

1989 July 31

(STYLIANIDES, J)

IN THE MATTER OF AN ORDER FOR IMPRISONMENT ISSUED BY
THE DISTRICT OF NICOSIA IN ACTION NO 9867/85 ON THE 14 5 87

AND

IN THE MATTER OF AN ORDER FOR IMPRISONMENT ISSUED BY
THE DISTRICT COURT OF NICOSIA IN ACTION NO 9867/85 ON
THE 23 6 87

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IN THE MATTER OF AN ORDER FOR IMPRISONMENT ISSUED
BY THE DISTRICT COURT OF NICOSIA IN ACTION NO 9867/85
ON THE 2 3 1988

AND

IN THE MATTER OF AN APPLICATION BY CHRISTAKIS MICHAEL
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND/OR
PROHIBITION TO REMOVE THE AFORESAID THREE WARRANTS
OF IMPRISONMENT AND QUASH THEM

(Application No 106/89)

*Prerogative orders — Certioran — Leave to apply for — Principles
applicable*

Prerogative orders — Certiorari/Prohibition — Purpose and scope of

*Prerogative orders — Certioran — Error apparent on the face of the
record — As a rule no affidavid evidence is admissible*

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The applicant was ordered to pay a Judgment debt by monthly instalments. He was committed to prison for failing to pay an instalment. He complains that the Judge failed, contrary to section 82 of the Civil Procedure Law, Cap 6, to examine whether, since the making of the order, he had sufficient means to pay, and, also, that he had, already, been committed to prison for the same Judgment debt and that having been discharged therefrom, his new committal was contrary to section 85 of Cap 6. The Court held that the applicant established an arguable case

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Leave granted 15

Cases referred to

In re Attorney-General of the Republic (Not reported yet).

In re Kakos (1984) 1 C.L.R. 876 and on appeal (1985) 1 C.L.R. 250;

In re Psaras (1985) 1 C.L.R. 561;

In re Argyrides (1987) 1 C.L.R. 23;

R. v. Nat Bell Liquors Ltd. [1922] 2 A.C. 128;

- 5 *Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others* [1959]
2 All E.R. 433.

Application.

Application for leave to apply for the issue of orders of certiorari and prohibition in relation to the orders for imprisonment issued
10 by the District Court of Nicosia in Criminal Case No. 9867/85.

L. N. Clerides, for the applicant.

STYLIANIDES J. read the following decision. By means of this application the applicant, who is now in prison, seeks leave to apply for the issue of orders of Certiorari and Prohibition in
15 relation to order for imprisonment issued by the District Court of Nicosia in Action No. 9867/85.

In the application three orders are set out, but, today counsel appearing for him restricted his application to the order dated 2nd March, 1988, on the strength of which a warrant of imprisonment
20 was issued, in virtue of which he is now in prison.

Certiorari is a means for exercising the supervisory power of this Court over inferior Courts. It is issued, inter alia, on the ground that in the decision sought to be reviewed there is error of law apparent on the face of the record. (See, inter alia, Civil Application No. 43/
25 89 - Αναφορικά με το Γενικό Εισαγγελέα τη Δημοκρατίας - (Judgment delivered on 31st July, 1989, not yet reported) in which the previous judgments are cited and reviewed.)

Prohibition is an order issued out of this Court directed to an inferior Court, which forbids that Court to continue proceedings
30 therein in excess of its jurisdiction, or in contravention of the laws of the land, or in departure from the rules of natural justice.

At this stage the Court has to be satisfied that a prima facie case is made out, or, as expressed otherwise, an arguable issue is raised. (See, inter alia, *In re Kakos* (1984) 1 C.L.R. 876 and on

Stylianides J. In re Michael (1989)
appeal (1985) 1 C.L.R. 250; *In re Psaras* (1985) 1 C.L.R. 561, 564;
In re Argyrides (1987) 1 C.L.R. 23, 27.)

The relevant material before the Court is the application, the affidavit in support and the order of the District Court.

The error of law, which counsel submitted is apparent on the face of the record, is twofold: 5

(a) That the order was issued contrary to section 82(a) of the Civil Procedure Law, Cap. 6 (the «Law»), in that the District Court did not examine whether - and had no material before him - the applicant, judgment debtor, has had sufficient means to pay the money directed to be paid by him and he refused or neglected to pay it according to the order; and 10

(b) That he had been in prison by previous order, on account of the same judgment, and was discharged. The order challenged is erroneous, as it is apparently contrary to the express provisions of section 85 of the Law, which reads: 15

«85. A debtor once discharged shall not again be imprisoned on account of the same judgment or order, but his property shall continue liable to execution until the judgment or order is fully satisfied.» 20

The applicant is the judgment debtor in Action No. 9867/85. Judgment was issued by consent against him on 22nd March, 1986. On the application of the judgment creditor and upon examination by the District Court he was ordered to pay the judgment debt and costs by monthly instalment of £300 commencing on 1st November, 1986, until final payment. He failed or neglected and the first order for imprisonment was issued on 14th May, 1987, under section 82 of Part VIII of the Law. Later, on 23rd June, 1987, another order, committing him to prison for thirty days, was issued under the same statutory provision, on account of the same judgment debt. 25 30

The applicant, according to the statement of his counsel, was imprisoned under one of those orders and he was discharged.

The order challenged is the order issued on the 2nd March, 1988, committing him to prison for 360 days, unless he pays £1,412.35 within 90 days from service thereof. 35

On the material before me, the applicant is imprisoned by this order of the Court, because of default of payment of instalments

directed by the Court. In the past he was committed to prison on account of the same judgment or order for which the challenged order of 2nd March, 1988, was issued and was discharged.

In the affidavit of the applicant, sworn at the central prisons on 5 29th July, 1989, it is stated:

«... the Hon. Court failed to examine whether since the making of the original order to pay £300 per month on the 9.10.86 I had sufficient means to pay the sum due...»

10 It may be said that when certiorari is sought on the ground of error of law on the face of the record, affidavit evidence is not, as a rule, admissible, for the simple reason that the error must appear on the record itself - (*R. v. Nat Bell Liquors Ltd.*, [1922] 2 A.C. 128, per Lord Sumner, at p. 159; *Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others* [1959] 2 All E.R. 433, per Lord 15 Tucker, at p. 443). Affidavits are admissible to show that the record is incomplete whereupon this Court would either order the record to be completed by the inferior Court, or it might quash the determination at once. Only affidavits put in by consent of the parties, as if they were part of the record, and make it into a 20 speaking order are admissible. (*In re Argyrides (supra)*).

In view of the foregoing, at this stage, and for the limited purpose of this application, I am satisfied that an arguable issue was raised entitling the applicant to the leave sought.

25 Further, counsel applied for stay of execution of the order pending the determination of the application to be filed by summons.

30 Leave granted. Application to be filed within ten days; to be served on the address of counsel for the judgment creditor. Execution of the challenged order is suspended until the determination of the application by summons.

Application granted.