

THE SUPREME COURT OF CYPRUS
JURISDICTION OF FIRST INSTANCE

(Civil Application No. 17/2020)

February 27th, 2020

[P.O. BOX OIKONOMOU, DIRECTOR]

WITH RESPECT TO ARTICLE 155.4 OF THE CONSTITUTION AND SECTIONS 3 AND 9 OF THE
ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) LAW OF 1964

AND

REGARDING THE SUPREME COURT (JURISDICTION TO ISSUE WARRANTS OF A PRIVILEGED
NATURE) PROCEDURAL REGULATION OF 2018

AND

REGARDING THE APPLICATION OF PJSC T PLUS, RUSSIA FOR PERMISSION TO REGISTER AN
APPLICATION FOR THE ISSUANCE OF PREFERENTIAL WRITS OF CERTIORARI AND/OR
PROHIBITION PURSUANT TO ARTICLE 155.4 OF THE CONSTITUTION

AND

REGARDING THE INSTRUCTIONS AND/OR DECREE AND/OR INTERIM DECISION OF THE
LIMASSOL DISTRICT COURT (CH. FILIPPOU, A.E.D.) DATED 15/01/2020 AND 23/01/2020 IN
APPLICATION 1522/2019

Ex-Parte from PJSC T PLUS, EK RUSSIA, Applicant

M. Loizou (Mrs) with K. Chatzianastasis (Mrs) for Ch. Kyriakides LLC, for the applicant.

DECISION

[Ex-tempore]

The applicant in the present application seeks in the lawsuit 1522/2009 E.D. Limassol, which was registered against 28 defendants, various remedies, among others Norwich Pharmacal-type disclosure, gagging order, prohibition of concealment or destruction of evidence, etc.. Simultaneously, she submitted a unilateral application requesting identical matters as orders.

On 5 September 2019, a judge of the Special Court of Limassol issued unilateral orders of gagging and destruction prohibition, whereas for the rest he permitted the application to proceed.

The application was set for a hearing on 23 January 2020, with directions that any objections should be submitted by 15 January 2020.

However, the application had not been given against defendant 1, just as it was not served against others, resulting in a break of the suit against them. Specifically, the break in relation to defendant 1 appears to have been registered with the jurat on 15 January 2020.

On the same day, another judge took on a unilateral application by defendant 1, 13 January 2020, with which she requested permission to file an objection "within the time determinable by the court". It should be noted that the file in the records was sought, however, it was not found by the jurat. It was reported to the judge by the lawyer of defendant 1 that from the research into the file there seems to be no serving, "but it may have been done in a way which was not? Unnoticed by the applicant". The crux is that the judge gave time for an objection on behalf of defendant 1, not knowing anything regarding the break of the suit on that same day. Since the time he gave, until 30 January 2020, the objection exceeded the time determined for the hearing of the main application (23 January 2020) he cancelled the trial date and gave direction for the lawyers to be notified by the jurat, without giving a chance to the other side and parties to be heard.

Furthermore, according to the facts as presented by the side of the applicant, her lawyers were disturbed when notified of this development and contacted the judge in connection with the issue of breaking the suit. As a result, the judge issued a new direction to the jurat to notify all lawyers that the main application will be heard on the already determined date, namely on 23 January 2020. However, this motion was without cancelling the direction as to the objection from the former defendant 1 until 30 January 2020.

On 23 January 2020, the lawyer of the applicant was ready for a hearing on the main application before the Court. Nevertheless, the Court did not proceed to a hearing. This was due to the fact that the Court considered the former defendant 1, whose lawyer was present, is an interested party with a right to intervene in the procedure and be heard, with a period to register an objection until 30 January 2020, according to the aforementioned direction on 15 January 2020.

With the present application, the plaintiff requested permission to register an application for the issue of an order of certiorari to cancel the application and decisions of the Court on 15 January 2020 and 23 January 2020. In addition, the plaintiff requested permission to lodge an application of prohibition to prevent promotion of an objection or continuing participation of the former defendant 1. Simultaneously, she requested postponement of the procedure, excluding the force of the intermediary order dated 5 August 2019, until the final adjudication of the present application.

The legal reasons for which the remedy is sought are presented extensively and with a to the events which are not of much importance in the limited context of the present procedure. As for the procedure on 15 January 2020, it is reported that the Court gave time without hearing from the other side, at the time when the main application was already set for hearing on 23 January 2020. This occurred when there was already a registered notice of a break, despite the fact that the Court did not have its file before it, subsequently being unable to consider all of the facts.

In relation to what was discussed, what poses an issue of violation of the rules of natural justice is the fact that the date of the hearing was cancelled, without input from the other side. The date may have been restored, however, the time to lodge an objection by defendant 1 until 30 January 2020 remained, without prior knowledge to the judge that on the same day the suit against her was broken, and the lack of examining to what extent she remained as an "interested party". This issue is connected to the above file of the application, dated 23 January 2020.

The applicant requested permission to disrupt the directions which allowed the intervention of former defendant 1, as according to her claim, it occurred outside the legitimate civil procedure, without engaging the available civil procedure mechanism for non-party intervention. There was reference to D.48 ch.8(4) and in the jurisprudence of *Heli-Air v. Drescher* (1988) 1 CLR 234 and other relevant decisions, however, I will not expand longer in this direction. Despite the fact that this file is presented as "overreach of jurisdiction", in reality it raises the issue of wrongful application of the law and jurisprudence, which does not fall within the ambit of the privileged writ. In any case, it would be oxymorous to discuss that the position of the applicant was not heard in terms of the issue of the intervention, while simultaneously examining the soundness of this position within the frame of the privileged writ. I do not overlook that with the civil procedure issue, the applicant connects matters which attach to the claim of omission of the Court to "examine within the proper procedural frame the presented positions and claims before the orders given were issued".

However, independently of the legal basis and the procedural form of intervention, what matters to the purpose of the present procedure is the claim of the applicant. It can be argued that the way the lower court allowed for the intervention without hearing her, violating the rules of natural justice.

The records, dated 23 January 2020, indicate that while the applicant's lawyer was ready for the hearing of the main application and objected to defendant 1 being heard, and while the latter's lawyer was ready to argue on this point. In response, the applicant's lawyer remarked that in that case, she would unavoidably submit an application to speak at a different stage. The Court was also questioned about the extent of jurisprudence on this issue, namely third party intervention, that it would have to hear the parties "on this matter". However, based on what was previously said, with no other justification, the following: "For all the reasons explained by Mr. Pavlou that this is an interested party I deem he has the right to intervene in the procedure to be heard".

The application of how the matters were handled, in combination with all that preceded on 15 January 2020, was already a clear issue of the violation of the rules of natural justice for which there must be an allowance to register an application which, , must be limited to the

context of this allowance without expanding it to other legal and material issues (Theodoulou (No.2) (1990) 1 AAD 756).

In consequence, a leave is given to register an application for issuing a certiorari writ for cancelling the orders of the Court, dated 15 January 2020 and 23 January 2020, which allowed the registration of objection from the former defendant 1, and the application to issue a writ of prohibition to prevent the promotion of the objection or the continuation of the participation of the former defendant 1 in the relevant intermediary procedure.

The application should be filed within 7 days and is determined to be scheduled on 11 March 2020, 11:15 PM. Simultaneously, the suspension of the relevant intermediary procedure on suit 1522/19 is ordered, excluding the force of the temporary order dated 5 August 2019, until the final adjudication of the present application.