

1987 February 13

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ABTUL RASHIM SULEIMAN,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE MINISTRY OF INTERIOR,  
2 THE MIGRATION OFFICER,

*Respondents*

*(Case No 93/87)*

*Aliens—Entry of in Cyprus—Discretion of Authorities under The Aliens and Immigration Law Cap 105—Very wide, bordering absolute discretion—Duty of Authorities—To examine an application for entry in good faith—Presumption of good faith*

*Provisional order—An extraordinary remedy sparingly exercised upon good grounds—Negative act—No jurisdiction to direct Administration to act, unless it omits or fails to carry out a positive duty cast by statute—A fortiori the power to make a provisional order is subject to the same constraint—Refusal to allow an alien to enter the country—Such refusal is a negative act* 5

The applicant is an alien, whose permit to stay in this country expired on 31 12 86 An application for its renewal was rejected The relevant decision was not challenged before this Court 10

By means of this recourse the applicant challenges the validity of the respondents' decision dated 10 2 87 refusing him entry at Larnaca Airport and the validity of the directive declaring him a prohibited immigrant Within 15 the framework of the present recourse, the applicant seeks a provisional order restraining the Immigration Authorities from giving effect to their said refusal or from deporting him from Cyprus

Held, *dismissing the application* (1) The applicant had no right to enter the country, unless such right was given to him Power to refuse entry to aliens is an incident of sovereignty The discretion of the authorities under Cap 105 to refuse entry to aliens is very wide, bordering absolute discretion (*Amanda Marga Ltd v The Republic* (1985) 3 C L R 2583 adopted) 20

(2) An alien's application to enter the country should be considered by the

Authorities in good faith (*Amanda Marga* etc supra) The presumption is that the Authorities acted in good faith an assumption that remains valid until the opposite is proved Nothing like a case of flagrant illegality has been made to justify the interference of the Court

- 5 (3) Moreover the sub judice decision is a negative one Its suspension would not achieve what the applicant desires, namely his entry in Cyprus Save where the Administration fails or omits to carry out a positive duty cast by statute there is no jurisdiction to direct the Administration to act Afortion the power of the Court to issue a provisional order is subject to the same constraints
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*Application dismissed*

*Cases referred to*

- Amanda Marga Ltd v The Republic* (1985) 3 C L R 2583
- Georgiades (No 1) v The Republic* (1965) 3 C L R 392
- 15 *Sofocleous v The Republic* (1971) 3 C L R 345
- Miltiados v The Republic* (1972) 3 C L R 341
- Procopiou and Others v The Republic* (1979) 3 C L R 686
- Sophocleous v The Republic* (1981) 3 C L R 360
- Frangos and Others v The Republic* (1982) 3 C L R 53
- 20 *Sayigh v The Republic* (1986) 3 C L R 277

**Application**

- Application for a provisional order restraining the respondents from giving effect to their refusal to admit applicant in Cyprus or from deporting him from Cyprus until the final determination of the recourse for the respondents refusal
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A C ( ), for the applicant

*Ch Kynakides, Counsel of the Republic*, for the respondents

*Cur adv vult*

- 30 PIKIS J read the following judgment Abtul Rashim Suleiman, a citizen of South Yemen, seeks a provisional order restraining the Immigration Authorities of the Republic from giving effect to their refusal to admit him to the country or deporting him from Cyprus The application is made within the framework of a recourse for the

judicial review of the decision of the respondents of 10th February 1987 refusing him entry at Larnaca Airport and the directive of the authorities declaring him a prohibited immigrant. Following this refusal he is detained at Larnaca Airport pending his departure. On the directions of the Court notice of the application and affidavit were served on the respondents in order to afford them opportunity to be heard in the matter. Counsel for the respondents joined issue with the applicant strongly opposing the application. He informed the Court entry was refused on grounds of national security.

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About two years ago the applicant was given permission to reside in Cyprus in order to manage herefrom an offshore company. His wife and two children joined him in Cyprus and reside at Larnaca where the children go to school. His permit to stay in the country expired on 31st December, 1986. An application for its renewal was rejected that decision has not been challenged before the Court. When Abtul Rashim Suleiman applied before the Immigration Authorities for permission to enter the country he had no right to enter unless a right was given to him. Permission to enter was in the discretion of the appropriate authorities of the Republic in accordance with the provisions of the Aliens and Immigration Law, Cap 105. Power to refuse entry to aliens is an incident of the sovereignty of the country. The discretion to refuse entry to an alien is very wide bordering on absolute discretion. The powers of the State in this respect were the subject of discussion and analysis in *Airanda Marga Ltd v Republic*\*. The passage cited below is definitive of the powers of the State and suggestive of the breadth of the discretion to refuse entry to an alien. I adopt and repeat it as an accurate statement of the law (p 2587).

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•By the terms of the Aliens and Immigration Law, Cap 105, the discretion of the State to exclude aliens is very wide, as broad as it can be in law, consistent with the supremacy and territorial integrity of the State, but not absolute. It is subject to the bona fide exercise of the discretion. So long as the discretion is exercised in good faith, the Court will query the decision no further. An alien, subject to any rights that may be conferred by convention or bilateral treaty, has no right to

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\* (1985) 3 C L R 2583

enter the country. His only right is that an application to enter the country should be considered in good faith. Acknowledgment of any further obligation on the part of the State would be inconsistent with the sovereign right of the State to exclude aliens».

There is no suggestion applicant was denied the right to make representations in support of his application for entry, nor can I suppose that the authorities acted in bad faith. The presumption is that they acted in good faith, an assumption that remains valid until the opposite is proven. Nothing like a case of flagrant illegality has been declared that might justify the intervention of the Court at this stage. A provisional order is an extraordinary remedy sparingly exercised upon good grounds\*. Moreover there is a more fundamental reason still for dismissing the application for a provisional order.

The decision sought to be stayed is a negative one, its suspension by provisional order would be inconsequential and would not achieve the end desired by the applicant, namely, a positive decision to allow him to enter. The jurisdiction of the Supreme Court under Art. 146 is confined to review of the legality of administrative action and its remedial powers to a decision or declaration on its validity. Save where the Administration fails or omits to carry out a positive duty cast by statute, there is no jurisdiction to direct the Administration to act. Afortiori the power of the Court to make a provisional order under Rule 13\*\* is subject to the same constraints. The subject was discussed in *Sayigh v. Republic*\*\*\* the facts of which were very similar to those of the present case. In that case too applicant, an alien, sought a provisional order to suspend a decision refusing extension of his stay in Cyprus. It was pointed out that stay of such decision would not give him a right to stay, having none in the absence of permission by the Immigration Authorities to remain in the country.

\* See *Georgiades (No 1) v The Republic* (1965) 3 C.L.R. 392, *Sofocleous v Republic* (1971) 3 C.L.R. 345, *Miltadous v Republic* (1972) 3 C.L.R. 341, *Procopiou & Others v Republic* (1979) 3 C.L.R. 686, *Sophocleous v Republic* (1981) 3 C.L.R. 360, *Frangos & Others v Republic* (1982) 3 C.L.R. 53

\*\* Supreme Constitutional Court Rules 1962 made applicable by Law 33/64

\*\*\* (1986) 3 C.L.R. 277

**Pikis J.**

**Suleiman v. Republic**

**(1987)**

I find the application to be groundless and is dismissed accordingly.

*Application dismissed.*