

1988 June 30

[SAVVIDES, J.]

IN THE MATTER OF AN APPLICATION BY LOUIS TOURIST AGENCY LTD. FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND MANDAMUS

and

IN THE MATTER OF A JUDGMENT AND OR ORDER OF THE INDUSTRIAL DISPUTES COURT DATED 4.5.88 IN APPLICATION NO. 572/86.

(Application No. 87/88).

*Prerogative Orders — Certiorari — Leave to apply for — Applicant should make out a prima facie case — What constitutes such a case has been analysed in Re Kakos (1985) 1 C.L.R., 250.*

5 *Evidence — Burden of proof — Wrongful dismissal, claim for, before the Industrial Disputes Court — Defence alleging voluntary retirement — On whom the burden of proof lies — The Termination of Employment Law 24/67, sections 3(1) and 6(1)*

10 Angelos Yiassemides filed against the present applicants an application before the Industrial Disputes Court claiming damages for wrongful dismissal. The defence to that application was that Yiassemides had left voluntarily from the service of the present applicants.

15 However, the Industrial Disputes Court ruled that under section 6(1)\* of the Termination of Employment Law 24/67, the burden of proof was upon the present applicants, who had to start first adducing evidence.

Hence this application.

20 Held, *granting the application*: (1) At this stage the applicants have to make out a «prima facie» case sufficiently to justify the granting of leave. What constitutes such a case has been considered in *Re Kakos* (1985) 1 C.L.R. 250.

(2) In this case the applicants succeeded in establishing a prima facie case.

*Application granted.*

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\* Quoted at p. 409 post.

*Cases referred to:*

- Re Savva «Pambos»* (1986) 1 C.L.R. 518;  
*Re Kotsonis and Another* (1986) 1 C.L.R. 634;  
*Re Kakos* (1985) 1 C.L.R. 250;  
*Sidnell v. Wilson and Others* [1966] 1 All E.R. 681; 5  
*Re L.P. Loucaides Ltd* (1986) 1 C.L.R. 154;  
*Re Mobil Oil Cyprus Ltd* (1985) 1 C.L.R. 781;  
*Re Psaras* (1985) 1 C.L.R. 561.

**Application.**

Application for leave to apply for an order of certiorari to bring up and quash the decision of the Industrial Disputes Court in Application No. 572/86 and for an order of mandamus directing such Court to deliver copy of its record or judgment dated 4.5.88. 10

*N. Papaefstathiou*, for the applicant.

*Cur. adv. vult.* 15

SAVVIDES J. read the following judgment. By the present application applicant applies for

(a) Leave to apply for an order of certiorari to move to the Supreme Court for the purposes of quashing the decision of the Industrial Disputes Court in Application No. 572/86, by virtue of which it was decided that the burden of proof shifted on the applicants in the aforesaid application and were ordered to proceed first in adducing evidence to prove their case. 20

(b) An order of mandamus directing the Industrial Disputes Court to deliver copy of the record of 4th May, 1988 and or the judgment of 4th May, 1988. 25

(c) An order directing that any further proceedings in Application No. 572/86 before the Industrial Disputes Court are stayed pending the determination of the application for an order of certiorari and mandamus. 30

The facts relevant to the present Application are briefly as follows:

On 1st September, 1986, Angelos Yiassemides filed an

application in the Industrial Disputes Court under No. 572/86 against the present applicants claiming

(a) Damages for wrongful dismissal;

5 (b) The benefits and any emoluments which he was entitled to under the law and/or the collective agreements;

(c) Costs.

10 The present applicants entered an appearance on the 16th February, 1987, and in their grounds of defence they alleged that the said Yiassemides submitted his resignation and or retired voluntarily from their service on or about 31st July, 1986, and for this reason they denied his claim.

15 After hearing argument in this respect by counsel for the present applicants the Court decided that under the provisions of s.6(1) of the Termination of Employment Law No. 24/67 and relying on the summary procedure contemplated by law for the purpose of the speedy trial of this case the burden of proof was upon the present applicants who had to start first adducing evidence.

20 The applicants on 5th May, 1988, applied to the Industrial Disputes Court asking for copies of the record of the 4th May, 1988 and/or the decision of the Court of the same date but according to their allegation the Court refused to supply same. In fact by letter dated 12th May, 1988, the Registrar of the Court replied to counsel for applicants as follows:

25 «With reference to your letter 10/206/109 dated 5.5.88 I have been directed to inform you that the hearing of the case on the substance has been adjourned to the 14th October, 1988. Whatever has been said preliminary to the hearing has been recorded by the stenographer and will be transcribed after the completion of the hearing of the case.»

30 This is obviously the reason for prayer under paragraph (b) for an order of mandamus directing the Court to supply them with copies of the record.

35 When the case came up before me and counsel for applicants raised his complaint that copy of the record had not been supplied to him which was material for the determination of the present Application I gave directions to the Chief Registrar to ask the Registry of the Industrial Disputes Court to supply counsel for

applicants with the notes of the record and in fact such minutes were given to him on the 20th May, 1988. Therefore, the prayer for leave to issue an order of mandamus remains without any substance and is hereby dismissed.

It is well settled that the power of the Court to grant leave for an order of certiorari is a discretionary one. The question which has to be considered is not whether the order applied for should be issued but whether on the material before the Court there is a «prima facie» case made out sufficiently to justify the granting of leave to a person to move the Court in due course to issue an order of certiorari. Useful reference may be made in this respect to the cases *In Re Savva «Pambos»* (1986) 1 C.L.R. 518 at pp. 522 and 523 and *In Re Kotsonis and Another* (1986) 1 C.L.R. 634. 5 10

What constitutes a prima facie case has been considered by the Full Bench in the case of *In Re Kakos* (1985) 1 C.L.R. 250 in which reference is made to the observations of Diplock L.J. in *Sidnell v. Wilson and Others* [1966] 1 All E.R. 681 at p. 686. 15

There is a line of decisions of this Court which deal with the principles governing the granting of leave to apply for an order of certiorari; suffices it to refer to the most recent ones. *In Re L.P. Loucaides Ltd.* (1986), 1 C.L.R. 154; *In Re Mobil Oil Cyprus Ltd.* (1985) 1 C.L.R. 781; *In re Psaras* (1985) 1 C.L.R. 561 and the cases of *Kotsonis* and *Pambos* (supra). 20

Counsel for applicants in arguing this application submitted that the Court wrongly relied on s.6(1) and s. 7(1) of Law 24/67 and misinterpreted the provisions contained therein. The present case, counsel submitted, is not a case of termination of employment as provided by s. 3(1) of Law 24/67, the effect of which subject to the provisions of s.5 is to shift the burden of proof on the employer but it is a case where the claimant has himself submitted his resignation and or retired voluntarily from the service of the applicants. 25 30

S. 3 of Law 92/79, which repealed s.3 of Law 24/67, reads as follows:

«3. (1) Όταν, κατά ή μετά την έναρξιν της ισχύος του παρόντος άρθρου, ο εργοδότης τερματίζει δι οιονδήποτε λόγον άλλον ή των εν των άρθρω 5 εκτιθεμένων λόγων, την απασχόλησιν εργοδοτούμένου ο οποίος έχει απασχοληθή συνεχώς υπ αυτού επί είκοσι ή εξ τουλάχιστον εβδομάδας, ο εργοδοτούμενος κέκτηται 35

δικαίωμα εις αποζημίωσιν υπολογιζομένην συμφώνως προς τον Πρώτον Πίνακα:».

The translation in English reads as follows:

5 (Where, on or after the commencement of the present section, the employer terminates for any reason other than those set out in section 5, the employment of an employee who has been continuously employed by him for at least  
10 twenty-six weeks, the employee has a right to compensation calculated in accordance with the First Schedule.)

S. 5 of Law 24/67 enumerates the cases in which termination of employment does not give right to a claim for compensation.

S.6(1) of the Law deals with the burden of proof and provides as follows:

15 «6.(1) Καθ οιανδήποτε ενώπιον του Διαιτητικού Δικαστηρίου διαδικασίαν ο υπό του εργοδότη τερματισμός απασχολήσεως του εργοδοτούμενου τεκμαίρεται, μέχρις αποδείξεως του εναντίου, ως μή  
20 γεγόμενος διά τινά των εν τω άρθρω 5 εκτιθεμένων λόγων.»

The translation in English reads as follows:

(In any proceedings before the Industrial Disputes Court there shall be a rebuttable presumption that the termination of  
25 the employment of the employee by the employer has not been for one of the reasons set out in section 5.)

S.6(1) clearly speaks about termination of employment by the employer. The applicants in the present case deny that there was any termination of employment and claim that the claimant voluntarily retired from the employment of the applicants by  
30 submitting his resignation and, therefore, a case of termination of employment under the law does not arise.

The question which has to be considered by me at this stage is not whether the order applied for should be issued but whether on the material before me there is a prima facie case sufficiently to  
35 justify the granting of leave to apply for an order of certiorari bearing in mind the meaning which should be attributed to the word «prima facie».

In the light of the material before me, I am satisfied that a prima facie arguable case has been made out and I make the following order:

(a) The applicants are granted leave to apply in this case for an order of certiorari within one month from today. Any opposition to be filed within one month from service of such application. 5

(b) The proceedings in Application 572/86 before the Industrial Disputes Court are hereby stayed for one month from today and after the applicants apply within that period for an order of certiorari then such stay shall continue to be operative until further order of this Court. 10

(c) Copy of this order to be sent to the Registrar of the Industrial Disputes Court and be communicated to the Judge concerned.

*Application granted.*