SUPREME COURT OF CYPRUS

APPELLATE JURISDICTION

(Civil Appeal No. 34/2023)

April 5th, 2023

[STAMATIOU, D.]

REGARDING ARTICLE 155.4 OF THE CONSTITUTION AND ARTICLES 3 AND 9 OF THE 1964 LAW CONCERNING THE ADMINISTRATION OF JUSTICE (VARIOUS PROVISIONS)

AND

REGARDING THE SUPREME COURT (JURISDICTION REGARDING ISSUANCE OF PRIVILEGED WARRANTS) REGULATORY SETTLEMENT OF 2018

AND

REGARDING THE PETITION OF ALICE EVAGGELIDOU FROM NICOSIA FOR THE REGISTATION OF APPLICATION FOR THE ISSUE OF A WRIT OF CERTIORARI

AND

REGARDING THE INTERMEDIATE DECISION DAT. (14/2/2023) ISSUED IN THE CONTEXT OF LAWSUIT N.289/16 IN THE REGIONAL COURT OF FAMAGUSTA BY THE POWER OF Δ.25, Δ.30 AND Δ.57 OF THE INSTITUTIONAL CIVIL PROCEDURE AND THE ADJUDICATION OF DELAYED CASES (SPECIAL ADJUDICATION REGULATIONS) OF 2022 AS MODIFIED IN 23/12/2022.

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Chr. M. Panagiotou for Tornaritis & Co LLC, for the Applicant.

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DECISION

STAMATIOU, D.: The present application requests the registration of a request to issue a privileged Certiorari writ, with the aim of annulling the intermediate decision, issued on 14 February 2023 in the context of Lawsuit N. 289/2016 of the Regional Court of Famagusta. Furthermore, it claims the suspension of the force of the aforementioned decision as well as all actions, directions and processes associated with and in pursuit of it.

The applicant is a plaintiff in this suit, which was registered on 6 April 2016. All legal documents have been duly submitted on 15 February 2020. Application for Direction, according to D.30 of the Institutional Civil Procedure. The applicant has brought about a change of the lawyers in her representation on12 February 2021, 8 March 2021 and 19 January 2022. Considering that, and the fact that the case has been presented in front of

various judges and moved from the Court of Larnaca to the Court of Famagusta, as a result of an error, no side submitted the revelation of documents under oath, the catalogue of witnesses, or the attachment of witness testimony, and no court has given orders to register such documents within an explicit deadline. Meanwhile, during the process of the lawsuit, the death of defendant 3 occurred, rendering necessary the modification of the title of the suit. For various reasons, there was no valid submission of an application for modification of title.

On16 November 2022, the lawsuit was set for hearing, and through electronic messages, the plaintiff's lawyers communicated with the Court on 14 November 2022 with the aim of making known the intentions of the plaintiff to submit an application for the modification of the title of the suit. In this request, there was no objection from the side of the defendants.

The Court set the case for hearing on23 January 2023, giving time to the applicant to register a request for modification of the title of the suit. For various reasons called upon by the applicant's sides and which are not required to be presented here, the application for modification was not submitted until20 January 2023, when the applicant's lawyers sent an electronic message to inform the Court that their intention was to submit the modification application on23 January 2023, which was the designated date of hearing. The Court set the case for a hearing on 14 February 2023, without mentioning anything regarding the application. On 23 January 2023, when the applicant's lawyers arrived at the First Sigil Office to submit the application, they were informed that according to the Adjudication of Delayed Cases (Special) Adjudicative Regulations they were unable to register the application. On 30 January 2023, an electronic message was sent to the Court to request permission to submit the application for modification, with no response. A new request was sent on 3 February 2023, again with no reply. In both cases the lawyers of the defendants made no objections.

On 4 February 2023, a lawyer on behalf of the applicant presented himself before the Court to request permission for the modification of the title. The Court interrupted the lawyer and reported that the hearing of the case had to start, and that the lawyer responsible for handling the case should be present with his witnesses. The responsible lawyer was notified, however, but the primary witness of the case, who was of late age, could not commute to the Court due to a serious fracture on his knee.

The Court reported to the lawyers before it that upon inspection of the case file, there were no registered documents to be unveiled, as well as no account of witnesses and attached witness testimony, despite relevant directions from two judges, in front of whom the case had been presented previously, with the second one having designated the case for a hearing "of course, because the deadlines are running". What was said between the lawyers and the Court is shown in the attached records. What was concluded by the Court, having taken into account the whole history of the case, is the following:

"But, during the investigation of the file, it was determined that the Institutional Regulations regarding submission of the Summary Witness Catalogue (SIC) and Attachment of Witness Testimony (AWT). The plaintiff's side claimed injustice, however the plaintiff was always represented by counsel in court procedures. There was never a time or issue during which, in as much as the Court can determine from the content of the case file, the plaintiff did not have a lawyer. Therefore, according to these conditions, namely that the plaintiff always had the benefit of legal representation under the direction of the Court, there is no question of exercising court discretion to get around the Institutional Regulations. Hence, the fair course of action adoptable by the Court, according to the case file, is the presentation of written

oration to it. The Court cannot justify the use of its discretion to order registration of SIC and AWT today, which should have been registered since 2020, nor is it justified to give orders for oral presentation of witness testimony in this delayed stage. The plaintiff always had full knowledge of Court direction during the process. At no point was the plaintiff unaware of the ongoing court proceedings, as it is proven by the content of the electronic correspondence given to the Court by the first lawyer as well as the second and the third, whom she had herself instructed to undertake the present hearing. Thus, the application for production of oral witness testimony without SIC and AIT cannot be accepted and is rejected."

The applicant is suggesting that the lower court acted in transgression of its authority and violated the principle of natural justice, depriving her of the right to a hearing and summoning of witnesses during the procedure. The plaintiff also claims legal error in the court records, as the Court interpreted the Adjudication of Delayed Cases (Special) Adjudicative Regulations 2022 wrongly, failing to observe the rules of civil procedure properly. On that point, the plaintiff refers to Rule 3 of the 2022 Regulations (clearly an error whereby the proper reference was to Rule 6) which permitted the Court to give directions during court motion for the production of a catalogue of witnesses on behalf of the parties, so that the procedure can commence.

The learned counsel of the applicant advocated for the application in oral oration.

A Certiorari writ is issued when the lower court has acted out of jurisdiction or exceeded it, or a clear legal error is identified in the records of its decision (Gennaro Perrella (No.2)) (1995) 1 ΑΑΔ 692). Furthermore, a Certiorari writ is issued where there is a manifest error as to the law, prejudice, or violation of the rules of natural justice as manifestations of a lack or overreach of authority (Bank of Cyprus (1999) 1 ΑΑΔ 1010).

According to the relevant jurisprudence, the power to issue a writ of Certiorari cannot be used as an instrument of review to the process or practice followed by the Regional Court (Attorney General (No.3) (1993) 1 ΑΑΔ 442), nor is its object the control of the soundness of a decision, but its legality (Marewave Shipping & Trading Company Ltd (1992) 1 ΑΑΔ 116). Where the Court holds jurisdiction, it is not possible to consider it to have transgressed or abused its jurisdiction due to misinterpreted legislation, accepted illegal testimony (Re. Mario Christou (1996) 1 ΑΑΔ 398), or finally, if it was deceived as to the facts. In any case the writ of Certiorari does not aim at the correction of a wrong decision by a First Instance Court. There is no question of substituting the judgement of the lower court regarding the issue as determined according to its jurisdiction with the judgement of the Supreme Court. In the case of another available adjudicatory mechanism, no writ of Certiorari is issued unless there are extraordinary circumstances (Anthimou (1991) 1 ΑΑΔ 41, R. v. Chief Constable of Merseyside [1986] 1 All ER 257, Artemi – Privileged Writs, pag. 166-167).

I have examined the application and the records of the Court, as well as all the points remarked by the learned counsel.

The applicant's complaints focus essentially on the way the Court interpreted the Adjudicative Regulations and in the way it implemented them, using its discretion to regulate the

procedure. The interpretation given by a court to the Institutional Rules of Civil Procedure or other Regulations, even when it is mistaken, the plaintiff cannot claim justice through privileged writ. The extent to which the Court could, according to the Rules of Civil Procedure or the Special Regulations, act upon its discretion,give orders for the production of a witness catalogue, and allow the applicant to summon witnesses is a matter that is up to the soundness of its exercise of discretion, something that cannot be controlled with a privileged writ.

The learned counsel of the applicant argued that the decision of the lower court not to allow the applicant to summon witnesses violates the rules of natural justice and gives authority to the Supreme Court to issue a privileged writ. It is true that in the case where a party is not granted the right to be heard, there is a violation of the rules of natural justice and the Supreme Court has the power to issue a privileged writ.

Even though the handling of the case by the lower court could have been different, the question posed by the present application is to what extent there was a violation of the rules of natural justice, as claimed by the applicant.

The decision of the Court not to allow the parties to present witness testimony in the case was the result of discretion and the interpretation of the relevant Adjudicative Regulations, considering the direction of the case. It is not a violation of the rules of natural justice, rather about the mistaken exercise of discretion, or interpretation, of the Regulations, which cannot be examined in the context of the present application.

Due to the above reasons, I submit that the applicant's claims have not been proven, therefore the request cannot be fulfilled.

In addition, if it was held that there were circumstances for an arguable case, the application could not have been successful due to the existence of an alternative remedy, namely the possibility of lodging an appeal at the end of the proceeding Furthermore, there is no justification supporting the opposite conclusion, as it would amount to extraordinary circumstances, according to the jurisprudence, and would contribute to the issue of the relevant writ.

The application is rejected.