

1988 August 17

[PIKIS, J.]
IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
ANDREAS POLYCARPOU,

Applicant,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Case No. 502/87).

Revisional Jurisdiction—Error of Registry consisting of failure to bring to the notice of the Court the fact that applicant filed a notice of withdrawal of the recourse as far as one of the interested parties was concerned—Court annulled sub judice decision, including the promotion of the said interested party—Whether power to correct the error—Question determined in the affirmative—The Supreme Constitutional Court Rules, 1962, Rule 18 and the Civil Procedure Rules, 0.25 Rule 6 (The slip rule). 5

Recourse for annulment—Practice—Withdrawal—Principles applicable—Withdrawal after filing of opposition—Leave of Court necessary, but it will only be refused in an exceptional case. 10

The recourse was directed against the promotion of the interested parties. Some time after judgment had been reserved, but before its delivery, the applicant filed a notice withdrawing the recourse against A.P. one of the interested parties. The Registry failed to bring this notice to the notice of the Court. The Court eventually annulled the sub judice promotions, including the promotion of A.P. At issue now is the amenity of this Court to remedy the aforesaid error. 15

Held: (1) *Republic v. Louca and others* (1984) 3 C.L.R. 241 established the principle that the applicant in proceedings for the review of administrative action has what may be termed an inherent right to abandon the proceedings at any stage, including the appeal. Afortiori the same applies to the abandonment of part of the cause. A litigant may address the court for the purpose of signifying the abandonment of the case at any time prior to the delivery of a judgment. 20

2) In revisional proceedings the Civil Procedure Rules are in virtue of Rule 18 of the Supreme Constitutional Court Rules applicable to the extent that they are compatible with the nature of the revisional process and so far as circumstances permit.

5 3) Ord. 15 of the Civil Procedure Rules requires the leave of the Court for the withdrawal of a proceeding after the delivery of defence that takes the form of opposition in proceedings under Art. 146.1.

10 4) In applying Ord. 15, r.1, the Court should no doubt heed the different nature of revisional jurisdiction and the lapse of the interest of an applicant to pursue a case after intimation of the intention to abandon the case. Leave would be refused only in an exceptional case.

15 5) In this case, had the notice concerning A.P. been brought to the attention of the Court the judgment would be limited to matters other than those affecting his promotion.

20 6) The Civil Procedure Rules are in their entirety modelled on the premise that errors of a litigant in the process may be remedied upon good cause. There should, in principle, be greater amenity to rectify errors where they don't originate from the parties or anyone of them, as in this case, Ord. 25, r.6 of the Civil Procedure Rules, confers power on the Court to correct errors in judgment arising either from an accidental slip or omission. The principle underlining Ord. 25, r. 6 would be neutralized if the Court was powerless in the present situation.

Directions that recourse as far as A.P. is concerned be deemed as having been dismissed.

25 *Cases referred to:*

Republic v. Louca and Others (1984) 3 C.L.R. 241;

Eleftheriades v. Cyprus Hotels (1985) 1 C.L.R. 677;

Decision 620/51 of Greek Council of State.

Application.

Application by interested party Andreas Pantelas to remedy an error in the process occasioned by an omission of the Registry of the Supreme Court.

G. Georghiou for A. Papacharalambous and P. Angelides, 5
for the applicant.

N. Hadjioannou, for the respondents and interested party A.
Pantelas

No appearance for applicant in Case No. 504/87.

Cur. adv. vult. 10

PIKIS J. read the following judgment. At issue is the amenity of a Court exercising revisional jurisdiction under Art. 146.1 to remedy an error in the process occasioned by an omission of the Registry of the Supreme Court. It was caused by the failure of the Registry to bring to the notice of the Court a written motion filed by the applicant before delivery of judgment signifying the withdrawal of the recourse against one of the interested parties, namely, Andreas Pantelas; tantamounting to the abandonment of the recourse so far as it was directed against the promotion of the aforementioned interested party. Reference to the facts surrounding the error will illuminate the nature of the problem and serve to identify the legal and factual issues calling for resolution. 15
20

Andreas Polycarpou, the applicant in Recourse 502/87, sought the review with the object of annulment of a decision of CYTA involving the promotion of 13 interested parties to the post of Section Leader 'B' (Technical Department) including that of Andreas Pantelas. The hearing* of the recourse was concluded on 25

* The case was consolidated for purposes of hearing with Recourse 584/87.

1st July, 1988 and judgment was reserved. It was given on 15th July, 1988, resulting in the setting aside of the sub judice decision and sequential annulment of the promotion of the interested parties, including that of Andreas Pantelas.

5 Unknown to the Court at the time that judgment was delivered, the applicant submitted on 9th July, 1988, a written notice in the cause of the recourse indicating the withdrawal of the action against Andreas Pantelas. As a matter of fact the Registry did not bring the above notice to the attention of the Court until after the
10 lodgment of the complaint by Andreas Pantelas respecting the outcome of the case. The notice was entered in the file, as we were informed, on 10th August, 1988. Thereupon I directed that the complaint of Andreas Pantelas be adjourned in open Court inviting at the same time argument from all concerned as to the implications of the omission of the Registry on the outcome of the case. All were of one mind that the error of the Registry should not prejudice the position of Andreas Pantelas. The omission to list the notice before the Court for consideration had direct repercussions on the outcome of the action because on the authority of
15 *Republic v. Louca and Others* (1984) 3 C.L.R. 241 it can be predicated with certainty that the recourse to the extent that it was directed against Andreas Pantelas would have been dismissed. In *Louca* (supra) the Full Bench of the Supreme Court decided that the applicant in proceedings for the review of administrative action has what may be termed an inherent right to abandon the proceeding at any stage, including the appeal. Afortiori the same applies to the abandonment of part of the cause at issue. The ratio emerging from the majority judgments* in the case of *Louca* (supra) is that the abandonment of the recourse at any stage of the proceedings, including the appeal, deprives the applicant of a legitimate interest to pursue the recourse any further.
20
25
30

* In a separate judgment I explained my reasons why leave of the Court is necessary for the abandonment of a recourse when the matter is sub judice on appeal.

Greek caselaw and jurisprudence supports that the pursuer of a recourse for the review of administrative action has an inherent right to abandon by a written or oral motion a recourse at any stage prior to the conclusion of the hearing*. A conflict is discernible respecting the right of an applicant to withdraw a recourse after the conclusion of a hearing in view of the fact that a litigant has no right to address the Court after the conclusion of the hearing of the action. We shall not enter the controversy for the case of *Louca* (supra) makes it clear that the right to address the Court for the purpose of communicating the abandonment of a recourse is not fettered in the way suggested by some Greek cases; a litigant may address the Court for the purpose of signifying the abandonment of a case at any time prior to the delivery of a judgment. Rule 18 of the Supreme Constitutional Court Rules, 1962 makes applicable the Civil Procedure Rules to the extent that they are compatible with the nature of the revisional process and so far as circumstances permit. Ord. 15 of the Civil Procedure Rules requires the leave of the Court for the withdrawal of a proceeding after the delivery of defence that takes the form of opposition in proceedings under Art. 146.1. The historical background to this adjectival enactment and the purpose it is designed to serve, were explained in *Eleftheriades v. Cyprus Hotels* (1985) 1 C.L.R. 677. The rule is intended, if I can put it in a nutshell, to vest power in the Court such as to render it the effective overseer of the judicial process.

In applying Ord. 15, r.1, the Court should no doubt heed the different nature of revisional jurisdiction and the lapse of the interest of an applicant to pursue a case after intimation of the intention to abandon the case. Only in a most exceptional case could I contemplate the Court refusing leave to withdraw a recourse after a declaration on the part of the applicant to abandon the case wholly or in part. It can, therefore, be presumed with as much certainty as one can express on an ex port facto contempla-

* See Case 620/51; Tsatsos "Application for Annulment", 3rd Ed., p.368; Kyriacopoulos, "Greek Administrative Law", Specific Part, Vol. 'C', p. 129.

tion of a decision that had the notice of 9th July, 1988, been drawn to the attention of the Court, the case against Andreas Pantelas would have been dismissed and the issues arising for consideration in the judgment will be limited to those other than matters affecting the promotion of Andreas Pantelas. Is there power to rectify the effects of the omission of the Registry? This is the next and final question we shall endeavour to determine. The Civil Procedure Rules are in their entirety modelled on the premise that errors of a litigant in the process may be remedied upon good cause. This is a sound foundation safeguarding the interests of justice that require that substance should take precedence over form unless the disregard of the Rules is such as to threaten the course of justice. There should, in principle, be greater amenity to rectify errors where they don't originate from the parties or any one of them, as in this case. Ord. 25, r.6, of the Civil Procedure Rules, confers power on the Court to correct errors in a judgment arising either from an accidental slip or omission. Study of the application of the English counterpart of this rule, notably, Ord. 28, r.11 (Old Rules of the Supreme Court) suggest that wide discretion resides with the Court to correct errors occurring in a judgment as a result of which the judgment does not reflect the true intention of the Court or fails to define the extent and range of the judgment. In none of the decided cases was the Court concerned to determine an issue similar to the one here considered. Nonetheless the principle underlining Ord. 25, r.6, would be neutralized if the Court was powerless in the present situation to ensure that the interested party is not prejudiced by the omission of the Registry or for that matter to allow the cause to remain in being, notwithstanding its abandonment by the pursuer. Considering that had the notice of 9th July been brought to the notice of the Court prior to the delivery of judgment, the questions at issue would have been confined to matters other than those concerning Andreas Pantelas, in exercise of the powers vested in the Court under Ord. 25, r.6, I hereby direct that the judgment be confined accordingly and that Recourse 502/87, so far as it was directed against Andreas Pantelas, be deemed as having been dismissed.

Order accordingly.