

1986 July 18

[STYLIANIDES, J.]

IN THE MATTER OF AN APPLICATION BY MIKIS
SIDERIS, FOR LEAVE TO APPLY FOR AN ORDER
OF CERTIORARI,

— AND —

IN THE MATTER OF THE DIRECTIONS AND/OR RULING
AND/OR ORDER DATED 26.6.86 MADE BY THE
DISTRICT JUDGE OF THE DISTRICT COURT OF
NICOSIA, MR. GLAFKOS MICHAELIDES, D.J., IN
THE MAINTENANCE APPLICATION NO. 39/85
PENDING BEFORE THE DISTRICT COURT OF
NICOSIA.

(Application No. 51/86).

*Prerogative Orders—Certiorari—It does not lie, if the act
sought to be reviewed is not a judicial act—Allegation
that the respondent in a Maintenance application, who
through his counsel obtained adjournment of the hearing
on the ground that he was absent abroad, was not in
fact abroad—Directions that relevant record be sent to
the Police for investigation—Said directions not a ju-
dicial act.*

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The Courts of Justice Law 14/60—Section 44(1) (i) (a).

On 12.6.86 the advocate of the respondent in a Main-
tenance application brought by the latter's wife applied
for an adjournment of the hearing fixed on that date on
the ground that the respondent is absent abroad. As a
result the hearing was adjourned to 26.6.86.

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On 25.6.86 the wife sworn an affidavit stating, inter
alia, that on the 12.6.86, after she left the Court-house,
she and her advocate personally saw the respondent, who,
therefore, was not absent abroad.

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On 26.6.86 the trial Judge, after referring, *inter alia*, to s. 44 (1) (i) (a) of Law 14/60 issued directions that the minutes of the Court of 12.6.86, the said affidavit and all that was stated by counsel of the parties on the
 5 26.6.86 to the Court be sent by the Registrar to the Police for investigation.

Hence the present application for leave to apply for an order of certiorari to quash the said directions.

Held, dismissing the application: (1) Certiorari exists to correct error of law where revealed on the face of
 10 an order or decision, or irregularity, or absence of, or excess of Jurisdiction where shown.

(2) In this case the trial Judge did not make any adjudication on the rights of the parties. The directions
 15 given are not a judicial act in the sense of *Christofi and Others v. Iacovidou* (1986) 1 C.L.R. 236. It follows that certiorari does not lie.

Observation by the Court: The handling of the matter by the trial Judge on 26.6.86 was not the proper one.

20 *Application dismissed.*

Cases referred to:

R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw [1952] 1 K.B. 338;

Hetherington v. Security Export Co. [1924] A.C. 988;

25 *Christofi and Others v. Iacovidou* (1986) 1 C.L.R. 236;

In re Droushiotis (1981) 1 C.L.R. 708.

Application.

Application for leave to apply for on order of certiorari in order to bring up and quash the directions of
 30 a District Judge of the District Court of Nicosia given

on 26.6.1986 in Maintenance Application No. 39/85 whereby it was ordered that record of the Court be sent to the Police for investigation as to an alleged contempt of Court.

Chr. Mitsides with M. Savva (Mrs.), for the applicant. 5

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by means of this application seeks leave to issue order of certiorari to bring up and quash "the directions made by a District Judge of the District Court of Nicosia on 26.6.86 that a Police investigation be carried out in order to establish whether an alleged act of contempt of Court has been committed by the applicant". 10

The applicant in the present case was the respondent in Maintenance Application No. 39/85 of the District Court of Nicosia, prosecuted by his wife claiming maintenance for herself and their two infant children. 15

On 12.6.86, the 5th hearing of the maintenance application, when the respondent was due to give oral evidence, he did not attend the Court and his advocate applied for adjournment on the ground that his client was abroad. Counsel appearing for the wife informed the District Judge that the client of Mr. Mitsides was in Cyprus. The Court made a 10 minutes' break obviously in order to enable counsel to make further inquiries. Mr. Mitsides after the break stated that despite his efforts he did not manage to ascertain where his client was and repeated his application for adjournment. The trial Judge adjourned the hearing to the 26th June, 1986. 20 25

On the 25th June, 1986, an affidavit was sworn by the wife, in which she deposed the happenings of 12.6.86 in Court. She further stated that after her departure from the Courthouse on 12.6.86 she and her advocate saw personally the respondent in Nicosia town and, therefore, 30

he was not abroad. The last paragraph of the affidavit reads:-

5 “The aforesaid I bring to the knowledge of the Court as I deem it a serious contempt of Court and as I believe that intentionally the respondent tries to delay the trial of this case in order to cause financial problem to me and my children, well knowing that the amount that is being paid for the maintenance of myself and my children is inadequate”.

10 An *uncertified* copy of this affidavit was delivered to one of the advocates of the respondent in the morning of 26.6.86

15 When the case was called up, counsel for the wife drew the attention of the Court to the filing of that affidavit. The Judge asked what was the object of the filing of the affidavit and counsel replied that in his opinion the facts deposed constituted a contempt of Court. Mr. Mitsides, on the other hand, said that the affidavit could not be taken into consideration for any purpose; when asked by 20 the Judge about the contents of the affidavit, he stated that there were no contempt proceedings before the Court. He objected that the affidavit was irregularly filed and received and finally he stated that the contents thereof are not correct.

25 The Judge thereupon, after referring to the oral statements of counsel of the wife, the affidavit and the provisions of s. 44 (1) (i) (a) of the Courts of Justice Law, which make it a criminal offence for any person to commit an act of intentional disrespect to any judicial proceeding or to any person before whom such proceeding is 30 being had or taken, he stated that two questions are raised: (a) Whether the act was committed, and, (b) if the allegation should be investigated upon, and continued that having regard to the material placed before him and 35 the serious way in which they were supported, i.e. affidavit and report by the advocate of the wife, he ex-

pressed the opinion that the matter should be investigated upon by the Police, and ultimately he made the following directions:-

«Δίδονται επομένως οδηγίες όπως τα πρακτικά του Δικαστηρίου ημερομηνίας 12.6.86, η ένορκος δήλωση ημερομηνίας 25.6.86 και όλα όσα ανέφεραν σήμερα προς το Δικαστήριο οι δικηγόροι κ.κ. Κλεόπας και Μιτσιδης σταλούν υπό του Πρωτοκολλητού προς τις Αστυνομικές Αρχές διά διερεύνηση της καταγγελίας. Το θέμα, επομένως, δια το Δικαστήριο τούτο θεωρείται ως λήξαν εις αυτό το στάδιο».

("Directions are given that the minutes of the Court of 12.6.86, the affidavit dated 25.6.86 and all that was stated today to the Court by the advocates, Mr. Kleopas and Mr. Mitsides, be sent by the Registrar to the Police authorities for investigation of the report. The matter, therefore, is deemed as over for the Court at this stage").

These are the directions for which the applicant seeks leave for the issue of an order of certiorari.

The application is based on the following grounds:-

- (a) The said direction or order was made in excess or lack of jurisdiction;
- (b) The said order was wrong in law; and,
- (c) There is an error of law on the face of the record.

Certiorari exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it—(*R. v. Northumberland Compensation*

Appeal Tribunal, ex-parte Shaw, [1952] 1 K. B. 338, at p. 357).

5 Certiorari requires the record or the order of the Court to be sent up to the Supreme Court to have its legality inquired into and, if necessary, to have the order quashed. Only judicial acts are subject to review by the prerogative order of certiorari—(*Hetherington v. Security Export Co.*, [1924] A. C. 988; *Manolis Christofi and Others v. Nina Iacovidou*, Civil Appeals No. 7063, 7065 and 7069*—
10 30th May, 1986, a Full Bench case; *In re Droushiotis*, (1981) 1 C.L.R. 708).

15 The primary purpose of judicial review by means of prerogative orders is to ensure that the inferior tribunals operate within the limits of their jurisdiction and exercise their powers within the limits set by Law.

In *Manolis Christofi and Others* (supra), a Full Bench case, it was said:-

20 “A judicial act is one issued by a Judge or Court and which involves exercise of discretion or judgment. It is an act by a Court touching the rights of parties or property brought before it. An administrative or ministerial act may have some of the characteristics of a judicial act. Though it may require exercise of discretion and due inquiry, it does not become a
25 judicial act.

When the decision is that of a Court, then, unless the Judge is acting in a purely ministerial capacity, it is clearly under a duty to act judicially”.

30 The District Judge in this case did not make any adjudication on the rights of the parties. The directions issued are not a judicial act in the sense of the Law, as delineated in the *Christofi* case above. The directions

* Now reported in (1986) 1 C.L.R. 236.

sought to be reviewed are not a judicial act and, therefore, certiorari does not lie. This is an unsurmountable obstacle to this application.

The handling of the matter by the District Judge on 26.6.86 is not the proper one and is an example to be avoided. Nevertheless, the road to certiorari is closed to the applicant as the act complained of is of ministerial character. 5

Leave is refused—Application dismissed.

Application dismissed. 10