

1987 May 14

(A LOIZOU J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION,

ASSOCIATION OF CONTRACTORS FOR
ELECTRICAL INSTALLATIONS,

Applicants,

v

1 THE COUNCIL OF MINISTERS,
2 THE MINISTER OF COMMUNICATIONS AND WORKS.

Respondents

(Case No 148/76)

5 *Revisional Jurisdiction Appeal — Time — Enlarging the time of filing the appeal —
The Supreme Constitutional Court Rules — Rule 3 making applicable mutatis
mutandis Ord 35 of the Civil Procedure Rules — Rule 2 of Order 35 provides
that the power is exercised subject to Ord 57, rule 2 — Discretion —
Principles governing its exercise — Review of the authorities*

10 *Recourse for annulment/Revisional Jurisdiction appeal — Interested party —
Meaning of — Person seeking the annulment of the sub judice act — Not an
interested party — To allow such a person to join the proceedings is contrary
to Art 146 3 of the Constitution — In any event an interested party can take
part in opposition, but not in support of the annulment of the sub judice act*

15 This is an ex parte application for enlarging the time, within which to file an
appeal against the judgment, whereby the recourse had been dismissed. It
must be noted that the present applicants were not the applicants in the
recourse, but they were joined as «interested parties» in the recourse on the
14 6.85, when they obtained the relevant leave

20 Held, dismissing the application (1) The power to enlarge the time of filing
an appeal is derived from Rule 3 of the Supreme Court (Revisional
Jurisdiction Appeal) Rules 1964, which provides that Ord 35 of the Civil
Procedure Rules shall apply mutatis mutandis to an appeal from a Judge or
Judges exercising revisional jurisdiction. Order 35 rule 2 provides such power
is exercised, subject to the provisions of Order 57 rule 2

(2) The basic principle concerning such power is that it is a matter of free
discretion and the question is whether on the facts of any particular case such
discretion should be exercised. Such extension was granted in the past in

Electrical Contractors v. Council of Ministers (1987)

cases where the relevant application was filed before the expiration of the time. This application was filed after the expiration of the time of filing the appeal.

(3) An interested party is a person, whose interests stand to be affected by the annulment of the sub judice decision. The present applicant joined the proceedings, not for the purpose of supporting, but for annulling the sub judice decision. The description of the «interested party» does not in fact represent the correct status of the applicants. To allow such a party to proceed in revisional proceedings, would be contrary to the express provision of Article 146.3 of the Constitution as to the time of filing a recourse. Even if the applicants have the status of an interested party they still cannot proceed, because in a recourse or a revisional appeal, such a party may only be heard in opposition, but not in support of the annulment of an administrative decision.

Recourse dismissed. 15
No order as to costs

Cases referred to:

- Cyprian Seaway Agencies Ltd. v. The Republic* (1981) 3 C.L.R. 271;
- Turkish Co-operative Carob Marketing Society Ltd. v. Lufti Kiamil and Another* (1973) 1 C.L.R. 1; 20
- Lanitis Bros Ltd. v. Municipal Corporation of Limassol* (1972) 2 C.L.R. 100;
- Ioannidou v. Dikeos* (1970) 1 C.L.R. 241;
- Georghiou v. The Republic* (1968) 1 C.L.R. 411;
- Pavlou v. Cacoyannis* (1963) 2 C.L.R. 405;
- Loizou v. Konteatis* (1968) 1 C.L.R. 291; 25
- Finch Frederick Peter v. Police* (1963) 1 C.L.R. 42;
- Charalambous v. Charalambides Dairies Ltd.* (1984) 1 C.L.R. 19;
- Theodorides v. Ploussiou* (1976) 3 C.L.R. 319;
- Bagdades v. Ploussiou* (1984) 3 C.L.R. 1556;
- Republic v. Nissiotou* (1985) 3 C.L.R. 943. 30

Application.

Ex parte application by the «interested parties» in a recourse for enlarging the time by one day for filing an appeal against the judgment dismissing such recourse seeking the annulment of the

3 C.L.R. Electrical Contractors v. Council of Ministers

order made by respondent 2 under reg. 53 of the Electricity Regulations.

K. Talarides, for the applicants.

Cur. adv. vult.

5 A. *LOIZOU J.* read the following judgment. This is
an ex parte application for an order of the Court enlarging
the time by one day for filing an appeal against the judgment of the
Court delivered on 11th December 1986, dismissing a recourse
10 seeking an annulment of the order made by respondent 2, under
Regulation 53 of the Electricity Regulations, published in
Supplement No. III(I) of the Official Gazette of the 2nd April 1976,
under Notification Number 1266, as well as the Electricity
(Amendment) Regulations of 1976 published in Supplement No.
15 IIII(I) of the Official Gazette of the 12th March, 1976, under
Notification No. 1262. It may be mentioned here that the said
applicants in the recourse itself have not appealed against the said
judgment.

20 On the 14th June 1985, leave was granted to the present
applicants, the Association of Licensed Electrical Contractors
(POVEK), to take part in the proceedings as an «interested party».

25 In their relevant address before the trial Court, filed on the 12th
November 1986, the present applicants stated that they joined in
the proceedings because a substantial part of its members were at
the time of the filing of the recourse members of the applicant
Association, «thus the interested party takes part in the
proceedings on behalf of its members who were members of the
applicant Association and on behalf of whom the recourse was
filed. These members are too late to file a separate recourse but
30 are naturally interested in the outcome of the recourse which will
affect also their professional interests».

35 In the affidavit filed in support thereof it is stated that the relevant
judgment was communicated to them by letter of their lawyer
dated 16th December 1986, in view, however, of the Christmas
vacations and the fact that its members are all over Cyprus, they
considered the matter on the 20th January 1987 and instructed
their lawyer to file an appeal late in the afternoon of the 22nd
January 1987, on which date time had also expired. It is also
alleged that the applicant Association did not know of the time
40 limit of forty-two days for filing an appeal.

A. Loizou J. Electrical Contractors v. Council of Ministers (1987)

The legal position as regards the power of the Court to enlarge the time for filing an appeal has been considered on numerous times in the past. Such power is derived from Rules 3 of the Supreme Court (Revisional Jurisdiction Appeal) Rules 1964 which provide that Order 35 of the Civil Procedure Rules relating to appeals shall apply mutatis mutandis to an appeal from a decision of a Judge or Judges exercising revisional jurisdiction. And by Order 35, rule 2 such power is exercised subject to the provisions of Order 57, rule 2. 5

The basic principle concerning such power is that it is a matter of discretion which is free and the question that must be considered by the Court is whether on the facts of any particular case such discretion should be exercised. (See *Cyprian Seaway Agencies Ltd., v. Republic* (1981) 3 C.L.R. 271 at p. 275 and to the authorities referred to therein). Whilst on this point I find it useful to refer to some of the authorities. 10 15

Such extension was granted in the past in cases where such application had been filed before expiry of the time. See *Turkish Cooperative Carob Marketing Society Ltd., v. Lutfi Kiamil and Another* (1973) 1 C.L.R. 1; *Lanitis Bros Ltd., v. Municipal Corporation of Limassol* (1972) 2 C.L.R. 100. (The Court record in both above cases being late in becoming available.) 20

In *Ioannidou v. Dikeos* (1970) 1 C.L.R. 241 the non-availability of the record and the fact that the appellant was acting without legal assistance, including the belatedness of the objection of the respondent that the appeal was out of time as a result of which the application for extension of time was filed late, were considered by the Court as sufficient reasons for exercising its discretion and granting the extension. 25

In *Georghiou v. Republic* (1968) 1 C.L.R. 411 it was considered by the majority of the Court of Appeal that failure of counsel to file the appeal within time was sufficient ground to grant the extension. 30

On the other hand in *Pavlou v. Cacoyannis* (1963) 2 C.L.R., 405 failure of counsel or the litigant to take the appropriate steps within time was held not to justify the exercise of such discretion in favour of the applicant. 35

In *Loizou v. Konteatis* (1968) 1 C.L.R. 291, the applicant consulted a new advocate after the time for appeal had expired - extension was refused. 40

3 C.L.R. Electrical Contractors v. Council of Ministers A. Loizou J.

5 In *Finch Frederick Peter v. Police* (1963) 1 C.L.R. 42, an extension was refused as the convenience of counsel (his departure abroad), was considered as not a good cause; and in *Charalambous v. Charalambides Dairies Ltd.*, (1984) 1 C.L.R. 19, the illness of counsel was not considered as a factor excusing non-compliance.

10 In *Cyprian Seaways Agencies Ltd. v. Republic* (supra) it was held that the failure of the applicant to take steps within time for filing an appeal because it awaited the views of the Cyprus Shipping Association which was not aware of the existence of the time limit, was not sufficient reason to justify enlargement of the time, as either such appeal could have been filed in time and discontinued at a later stage, or such application for extension could have been filed before the expiration of the time.

15 The legal position being so, the first matter that I must consider in dealing with this application is the status of the applicant.

20 I consider that the description of interested party does not in fact represent its correct status, an interested party being a person whose interests stand to be affected by the annulment of a decision, and who appears in the proceedings for the purpose of protecting such right. See: *Theodorides v. Ploussiou* (1976) 3 C.L.R. 319; *Bagdades v. Ploussiou* (1984) 3 C.L.R. 1556 at 1558-1559; *Republic v. Ivi Nissiotou* (1985) 3 C.L.R. 943.

25 In the present case this «interested party» joined the present proceedings almost nine years after the filing of the recourse, not for the purpose of supporting the sub judice decision but as it later transpired from the address filed, for the purpose of annulling it.

30 In the first place, to allow such a party to proceed in revisional proceedings under the alleged status of an «interested party», for the purpose of obtaining the annulment of a decision would be contrary to the express provisions of Article 146.3 of the Constitution as to the time a person may file a recourse. This applicant is by about nine years too late.

35 Secondly, even if this applicant had in fact the status of an interested party according to *Republic v. Ivi Nissiotou* (1985) 3 C.L.R. 943, at pp. 945-946:

«an interested party may only be heard in proceedings in a

A. Loizou J. Electrical Contractors v. Council of Ministers (1987)

recourse under Article 146 or in a revisional jurisdiction appeal, in opposition, but not also in support, of the annulment of an administrative decision which relates to him and which is the subject-matter of the recourse or appeal.»

In the circumstances therefore I consider that the present application must be dismissed with no order as to costs. 5

Application dismissed.
No order as to costs.