

1988 October 29

(KOURRIS, J)

IN THE MATTER OF AN APPLICATION BY THE ATTORNEY-GENERAL OF THE REPUBLIC ON BEHALF OF THE DIRECTOR OF L.R.O., FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF ORDERS OF THE DISTRICT COURT OF NICOSIA DATED 5.12.87 AND 16.2.88 IN APPLICATION NO. 65/87.

(Application No. 173/88)

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

5 *Mortgages — Cancellation of — Order for, twice amended upon ex parte applications — Prima facie case justifying leave to apply for certiorari quashing such amending orders.*

Natural Justice — Order for cancellation of mortgage twice amended upon ex parte application — Prima facie case justifying leave to apply for certiorari quashing such amending orders.

Leave to apply for certiorari granted.

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

Cases referred to:

A-G v. Christou, 1962 C.L.R. 129;

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

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

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

Application.

20 Application for leave to apply for an order of certiorari for quashing two orders of the District Court of Nicosia dated 5.12.87 and 16.2.88 in Appl. No. 65/87.

Gl. HadjiPetrou, for the applicant.

Cur. adv. vult.

KOURRIS J. read the following judgment. This is an application for leave to apply for an order of certiorari for the purpose of quashing two orders of the District Court of Nicosia dated 5.12.87 and 16.2.88, in Application No. 65/87. 5

The facts of the case as they appear from the affidavit sworn in support of the Application by M. Tsangarides, Lands Officer, 1s. Grade, are as follows:-

On the 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. 10

On the 5th December, 1987, the applicant in that application filed an ex-parte application for the amendment of the order granted on the 17th September, 1987 and the same Judge granted the order amending the previous order. 15

Again, on the 1st February, 1988, the applicant in that application 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 the 16th February, 1988. 20

Subsequently, the applicant in that application 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 on the 17th September, 1987. It should be noted that this order was the subject of an application for certiorari under No. 95/88, filed on behalf of Eleni Kyriakidou and was quashed on the ground of breach of the rules of natural justice and also on the ground that the learned Judge acted in excess of jurisdiction in that he made the order without being moved by anyone. 25 30

Counsel for the applicant in the present application argued that the orders of the Court dated 5th December, 1987 and 16th February, 1988, under consideration, were 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 contrary to sections 4, 5, 8, 28 and 36 of Law 9/65. 35

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
5 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
10 C.L.R. 66; *In Re Nina Panaretou* (1972) 1 C.L.R. 165; *In Re Kakos* (1985) 1 C.L.R. 250).

I have considered the argument of learned counsel for the applicant and, at this stage, it would appear that the applicant has
15 a prima facie arguable case that there has been a breach of the rules of natural justice and also an error on the face of the proceedings 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.