamus are amongst the prerogative orders which are within the exclusive jurisdiction of the High Court.

15 The question which I have to decide at this stage is not as to whether the orders applied for should be issued but whether on the material before me there is "a prima facie case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an order of certiorari". (Per Josephides, J. *In Ex-parte*
20 *Costas Papadopoulos* (1968) 1 C.L.R. 496 at p. 498. See, also, *In Ex-parte Loucia Kyriacou Christou Marouletti* (1970) 1 C.L.R. 75, 77, and *In Re Nina Panaretou* (1972) 1 C.L.R. 165).

25 What constitutes a prima facie case has been considered by the Full Bench in the recent case of *In Re Kakos* (1985) 1 C.L.R. 250, in which reference is made to the following observations of Diplock, L.J. in *Sidnell v. Wilson and Others* [1966] 1 All E.R. p. 681 at p. 686:

30 "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
35 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." 5 10

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 as follows:

"If the term 'prima facie' 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." 15 20

In granting or refusing an application for leave to apply for an order of certiorari or mandamus in a case of this nature the Court has to exercise a discretion. 25

I am satisfied, at this stage, in the light of the material before me, and without considering it necessary to go now into the matter thoroughly, that the applicant has a prima facie arguable case that the trial Judge may not have complied with the directions of the Supreme Court when the summons for directions was referred back to him for consideration. 30

In the circumstances I grant leave to the applicants to file an application for an order of certiorari and an order of mandamus within one month. 35

Application granted.