

1989 July 21

(SAVIDES, J)

IN THE MATTER OF AN APPLICATION BY MAROULLA  
KAVALLARI (ADMINISTRATRIX OF THE ESTATE OF  
PANAYIOTIS KAVALLARIS DECEASED) OF LIMASSOL  
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

AND

IN THE MATTER OF A DECISION ON APPEAL UNDATED  
AND POSTED TO THE ABOVE NAMED MAROULLA KAVALLARI  
BY LETTER DATED 25.1.88 BY THE REGISTRAR OF  
CO-OPERATIVE SOCIETIES AND CO-OPERATIVE  
DEVELOPMENT, MR. EROKOTAKRITOS CHLORAKIOTIS.

*(Application No. 31/88).*

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*Prerogative Orders — Certiorari — Leave to apply for — Principles  
applicable.*

The facts of this case need not be summarized. In granting leave to  
apply for certiorari, the Court expounded the principles governing  
such matter.

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*Leave to apply for an order of Certiorari granted.*

*Cases referred to:*

*In Re Constantinou* (1983) 1 C.L.R. 410;

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

*In Re Savva «Pambos»* (1986) 1 C.L.R. 518;

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*In Re Kotsonis and Another* (1986) 1 C.L.R. 634;

*In Re Hadjisoteriou and Another* (1985) 1 C.L.R. 387.

**Application.**

Application for leave to apply for an order of certiorari to quash  
the decision of the Registrar of Co-operative Development given  
on appeal in his capacity of hearing appeals in arbitration awards  
by virtue of section 53(4) of Cap. 114.

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*M. Georghiou, for the applicant.*

SAVVIDES J. read the following decision. This is an application for leave to apply for an order of Certiorari to quash the decision of the Registrar of Co-operative Societies and Co-operative Development given on appeal in his capacity of hearing appeals in  
5 arbitration awards by virtue of s.53(4) of Cap. 114, communicated to the applicant by letter dated 25th January, 1988.

The facts of the case are briefly as follows:

The applicant is the administrator of the estate of the deceased Panayiotis Kavallaris late of Lapithos who was a member of the  
10 Cyprus School-Teachers Co-Operative Savings Bank Ltd. The deceased had in his credit under a savings account a sum of £2,831.56 plus interest as from 21st August, 1984. As a result of the refusal of the said School-Teachers' Co-Operative Savings Bank Ltd. to pay this amount to the administrator on the ground  
15 that it was entitled to keep same as additional security for a debt due by the deceased and secured by a mortgage a dispute arose.

By letter dated 21st May, 1986, the applicant applied to the Registrar of Co-operative Societies requesting that the dispute be referred to arbitration. The dispute was eventually referred to  
20 arbitration before Mr. Stelios Papalexandrou who reached his decision on 5th December, 1986, by which the School-Teachers Co-Operative Savings Bank Ltd. was ordered to pay to the applicant the whole amount standing to the credit of the deceased in his account of permanent savings.

25 An appeal was filed against the above decision by and/or on behalf of the Cyprus School-Teachers Co-Operative Savings Bank Ltd. which was fixed for hearing before Mr. Erotokritos Chlorakiotis, the Registrar of Co-operative Societies and Co-operative Development, on the 9th December, 1987. After the  
30 conclusion of the hearing of the case a judgment was delivered and communicated to the applicant by letter dated 25th January, 1988, reversing the decision of the arbitrator and deciding that the said deposits should remain with the Savings Bank as a guarantee of a frozen debt of the deceased so long as the debt existed.

35 It is the contention of counsel for applicant that the said decision of Mr. Chlorakiotis is initiated by errors of law on the face of the record in that:

(a) He wrongly decided that the funds in the deposit account of

the deceased should remain with the Savings Bank as a guarantee of a frozen debt of the deceased so long as that debt existed.

(b) He wrongly, unreasonably and arbitrarily interpreted Reg. (f) of page 18 of the Regulations of the School-Teachers Co-Operative Savings Bank Ltd. as meaning that the fixed deposit accounts are a general guarantee for any debt of a deceased member. 5

(c) He wrongly evaluated and applied Law 24/79 as well as Laws 4/79 and Law 46/78.

(d) In view of his conclusion that the deposits of the deceased should not be considered as a guarantee of the debt of the deceased that was secured by mortgage Y 207/72 of the District Lands Registry of Kyrenia, his decision is contradictory, arbitrary, unreasonable and wrong. 10

I need not repeat the principles governing the granting or refusal of an application for leave to apply for an order of Certiorari as they have explicitly been stated in a number of cases of this Court. See, inter alia, *In Re Constantinou* (1983) 1 C.L.R. 410; *In Re Kakos* (1985) 1 C.L.R. 250; *In Re Savva «Pambos»* (1986) 1 C.L.R. 518; *In Re Kotsonis and Another* (1986) 1 C.L.R. 634. 15 20

The principles emanating from such decisions are that firstly there must be shown at this stage that there exists a prima facie case on the face of the record, that the decision was erroneous in point of law, that is not an unanswerable case but an arguable one and, secondly, provided the requisite grounds exist certiorari will lie although a right of appeal has been conferred by statute. (See, in this respect, *In Re Hadjisoteriou and Another* (1985) 1 C.L.R. 387 at pp. 391-392). 25

The question which has to be considered by me at this stage is not whether the order applied for should be issued but whether on the material before me there is a prima facie case sufficient to justify the granting of leave to apply for an order of Certiorari, bearing in mind the meaning that should be attributed to the words «prima facie». 30

In the light of the material before me I am satisfied that a prima facie arguable case has been made out and I make the following order: 35

(a) The applicant is granted leave to apply for an order of

Certiorari within one month from today. Any opposition to be filed within one month from the service of such application.

(b) Copy of this order to be sent to the Registrar of Co-operative Societies and Co-operative Development.

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*Application granted.*