

1988 September 27

(MALACHTOS, PIKIS, PAPADOPOULOS, JJ.)

IOANNIS CONSTANTINIDES KOLOKOUDIAS AND OTHERS,

Appellants-Respondents,

v.

THOULLA VARNAVIDOU AND OTHERS,

Respondents-Applicants.

(Civil Appeal No. 7477).

Jurisdiction — Objection as to — The proper approach of a trial Court.

Words and Phrases: «The Judicial act».

Abuse of process — Proceedings for a declaration that Court before which such proceedings were instituted has no jurisdiction to try a particular dispute between the parties — An odd approach, bordering abuse of process of the Court. 5

Jurisdiction — Judicial act issued by an inferior Court having no jurisdiction in the matter — A nullity.

Rent Control — Rent Control Court — An inferior Court — Applicability of principles governing jurisdiction of inferior Courts. 10

The respondents are the owners of a hotel at Kakopetria village and the appellants are the tenants in occupation of the building.

The respondents applied to the Rent Control Court for a declaration that such Court lacks jurisdiction to take cognizance of their dispute with appellants. 15

Notwithstanding an objection by the appellants, that the Rent Control Court had no jurisdiction to entertain such an application, the Court proceeded on the merits and found that the appellants were not statutory tenants.

Held, *allowing the appeal*: (1) The first and paramount duty of the trial Court was to examine the question of jurisdiction and only if it found that it had jurisdiction, it could have proceeded to examine 20

further the application before it on its merits. The trial Judge should not have issued a judicial act, if he had no jurisdiction.

5 (2) The Rent Control Court is an inferior Court and, therefore, the principles applicable as regards the jurisdiction of such Courts apply to the jurisdiction of such Court. The deliberations of such Courts should be confined to matters within their jurisdiction.

(3) In the light of the above the approach of the trial Court was erroneous.

10 (4) The approach of the respondents in this case was odd and one that bordered abuse of process of the Court. It is a contradiction in terms to pronounce on a subject that ~~avowedly~~ the Court has no competence to pronounce upon.

Appeal allowed with costs.

Cases referred to:

- 15 *Christofi and Others v. Iacovidou* (1986) 1 C.L.R. 236;
Philippou v. Philippou (1986) 1 C.L.R. 689;
Frangos v. Medical Disciplinary Board (1983) 1 C.L.R. 256;
Efthymiadou v. Zoudros (1986) 1 C.L.R. 341.

Appeal.

20 Appeal by applicant against the judgment of the Rent Control Court, Nicosia (Appl. No. 180/86) dated 28th August, 1987 whereby it was declared that it had no jurisdiction to try the case as the premises, a hotel, are not subject to rent control.

E. Odysseos, for the appellants - respondents.

25 *Ph. Pelides with A. Anastassiou (Mrs.)*, for the respondents - applicants.

Cur. adv. vult.

MALACHTOS J.: *The judgment of the Court will be delivered by Papadopoulos, J.*

30 PAPAPOPOULOS J.: This is an appeal against a declaration of the Rent Control Court, that it has no jurisdiction to try the case as the premises, a hotel at Kakopetria, are not subject to rent control. The facts surrounding the case are the following:

35 The respondents are the owners of a hotel at Kakopetria village and the appellants are the tenants in occupation of the building.

The respondents, as surprising as it may appear, made an application to the Rent Control Court for a declaration that the Court lacks jurisdiction to take cognizance of their dispute with appellants as the premises although situate within a controlled area, are not, as alleged by the Respondents, covered by the Rent Control Legislation in force. The appellants in reply raised a preliminary objection to the effect that the Rent Control Court had no jurisdiction to hear the application as the applicants themselves alleged and/or supported that «the lease of the hotel of the respondents does not fall within the provisions of Law 23/83» and that, even if it was found that the Court had jurisdiction to hear the application, it had no jurisdiction to give declaratory judgment as prayed by the applicants.

When the case came up for hearing before the Rent Control Court, the Judge gave directions to Counsel of both sides to file written addresses on the issue of jurisdiction and adjourned the case for clarifications. After the submission of the written addresses when the case came again before the Court for clarifications, the Judge decided to proceed with the hearing of the substance of the application; and adjourned his decision on the issue of jurisdiction to a later stage.

Mr. Odysseos, acting for the respondents, reserved his rights as to the correctness of the proceedings and expressed the view that it was imperative that the preliminary objection as to jurisdiction should be decided first, because, as he put it, a decision on the preliminary point would put an end to the whole case. However, he applied for leave to file a supplementary address in reply to that of Mr. Pelides, Counsel for the applicants.

When the case came up for hearing, Mr. Odysseos submitted that the Court should give its Ruling first on the issue of jurisdiction before proceeding with the hearing of the substance of the case. The Court rejected the submission of Mr. Odysseos and proceeded to hear the case on its merits.

The learned trial Judge examined the evidence before him, reviewed a number of cases and referred to various legal principles before deciding that the Rent Control Court had power to issue declaratory judgments. Furthermore, on examination of the merits of the application before him, he found that the respondents were not statutory tenants.

Going through the record of this case we can discern the eagerness of the Judge to have the case concluded as soon as possible. This is in accord with the wishes of the legislator when establishing Rent Control Courts with section 4(1) of 23/83.

5 However, with all respect to the learned Judge, his first and paramount duty was to examine the question of jurisdiction and only if he found that he had jurisdiction, he could have proceeded to examine further the application before him on its merits. He was not asked in this particular case to proceed to answer a
 10 hypothetical question as to whether Rent Control Courts had jurisdiction to make declaratory judgments. He had a concrete case before him based on certain facts which he had to examine on the basis of the Law and authorities and pronounce his judgment. But before doing so, he ought to have examined the issue of
 15 jurisdiction. He should not in any way proceed to a judicial act if he had no jurisdiction; a judicial act as stated by Mr. Justice Stylianides in the case of *Christofi and Others v. Iacovidou* (1986) 1 C.L.R. p. 236 at p. 248;

20 «A judicial act is one issued by a Judge or Court and which involved exercise of discretion or judgment. It is an act by a Court touching the rights of parties or property brought before it.»

It has been said by Mr. Justice Stylianides again in the case of *Philippou v. Philippou* (1986) 1 C.L.R. p. 689 at p. 698 that:

25 «The jurisdiction of the inferior Courts in this country must be traced in the statute establishing them. Trial and decision by an inferior Court on a matter on which it has no jurisdiction is a nullity.»

30 The characteristics of a judicial act were defined in some detail by the Full Bench in *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256.

The task of the trial Court as Mr. Justice Pikiş observed in the case of *Efthymiadou v. Zoudros* (1986) 1 C.L.R. p. 341, in connection with the jurisdiction of a District Court, is to confine its
 35 deliberations to matters within its competence. He put it thus:

«The District Court is an 'inferior Court' in the sense of article 152 of the Constitution and possesses such jurisdiction as given it by Law. It cannot assume or exercise jurisdiction beyond that conferred on District Courts by Law.»

And further down:

«As the proceedings before the District Court were abortive and in consequence a nullity, the competence of the District Court was confined to dismissal of the proceedings.»

The Rent Control Court is likewise an inferior Court and similar considerations apply to the exercise of its powers. Any other decision would be paradoxical. We cannot imagine any Court which knowingly has no jurisdiction to proceed to the hearing of the merits of the case to make an assessment on the merits and then go back and say that «I made a mistake. I had no jurisdiction». We are of the view that the learned Judge erred in his approach to the solution of the problem before him.

Reverting to the case of *Zoudros* above, I would like to quote one more passage from the judgment of Pikis J. ... He said at page 5:

«It is for the parties to reflect on their rights and means for their ventilation before a competent Court.»

In this case what Mr. Justice Pikis said, becomes more striking. The appellants knowingly and believing that the Rent Control Court had no jurisdiction to entertain their case, yet applied to it for a negative declaratory judgment. It would seem odd, to give an example, for a party to seek an order for habeas corpus from a District Court when it is known that only the Supreme Court has such jurisdiction. It would appear to us that it is not only an erroneous and inappropriate approach, but one that borders abuse of the process of the Court. It is a contradiction in terms to pronounce on a subject that avowedly has no competence to pronounce upon. Evidently the object of recourse to the Rent Control Court was to pre-empt a decision of the District Court that the dispute is not within its jurisdiction.

For the reasons we have explained, the appeal is allowed with costs in this Court.

Appeal allowed with costs.