

1985 February 8

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS,
DEMETRIADES, SAVVIDES, LORIS, STYLLANIDES, JJ.]

NICOS ROUSOS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTRY OF INTERIOR,

Respondents.

(Revisional Jurisdiction Appeal No. 429).

GAVRIEL LOUCAIDES,

Appellant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 430).

Practice—Recourse for annuement—Absence of applicants and their Counsel—Dismissal by trial Judge for want of prosecution by being treated, prima facie, as having been abandoned—Reinstatement—Dismissals not final orders against which revisional jurisdiction appeals could be filed—Such appeals could only be filed if trial Judge after having been moved to reinstate the recourses refuses to do so—Extent of applicability of the Civil Procedure Rules and of relevant principles applicable to civil proceedings generally and to civil appeals in particular—Differentiation to be made in the relevant procedure between reinstating an action and reinstating a recourse.

In the absence of the appellants and their Counsel the trial Judge dismissed the recourses of the appellants, for what was found by him to be, in effect, want of prosecution. The appeals against the dismissal of the recourses were not heard on their merits but only on the preliminary issue, which was raised by the Court, of whether they could have been filed prior to the outcome of applications for reinstatement of the aforementioned recourses which were filed by the appellants on the 2nd January 1985 and 4th January 1985, respectively, and which were fixed for hearing on the 9th February, 1985 before the Judge who dismissed such recourses.

Held, (1) that since the recourses of the appellants were dismissed for what was found by the trial Judge to be, in effect, want of prosecution it appears that they were treated by him, prima facie and in the absence of the appellants and of their counsel, as having been abandoned; that a recourse under Article 146 which has been treated as abandoned and has been dismissed accordingly has to be reinstated if it has not been actually been abandoned so that the Court can proceed to determine it in accordance with the provisions of Article 146 of the Constitution and particularly, of paragraph (4) thereof and its reinstatement is a matter within the competence of the Judge of this Court who is dealing with such recourse (see *Tsingis v. Republic* (1984) 3 C.L.R. 1262); that once the recourses of the appellants have not been taken directly by the Full Bench of this Court, as it could have done in the exercise of its powers under section 11(1) of Law 33/64, but were fixed, according to standing arrangements of this Court for the purposes of section 11(2) of the said Law, before one of its Judges, they became judicial proceedings pending before the trial Judge and not before the Full Bench of this Court; and that as such recourses were dismissed by the trial Judge for want of prosecution after having been treated by him, prima facie, as abandoned, their dismissals are not final orders against which the present revisional jurisdiction appeals could be

filed; that such appeals can only be filed if the trial Judge, after having been moved to reinstate the recourses concerned, refuses to do so; and that as the applications of the appellants in the present cases for reinstatement of their recourse have not yet been determined these appeals are premature and have to be dismissed as such, but with no orders as to their costs.

Held, further, on the question of the applicability of the Civil Procedure Rules, pursuant to rule 18 of the Supreme Constitutional Court Rules of Court and rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court, 1964, and of relevant principles of law applicable to civil proceedings generally and to civil appeals in particular:

- (1) That the Civil Procedure Rules and the said principles are applicable mutatis mutandis to first instance proceedings in recourses under Article 146 and to revisional jurisdiction appeals only to the extent to which their application is consonant with the nature of the judicial control exercised by virtue of the jurisdiction created by the said Article 146 and with the two-tier "Single-Judge" and appellate jurisdiction of this Court under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) (relevant dicta delivered by A. Loizou J., Savvides J., Loris J. and Styliani-des J. in *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, 250, 258, 261, 267 affirmed).

Observations with regard to the differentiation to be made, in the relevant procedure, between restoring to the list an action which has been dismissed by default and reinstating a recourse which has been dismissed for want of prosecution as prima facie abandoned (vide pp. 126-127 post).

Appeals dismissed

Cases referred to:

President of the Republic v. Louca (1984) 3 C.L.R. 241 at pp. 250, 258, 261, 267;

- Dafnides v. Republic*, 1964 C.L.R. 180 at p. 185;
Christou v. Republic, (1969) 3 C.L.R. 134 at pp. 148, 150;
Antonίου v. Republic (1978) 3 C.L.R. 308 at p. 312;
Razis v. Republic (1982) 3 C.L.R. 45 at pp. 49, 50;
CY.T.A v. Republic (1983) 3 C.L.R. 1350 at p. 1353; 5
Republic v. Vassiliades (1967) 3 C.L.R. 82 at p. 88;
Pikis v. Republic (1968) 3 C.L.R. 303 at p. 305;
Constantinides v. Republic (1969) 3 C.L.R. 523 at p. 530;
Republic v. Georghiades (1972) 3 C.L.R. 594 at p. 690;
Tsingis v. Republic (1984) 3 C.L.R. 1262; 10
Re Edward's Will Trust, Edwards v. Edwards [1981]
2 All E.R. 941 at p. 949.

Appeals.

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (Pikis J.) given on the 28th February, 1985, (Revisional Jurisdiction Case Nos. 538/84 and 607/84)* whereby he dismissed the above recourses due to the absence of applicants and their counsel. 15

A. S. Angelides, for appellant in R. A. 429.

L. Papaphilippou with *D. Papachrysostomou*,
for appellant in R. A. 430. 20

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. These two appeals, which were heard together. 25

* Reported as *Theodosiadou and Others v. The Republic* (1985) 3 C.L.R. 178.

ther in view of their closely similar nature, were filed on the 5th January 1985 against judgments of a Judge of this Court which were delivered on the 22nd December 1984 and by means of which there were dismissed the re-
5 courses of the appellants under Article 146 of the Constitution against the promotion of Antonis Koufettas to the post of Land Officer 1st Grade (538/84 and 607/84, respectively).

10 Koufettas was duly notified both about the recourses and these appeals, as an interested party, and he appeared before us on the 29th January 1985 and stated that he did not wish to take part in the proceedings on his own and that he was leaving the matter in the hands of counsel appearing for the respondents.

15 The present appeals were not heard by us on their merits but only on the preliminary issue, which was raised by the Court, of whether they could have been filed prior to the outcome of applications for reinstatement of the afore-
20 mentioned recourses which were filed by the appellants on the 2nd January 1985 and 4th January 1985, respectively, and which are fixed for hearing on the 9th February 1985 before the Judge who dismissed such recourses.

Both recourses had come up before the learned trial Judge on the 21st December 1984 for directions and they
25 were dismissed on the 22nd December 1984, in the absence of the appellants and their counsel, for what was found by him to be, in effect, want of prosecution for reasons which were dealt with in his judgments but which it is neither necessary nor advisable to expound in our
30 present judgment.

We take judicial notice of the fact that another recourse, 560/84, against the same promotion of interested party Koufettas, was filed by Theodoros Marinos, and was, also, dismissed on the 22nd December 1984 by the same Judge
35 again for want of prosecution, but no appeal was made against its dismissal and only an application for its reinstatement was filed on the 2nd January 1985, which is, also, fixed for hearing before the trial Judge on the 9th February 1985.

Obviously, the two recourses in relation to the dismissal of which the present appeals have been made and the said other recourse by applicant Marinos had to be heard and determined together by the same Judge as they have been made against one and the same subject-matter, that is the aforesaid promotion of interested party Koufettas.

A perusal of the first instance judgments by means of which the appellants' recourses were dismissed on the 22nd December 1984 discloses that they are not judgments determining such recourses on their merits and given pursuant to the powers of the trial Judge under paragraph (4) of Article 146 of the Constitution, nor on any ground rendering the recourses liable to be dismissed on the basis of the application of the provisions of paragraphs (1) or (2) or (3) of the said Article 146.

In dealing with the aforementioned preliminary issue, which we have to determine in relation to the fate of the present appeals, we have heard arguments regarding the applicability of the Civil Procedure Rules, pursuant to rule 18 of the Supreme Constitutional Court Rules of Court and rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court, 1964, and of relevant principles of law applicable to civil proceedings generally and to civil appeals in particular.

In our view the Civil Procedure Rules and the said principles are applicable *mutatis mutandis* to first instance proceedings in recourses under Article 146 and to revisional jurisdiction appeals only to the extent to which their application is consonant with the nature of the judicial control exercised by virtue of the jurisdiction created by the said Article 146 and with the two-tier "Single-Judge" and appellate jurisdiction of this Court under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64); and we affirm, in this respect, relevant dicta in the judgments delivered by four of us (A. Loizou J., Savvides J., Loris J. and Stylianides J.) in *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241. 250, 258, 261, 267.

As regards the inquisitorial nature of the judicial control exercised by virtue of the jurisdiction created by Article

146 of the Constitution useful reference may be made to, inter alia, *Dafnides v. The Republic*, 1964 C.L.R. 180, 185, *Christou v. The Republic*, (1969) 3 C.L.R. 134, 148, 150, *Antonίου v. The Republic* (1978) 3 C.L.R. 308, 312.
 5 *Razis v. The Republic*, (1982) 3 C.L.R. 45, 49, 50, *The Cyprus Telecommunications Authority v. The Republic*, (1983) 3 C.L.R. 1350, 1353 and *The President of The Republic v. Louca*, supra, 267.

10 In relation to the nature of the "Single-Judge" and appellate jurisdiction under section 11(2) of Law 33/64 it is pertinent to refer to, inter alia, *The Republic v. Vassiliades*, (1967) 3 C.L.R. 82, 88, *Pikis v. The Republic*, (1968) 3 C.L.R. 303, 305, *Constantinides v. The Republic*, (1969) 3 C.L.R. 523, 530. *The Republic v. Georghiades*, (1972)
 15 3 C.L.R. 594, 690 and *The President of The Republic v. Louca*, supra, 258, 265, 266.

As already stated in this judgment the two recourses of the appellants were dismissed for what was found by the trial Judge to be, in effect, want of prosecution; and it
 20 appears, therefore, that they were treated by him, prima facie and in the absence of the appellants and of their counsel, as having been abandoned.

As is indicated by the case of *Tsingis v. The Republic* (case No. 344/82 to be reported in the 1984 3 C.L.R.) * a
 25 recourse under Article 146 which has been treated as abandoned and has been dismissed accordingly has to be reinstated if it has not actually been abandoned so that the Court can proceed to determine it in accordance with the provisions of Article 146 of the Constitution and, particularly, of paragraph (4) thereof; and its reinstatement is
 30 a matter within the competence of the Judge of this Court who is dealing with such recourse.

Once the recourses of the appellants have not been taken directly by the Full Bench of this Court, as it could have
 35 done in the exercise of its powers under section 11(1) of Law 33/64, but were fixed, according to standing arrangements of this Court for the purposes of section 11(2) of the said Law, before one of its Judges, they became judicial proceedings pending before the trial Judge and not before
 40 the Full Bench of this Court; and, as such recourses were

* Reported in (1984) 3 CLR 1262.

dismissed by the trial Judge for want of prosecution after having been treated by him, prima facie, as abandoned, their dismissals are not final orders against which the present revisional jurisdiction appeals could be filed. Such appeals can only be filed if the trial Judge, after having been moved to reinstate the recourses concerned, refuses to do so.

The above approach is consonant with the principles which govern the setting aside of a judgment obtained in civil proceedings when one of the parties does not appear at the trial. It is well established that in such a case the application for setting aside such judgment should be made, if possible, to the Judge who has tried the case and that even when the Appeal Court has power to entertain an appeal directly from that judgment the proper course is for the defaulting party to apply to the Judge who heard the case for the setting aside of his judgment (see, in this respect, inter alia, the Supreme Court Practice in England (1982), vol. 1, part. I, p. 620 and the judgment of Backley LJ in *Re Edwards' Will Trusts, Edwards v. Edwards*, [1981] 2 All E. R. 941, 949).

A basic differentiation must, however, be made between restoring to the list an action which has been dismissed by default and reinstating a recourse which has been dismissed for want of prosecution as prima facie abandoned, by stressing that before an application for reinstatement has been made to the trial Judge and before it has been dealt with by him there is no right of the applicant in such recourse to appeal against its dismissal. In our opinion this differentiation is necessary in view of the nature of a recourse under Article 146 of the Constitution, of the nature of the judicial control exercised under such Article, of the nature of the two-tier "Single-Judge" and appellate system provided by section 11(2) of Law 33/64 and of the general principles of administrative law relating to the abandonment of a recourse.

With all the foregoing in mind we have reached the conclusion that as the applications of the appellants in

the present cases for reinstatement of their recourses have not yet been determined these appeals are premature and have to be dismissed as such, but with no orders as to their costs.

Appeal dismissed.