

**CASES**  
DECIDED BY  
**THE HIGH COURT OF JUSTICE OF CYPRUS**

until the 8th July, 1964

AND BY

**THE SUPREME COURT OF CYPRUS**

as from the 9th July, 1964

IN THEIR ORIGINAL JURISDICTION AND ON APPEAL  
FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[JOSEPHIDES, J.]

MITSIS LEMYTHOU COMMERCIAL SCHOOL,

*Plaintiff,*

v.

ATTORNEY-GENERAL OF THE REPUBLIC,

*Defendant.*

(Charity Application No. 1/63)

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March 14, 26

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MITSIS  
LEMYTHOU  
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*Charitable Trusts—Charities Law, Cap. 41, sections 13 (b) and (c) and 15—Raising of a loan by the trustees on mortgage of trust property—The High Court is empowered to sanction such loan in spite of an express prohibition in the Trust Indenture—Provided it would be beneficial to the Charity—The Charitable Trusts Act, 1853, section 21 applicable to the present case by virtue of section 15 of Cap. 41 (supra).*

*Charitable Trusts—Jurisdiction—Jurisdiction of the High Court—The High Court has jurisdiction to deal with an application under the provisions of section 13 of the Charities Law, Cap. 41 (supra) whereby the trustees of a trust created for educational purposes are applying for the sanction of the High Court to raise a loan on mortgage of trust property—The Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960), section 70—Articles 87.1, 152, 155.2, and 197 of the Constitution.*

The Trustees of the Mitsis Lemythou Commercial School Trust made an application to the Court, based on sections 13 (b) and (c) and 15 of the Charities Law, Cap. 41, requesting its sanction to raise a loan amounting to £130,000 on mortgage of trust property. The Attorney-General of the Republic was made a party to the proceedings under the provisions of the Charities Law, Cap. 41, (section 14 (1)), and the Rules made thereunder (under section 16).

*Held*, on the legal aspect :

(1) (a) The High Court has power to sanction the mortgage applied for by virtue of section 21 of the English Cha-

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ritable Trusts Act, 1853, which is the law applicable to the present case under the provisions of section 15 of the Charities Law, Cap. 41.

(b) The provisions of section 13 of the Charities Law, Cap. 41, are still in force in view of the constitutional provisions in force in Cyprus since the establishment of the Republic in 1960, and section 70 of the Courts of Justice Law, 1960 (Law of the Republic No. 14/1960).

(2) On the merits :

The raising of the loan on mortgage applied for is for the benefit and advantage of the charity. The application, therefore, is granted.

*Application granted. Raising of the loan on mortgage of trust property authorized.*

Cases referred to :

*Panayi v. Fraser*, (1963) 2 C.L.R. 356.

#### Charity application.

Application made under sections 13 (b) and (c) and 15 of the Charities Law, Cap. 41 on behalf of the Trustees of the Mitsis Lemythou Commercial School for the sanction of the High Court to raise a loan amounting to £130,000 on mortgage.

*E. Tavernaris*, for the plaintiffs.

*A. Frangos*, Counsel of the Republic, for the defendant.

The following judgment of the Court was read by :—

JOSEPHIDES, J.: This is an application made on behalf of the Trustees of the Mitsis Lemythou Commercial School Trust for the sanction of this Court to raise a loan amounting to £130,000 on mortgage, as specifically set out in paragraphs (a) and (b) of the application dated the 23rd March, 1964.

The defendant in this application is the Attorney-General of the Republic, and this is under the provisions of the Charities Law, Cap. 41 and the Rules made thereunder. In fact, Mr. Frangos, advocate of the Republic, who appeared today on behalf of the Attorney-General, joins in the application so far as the facts and submissions of the plaintiffs are concerned.

The application is based on sections 13 (b) and (c) and 15 of the Charities Law, Cap. 41. Section 15 of the Law provides that all proceedings under that law shall be "heard and determined by the Supreme Court in accordance with the law relating to charitable trusts for the time being in

force in England". Section 13 empowers the "Supreme Court" *inter alia*, to give directions as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose, and "to sanction the sale or other disposition of any property subject to a charitable trust on being satisfied that such sale or disposition is for the benefit and advantage of the charity". Under the provisions of section 70 of the Courts of Justice Law, 1960, the jurisdiction vested in the former Supreme Court of the Colony of Cyprus is now vested in and exercised by the High Court of Justice.

I shall *first* deal with the question of the power of this Court to sanction the mortgage applied for. It was submitted by both counsel, and I am in agreement with their submission, that by virtue of the provisions of section 15 of the Charities Law, Cap. 41, section 21 of the English Charitable Trusts Act, 1853, is the law applicable to the present case.

The question which exercised my mind, and which I invited counsel to argue, was whether this Court was empowered to sanction the mortgaging of the trust property in spite of the express prohibition in paragraph 14, Part IV Financial Provisions, of the Mitsis Trust Indenture, dated the 20th December, 1910. That paragraph provides as follows :

" 14. Save as provided in the succeeding paragraph it shall not be lawful for the Board to sell, mortgage, pledge, hypothecate or raise loans upon any of the immovable or movable property vested in, belonging to, or invested on behalf of the School."

The "succeeding paragraph", referred to in paragraph 14, has no bearing on the present case.

I think that section 21 of the Charitable Trusts Act, 1853, provides the answer. It is therein expressly provided that a mortgage may be sanctioned although not authorized "or permitted by the trust", provided that it would be beneficial to the charity. This proviso is also expressly laid down in our Charities Law, Cap. 41, section 13 (c), which provides that "the sale or other disposition of any property" shall be "for the benefit and advantage of the charity". Whether the mortgage applied for in the present case is beneficial to the charity or for the benefit and advantage of the charity, will be considered by me when I come to examine the evidence put before the Court.

The *second* point which arises for consideration is whether, in view of the constitutional provisions in force in Cyprus

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since the establishment of the Republic in 1960, the provisions of section 13 of the Charities Law, Cap. 41 are still in force. As already stated, the jurisdiction of the former Supreme Court of the Colony of Cyprus is now vested in the High Court of Justice of the Republic of Cyprus under section 70 of the Courts of Justice Law, 1960. Article 152 of the Constitution provides that the judicial power in the Republic (other than that exercised by the Supreme Constitutional Court and, under paragraph 2 of Article 152, by the Communal Courts) shall be exercised by the High Court of Justice and other subordinate Courts as provided by a law, and that law is the Courts of Justice Law, 1960. Paragraph 2 of Article 152 provides that the judicial power with respect to "civil disputes relating to personal status and to religious matters, which are reserved under Article 87 for the Communal Chamber" shall be exercised by the Communal Courts established by a communal law.

Pausing there for a moment, I would observe that an application to the Court to sanction the mortgaging of property subject to a charitable trust cannot be said to be a civil dispute relating either to "personal status" or to "religious matters".

Under Article 155, paragraph 2, this Court has, *inter alia*, such original jurisdiction as provided by the Constitution or as may be provided by law and, in the present case, the Charities Law, Cap. 41, is stated to be the law which provides for the jurisdiction of this Court. Another article of the Constitution which needs consideration is Article 87, which is referred to in Article 152. Article 87, paragraph 1, provides that the Communal Chambers shall have competence to exercise within the limits of the Constitution legislative power solely with regard to the following matters:—

- "(a) all religious matters ;
- (b) all educational, cultural and teaching matters ;
- (c) personal status ;
- (d) the composition and instances (βαθμούς δικαιοδοσίας—dereceleri) of courts dealing with civil disputes relating to personal status and to religious matters ;
- (e) in matters where the interests and institutions are of purely communal nature such as charitable and sporting foundations, bodies and associations created for the purpose of promoting the well-being of their respective community . . . ."

So far as I am aware, no law has been enacted either by the House of Representatives or the Greek Communal

Chamber, ousting, either expressly or by necessary implication, the jurisdiction of this Court in the matter under consideration. And it is a well-established canon of construction that the jurisdiction of the Court is not taken away except by express words or necessary implication (see authorities quoted in *Panayi v. Fraser*, (1963) 2 C.L.R. 356, *per* Josephides, J.). It may well be that under the provisions of Article 87 the Greek Communal Chamber may or may not have additional supervisory or administrative powers over the administration of charitable trusts but that would not necessarily oust the jurisdiction of this Court. Finally, it may be observed that, as the Mitsis Trust is a donation administered by trustees in connection with educational purposes, under the provisions of Article 197, paragraphs 1 and 2, of the Constitution, the trust property is vested in the trustees unconditionally and is not subject to any terms or conditions that may be provided in a communal law in the case of property which was formerly vested in, or registered in, the name of the Government of the Colony of Cyprus or any other person or body, for and on behalf of, or in trust for, any school, or other body or institution which come, under the provisions of the Constitution, within the competence of the Communal Chambers.

For these reasons I am of the view that this Court has jurisdiction to deal with the present application under the provisions of section 13 of the Charities Law, Cap. 41.

Coming now to the merits of the case, I have given serious consideration to the facts and figures put in evidence before this Court in the affidavits of Mr. C. Michaelides, Secretary of the Board of Trustees of the said trust, dated the 21st November, 1963, and the 11th March, 1964 ; of Alecos Modinos of the Architectural Office of Messrs. M. Michaelides Brothers, dated the 21st November, 1963 ; of Mr. A. Stavrinides, Chairman of the Board of Trustees of the aforesaid trust, dated the 5th March, 1964 ; of Mr. Theodoros Ieronymides, a Chartered Surveyor of the Lands and Surveys Department of Cyprus and a trustee, dated the 5th March, 1964, and his estimate of the value of the properties dated the 26th March, 1964.

Having considered all this evidence I am satisfied that the raising of the loan on mortgage applied for is for the benefit and advantage of the charity and I, accordingly, grant the application in the terms of paragraphs (a) and (b).

*Application granted. Raising of the loan on mortgage of trust property authorised.*

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