

1988 September 14

(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 THESPI
CHRISTODOULIDES OF NICOSIA FOR AN ORDER OF CERTIORARI.

(Application No. 118/88).

Prerogative orders — Certiorari — Leave to apply for — Principles applicable.

Natural Justice — Order for payment of capital gains tax — Allegation that taxpayer was not given opportunity to be heard — In the circumstances leave was granted to taxpayer to apply for certiorari quashing said order. 5

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

Leave to apply for an order of certiorari granted. 10

Cases referred to:

A. G. v Chnstou, 1962 C.L.R. 129

Ex Parte Costas Papadopoulos (1968) 1 C.L.R. 66;

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

Application. 15

Application for leave to apply for an order of certiorari for the purpose of quashing the decision of the District Court of Nicosia in Cases Nos. 1606/87 and 1607/87.

A. Haviaras, 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 the decision of the District Court of Nicosia in cases Nos. 1606/87 and 1607/87 and also for an order staying the writ of execution issued in respect of the aforesaid two cases.

The facts of the case as they appear from the affidavit sworn in support of the application are as follows:-

The applicant was the lawful attorney of a certain Haritini K. Charalambidou by virtue of a power of attorney executed by the said Charalambidou and in the said capacity he sold two building sites situate at Strovolos.

The Income Tax Office imposed as tax under the Capital Gains Tax Law, Law 58/80 in respect of the sale of the said two plots, the sum of £3,404.

One of the Judges of the District Court of Nicosia, in dealing with the cases on 5.4.1987, proceeded and ordered the applicant to pay the sum of £3,404 with interest at 9 per cent, without giving the opportunity to the applicant to be heard.

The applicant came to know of these proceedings when writs of execution were issued against him. (See exhibits C and D).

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 applicant's statement and the affidavits in support, the Court is satisfied that such leave should be granted. (See *A.G. v. Panayiotis Christou*, 1962 C.L.R. 129 at p. 134, *ex parte Costas Papadopoulos*, (1968) 1 C.L.R. 66; *In Re Kakos* (1985) 1 C.L.R. 250).

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 there has been an error of law on the face of the record and in the circumstances, I grant leave to the applicant to file an application for an order of certiorari within 15 days from today and all proceedings for execution in respect of Case Nos. 1606/87 and 1607/87 to be stayed.

Application granted.