

IMBRAHIM MEHMED CHAKKARTO,
Appellant (Plaintiff),

IMBRAHIM
MEHMED
CHAKKARTO

v.

THE ATTORNEY-GENERAL,

THE ATTORNEY-
GENERAL

Respondent (Defendant).
(Civil Appeal No. 4336).

Immovable property—Error or omission in the Land Register—Correction of, by the Director—The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 61—Order or decision of the Director in that regard subject only to appeal to the Court—Section 80—However, that section has no application and the persons concerned may proceed by action, where the correction of an error or omission in the Land Registry records is incidental to the main issue between the parties which concerns their legal rights such as the existence of a right of way—Even though such right is shown in the Land Registry records or plans and one of the consequences of the judgment in the action might be the correction or alteration of those records or plans.

Constitution—Articles 30, paragraph 1, 152, 179, paragraph 1, and 188, paragraph 1—Effect of those provisions on sections 61 and 80 of Cap. 224 and on the issue of the jurisdiction of the District Courts to entertain actions on matters referred to in those sections.

The trial judge, acting under the Civil Procedure Rules, Order 27, r.2, dismissed the appellant's claim in an action for a declaration that a path, shown on the Land Registry plans as a public path, is not a public path, on the ground that he had no jurisdiction to entertain such a claim as it was a matter entirely within section 61 of Cap. 224, which, on the authority of *Lambris Papa Loizou v. Kornelia Themistocleous* 22 C.L.R. 177 and *Ibrahim v. Souleyman* 19 C.L.R. 237, should have been referred to the Director of Lands and Surveys, subject to the right of appeal to the District Court under sect. 80 of Cap. 224.

Section 61 of Cap. 224, provides:

“(1) The Director may correct any error or omission in the Land Register or in any book of the District Lands Office, or in any certificate of registration, and every such Register book or certificate of registration so corrected shall have the

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like validity and effect as if such error or omission had not been made.

(2) No amendment shall be made under the provisions of subsection (1) of this section, unless thirty days' previous notice is given by the Director to any person who might be affected thereby, and any person may, within the period of thirty days from the date of the giving of such notice, lodge an objection with the Director who shall thereupon investigate the same and give notice of his decision thereon to the objector".

By section 80 of Cap. 224 it is provided:

"Any person aggrieved by any order notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

Provided that....."

The majority of the Court left open the question whether certain provisions of the Constitution (Articles 30. 1, 152, 179. 1 and 188. 1) have changed the position so far as sections 61 and 80 of Cap. 224 are concerned. On the contrary VASSILIADES, J., held that the appellant's action was entertainable for the additional or alternative reason that quite apart from any view as to the combined effect of sections 61 and 80 of Cap. 224 regarding the jurisdiction of the District Court to entertain the appellant's claim, the effect of the constitutional provisions referred to above cannot be now to take such jurisdiction away from the Courts.

Held: (1) It may well be that if the appellant-plaintiff succeeds in the action and obtains a declaratory judgment as claimed, the official records affecting appellant's property, will have to be amended; but that is one of the consequences of the court's adjudication of the rights of the parties. It is merely an incidental or consequential result of the judgment.

(2) Therefore, sections 61 and 80 of Cap. 224 are not a bar

to the appellant's action. Neither of the cases relied upon by the trial judge decides that where the parties' legal rights, as between themselves, regarding certain property, are in issue, the action cannot be heard by the District Court before reference to the Director of Lands and Surveys merely because one of the consequences of the judgment in the action may be that the relative Land Registry records or plans shall require alteration or correction.

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Lambris PapaLoizou v. Kornelia Themistocleous 22 C.L.R. 177 and *Ibrahim v. Souleyman* 19 C.L.R. 237, distinguished.

(3) Consequently, the order dismissing the claim is set aside and the hearing of the action will be proceeded with before the District Court.

Appeal allowed. Case remitted to the District Judge to be dealt with accordingly.

Cases referred to:

Ibrahim v. Souleyman 19 C.L.R. 237:

Lambris Papu Loizou v. Kornelia Themistocleous 22 C.L.R. 177.

Per VASSILIADES, J.: The Constitution of the Republic of Cyprus which according to Article 179.1 is the supreme law of the State, provides that all laws in force on the date of the establishment of the Republic shall, as from that date, be construed and applied with such modification as may be necessary to bring them into conformity with the Constitution (Article 188, paragraph 1).

Article 152 provides that the judicial power in civil matters, such as the present dispute, shall be exercised by Courts as may be provided by a law made under the Constitution. The present Courts in the Republic are those established by the Courts of Justice Law, 1960; and the District Court of Limassol is one of such Courts.

Article 30, paragraph 1, provides that "no person shall be denied access to the court assigned to him by or under this Constitution". And it also provides that "the establishment of judicial committees or exceptional courts under any name whatsoever is prohibited".

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So, whatever may have been the effect of section 61, or the combined effect of this section read together with section 80, regarding the jurisdiction of the ordinary courts to entertain appellant's present claim, prior to the establishment of the Republic, now the effect of these sections cannot, in my opinion, be to take such jurisdiction away from the District Judge and pass it over to the Director of Lands and Surveys or any other executive officer.

Appeal.

Appeal against the judgment of the District Court of Limassol (Malyali D.J.), dated the 8.3.61 (Action No.891/60) whereby the Court ruled that it had no jurisdiction to entertain an action for a declaration by the Court that there is not, and never existed, any path and/or pathway and/or road at Cherkes Chifik running between the plots 101/2 and 98/2 of plan 58/16 over which the public has a right of way, and dismissed the action under 0.27 r.1 and 2

M. Houry for the appellant.

G. Cacoyannis for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of VASSILIADES, J.

O' BRIAIN, P.: In this case I have had the opportunity of reading the judgment which Vassiliades, J. is about to deliver. I agree with same and with his conclusions except that I would like to say that I find it unnecessary to deal with matters of Constitutional Law referred to in that judgment

ZEKIA, J.: I also had the advantage of reading the judgment of my brother Mr. Justice Vassiliades and, leaving aside the Constitutional aspect of the case, I am content to decide the appeal on one ground only, namely, that the main issue in the case was not rectification of error or omission as contemplated under sections 61 and 80 of the Immovable Property (Tenure, Registration and Valuation) Law. I agree, therefore, that the appeal should be allowed and the hearing of the action be proceeded with before the District Judge and finally determined by him.

VASSILIADES, J.: This is an appeal against the judgment of a District Judge in a property action dismissing appellant's claim on the ground that the Court had no jurisdiction to entertain it as it was a matter within section 61 of the Immoveable Property (Tenure, Registration and Valuation) Law, Cap. 224, which should have been referred to the Director of Lands and Surveys.

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The judgment in this connection reads:-

"..... in view of sections 61 and 80 of Cap. 224 and the decision in Lambris Haral. Papa Loizou v. Kornelia Themistocleous (22 C.L.R. p.177) which I find is applicable to the present case, I have no jurisdiction to try this case; but had it not been for these authorities, I would have continued to hear oral evidence and determine whether the L.R.O. Clerk who carried out the local enquiries in 1943 and 1945 found that there was in actual existence 'a path' or a 'pathway', as he puts it, and whether this was public or private. As the law stands sections 61 and 80 of Cap.224 give that duty to the Director of Lands, and preclude the Courts from entertaining any action or proceedings on any matter in respect of which the Director is empowered to act under the provisions of Cap. 224". (Page 17 of the record).

The question which falls for decision in the present appeal is whether the learned District Judge was right in taking this view of the law.

The claim in the action is for a declaration that a path shown on the Land Registry plans as running between two plots of land belonging to and registered in the name of the appellant, is not a public path; nor has the public any right of way there.

Appellant's pleading alleges that the State's claim that the public have a right of way over such path, "is without foundation inasmuch as such a right was never exercised by the public" (Statement of Claim para. 3).

This claim, made against the Attorney-General under a *fiat*, was defended on his behalf, with a pleading which states, *inter alia*, "that the pathway in question is and has always been vested in the Republic (as successor to the Crown) and the public have a right of way over it". (Defence para.6)

The substance of the dispute is, therefore, an issue

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between the appellant-plaintiff and the State, as to the existence of a public path on appellant's property, as shown on the Land Registry plans, or at all.

At the trial, while appellant's first witness, a Land Registry Officer, was being cross-examined, counsel for the respondent submitted that the appellant was in effect claiming that the relative records in the Land Registry were erroneous; and that the correction of such an error was a matter for the Director to deal with under section 61 of Cap. 224. Counsel contended that on the authority of *Papa Loizou v. Kornelia Themistocleous* (22 C.L.R. 177) the Court should not entertain the claim before the Director dealt with the matter; and then only by way of appeal against the Director's decision, under section 80.

This submission was opposed by counsel for the appellant, as "entirely misconceived". But the learned District Judge accepted the submission, as already stated, and dismissed the action forthwith, under the Civil Procedure Rules, Order 27, r.2.

In my judgment the case presents no difficulty. The question for determination, is not whether the appellant, by filing this action, has taken the best or the shortest course, in the circumstances. The question is whether section 61 of Cap. 224, either alone or read in conjunction with section 80, constitutes a bar to appellant's action, by taking away from the Court the jurisdiction to deal with it.

The Constitution of the Republic of Cyprus which according to Article 179 paragraph 1 is the supreme law of the State, provides that all laws in force on the date of the establishment of the Republic shall, as from that date, be construed and applied with such modification as may be necessary to bring them into conformity with the Constitution (Article 188, paragraph 1).

Article 152 provides that the judicial power in civil matters, such as the present dispute, shall be exercised by Courts as may be provided, by a law made under the Constitution. The present Courts in the Republic are those established by the Courts of Justice Law, 1960; and the District Court of Limassol is one of such Courts.

Article 30, paragraph 1 provides that "no person shall be denied access to the court assigned to him by or under this

Constitution.” And it also provides that “the establishment of judicial committees or exceptional courts under any name whatsoever is prohibited”.

So, whatever may have been the effect of section 61, or the combined effect of this section read together with section 80, regarding the jurisdiction of the ordinary courts to entertain appellant’s present claim, prior to the establishment of the Republic, now the effect of these sections cannot, in my opinion, be to take such jurisdiction away from the District Judge and pass it over to the Director of Lands and Surveys or any other executive officer.

It may well be that if the appellant-plaintiff succeeds in the action and obtains a declaratory judgment as claimed, the official records affecting appellant’s property will have to be amended; but that is one of the consequences of the Court’s adjudication of the parties’ rights. It is merely an incidental or consequential result of the judgment.

The subject matter of the action is whether the appellant-plaintiff is entitled as against the respondent-defendant to the declaratory judgment sought, regarding the existence of a public path on his property; and not the correctness of the Land Registry records regarding such rights, which are only evidence in the matter.

But, quite apart of the effect which the Constitution may have had on the provisions of section 61 of Cap.224, I cannot see how these can constitute a bar to appellant’s present claim.

The learned District Judge felt himself bound to decide the matter in the way he did, by the judgment of the Court of Appeal in *Lambris Papa Loizou v. Kornelia Themistocleous* (22 C.L.R. p. 177). That case, as well as *Ibrahim v. Souleyman* (19 C.L.R. 237) which deals with a similar matter, were decided in 1957 and 1953 respectively, some years before the establishment of the Republic with its present Constitution.

They are, both, cases of boundary dispute which can be distinguished from the present case on the facts. In *Ibrahim v. Souleyman* the Court took the view that where the parties’ legal rights were in dispute, the District Court was not precluded (notwithstanding the prohibition in section 56 - now section 58) from adjudicating thereon in the first instance (p. 239). In *Papa Loizou v. Themistocleous* the Court took the view that where the issue was one of a mistake in the Land

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Registry books, the matter could only be taken to Court on appeal from a decision of the Director.

It seems to me that neither of these cases decides that where the parties' legal rights, as between themselves, regarding certain property, are in issue, the action cannot be heard by the Court before reference to the Director of Lands and Surveys, merely because one of the consequences of the judgment in the action may be that the relative Land Registry records or plans shall require alteration or correction.

In my judgment the appellant is entitled to succeed in this appeal; the order dismissing the claim be set aside; and the hearing of the action be proceeded with before the District Judge. And I think he is also entitled to his costs in this appeal.

JOSEPHIDES, J.: I agree with the judgment which has been delivered by my brother Vassiliades J., except that I would like to leave the question open whether the constitutional provisions have changed the position so far as the provisions of sections 61 and 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, are concerned. In this case the correction of an error or omission in the Land Registry records is incidental to the main issue which concerns the legal rights of the parties as regards the existence of the path on the appellant's land. In these circumstances I am of the opinion that the provisions of sections 61 and 80 of the Immovable Property Law are inapplicable.

O' BRIAIN, P: In the result this Court unanimously allows the appeal and remits the case to the District Court accordingly and also allows the appellant's costs in this appeal.

*Appeal allowed. Case remitted
back to the District Court to be
dealt with accordingly.*