

1987 January 26

{STYLIANIDES J}

IN THE MATTER OF AN APPLICATION
BY OR ON BEHALF OF MR CHARALAMBOS
THEOPHANOUS ARGYRIDES AGAINST WHOM A RULING
AND/OR AN ORDER COMMITTING HIM FOR TRIAL WERE
MADE BY THE DISTRICT COURT OF NICOSIA (BY H H E
PAPADOPOULOU, AG D J) ON THE 10 1 87 FOR LEAVE
TO APPLY FOR AN ORDER OF CERTIORARI

(Civil Application No 14/87)

Prerogative orders—Certiorari—Leave to apply—Principles applicable—Prima facie case—Meaning—Error of law apparent on the face of the record—Affidavit evidence inadmissible—Misapplication of law is an error of law—Grant or refusal of leave within the discretion of this Court—Such discretion is exercised judicially—Purpose of the order of certiorari

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On 10 1 87 Criminal Case 568/87 was filed in the District Court of Nicosia. Two persons appear as accused in the charge sheet. Accused 1, the present applicant, faces not less than 31 charges of offences of forgery, falsification of accounts by public officer, stealing by public officer and animal stealing.

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The officer appearing for the prosecution produced the written consent of the Attorney-General to the effect that there was no necessity for a preliminary inquiry. Then he produced a copy of the statements of the witnesses, which run to 250 pages. After a «short break» the Judge issued the order impugned in these proceedings, committing the accused for trial before the Assize Court of Nicosia sitting on 12 1 87.

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Counsel for the applicant argued that as it is impossible for any human being to read 250 pages, the committing Judge did not read, apparently, the statements and exercised her discretion in a faulty way, thereby misapplying the provisions of section 3 of the Criminal Procedure (Temporary Provisions) Law 42/74. This misapplication is an error of law apparent on the face of the record.

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Held, *granting leave to apply for an order of certiorari*. (1) In the affidavit in support of the application it is stated that the break of the sitting of the Court was 15-20 minutes. It may be said, even at this stage, that when certiorari is sought for an error of law apparent on the face of the record, affidavit evidence is not, as a rule, admissible, for the simple reason that the error must appear on the record itself. Affidavits are admissible to show that the record is incomplete, whereupon this Court would either order its completion or might quash the determination. Only affidavits put in by consent, as if they were part

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of the record, are admissible

(2) Misapplication of the law is an error of law

(3) At this stage the Court must be satisfied by the material before it that a prima facie case is made out or an arguable point is raised. The expressions «arguable case» and «prima facie case» are used in the sense of a case that it is sufficient that the applicant to show that there is a bona fide arguable case, without the need to go into any rebutting evidence put forward. It is a case which is sufficiently arguable and merits an answer. In this case the material before the Court justifies the conclusion that an arguable case has been made out.

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(4) The granting or refusal of leave to apply for an order of certiorari is within the discretion of this Court, which is exercised judicially. The supervisory power of this Court does not extend to the dictation by this Court to the inferior Court how to exercise its discretionary power.

(5) In the light of the above leave to apply for an order of certiorari would be granted.

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Application granted

Cases referred to

R v Northumberland Compensation Appeal Tribunal, Ex-parte Shaw [1952] 1 All E R 122,

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Anisminic Ltd v Foreign Compensation Commission [1969] 1 All E R 208,

O' Reilly v Mackman and Others and Other Cases [1982] 3 All E R 1124,

R v Registrar of Companies [1985] 2 All E R 79,

R v Nat Bell Liquors Ltd [1922] 2 A C 128,

Baldwin and Francis Ltd v Patents Appeal Tribunal and Others [1959] 2 All E R 433,

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Sidnell v Wilson and Others [1966] 1 All E R 681,

Land Securities Plc v Receiver for the Metropolitan Police District [1983] 2 All E R 254,

Ex-parte Papadopoulos (1968) 1 C L R 496,

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

In re Panaretou (1972) 1 C.L.R. 165;

Zenos v Disciplinary Board (1978) 1 C L R. 382;

In re Azinas (1980) 1 C L.R. 466;

5 *In re Malikides* (1980) 1 C L R. 472;

In re Kakos (1984) 1 C.L.R. 876,

In re Kakos (1985) 1 C.L.R. 250.

Application

10 Application for leave to apply for an order of certiorari for the purpose of bringing up and quashing the order in Criminal Case No.568/87 committing the applicant for trial before the Nicosia Assize Court and for an order staying the proceedings before the Assize Court Nicosia in relation to the applicant.

A. Markides with Chr. Triantafyllides for the applicant.

15 STYLIANIDES J. read the following judgment. By means of this application the applicant seeks leave to apply for order of certiorari in order to bring up and quash the committal order in Criminal Case No.568/87 whereby he was committed for trial before the Nicosia Assize Court and an order staying all further
20 proceedings before the Nicosia Assize Court in relation to the applicant.

By the prerogative order of certiorari this Court exercises control over all inferior courts, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that
25 the inferior Courts keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the Court which, on the face of it, offends against the law. This Court does not substitute its own views for those of the inferior Court, as a court of appeal would do
30 It leaves it to the inferior Court to hear the case again, and in a proper case may command it to do so - (*R. v. Northumberland Compensation Appeal Tribunal, Ex-parte Shaw*, [1952] 1 All E.R. 122).

By the *Northumberland* case it was rediscovered that the High Court in England - and by extension this Court - has power to quash by an order of certiorari a decision of an inferior Court on the ground that it is apparent on the face of its written determination that it has made a mistake as to the applicable law. 5

If the inferior Court mistook the law applicable to the facts, as it found them, or if its purported «determination» is not within the meaning of the empowering legislation, this is a nullity - (*Anisminic Ltd v. Foreign Compensation Commission*, [1969] 1 All E.R. 208; *O' Reilly v. Mackman and Others and Other Cases*, [1982] 3 All E.R. 1124; *R. v. Registrar of Companies*, [1985] 2 All E.R. 79). 10

↳ Misapplication of the law is an error of law.

{ In the present case on 10.1.87 Criminal Case No. 568/87 was filed in the District Court of Nicosia. Two persons appear as accused in the charge-sheet-(See Exhibit No.1). Accused No.1 is the present applicant. He faces not less than 31 charges of offences of forgery, falsification of accounts by public officer, stealing by public officer and animal stealing. The accused appeared before a Judge. They were represented by counsel. The charges were read over to them. 15 20

The officer appearing for the prosecution produced the written consent of the Attorney-General to the effect that there was no necessity for the holding of a preliminary inquiry in this case. Then he produced to the Court a copy of the statements of the witnesses, as prescribed in Section 3(b) of the Criminal Procedure (Temporary Provisions) Law, 1974 (No. 42 of 1974). Another copy had been handed earlier on that day to counsel for the accused. 25

After a short break the Judge issued the order in question. It reads:- 30

«I am satisfied that the provisions of s.3 of Law 42/74 have been complied with. I am also satisfied that in exhibit «B» there is sufficient evidence that justifies the committal of the accused to trial before the Assize Court without the necessity of holding a preliminary inquiry. 35

The accused are committed for trial by the Assize Court of Nicosia sitting on 12.1.87».

The grounds on which leave is sought, as set out in the application, are that the said order is in excess and/or abuse of the powers of the Court and/or there is an error of law on the face of the record in that the honourable Court failed to exercise its discretion and/or judicial power, as provided by Law 42/74, as amended

In the affidavit sworn by the applicant in support of this application it is stated, inter alia, that the break of the sitting of the Court was 15-20 minutes. It may be said even at this stage that when certiorari is sought on the ground of error of law on the face of the record, affidavit evidence is not, as a rule, admissible, for the simple reason that the error must appear on the record itself - (*R v Nat Bell Liquors Ltd*, [1922] 2 A C 128, per Lord Sumner at p 159; *Baldwin & Francis Ltd v Patents Appeal Tribunal and Others* [1959] 2 All E R 433, per Lord Tucker, at p 443). Affidavits are admissible to show that the record is incomplete whereupon this Court would either order the record to be completed by the inferior Court, or it might quash the determination at once. Only affidavits put in by consent of the parties as if they were part of the record, and make it into a speaking order are admissible.

At this stage the Court is dealing with an application for leave. The Court must be satisfied by the material before it, if accepted as accurate, that a prima facie case is made out or an arguable point is raised. A prima facie case should be made out sufficiently to justify the granting of leave to the applicant to move this Court to issue an order of certiorari. The expressions «arguable case» and «prima facie case» are used in the sense of a case that it is sufficient that the applicant should show that there is a bona fide arguable case, without the need to go into any rebutting evidence put forward. It is a case which is sufficiently arguable and merits an answer - (*Sidnell v Wilson and Others*, [1966] 1 All E R 681 at p 685, *Land Securities Plc v Receiver for the Metropolitan Police District*, [1983] 2 All E R 254, at p 258, *Ex-parte Papadopoulos* (1968) 1 C L R 496, *Ex-parte Maroullet*, (1970) 1 C L R 75 *In re Panaretou*, (1972) 1 C L R 165, *Zenios v Disciplinary Board* (1978) 1 C L R 382, *In re Azinas*, (1980) 1 C L R 466, *In re Malikides*, (1980) 1 C L R 472, *In re Kakos*, (1984) 1 C L R 876, *In re Kakos*, (1985) 1 C L R 250).

Counsel for the applicant submitted that there is an error of law

apparent on the face of the record in the sense that though the statements of the witnesses run to 250 pages, the committing Court, after a «short break», exercised its discretion and made the committal order. It is impossible for any human being to go through 250 pages in such a short period as the short break was. The committing Judge did not read apparently the statements, and exercised its purported discretions in a faulty way thereby misapplying the provisions of Section 3 of Law 42/74. This miscompliance is an error of law apparent on the face of the record.

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Without at this stage being necessary to decide on the validity of the above contentions of counsel for the applicant, the functions of the committing Court under s.3 of Law 42/74 and whether the alleged miscompliance occurred, I think that the material before me justifies the conclusion that an arguable case has been made out sufficiently to merit further consideration after leave is given to the applicant.

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The grant or refusal of leave to apply for an order of certiorari are within the discretion of this Court which is exercised judicially (*In re Panaretou* (supra)). Certainly it has to be noted that the supervisory power of this Court by the prerogative order of certiorari does not extend to the dictation by this Court to the inferior Court how to exercise its discretionary powers - (*In re Malikides* supra).

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In view of the above I have decided to grant to the applicant leave to apply for order of certiorari in respect of his committal for trial by the Assize Court of Nicosia.

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It was brought to my knowledge by learned counsel that the case is listed for today before the Assize Court of Nicosia. This denotes that there is urgency in the matter.

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The applicant to file application not later than noon of 27.1.87. Counsel for the Republic may file opposition thereto not later than noon of 31.1.87, and the application to be fixed for hearing by the Registrar on 4.2.87 at 4.00 p.m.

Proceedings before the Assize Court in Criminal Case No.568/87 in relation to the applicant are hereby stayed until further order of this Court.

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Copy of my present order to be sent to the Registrar of the

District Court of Nicosia and to the Assize Court sitting at Nicosia.

Leave granted, Proceedings to be stayed until further notice.

Application granted.