

1988 November 8

(PIKIS, J.)

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF YIANNAKIS P. ELLINAS, OF LIMASSOL, WITH REGARD TO THE ADJOURNMENT BY THE LIMASSOL ASSIZE COURT OF CRIMINAL CASE NO. 23802/87 TO 26.9.88 FOR TRIAL THEREOF BY THE NEXT ASSIZE COURT SITTING IN LIMASSOL.

(Application No. 154/88).

*Criminal Procedure — Assize Court — Whether it has power to adjourn a case pending before it to its next session, without the consent of the accused — Question determined in the affirmative — The Criminal Procedure Law, Cap. 155, s.48.*

*Courts Justice — The Courts of Justice Law 14/60 — Assize Courts — Position of, in the judicial system.* 5

*Assize Courts — Comparison between Assize Courts in England (prior to their replacement by Crown Courts) and the Assize Courts of Cyprus.*

The Assize Court of Limassol adjourned the case of the applicant, which was pending before it, to the next session of the Assize Court, without the consent of the accused (applicant) and, in fact, contrary to his wishes. 10

Having obtained the necessary leave\*, the applicant filed the present application for certiorari to quash the ruling for adjournment.

At issue in these proceedings is not the reason of the adjournment, but the jurisdiction of an Assize Court to adjourn a case before it to a next session, as opposed to an adjournment for trial during the same session of the Assize Court. 15

Held, *dismissing the application:*

(1) The Assize Court, as a judicial institution, was inherited from the English system, adapted to a colonial model established in many English colonies. Unlike England, questions of both law and fact are decided by professional Judges. In the days of colonial rule, it was modelled to a far greater extent than today on its English counterpart. 20

\* See (1988) 1 C.L.R. 555.

5 (2) Courts of Assize in England operate by virtue and under a commission of assize and were ordinarily presided over by a High Court Judge. A number of Statutes made provision for the regulation of a Court of Assize in England to postpone or adjourn a case to a future session of it. These were premised on the proposition that such power resided in the Assize Court, and need arose to curtail or modify it in certain respects\*.

10 (3) In Cyprus, the Courts of Justice Law 14/60, cast the Assize Court in a new frame. The Constitution vested judicial power in the Supreme Court and inferior courts subordinate thereto, established by law (see Part X of the Constitution, Art. 152.1). The Assize Court is one of those lower Courts. It is not convened on the authority of a commission. It is a permanent feature of the judicial system. The fact that the Assize Court is not in continuous session, does not detract from its permanence. Nor does it alter its position as a permanent feature of our judicial system.

15 (4) The procedure before the Assize Court is regulated by the Criminal Procedure Law - Cap. 155. The power of a court exercising criminal jurisdiction to adjourn a case pending before it, is regulated by the provisions of s.48 of the law; it applies to every competent court exercising criminal jurisdiction. The Assize Court is unquestionably a competent Court in the sense of s.48, in relation to cases the subject of an information filed by the Attorney-General before it (s.107 - Cap. 155). Section 48 applies indistinguishably to courts exercising criminal jurisdiction. The power to postpone is not limited to the adjournment of the case to a future date before the same session of the Court.

*Application dismissed.  
No order as to costs.*

30 *Cases referred to:*

*Republic v. Panayi, alias, Kavkaris and Others* (1988) 2 C.L.R. 124;

*In re Kakos* (1985) 1 C.L.R. 250.

### **Application.**

35 Application for an order of certiorari to remove into the Supreme Court and quash an order of the Assize Court of Limassol whereby Criminal Case No. 23802/87 was adjourned to 26.9.88 for trial by the next Assize Court sitting at Limassol.

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\* *The Criminal Procedure Act 1851, see Halsbury's Statutes of England*

G. Cacoyannis, for the applicant.

L. Loucaides, Deputy Attorney-General, for the Republic.

*Cur. adv. vult.*

PIKIS J. read the following judgment. At issue in this proceeding is the competence of the Assize Court to adjourn a case pending before it to the next session of the Assizes without the consent of the accused or, indeed, as in this case, contrary to his wishes. 5

None of the decided cases answers the question. This has led Mr. Cacoyannis to make extensive reference to English statutory law and practice affecting the jurisdiction of the Court of Assize in England to postpone or adjourn a case to a future session of the Court. He submitted that no jurisdiction lies with the Assize Court to adjourn a case to a future meeting of it without the consent of the accused. Mr. Loucaides argued that no benefit can be derived from English statutory or caselaw, because the jurisdiction of the Assize Court in Cyprus to adjourn a case to a future date, is regulated by express statutory provisions. He referred to s.3 of the Courts of Justice Law - 14/60, providing for the establishment of the Assize Court as a statutory Court within the framework of lower courts subordinate to the Supreme Court. Like every court exercising criminal jurisdiction, counsel submitted, the Assize Court enjoys the powers conferred by s.48 of the Criminal Procedure Law - Cap. 155, an enactment that vests power in every competent court exercising criminal jurisdiction to adjourn, at its discretion, any case to a future session of it. Consequently, the adjournment of the case by the Assize Court to a future session of it, is not defective for lack of jurisdiction. The reasons for the adjournment, namely, the impending appointment of the President of the Assize Court to the Supreme Court and sequential inability to preside over it, are referable to the exercise of the discretionary power residing with the Court; not in issue as such. Furthermore, he submitted that as the next session of the Assize Court was due to be convened in about a month's time, no conceivable prejudice could be occasioned to the appellant. 10 15 20 25 30

Mr. Cacoyannis submitted that the case had, in any event, been adjourned for no good reason, a proposition supported by the recent decision of the Full Bench of the Supreme Court, in *Republic v. Panayiotis Agapiou Panayi, alias Kavkaris and 2* 35

*Others* (1988) 2 C.L.R. 124.

In that case it was decided that the functioning of the Assize Court, or the continuation of its session, is not dependent on amenity of individual members of the Court to continue their participation in any one case. In that sense, the composition of the Court is no doubt impersonal. The Supreme Court may authorise a change of the composition of the Assize Court during the continuance of its session upon cause. However, as counsel acknowledged, at issue here is not the erroneous exercise of discretionary powers on the part of the Court, but the existence or absence of jurisdiction to adjourn a case to a future session of the Assize Court. For this Court to intervene in exercise of the powers vested in it under para. 4 of article 155 of the Constitution, it must appear that the Assize Court had no jurisdiction to adjourn the case, except upon the application or at least with the consent of the accused. If jurisdiction vested in the Court to adjourn the case, the present proceedings are not the proper forum for the review of the propriety of the exercise of its discretionary powers (*In re Kakos* (1985) 1 C.L.R. 250).

For the respondents it was contended that not only it was competent for the Assize Court to adjourn the case, but also desirable; no less in the interests of the accused in order to avoid trial by the same Assize Court that earlier on in its session convicted the applicant, after a plea of not guilty on other charges, and sentenced him to a term of imprisonment.

I have given consideration to the careful arguments of both counsel and took time to consider my decision.

Having duly reflected on the various aspects of the application, my conclusions and the reasons for them, are set out below: The Assize Court, as a judicial institution, was inherited from the English adapted, as I perceive, to a colonial model established in many English colonies. Unlike England, questions of both law and tact are decided by professional Judges. In the days of colonial rule, it was modelled to a far greater extent than today on its English counterpart (repealed and replaced after Independence by Law 14/60). Although I have been unable to trace to its origin the history of Courts of Assize in England, it is beyond controversy that Courts of Assize operated by virtue and under a commission

of assize and were ordinarily presided over by a High Court Judge (Courts of Assize were abolished by the Courts Act 1971 and replaced by Crown Courts). A number of English Statutes made provision for the regulation of a Court of Assize in England to postpone or adjourn a case to a future session of it. To my understanding they are premised on the proposition that such power resided in the Assize Court, and need arose to curtail or modify it in certain respects. The most notable of these enactments is the *Criminal Procedure Act 1851* (see, *Halsbury's Statutes of England*, 3rd ed., Vol. 8, pp. 110-111). Section 28 of the Act, in addition to requiring the accused to plead before the session of the Assize Court before which he was committed for trial, empowered the Court to adjourn a case mainly at the instance of the prisoner to the next or subsequent session of it in order to enable him to prepare his defence (amended by the Administration of Justice (Miscellaneous Provisions) Act 1933). I am unable to uphold the submission of counsel for the applicant that the provisions of the above Statute restricted the powers of an Assize Court in England to adjourn a case to the next session, except with the consent of the accused. A series of English decisions suggests that the Assize Court had jurisdiction to adjourn a case to a subsequent session of it whenever this was expedient in the interests of justice. Thus, cases have been postponed, inter alia, on account of the unavoidable absence or illness of a witness, the existence of prejudice in the jury, and to avoid surprise from failure to communicate evidence to the prisoner not produced before the magistrates (the subject is discussed in *Archbold, Criminal Pleading, Evidence and Practice*, 37th ed., para. 242). In order to prevent prejudice or oppression to the accused from repeated adjournments of a case from one session of the Assize Court to the next, the *Assizes Relief Act 1889* restricted amenity of the next session of the Assize Court to adjourn to a subsequent session, unless delay was due to special reasons, such as impossibility of producing the witnesses before the Court.

Next, we shall examine the position of the Assize Court within the context of the Cyprus Judiciary:

*The Courts of Justice Law - 14/60*, casts the Assize Court in a new frame. The Constitution of the Republic established the Judiciary as a separate and independent power of the State. Judicial power was vested in the Supreme Court and inferior courts subordinate thereto, established by law (see Part X of the Constitution, article 152.1). The Courts of Justice Law was

enacted in the spirit of and subject to the provisions of article 152.1 of the Constitution. It made provision for the establishment of inferior courts in which criminal and civil jurisdiction was vested. The Assize Court is one of those courts. Its jurisdiction, composition and functioning, are all regulated by the provisions of Law 14/60. Unlike a Court of Assize in England, the Assize Court in Cyprus is not convened on the authority of a commission. It is a statutory lower Court (the Assize Court in England was a superior Court) that functions within the framework of established judicial order. It is a permanent feature of the judicial system. The fact that the Assize Court is not in continuous session, does not detract from its permanence. Nor does it alter its position as a permanent feature of our judicial system. It is significant to note that s.3 of Law 14/60 provides that an assize court shall be composed or held (in every district) as there shall be a district court in every district.

The procedure to be followed by the Assize Court, like the District Court, in the exercise of its summary criminal jurisdiction, is regulated by the Criminal Procedure Law - Cap. 155. The power of a court exercising criminal jurisdiction to adjourn a case pending before it, is regulated by the provisions of s.48 of the law; it applies to every competent court exercising criminal jurisdiction. The Assize Court is unquestionably a competent Court in the sense of s.48, in relation to cases the subject of an information filed by the Attorney-General before it (s.107 - Cap.155). Section 48 applies indistinguishably to courts exercising criminal jurisdiction. The power to postpone is not limited to the adjournment of the case to a future date before the same session of the Court. If every meeting of the Assize Court could be regarded as a self-constituted session of the Court, separate and independent from subsequent sessions of it, it might be argued, not necessarily with success, that the power to adjourn, conferred by s.48, was limited to postponement of the case within the same session of the Court. As earlier explained, this is not the position of the Assize Court. It is a permanent statutory Court that functions in every district of the Republic at such times as the Supreme Court may direct.

I conclude that the Assize Court had jurisdiction to adjourn the case to the next session of it. Whether its discretion was properly exercised, is not the subject of these proceedings and, for that reason, I shall refrain from expressing a concluded opinion on the matter.

The application for the issue of certiorari will, therefore, be dismissed Order accordingly There shall be no order as to costs

*Application dismissed*

*No order as to costs*