

1988 June 16

(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 ELENI KYRIAKIDOU
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI.

(Application No. 95/88).

*Prerogative orders — Certiorari — Leave to apply for — Applicant
should make out a prima facie arguable case.*

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

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*Leave to apply for an Order
of Certiorari granted.*

Cases referred to:

Attorney-General v. Christou, 1962 C.L.R. 129;

Re Papadopoulos (1968) 1 C.L.R. 66;

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

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

Application.

Application for leave to apply for an order of certiorari to bring
up and quash an order of the District Court of Nicosia in
15 Application No. 65/87.

Chr. Triantafyllides, for the applicant.

Cur. adv. vult.

20 KOURRIS J. read the following decision. This is an application
for leave to apply for an Order of certiorari for the purpose of
quashing an Order of the District Court of Nicosia in Application
No. 65/87.

The facts of the case as they appear from the affidavit sworn in support of the application by Andri Charalambous, an advocate working for the counsel who appeared in the application before the District Court of Nicosia, are as follows:

On 15th August, 1987, an application by summons was filed for the cancellation of a mortgage under Law 9/65 and a Judge of the District Court of Nicosia granted the application. 5

On 5th December, 1987, the applicant filed an *ex parte* application for the amendment of the Order granted on 17.9.1987 and the same Judge granted the Order for amending the previous Order. 10

Again, on 1.2.1988 the applicant filed another *ex parte* application for the amendment of the original Order granted by the Court. The same Judge again amended the said Order on 16.2.1988. 15

Subsequently, the applicant received by post an Order of the Court in respect of her application by which the learned trial Judge cancelled the two amendments and restored the Order in its original form of 17.9.1987.

It should be noted that this Order is not dated and it appears that it has been made as a result of a letter of the District Lands Office, Nicosia, addressed to the President of the District Court of Nicosia which is exhibit 6 in this application. 20

Counsel for the applicant argued that the Order of the Court under consideration was made without affording an opportunity to the applicant to be heard in breach of the rules of natural justice. Counsel also contended that the learned Judge acted in excess of jurisdiction in that he made the order without being moved by anyone. 25

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 affidavit in support, the Court is satisfied that such leave should be granted. (See *Attorney-General v. Panayiotis Christou*, 1962 C.L.R. 129 at pp. 133 and 134; *ex parte Costas Papadopoulos* (1968) 1 C.L.R. 66; in re *Nina* 30 35

Panaretou (1972) 1 C.L.R. 165; in re *Kakos* (1985) 1 C.L.R. 250.)

- 5 I have considered the argument of learned counsel for the applicant and at this stage, it would appear that the applicant has a prima facie arguable case that there has been a breach of the rules of natural justice and that the learned Judge acted in excess of jurisdiction and, in the circumstances, I grant leave to the applicant to file an application for an Order of Certiorari within 15 days from today.

Application granted.