

1986 February 14

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

IN THE MATTER OF THE WILLS AND SUCCESSION  
LAW, CAP. 195,

AND

IN THE MATTER OF S. 3 OF THE CONVENTION ON  
THE LEGAL STATUS OF THE CHILDREN BORN OUT OF  
WEDLOCK (RATIFICATION) LAW, 50/79,

AND

IN THE MATTER OF E.S., AN INFANT.

(Civil Appeal No. 7101).

*The Civil Procedure Rules, Order 35, r. 18—Stay of Proceedings  
—Application for—Pending appeal against a ruling dis-  
missing an interlocutory application that the parties in a  
legitimation petition and the child do submit to a blood test  
—Order 35, r.18 does not confer jurisdiction to stay the  
proceedings before the District Court pending the determi-  
nation of the appeal against said ruling—Matters to which  
the application of Order 35, r. 18 is confined.*

*Stay of proceedings—Pending appeal against ruling dismissing  
an interlocutory application: See The Civil Procedure  
Rules.*

*Constitutional Law—Constitution, Article 30.1.*

In the course of the hearing of a legitimation petition  
an interlocutory application was made by the respondent  
for a direction that the petitioner, the respondent as well  
as the child do submit to a blood test. The application was  
dismissed. The respondent in the petition (applicant in  
these proceedings) appealed. The appeal was followed by  
an application, in the first place, before the trial Court for  
stay of proceedings pending the appeal. After its dis-  
missal the application was renewed before this Court.

The foremost question in issue in this application is

whether under Order 35 rule 18 of the Civil Procedure Rules there is jurisdiction to stay proceedings before the District Court pending the determination of the said appeal against the ruling dismissing the interlocutory application relating to the blood test. 5

*Held, dismissing the application:* (1) The jurisdiction under Order 35, r.18 is confined to two matters, namely the execution of the order or judgment under appeal and proceedings under the decision appealed from.

(2) The proceedings that the applicant wishes us to stay are exclusively connected with the legitimation petition under trial before the District Court. They are neither intended to execute the ruling, excluding the admission of certain evidence, nor are they in any way incidental or dependent upon the ruling of the Court. Rule 18 does not confer power to stay proceedings in general or in connection with any matter other than those explicitly enumerated in the rule here under consideration. 10 15

(3) Considering the drastic implications of an order staying proceedings and the limitation inherent in such order to the right of access to the Courts safeguarded by Article 30.1 of the Constitution, there is no justification in principle for giving Order 35, r.18 an interpretation wider than its wording admits. 20

*Application dismissed.* 25  
*No order as to costs.*

Cases referred to:

*Fotiou and Another v. Petrolina Ltd.* (1984) 1 C.L.R. 708;

*Christofidou v. Nemitsas* (1963) 2 C.L.R. 269;

*In Re J.B. Palmers Application* [1882] 22 Ch. D. 88; 30

*Republic v. Samson* (1977) 2 C.L.R. 1;

*Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63.

**Application.**

Application by appellant for a stay of the proceedings before the District Court of Nicosia pending the determina- 35

tion of an appeal against the ruling of the trial Court in Legitimation Petition No. 7/84 given on the 13th January, 1986 whereby an application for a direction that the parties submit to a blood test was dismissed.

- 5           *K. Michaelides* with *M. Georghiou*, for the appellant.  
              *L. Clerides*, for the respondent.

A. LOIZOU J.: At the conclusion of the appeal on 12.2. 1986 we dismissed the application. Justice Pikiis will now deliver our reasons for our decision.

- 10           PIKIS J.: The foremost issue in this proceeding is the  
              existence, if any, of jurisdiction under Ord. 35, r. 18 of  
              the Civil Procedure Rules to stay proceedings before the  
              District Court pending the determination of an appeal  
              against a ruling of the trial Court dismissing an application  
15           for a direction that the parties submit to a blood test. If  
              discretion vests to stay the proceedings, the further question  
              arises whether the facts warrant its exercise in favour of  
              the applicant. A similar application for stay before the  
              District Court, made pursuant to the provisions of Ord. 35,  
20           r. 19, was dismissed for the reasons indicated in the ruling  
              of the learned trial Judge of 1.2.86. Before we answer the  
              questions raised, it is advisable to make brief reference to  
              the history of the proceedings initiated by the legitimation  
              petition of the mother of the minor E. S. the petitioner in  
25           this case. In the course of the hearing of the petition an  
              interlocutory application was made by the respondent for a  
              direction that the petitioner, the respondent, as well as the  
              child, do submit to a blood test. The application was dis-  
              missed. The applicant appealed against that decision. The  
30           appeal was followed by an application, in the first place  
              from the trial Court for stay of the proceedings, renewed  
              before us after its dismissal. The hearing of the petition  
              reached an advanced stage; the case for the petitioner was  
              closed after the adduction of the evidence of nine witnesses.
- 35           Counsel for the applicant made a valiant effort to per-  
              suade us we have jurisdiction under Ord. 35, r. 18 to stay  
              the proceedings, inviting us in the course of his argument  
              to depart from the decision of Triantafyllides, P., in *Fotiou*

and *Another v. Petrolina Limited*,<sup>1</sup> where he ruled that jurisdiction to stay is confined to steps in execution and proceedings founded on the decision under appeal. Analysis of the provisions of Ord. 35, r. 18 proves convincingly that the approach of Triantafyllides, P. in *Fotiou* was correct. 5

Even if we assume that the decision of the trial Court, on the issue of a blood test, essentially a ruling on the admissibility of evidence, is an appealable decision in the sense of r.2 and r.18 of Ord. 35, Civil Procedure Rules, a doubtful proposition in view of the decision in *Christophidou v. Nemitsas*<sup>2</sup>, jurisdiction to stay under r. 18 is expressly confined to two matters: 10

- (a) The execution of the order or judgment under appeal. "Execution" in the context of the Civil Procedure Rules encompasses every proceeding designed to enforce a judgment or order. And this is the sense in which "execution" should be understood and applied under the rule here under consideration. 15
- (b) Proceedings under the decision. Here, again, we are concerned with proceedings incidental to the decision appealed, such as garnishee proceedings and proceedings under the Fraudulent Transfers Avoidance Law—Cap. 62. 20

The proceedings that the applicant wishes us to stay are exclusively connected with the legitimation petition under trial before the District Court. They are neither intended to execute the ruling, excluding the admission of certain evidence, nor are they in any way incidental or dependent upon the ruling of the Court. Rule 18 does not confer power to stay proceedings in general or in connection with any matter other than those explicitly enumerated in the rule here under consideration. Nor is there any justification in principle for giving Ord. 35, r. 18 an interpretation wider than its wording admits, considering the drastic implications of an order staying proceedings and the limitation inherent in 25 30 35

<sup>1</sup> (1984) 1 C.L.R. 708.

<sup>2</sup> (1963) 2 C.L.R. 289.

any such order to the right of access to the courts safeguarded by Article 30.1 of the Constitution. We shall not, of course, in these proceedings, attempt to define the ambit of Article 30; we confine ourselves to drawing attention  
5 to the fact there is no reason in principle why we should give to Ord. 35, r. 18 an interpretation broader than its plain provisions warrant.

The decision *In Re J. B. Palmers Application*<sup>1</sup> relied upon by counsel for the applicant in support of his submission for an extended interpretation of Ord. 35, r. 18,  
10 in no way compels us to give a wider interpretation to Ord. 35 r. 18. Decision on a demurrer or a preliminary objection to the viability of the proceedings, as defined in the claim, is interwoven with the fate of the action itself.  
15 And in a sense inextricable from the decision. It is not analogous either to a ruling on an interlocutory matter and far less to a ruling on the admissibility of evidence. In any event, the Court of Appeal in that case did not attempt to define the limits of the jurisdiction under a rule  
20 of identical content with Ord. 35 r. 18.

It is instructive to note that Ord. 58, r. 12 of the old English rules that corresponds to an extent to Ord. 35, r. 18 of our Rules, expressly provided in r. 12(1) (b), “no  
25 intermediate act or proceeding shall be invalidated by an appeal.” In the explanatory note in the White Book<sup>2</sup>, on the scope and application of the aforementioned Ord. 58 r. 12, not a single case is cited where the trial was stayed pending the outcome of an appeal on an interlocutory matter or on a matter of admissibility of evidence.

30 In face of the clear and unambiguous wording of Ord. 35, r 18, it is unprofitable to look further for the bounds of the jurisdiction of the Court thereunder. Moreover, as a matter of practice, piecemeal litigation should be discouraged. Even where there is a statutory right to take an  
35 appeal on an intermediate matter by reserving a question of law for the Supreme Court, as in the case of s. 148 of the Criminal Procedure Law, the power should on au-

<sup>1</sup> [1982] 22 Ch. D. 88.

<sup>2</sup> The Annual Practice 1958, Vol. 1, p. 1697.

thority be sparingly exercised and always with due regard to the need to ensure the unimpeded trial of a case<sup>1</sup>.

The application for stay is dismissed. There shall be no order as to costs.

*Application dismissed.*

*No order as to costs.*

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<sup>1</sup>See, Republic v. Samson (1977) 2 C.L.R. 1, 71-72 (Judgment of A. Loizou, J.); Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63.