

1988 June 3

(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 «FILELEFTHEROS LTD »
FOR AN ORDER OF CERTIORARI

(Application No 64/88)

*Civil procedure—Ex parte application—Whether civil proceedings can
be initiated thereby—Question determined in the negative*

*Companies—Ex parte application for an order restraining company from
holding a meeting—Such proceedings cannot be initiated by such an
application—In issuing the injunction the Court acted without
jurisdiction* 5

*Natural Justice—Right to be heard—Issuing injunction upon ex parte
application, but making same returnable on a day certain—It
cannot be said that there has been a breach of the said rule of
natural justice* 10

Upon ex parte application filed by two of the Directors of «O
Fileleftheros Ltd » a Judge of the District Court of Nicosia issued an
injunction restraining the said company from holding a meeting on
the same day, i e on 19th March, 1988, until the determination of the
application which was fixed for hearing on 30th March, 1988 15

Having obtained leave* the applicants filed the present application
for certiorari quashing the said injunction

Held, granting the application (1) The ex parte application is not
available for the commencement of proceedings As it was held in
HadjiHambis v Attorney-General and Others (1986) 1 C L R 386 «If 20
the matter is not incidental to pending proceedings already before
the Court, then the cause cannot be brought before the Court, in any
other manner than that which is prescribed by the Rules, that is,
either by a writ or in exceptional cases by originating summons

* (1988) 1 C L R 160

where provision to that effect exists in the Law or the Regulations.»
The ex parte application was not incidental in this case to any
pending proceedings.

5 (2) In the circumstances the injunction will be quashed for the
additional reason that the Judge acted without jurisdiction.

(3) As the order was made returnable on a day certain, it cannot be
said that there had been a breach of the rules of Natural Justice.

*Order for certiorari to issue
Costs against respondents.*

10 *Cases referred to:*

HadjiHambis v. Attorney-General and Others (1986) 1 C.L.R. 386.

Application.

Application for an order of certiorari to remove into this Court
and quash the order made by the District Court of Nicosia on the
15 19th March, 1988 in Application No. 82/88.

L. Papaphilippou, for the applicant.

M. Christofides, for the respondent.

Cur. adv. vult.

20 KOURRIS J. read the following judgment. This is an application
for an order of certiorari to remove into this Court and quash the
order made by the District Court of Nicosia on 19th March, 1988,
in Application No. 82/88.

25 On the 29th March, 1988, leave was granted to the applicant to
move this Court for an order of certiorari and, in pursuance of such
leave, applicant filed the present application.

The facts of the present case, as appearing in the affidavit filed
in support of the application for leave to apply for an order of
certiorari are that on the 19th March, 1988, a Judge of the District
Court of Nicosia, on an ex parte application filed by a certain
30 Efthymios Hadjiefthymiou and Gavriella Stavridou, who are
directors of «O Fileleftheros Ltd.», issued an injunction restraining
the said company from holding a meeting on the same day, i.e. on
19th March, 1988, until the determination of the application which
was fixed for hearing on 30th March, 1988.

35 By the said application, the applicants also prayed for an order
ordering the company of «O Fileleftheros Ltd.» and its Managing

Director, a certain Christoforos Pattichis, to make available to them for inspection all books of account and returns with respect to the business dealt with in the books of account.

The said application was based on Regs. 3 - 8 of the Companies Rules, on Part II of Table A in the First Schedule of the Companies Law, Cap. 113, on the regulations contained in the memorandum of «O Fileleftheros Ltd», and on the inherent powers of the Court. 5

In their affidavit in support of the said application, Efthymios Hjiethymiou and Gavriella Stavridou, stated that they asked for the inspection of the books of account and returns with respect to the business dealt with in the books of account of the company, but they received no reply and as the meeting of the company was to take place on 29th March, 1988, they applied by an ex parte application to the District Court of Nicosia. 10

The grounds on which the present application is based are:- 15

(a) the said order was wrong in law and there is an error of law apparent on the face of the record;

(b) the District Court of Nicosia did not have jurisdiction to issue the said order; and

(c) The said order was made in breach of the Rules of Natural Justice. 20

Counsel for the applicants argued that the Judge who issued the Order restraining the said company from holding a meeting on the 19th March, 1988, was wrong in law, and there is an error of law apparent on the face of the record in that the application before the District Court of Nicosia was not envisaged by any law or rule and the proceedings are unknown to law. He said that the ex parte application is not based on any application by originating summons or writ of summons and that the said application is not available for commencement of any action, in this country, particularly under the Companies Law and rules thereof. He argued that under the Companies Law «Subsidiary Legislation of Cyprus» Vol. II, p. 279, Rules 5 & 6 provide for only two types of applications, namely by petition, and by summons; and these Rules further state when a petition is to be used and in what circumstances an application by summons is to be used and that the ex parte application is unknown to the Company Rules. Likewise, he said that sections 141 - 152 do not provide for an 25
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injunction against a Director who is in breach. He, further, contended that the District Court acted for want of jurisdiction and he relied on the case of *Panikkos HadjiHambis v. Attorney-General of the Republic and Others*, (1986) 1 C.L.R. 386.

- 5 Counsel for the respondents in effect, argued that due to the urgency of the matter the respondents were entitled to apply to the Court by an *ex parte* application.

In the case of *HadjiHambis v. Attorney-General of the Republic and Others* (supra), at pp. 390 - 391, the Court said the following:

- 10 «If the matter is not incidental to pending proceedings already before the Court, then the cause cannot be brought before the Court in any other manner than that which is prescribed by the Rules, that is, either by a writ or in
15 exceptional cases by originating summons where provision to that effect exists in the Law or the Regulations.»

Also, at the same page it is stated:

«In contrast to this, under Order 48, an application made is incidental to the cause in respect of which proceedings are pending before the Court.»

- 20 I have considered the matter and I hold that the *ex parte* application before the District Court of Nicosia, is not envisaged by any law or rules and that the proceedings are unknown to the law. That *ex parte* application «is not incidental to pending proceedings already before the Court», and the said application is not available
25 for the commencement of any action. In these circumstances, I am satisfied that the Judge of the District Court was wrong in law and there is an error of law apparent on the face of the record.

- I am also satisfied that in the circumstances under which the Judge of the District Court dealt with the *ex parte* application, it
30 acted without jurisdiction. (See Halsbury's Laws of England, 3rd edn. Vol. II, p. 142 paragraph 268).

- The third ground on which this application is based is that there has been a breach of the rules of natural justice. I do not think that there has been a breach of the rules of natural justice because the
35 Judge of the District Court when he granted the *ex parte* application and issued an injunction on 19.3.1988, the injunction was returnable on 30.3.1988 when the applicants in this application who were respondents in Application No. 60/88

before the District Court could make their opposition and they could be heard. Therefore, I do not think that there has been a breach of the rules of natural justice.

For all these reasons, I direct that the proceedings reviewed be quashed. Order of certiorari to issue. Respondents to pay costs. 5
Costs to be assessed by the Registrar.

Application granted with costs.