

1963  
March 19,  
April 4

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MATHEOS  
MATOSSIAN  
v.  
THE WATER  
BOARD OF  
NICOSIA

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

MATHEOS M. MATOSSIAN,

*Appellant-Plaintiff,*

v.

THE WATER BOARD OF NICOSIA,

*Respondents-Defendants.*

(Civil Appeal No. 4401).

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*Judgment—Declaratory judgment—The Courts of Justice Law, 1960 (Law of the Republic No. 14/60), section 41—Declaratory judgment should not be given when the declaration sought is not confined to the plaintiff's legal rights under the statute invoked which were never duly claimed or denied before action—But it is a declaration connected with matters outside the provisions of the statute and which were discussed prior to the action but never reached the stage of any binding agreement between the parties.*

*Water Supply—The Water Supply (Municipal and Other Areas) Law, Cap. 350, section 12 (1) (a)—Whether on the true construction of the section the Water Board is under a statutory duty to supply with water all plots or building sites within the area of supply—Question left open.*

The plaintiff-appellant by his action claimed a declaration that the defendants-respondents had a legal obligation towards him to construct a pipeline for the supply of water to certain building-sites, belonging to him, under certain conditions. The claim was based on the provisions of the Water Supply (Municipal and Other Areas) Law, Cap. 350, section 12 (1) (a). The appellant-plaintiff also claimed a declaration that if he paid to the defendants-respondents the sum of £1,400, the latter were bound to refund to him all such sums so paid by him whenever the defendants-respondents would decide to make use of the whole or part of the said pipe-lines.

The District Court declined to make the declaration sought, concluding that they could not accept the view that section 12 (1) (a) (*supra*) might be construed to mean that the Water Board had a duty to supply all plots or building-sites within their area of supply with water. On appeal by the plaintiff

against that judgment the High Court upheld the dismissal of the action by the District Court but did not endorse the interpretation of the statute given by the District Court, and in dismissing the appeal —

*Held*, (1) the power of the Court to make declarations of right on matters falling within their jurisdiction, generally recognized in practice, and expressly provided for in section 41 of the Courts of Justice Law, 1960, was never questioned in this case. The District Court made clear reference to such power in their judgment. But they declined to make the declarations sought, on the ground that they cannot accept the view that paragraph (a) of section 12 (1) of Cap 350 (*supra*) may be construed to mean that the Water Board has a duty to supply all plots or building-sites within their area of supply, with water.

(2) It is this interpretation of the statute, that we found ourselves unable to endorse; and did not wish to leave the impression that we adopt it by dismissing the appeal. We do not purport to decide the point in this case, as we do not think that this is necessary for the purposes of the present appeal. But we thought that it was desirable to make this statement as to the effect of the statute, and to reserve the question open for decision, when the facts of a future case will so require. The less, therefore, we say about it now, the better.

(3) The appeal in this case is dismissed and plaintiff's action, we think, should fail, on the ground that the declaration sought was not confined to plaintiff's legal rights under the statute which were never duly claimed or denied before action, but it was a declaration connected with matters outside the provisions of the statute, which were discussed prior to the action, but never reached the stage of any binding agreement between the parties.

*Appeal dismissed.*

#### **Appeal.**

Appeal against the judgment of the District Court of Nicosia (Loizou and Ioannides D.JJ.) dated the 15.10.62 (Action No 3318/59) dismissing plaintiff's claim for a declaration that the defendants had a legal obligation towards plaintiff to construct a pipeline for the supply of water to certain building-sites belonging to plaintiffs.

*Chr. P. Mitsides* for the appellant.

*St. Pavlides* for the respondent.

*Cur. adv. vult.*

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The facts sufficiently appear in the judgment of the High Court.

WILSON, P. : The judgment of the Court will be given by Mr. Justice Vassiliades.

VASSILIADES, J. : On dismissing this appeal on the 19th of March, 1963, the Court said that the reasons for that decision would be given later. We thought that, while the judgment should be confined to the short ground upon which the appeal was dismissed, it should, at the same time, be made clear that we did not reach that result for the same reasons for which the District Court dismissed the action which was instituted in September, 1959.

The claim was for a declaration that the defendants had a legal obligation towards the plaintiff to construct a pipe-line for the supply of water to certain building-sites belonging to the plaintiff, under certain conditions. It was a claim purporting to be made on the provisions of the Water Supply (Municipal and Other Areas) Law, Cap. 350, which regulates the supply of water in certain areas, and under which (Law) the defendants exist and function as a statutory body.

The declaration sought was not confined to plaintiff's rights as settled by the statute. It extended to a proposed arrangement, beyond such rights, under which, if the plaintiff paid the estimated cost of the works amounting to over £1,400 :

“ the defendants are bound to refund to him any and all such sums so paid by him whenever the defendants will decide to make use of the whole or part of the said pipe-lines, so paid for by the plaintiff, for supply and distribution of water to other owners or occupiers of land or buildings.”

The defendants in their pleading denied that plaintiff was entitled to the declarations sought. They said that—  
“ though admitting that they have a general duty as set out in the said paragraph (para. 2 of the statement of claim) they contend that with regard to the laying of main pipes and connections, their duty is only to secure sufficient supply to houses and buildings, within the area of supply, and this only so far as it is reasonably practicable.”

At the trial it appeared that in reply to an enquiry made by the plaintiff as to the estimated cost of the work and material required for the supply of water to his building sites, oral discussions followed on the matter, which led to no conclusion. And that the action was filed before any request was made to the defendants, or refusal on their part, to provide for the water-supply required.

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“ It is in evidence, (the District Court say in their judgment) that this proposal was never made to the Board before action. In fact there was never any application to the Board for the supply of water to these plots of the plaintiff before action and consequently no refusal to supply water.”

Counsel for the appellant agreed that this was so ; but argued, quite extensively before us, that nevertheless the Court had power to make the declarations of right sought by the action ; and should have made them, in the circumstances.

The power of the Court to make declarations of right on matters falling within their jurisdiction, generally recognized in practice, and expressly provided for in section 41 of the Courts of Justice Law, 1960, was never questioned in this case. The District Court made clear reference to such power in their judgment. But they declined to make the declarations sought, for the reasons stated therein.

“ We consider (they say) that the first question to be decided in this case is whether the defendants have a statutory duty to supply water to the building plots of plaintiff which, as stated above, are within their area of supply.”

After reference to section 12 of the statute (Cap. 350) and to the submissions made on behalf of the plaintiff, in connection thereto, the District Court conclude that they—

“ cannot accept the view that this para. (section 12 (1) (a)—) may be construed to mean that the Water Board has a duty to supply all plots or building sites within their area of supply, with water.”

It is this interpretation of the statute, that we found ourselves unable to endorse ; and did not wish to leave the impression that we adopt it by dismissing the appeal. We do not purport to decide the point in this case, as we

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The appeal, in this case was dismissed and plaintiff's action, we think, should fail, on the ground that the declaration sought was not confined to plaintiff's legal rights under the statute which were never duly claimed or denied before action, but it was a declaration connected with matters outside the provisions of the statute, which were discussed prior to the action, but never reached the stage of any binding agreement between the parties.

*Appeal dismissed.*