

1987 December 22

[KOURRIS, 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 ANDREAS EFSTRATIOU  
OF NICOSIA, FOR AN ORDER OF CERTIORARI AND  
PROHIBITION

(Civil Application No. 193/87).

*Prerogative Orders — Certiorari and Prohibition — Leave to apply for — Application for such leave — The question is whether applicant made out a prima facie case — The Tax Collection Law, 1962 — Summons issued to applicant to appear before a District Court to be examined as to his means regarding payment of tax due — Order that applicant should pay the sum of the tax with interest issued without giving opportunity to the applicant to be heard — Applicant has a prima facie arguable case.*

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The facts of this case appear sufficiently in the judgment of the Court

*Leave granted.*

*Cases referred to:*

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*A. G. v Chnstou*, 1962 C.L.R. 129.

*Ex Parte Papadopoulos* (1968) 1 C.L.R. 66.

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

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

**Application.**

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Application for leave to apply for an order of certiorari for the purpose of bringing up and quashing the decision of a Judge of the District Court of Nicosia in Case No. 2105/87 whereby the applicant was ordered to pay the sum of £1002.- with interest thereon at 9% as tax under the Capital Gains Tax Law, 1980 (Law No. 58 of 1980).

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*L. Georghiadou (Mrs.)*, for the applicant.

KOURRIS J gave the following decision 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 case No 2105/87

- 5 The applicant also prays for an Order of Prohibition prohibiting the Commissioner of Income Tax from proceeding with the execution of the Decision of the District Court

The facts of the case as they appear from the affidavits sworn in support of the application are as follows -

- 10 The applicant was summoned under the Tax Collection Law, 1962, (Law 31/62) to appear before the District Court of Nicosia to be examined as to his financial means regarding the payment of £1,315 40 imposed on him as tax under the Capital Gains Tax Law (Law 58/80), in respect of the sale of a house by him at Larnaca

- 15 One of the Judges of the District Court of Nicosia in dealing with the case on 30 11 88 proceeded and ordered the applicant to pay the sum of £1,002 with interest at 9 per cent, without giving the opportunity to the applicant to be heard

- 20 The question which falls for determination by me at this stage is whether there is a prima facie arguable case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an Order of Certiorari It is not necessary for me to go into the matter thoroughly, but it is sufficient if on the basis of the applicant's statement, and the affidavits in support, the Court is satisfied that such leave should be granted (See *A G v Panayiotis Chnstou*, 1962 C L R 129 at pp 133 and 134, *Ex Parte Costas Papadopoulos*, (1968) 1 C L R 66, *in Re Nina Panaretou*, (1972) 1 C L R 165, *in re Kakos* (1985) 1 C L R 250

- 30 At this stage, it would appear that the applicant has a prima facie arguable case that there has been a violation of the Rules of Natural Justice, and in the circumstances, I grant leave to the applicant to file an application for an Order of Certiorari within one month from today, and I also issue an Order of Prohibition prohibiting the Commissioner of Income Tax to proceed with the execution of the Order of the District Court until the decision of the application for an order of Certiorari
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*Application granted*