

1986 May 20

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 155(4) OF THE  
CONSTITUTION AND S. 9 OF THE COURTS OF  
JUSTICE (MISCELLANEOUS PROVISIONS)  
LAW, 1964,

AND

IN THE MATTER OF AN APPLICATION BY  
ROGHIROS GEORGHIOU FOR LEAVE TO  
APPLY FOR AN ORDER OF CERTIORARI.

(Civil Application No. 36/86).

*Prerogative Orders—Certiorari—Application for leave to apply for—Applicant should make out a prima facie case—What constitutes a “prima facie” case—The Guardianship of Infants and Prodigals Law, Cap. 277—Application thereunder by mother of two infant children for removing R. G. and appointing her as their guardian and for giving her the custody of them—Application granted on the date when the same was fixed for mention in the absence of R. G. and his advocate—Allegation that his advocate appeared before the Court at 10.45 a.m. on that day, when she was informed that the application had been granted—In the light of the material before the Court R. G. succeeded in making out a prima facie arguable case—Leave to apply for an order of certiorari granted.*

15        Phivi Michael, the mother of two infant children, applied to the D. C. Nicosia by summons for an order removing Roghiros Georghiou as guardian of the two infants, an order appointing her as their guardian and an order giving her the custody of the said infants. Miss  
20        Kekkou, a practising advocate, who appeared for Roghiros Georghiou stated that the application was opposed. As a result the application was adjourned for mention to 27.3.86 with directions that in the meantime opposition to be filed. The record of the proceedings for 27.3.86 reads:

25        “For applicant: Mr. Koutras.

Respondent absent, no appearance.

No opposition filed.

Court: Having read the affidavit I grant the application without costs".

Hence the present application for leave to apply for an order of Certiorari. In the affidavit in support it is stated that Miss Kekkou appeared before the Court at 10.45 a.m., when she was informed that the application had already been granted. 5

Counsel for the applicant submitted that under Cap. 277 and the relevant rules an order of such nature as the one made can only be made when the application is fixed for hearing; that under the Civil Procedure Rules, proceedings in default of pleadings can only proceed on application for judgment by default; that the principle of natural justice to hear the other party was violated; that Article 32 of the Constitution was also violated; and that no reasons whatsoever were given for granting the application. 10 15

*Held, granting leave to apply for an order of certiorari :* 20

(1) In granting or refusing the leave applied for in a case of this nature a discretion has to be exercised. The question is whether on the material before the Court a prima facie case has been made out sufficiently to justify the leave applied for. 25

(2) In the present case, in the light of the material before the Court, a prima facie case has been made out.

*Application granted.*

Cases referred to: 30

*Ex-parte Marouletti* (1970) 1 C.L.R. 75;

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

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

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

*In Re HjiSoteriou and Another* (1985) 1 C.L.R. 387;

*In Re Mobil Oil Cyprus Ltd.* (1985) 1 C.L.R. 781;

*In Re Loucaides Ltd.* (1986) 1 C.L.R. 154;

5 *Ex parte Costas Papadopoulos* (1968) 1 C.L.R. 496.

### Application.

Application for leave to apply for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Nicosia (Hadjiconstantinou, S.D.J.)  
10 in the exercise of civil jurisdiction under the Guardianship of Infants and Prodigals Law, Cap. 277 whereby the applicant was removed as guardian of the infants Yiangos Georghiou and Electra Georghiou and Phivi Michael was appointed as guardian of the said infants.

15 *Chr. Clerides*, for the applicant.

*Cur. adv. vult.*

SAVVIDES J. read the following ruling. This is an application for leave to apply for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Nicosia in the exercise of civil jurisdiction  
20 in Application No. 15/86 under the Guardianship of Infants and Prodigals Law, Cap. 277, whereby the applicant was removed as a guardian of the infants Yiangos Georghiou and Electra Georghiou and the care and control  
25 of the infants was granted to Phivi Michael who was appointed as guardian of the said infants.

The facts of the case as emanating from the affidavit sworn in support of the application, are briefly as follows :

30 Phivi Michael, of Nicosia, the mother of two infant children, Eleni and Yiangos Georghiou, applied to the District Court of Nicosia by summons, praying for, inter alia :

(a) An order of the Honourable Court removing Roghiros  
35 Georghiou as guardian of the infants Electra Georghiou and Yiangos Georghiou.

(b) An order of the Honourable Court appointing the applicant as the guardian of her infant children Yiangos and Electra Georghiou and as the guardian of their property.

(c) An order of the Honourable Court giving the applicant custody and care of her infant children Electra and Yiangos Georghiou. 5

As it appears from the record of the proceedings, copy of which was filed with this application, Miss Kekkou a practising advocate, appeared in Court on behalf of the respondent Roghiros Georghiou—applicant in the present proceedings—and stated that the application of Phivi Michael was opposed and as a result the application was adjourned to 27.3.1986 for mention with directions that in the meantime opposition to be filed. On 27.3.1986 the day on which the case was fixed for mention, the case which on that date was handled by a different Judge, namely, H. H. Hadjiconstantinou, Senior District Judge, the Court granted the application in the absence of the respondent or his counsel. The record of the Court reads as follows: 10 15 20

“For applicant: Mr. Koutras.

Respondent absent, no appearance.

No opposition filed.

*Court:* Having read the affidavit I grant the application without costs. 25

(Sgd) A. Hadjiconstantinou,

S. D. J.”

According to the affidavit in support of the application, Miss Kekkou appeared before the Court at 10.45 a.m. and she was informed that the application had already been granted. 30

The grounds upon which leave is sought are, briefly, that the Court wrongly and in excess of power proceeded to the issue of the order of guardianship applied for and 35

that wrongly and in violation of the principle of the rules of natural justice to hear the other party and also in violation of the provisions of the Constitution and the Civil Procedure Rules, the Court proceeded to the making of  
5 the order. Also, that the Honourable Judge Mr. Hadjiconstantinou acted in abuse of powers.

In arguing his case, counsel for applicant submitted that under the Guardianship of Infants and Prodigals Law, Cap. 277 and the relevant rules, an order of this nature  
10 can only be granted on the day when the application is fixed for hearing. Also, under the Civil Procedure Rules, proceedings in default of pleadings can only proceed on the application of the applicant to obtain judgment by default. In the present case, counsel submitted, on the date  
15 when the order was made, the action was not fixed for hearing, the Court could not and should not have proceeded to grant the application on such date without any request for judgment by default on the part of the applicant. In the way that the Court has acted, counsel concluded, the respondent whose advocate appeared on that  
20 day a little delayed, was deprived of his right to be heard and present his case in violation of Article 32 of the Constitution, also that in the judgment of the Court, no reasons whatsoever are given for granting the application, but merely a statement that the application is granted.  
25

In granting or refusing an application for leave to apply for an order of certiorari in a case of this nature the Court has to exercise a discretion. The question which I have to decide at this stage is not as to whether the  
30 order 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 to issue an order of certiorari". (Per *Josephides, J.* in *Ex-parte Costas Papadopoulos* (1968) 1  
35 C.L.R. 496. See also *Ex-parte Loucia Kyriacou Christou Marouletti* (1970) 1 C.L.R. 75, 77 and in *Re Nina Panaretou* (1972) 1 C.L.R. 165).

What constitutes a prima facie case has been expounded by Lord Diplock, L. J. in *Sidnell v. Wilson and Others*  
40 [1966] 1 All E.R. p. 681 at p. 686 to which reference

has been made by the Full Bench in the recent case of *In Re Kakos* (1985) 1 C.L.R. 250).

The principles governing the grant of leave to apply for an order of certiorari have also been expounded in the most recent decisions of this Court in *Re HjiSoteriou and Another* (1985) 1 C.L.R. 387 and in *Re Mobil Oil Cyprus Ltd.* (Application No. 49/85 in which the decision was delivered on 1st November, 1985 and will be reported in (1985) 1 C.L.R.),\* and in *Re Loucaides Ltd.* (Civil Application No. 110/85\*\* in which judgment was delivered on the 12th February, 1986.)

In the light of the material before me, I am satisfied that a prima facie arguable case has been made out and I make the following order.

(a) The applicant is granted leave to apply in this case for an order of certiorari within one month from today.

Any opposition to be filed within one month from service of such application.

(b) Any proceedings in execution of the judgment in Civil Application 36/86 of the District Court of Nicosia are hereby stayed for one month from today and if applicant applies within that period for an order of certiorari then such stay shall continue to be operative until further order of this Court, provided that any party affected by the stay of the execution ordered as above, shall be at liberty to show cause at any time why such stay should not continue to be operative.

(c) Copy of this order to be sent to the Registrar of the District Court of Nicosia and be communicated to the Judge concerned.

*Order accordingly.*

\* Now reported in (1985) 1 C.L.R. 781.

\*\* Reported in (1986) 1 C.L.R. 154.