

1986 August 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION AND SECTION 3 OF THE COURTS OF JUSTICE (MISCELLANEOUS PROVISIONS) LAW, 1964,

AND

IN THE MATTER OF AN APPLICATION BY LOUCIS P. LOUCAIDES LTD., OF NICOSIA, FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

AND

IN THE MATTER AND/OR ORDER OF 2ND JULY, 1985, OF THE DISTRICT COURT OF LIMASSOL MADE BY H.H. JUDGE ELEFThERIOU IN CRIMINAL CASE 14008/84 BETWEEN THE CHAIRMAN AND MEMBERS OF THE MUNICIPAL COMMITTEE OF LIMASSOL v. LOUCIS P. LOUCAIDES LTD., OF LIMASSOL,

(Civil Application No. 18/86).

Natural Justice—Opportunity of being heard—Criminal proceedings—Adjournment of, sine die—Re-fixing of same on a particular date, when prosecution called evidence upon which trial Judge convicted the accused—Such date not known to accused—Breach of said rule of natural justice—Violation of accused's rights under Articles 12.5, 30.2 and 30.3 of the Constitution. 5

Constitutional Law—Criminal proceedings—Rights of accused—Constitution, Articles 12.5, 30.2 and 30.3.

Prerogative Orders—Certiorari—Natural Justice—Violation of rules of—Ground upon which the order of certiorari may be granted. 10

The applicants were charged for failure to pay refuse collection fees. On 2.10.84 the trial Court adjourned the case sine die due to the fact that a number of recourses challenging the validity of such fees were pending before the Supreme Court. The case came up before the trial 15

Court on 2.7.85 in the absence of the applicants or their advocate. Counsel for the prosecution, upon filing an affidavit of service, that the original summons had been served, proceeded to call evidence upon which the trial Judge found the applicants guilty and sentenced them to pay a £30.- fine, £500.- refuse fees and £4.- costs.

When the applicants came to know of this conviction applied for and obtained the necessary leave to file the present application for an order of certiorari.

As emanates from the evidence the said criminal case was fixed on 27.8.84. Then the date was changed by a line on top of the said date and substituted by 2.10.84. There is no record as to what happened on either date. The affidavit of service stated that the applicants were served with the summons on 6.8.84. There is also in the file a form of appearance by the applicants' advocate on 27.8.84. The only record is that of 2.7.85.

Held, granting the application: (1) The applicants were entitled to know about the date when their case was fixed for hearing and attend the Court to defend themselves in exercise of their rights under Articles 12.5, 30.2 and 30.3 of the Constitution.

(2) Breach of the rules of natural justice such as, for instance, failure to give to a party a full and fair opportunity of being heard, is a ground upon which an order of certiorari may be made.

Observations by the Court: It is regrettable that in criminal proceedings Judges instead of keeping a proper record as to the appearance of the advocates and the reasons for adjourning the case, they elect the easy way of striking out the date and substituting it by another date.

Application granted.

No order as to costs.

35 Cases referred to:

Tourapis v. Pelides (1967) 1 C.L.R. 5;

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

Application.

Application for an order of certiorari to remove into the Supreme Court of Cyprus and quash the order made by the District Court of Limassol (E'efthierou, D.J.) on the 2nd July, 1985 in Criminal Case No. 14008/84 whereby the applicants were found guilty in their absence, on a charge of failing to pay refuse collection fees and were sentenced to pay £30.- fine, £500.- fees and £4.- costs. 5

Chr. Clerides, for the applicants. 10

Y. Potamitis, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants, a company of limited liability, are praying for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Limassol, in the exercise of criminal jurisdiction in Case No. 14008/84, whereby the applicants were found guilty, in their absence, on a charge of failing to pay refuse collection fees and were sentenced to pay £30.- fine, £500.- fees and £4.- costs. 15 20

On the 12th February 1986, leave was granted to the applicants to move this Court for an order of certiorari and in pursuance of such leave, the applicants filed the present application.

The facts of the case, as emanating from the affidavit filed in support of the application and the documents attached thereto, are briefly as follows:- 25

The applicants, as occupiers of business premises in Limassol, were assessed by the Municipality of Limassol to pay the sum of £500.- as refuse collection fees for the year 1983. The applicants failed to pay such fees and as a result, a criminal case was filed against them in the District Court of Limassol, calling upon them to appear before the Court on the 27th August, 1984, to answer a charge accusing them for failing to pay refuse collection fees for the year 1983. The applicants appeared before the Court on the 27th August, 1984, through their advocate, Mr. Chr. Clerides and according to the affidavit sworn by 30 35

him and attached to the present application, the case was adjourned to the 2nd October, 1984, when, due to the fact that a number of recourses had been pending before the Supreme Court challenging the validity of such fees, the case was adjourned sine die, pending the result of such recourses. The case was brought up again before the District Court of Limassol on 2.7.1985 in the absence of the applicants or their advocate, when counsel for the prosecution proceeded to call evidence to prove the case against the applicants, upon which the trial Judge found the applicants guilty of the charge and sentenced them to pay £500.- refuse collection fees, £30.- fine and £4.- costs.

The applicants came to know about such conviction when a notice was sent to them by the Police, dated 14th October 1985, informing them that a warrant had been issued for the collection of the sum of £534.- and that if they failed to attend at the Police Station on or before the 26th October 1985, to pay such amount, the Police would proceed with the execution of such warrant.

The grounds upon which the application is based, are the following:

(a) The trial Court wrongly and/or in abuse of powers proceeded to hear the case without any prior notice of the date of trial having been given to the applicants or their advocate.

(b) The trial Court wrongly and/or in abuse of powers proceeded and delivered judgment without a previous notice of the date of hearing to the applicants or their advocates.

(c) The trial Court and/or the trial Judge acted in abuse of powers.

When the case came up for hearing, counsel for respondents did not oppose the application and stated that the respondents had no objection to the issue of the certiorari applied for. Neither the respondents nor their advocate, counsel stated, were aware of the fact that the applicants had not been notified that the case was fixed for proof on that day. He submitted that as the matter was not due to any fault on their part, the respondents should not bear the costs of the application.

The advocate who was handling the case before the trial Court on behalf of the respondents, attended also the Court and stated that he was informed that the case was fixed for proof and he proceeded to prove the case without being aware that either the applicants or their advocate were not notified as well. He also stated that it was a fact that when the case was fixed on 27.7.1984, the applicants were represented by Mr. Clerides and the case was adjourned on 2.10.1984 and then sine die pending the result of a recourse before the Supreme Court on the question of constitutionality.

Counsel for applicants conceded that, in the circumstances, the respondents were not to blame and he stated that he claims no costs. He called as a witness the Registrar of the District Court of Limassol who produced the file of the criminal case in which the applicants were convicted. In addressing the Court he submitted that there has been a breach of natural justice in the present case, as the applicants by not being notified that the case was fixed before the Court, were not afforded the opportunity of defending themselves, in violation of Articles 12.5 and 30.2 and 3 of the Constitution.

What emanates from the evidence before me, is that the charge in Criminal Case 14008/84 was filed on 14.6.1984 and after the approval of the Judge had been obtained it was fixed, as it appears on the printed form on the face of the charge-sheet, on 27.8.1984. Then the date was changed, by a line drawn on top of the previous date and substituted by 2.10.1984. No record appears as to what happened either on the 27th August, 1984 or on the 2nd October 1984, but judging from the initials appearing next to the line crossing out the date, the case was previously being handled by a Judge other than the one who tried the case and convicted the applicants. Attached to the said charge there is an affidavit of service that the applicants were served with a summons on the 6th August, 1984. Also, in the file of the criminal case, there is a form of appearance by the advocate for the applicants, namely, Mr. Christos Clerides on 27.8.1984. The only record which appears in the case is that of the 2nd July, 1985, to the effect that Mr. S. Patsalides appeared for the prosecution and that the accused were called and

were absent and that an affidavit of service had been filed. Mr. Patsalides then proceeded to call evidence to prove the charge against the accused. Such evidence is recorded and also the finding of the Court convicting the accused on
5 the charge, imposing a sentence of £30.- fine, £500.- refuse fees and £4.- costs.

The record of the criminal case fully supports the contents of the affidavit sworn on behalf of the applicant that the case had been adjourned sine die pending the result of
10 a recourse before the Supreme Court on a similar issue and that without any notice having been sent to the applicants the Court proceeded in their absence to convict them. Such fact is further corroborated by the statement made by counsel for respondents.

15 It is regrettable that in criminal prosecutions Judges instead of keeping a proper record as to the appearance of the advocates and the reasons for adjourning the case, they elect the easy way of striking out the date and substituting it by another date. Had there been such a
20 record in this case, as it ought to have been, the trial Judge before whom the case was brought for proof would not have operated under the impression that the accused, though duly served with a summons, did not appear to defend their case. The only material which the trial Judge had
25 before him was the criminal charge with the dates on which such charge was fixed, which was subsequently changed, as explained above, and an affidavit of service, which led him to believe that the accused, though duly served, did not appear to defend themselves.

30 I wish to add that in cases of this nature when a case is adjourned sine die for a particular reason, though such reason is not recorded, it is the duty of the advocate for the prosecution to bring to the notice of the Court the previous facts which led to the adjournment of the case.
35 before proceeding to prove the case against the accused.

The applicants were entitled to know about the date when their case was fixed for hearing, especially in view of the fact that when they appeared before the Court, through their advocate, on the last occasion when the case
40 was fixed, the case was adjourned sine die pending the result of a recourse before the Court. The applicants were

entitled to know about this fact and attend the Court to defend themselves, in the exercise of their rights under Article 12.5 and Articles 30.2 and 3 of the Constitution.

It is well settled that an order of certiorari may be made on the ground that there has been a breach of the rules of natural justice such as, for instance, in the case of a party who has not been given a full and fair opportunity to be heard. 5

In Halsbury's Laws of England, Third Edition, Vol. II, page 145, para. 272 under sub-paragraph (2), we read: 10

"(2) Breach of the rules of natural justice: a judicial decision reached by an inferior tribunal in violation of these rules, e.g. where a party is not given a full and fair opportunity of being heard, may be quashed on certiorari." 15

In *Tourapis v. Pelides etc.* (1967) 1 C.L.R. 5 at p. 6, Josephides, J. had this to say in this respect:

"It is well settled that the prerogative order of certiorari is made, inter alia, for breach of the rules of natural justice by an inferior tribunal or a person exercising quasi judicial powers, who has the duty cast on him of hearing both sides." 20

(See, also in *Re Nina Panaretou* (1972) 1 C.L.R. 165 at p. 166).

In the result, the application succeeds and an order of certiorari is granted quashing the conviction of the accused in Criminal Case No. 14008/84. 25

In the circumstances of the case and bearing in mind the statements made by counsel, I make no order for costs. 30

*Application granted.
No order as to costs.*