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[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR,  
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

TIMOTHEOS  
DEMETRIOU  
*and*  
THE REPUBLIC OF  
CYPRUS,  
THROUGH  
1. THE MINISTRY  
OF INTERIOR,  
2. THE MINISTER  
OF AGRICULTURE  
& NATURAL  
RESOURCES

TIMOTHEOS DEMETRIOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. THE MINISTER OF AGRICULTURE &  
NATURAL RESOURCES,

*Respondent.*

(Case No. 149/62).

*Wells—The Wells Law Cap. 351, sections 3, 4(1)(5), and 13—  
Recourse against decision of Respondent to grant a permit  
to Interested Party to deepen a well and the concurrence of  
the Director of Water Development for such permit under  
section 4 of the Law—Concurrence given under a misappre-  
hension as to the correct position regarding a District Court's  
ruling in a criminal case concerning a relative of Interested  
Party.*

*Constitutional Law—Time, Article 146.3 of the Constitution—  
In the circumstances of this particular case, this recourse  
is not out of time.*

*Constitutional Law—Legitimate Interest, Article 146.2—Pro-  
visions of section 4(5) of Cap. 351 (supra) give Applicant  
a legitimate interest in the sense of Article 146.2.*

By this recourse, the Applicant attacks the decision of the Respondent No.1, made through the District Officer, Kyrenia, to grant to a certain Costas Theocleous of Lapi-thos, the Interested Party, on the 22nd January, 1962, a permit under the Wells Law, Cap. 351 to deepen his well, and the act of Respondent No. 2, taken through the Dire-ctor of Water Development, giving his consent under sec-tion 4 of Cap. 351 (*supra*), for the aforesaid permit.

The Court annulled the subject-matter of this recourse, which it described as a "composite" administrative act, having found as a fact that the statutory concurrence of

the Director of Water Development was given under a misapprehension as to the correct position regarding the effect of a ruling of the District Court of Kyrenia, in Criminal Case No. 939/61, concerning a prosecution by the District Officer, Nicosia and Kyrenia, against the father-in-law of the Interested Party, for the offence of sinking a well without obtaining a permit, contrary to sections 3 and 13 of Cap. 351.

*Held*, 1. It is apparent to the Court that the matter has not been considered by the Director of Water Development on its proper merits and in the light of the provisions and spirit of section 4 of Cap. 351 and particularly the express requirements of sub-section (5) thereof, inasmuch as the officer concerned erroneously appears to have assumed that the ruling of the Court in Criminal Case No. 939/61 was binding on the Director of Water Development and that such ruling had fettered his discretion. Having regard to the fact that the statutory concurrence of the Director of Water Development was given under a misapprehension as to the correct position regarding the effect of the said ruling in view of the fact that such ruling was erroneously considered to be binding on the Director of Water Development, this Court is of the opinion that the decision in question to give such concurrence as recorded in minute (14) of the 4th January, 1962, in *Exhibit 9* was not validly taken and is, therefore, *null* and *void* and of no effect whatsoever.

2. In view of the fact that the decision of the District Officer, Nicosia-Kyrenia, to grant to the Interested Party a permit to deepen his well on the 22nd January, 1962, was taken as a result of, and was dependent upon, the invalid concurrence of the Director of Water Development under section 4(1) of Cap. 351, then the decision itself of the District Officer to grant the said permit on the 22nd January, 1962, i.e. the "composite" administrative act as a whole must likewise itself also be invalid and of no effect whatsoever.

3. For all the reasons given above, the Court, therefore, declares that the granting of the permit in question to the Interested Party to deepen his well in question by the District Officer, Nicosia-Kyrenia, on the 22nd January, 1962, like the concurrence of the Director of Water De-

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velopment on which the said decision to grant the afore-  
said permit was based, is *null* and *void* and of no effect  
whatsoever.

*Declaration accordingly.*

### Recourse.

Recourse against the decision of the respondent granting  
a permit to the Interested Party to deepen his well.

*L.N. Clerides*, for the applicant.

*L. Loucaides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

ZEKIA, P.: The judgment of the Court will be delivered by  
Mr. Justice Munir.

MUNIR, J.: By this recourse under Article 146 of the  
Constitution the Applicant seeks a declaration—

“(1) that the decision of the Respondent No. 1 made  
by him through the District Officer Kyrenia communi-  
cated to Applicant on the 21.5.1962 granting a permit  
to deepen a well to Costas Theocleous of Lapithos is  
*null* and *void* and of no effect whatsoever,” and

“(2) that the act of Respondent No.2 taken through  
the Director of Water Development giving his consent  
under s. 4 of Cap. 351 for the aforesaid permit to the  
interested party is *null* and *void* and of no effect what-  
soever”.

It is common ground that the Applicant, who is a farmer,  
owns a field in the village of Lapithos, in which there is a  
well and from which water is raised to the surface by means  
of a water pump. The sinking of this well in 1951 was au-  
thorized by the necessary permit under the Wells Law  
(Cap. 351).

A certain Costas Theocleous of Lapithos (hereinafter in  
this judgment referred to as “the Interested Party”) also  
owns some property in Lapithos on which there has existed  
for many years, and since before 1938, an old well. The  
distance between this well and the Applicant’s well is 143  
feet.

The two wells are situated in a water conservation area in respect of which an order has been made under section 4 of Cap. 351 and to which area the provisions of that section have been applied, and did so apply at all material times.

During March, 1961, it came to the notice of the Applicant that a certain Mr. HadjiYiannis N. Iacovides, who is the father-in-law of the Interested Party, had started certain excavations in the property of the Interested Party. On the 27th March, 1961, the Applicant wrote to the District Office in Kyrenia objecting to the issuing of a permit for the sinking of a well in the property of the Interested Party so close to the Applicant's well. As the result of investigations made upon the Applicant's aforesaid representations Mr. Iacovides was prosecuted before the District Court of Kyrenia in Criminal Case No. 939/61 by the District Officer, Nicosia-Kyrenia, for the offence of sinking a well without obtaining a permit, contrary to sections 3 and 13 of Cap. 351. Mr. Iacovides was on the 19th July, 1962, acquitted by the District Court of that charge. It is important at this stage to quote in full the short Ruling of the District Court of Kyrenia in Criminal Case No. 939/61, in which the trial Judge gives his reasons for deciding that the accused should not be called upon to defend himself, because it would seem to this Court that it was the result of this criminal prosecution which played such a major and decisive role in the subsequent decision to issue a permit under Cap. 351 to the Interested Party, which is the subject-matter of this recourse. The Judge's ruling in the aforesaid Criminal Case No. 939/61 is as follows:

"I consider that a *prima facie* case has not been made out against the accused sufficiently to require him to make his defence.

The accused is charged that he sunk a well in 1961 contrary to section 3 of the Wells Law, CAP. 351.

It is clear from the evidence before me that at the same spot there was an old well which had filled in with stones and earth.

There is no evidence that accused did more than clean old well by taking out earth and stones.

Nor is there any evidence that well was deepened or widened or otherwise extended within meaning of Law

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as none of the witnesses could say what the depth of old well was.

P.W.5 was called in an endeavour to prove that old well was built without a permit. It is clear, however, from his evidence that no such thing has been proved because he checked wrong name and as from 1939 and not 1938 when property was registered in the name of the present owner and when according to the evidence the well was in existence.

In the circumstances even if what accused did amounts to 'repair' which is not the case, it would be covered by Section 15 of Law.

For the above reasons I am of the opinion that a *prima facie* case has not been made out against the accused sufficiently to require him to make his defence and he is therefore acquitted and discharged".

The Applicant had requested an expert from the Department of Water Development to prepare a report on his well and the well of the Interested Party. This report was required by the Applicant for the purposes of civil litigation in which the Applicant and the Interested Party were engaged at the time and the history of which proceedings are now no longer material for the purposes of this Judgment. Such report was duly prepared by the Department of Water Development on the 25th September, 1961, in which the following opinion is clearly and categorically expressed:—

"It is certain that there will be interference between the two wells", i.e. pumping from the well of the Interested Party would have adverse effect on the well of Applicant.

On the 21st November, 1961, the Interested Party applied for a permit under Cap. 351 to deepen his existing well in question.

On the 22nd January, 1962, the District Officer, Nicosia-Kyrenia, granted to the Interested Party a permit under Cap. 351 to deepen his well in question, as applied for, and it is the granting of this permit to the Interested Party which has resulted in the Applicant making this recourse in respect of such permit.

On the 16th May, 1962, Applicant's counsel addressed a

letter to the District Officer stating that the Applicant was objecting against the decision to grant "a permit for the digging of a well" to the Interested Party and in the said letter asked for a review of such decision and requested a reply not later than the 19th May, 1962. On the 21st May, 1962, the District Officer replied stating that no permit for the digging of a new well had been granted to the Interested Party, but that with the consent of the Director of Water Development, under section 4(1) of Cap. 351, a permit had been granted for the deepening of an old well and that it was not intended to review the decision to grant such a permit.

Dealing first with the submission made by counsel for Respondent that this recourse is out of time, the Court is of the opinion that, having regard to all the circumstances of this Case and to the fact that on the 16th May, 1962, counsel for Applicant asked for a review of the decision to grant to the Interested Party the permit complained of, to which the District Officer replied on the 21st May, 1962, the period of 75 days prescribed under paragraph 3 of Article 146 of the Constitution should commence to run from the latter date and that this recourse is not, therefore, out of time.

The Court also considers that there is no substance in the submission of counsel for Respondent that the Applicant has no "legitimate interest" (in the sense of paragraph 2 of Article 146 of the Constitution) which can be affected by the decision which is the subject-matter of this recourse. The statutory provisions of sub-section (5) of section 4 of Cap. 351, (which expressly requires the Director of Water Development, in deciding whether or not to give his concurrence under the said section, to have regard not only to the general water situation in the area, but also to "the requirements of *prior users* of water"), in the opinion of the Court, give the applicant, apart from any other consideration, a "legitimate interest" in the sense of paragraph 2 of Article 146.

In essence the administrative act which is the subject-matter of this recourse (namely, the decision of the District Officer to grant to the Interested Party on the 22nd January, 1962, a permit under Cap. 351 to deepen his well) is what might be described as a "composite" administrative act. It is provided by sub-section (1) of section 4 of Cap. 351 that, upon the making of an order under the said sub-section, whereby the area is declared a water conservation area, "no

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permit for the sinking or construction of a well in any such area shall be issued by a District Officer and no variation or modification of any condition or restriction imposed in such permit shall be effected, *save with the concurrence of the Director of Water Development*".

It will be seen, therefore, from the above quoted statutory provision that the issuing of a permit under Cap.351 in respect of any water conservation area, declared as such under section 4 of Cap. 351, requires a composite decision by both the Director of Water Development and the District Officer. In other words, the District Officer cannot, in such a case, exercise his powers of granting a permit under Cap. 351 without the participation of the Director of Water Development in such decision, i.e. without his obtaining the concurrence of the Director of Water Development.

Coming now to the merits of this particular case, it seems clear to this Court, both from a perusal of the relevant minute in the relevant file of the Director of Water Development (minute (14) in file No. W.38/61—which is Exhibit 9) and from the evidence of Mr. Yiangos Hadji Stavrinou, the Assistant Director of Water Development, that the decision of the Senior Officer of the Water Development Department to give the statutory concurrence of the Director to the granting of the permit in question to the Interested Party, was influenced by the result in Criminal Case No. 939/61, in which the father-in-law of the Interested Party was acquitted on the 19th July, 1962.

It will be observed that in minute (14) dated the 4th January, 1962, in file No. W. 38/61 (*Exhibit 9*) Mr. Butler (who appears to have signed the minute on behalf of the acting Director of Water Development) has expressed the following opinion in deciding to give the statutory concurrence under section 4(1) of Cap. 351:—

"I have no wish to accept otherwise than the decision of the Court is *final and binding* as regards the legality of Applicant's well and in common with other such applications in your area I would have no objections to deepening".

Mr. Hadji Stavrinou, the Assistant Director of Water Development, giving evidence in this recourse has expressed the opinion that it "*would have been better if no permit of*

*deepening was given, but it is not the deepening, as such, that would cause the adverse effect; this is what must have been in the mind of our Senior Officer when he gave his concurrence". In another part of his evidence Mr. Hadji Stavrinou also states as follows:*

*"It is very difficult for me to say what was in the mind of our Senior Officer in concurring under section 4 of Cap. 351, but it may be that the fact that there was a decision of the District Court that this well is 'legal' made him feel that he, himself, as a government officer should not refuse the concurrence and thus interfere with such decision".*

It will be seen from the above that the Senior Officer of the Water Development Department concerned, in considering whether or not the statutory concurrence under section 4(1) of Cap. 351 should be given, appears to have misinterpreted the effect of, and attached undue importance to, the fact that the trial Judge had found that there was not a *prima facie* case for the accused to answer in Criminal Case No. 939/61 and the said Senior Officer felt himself bound by the result of that criminal prosecution. He did not, therefore, appear to consider the whole question on its merits, that is to say, whether or not, having regard to the merits of the case, concurrence should be given for the granting of a permit to the Interested Party to deepen his well in question.

As will be seen from a reading of the Ruling of the trial Judge in the said Criminal Case No. 939/61, which is quoted in full above, that in that criminal case the issue before the judge was not whether or not the concurrence of the competent expert (i.e. the Director of Water Development) should be given under section 4(1) of Cap. 351 to the deepening of the well in question in a water conservation area, but the issue before him was simply whether or not the father-in-law of the Interested Party had committed a criminal offence in contravention of the provisions of sections 3 and 13 of Cap. 351. The learned trial Judge merely held that, for the reasons given by him in his above quoted ruling, "a *prima facie* case has not been made out against the accused sufficiently to require him to make his defence" and, therefore, acquitted him accordingly.

It is pertinent to note also in this connection the provisions of sub-section (5) of section 4 of Cap. 351 which require

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that the Director of Water Development "in giving or withholding his concurrence under this section, *shall have regard to the extent to which the general water situation in the area (including its further development) or the requirements of prior users of water may be affected by the proposed well*".

It is apparent to the Court that the matter has not been considered by the Director of Water Development on its proper merits and in the light of the provisions and spirit of section 4 of Cap. 351 and particularly the express requirements of sub-section (5) thereof, inasmuch as the officer concerned erroneously appears to have assumed that the ruling of the Court in Criminal Case No. 939/61 was binding on the Director of Water Development and that such ruling had fettered his discretion. Having regard to the fact that the statutory concurrence of the Director of Water Development was given under a misapprehension as to the correct position regarding the effect of the said ruling, and in view of the fact that such ruling was erroneously considered to be binding on the Director of Water Development, this Court is of the opinion that the decision in question to give such concurrence as recorded in minute (14) of the 4th January, 1962, in *Exhibit 9* was not validly taken and is, therefore, *null and void* and of no effect whatsoever.

In view of the fact that the decision of the District Officer, Nicosia-Kyrenia, to grant to the Interested Party a permit to deepen his well on the 22nd January, 1962, was taken as a result of, and was dependent upon, the invalid concurrence of the Director of Water Development under section 4(1) of Cap. 351, then the decision itself of the District Officer to grant the said permit on the 22nd January, 1962, i.e. the "composite" administrative act as a whole must likewise itself also be invalid and of no effect whatsoever.

For all the reasons given above, the Court, therefore, declares that the granting of the permit in question to the Interested Party to deepen his well in question by the District Officer, Nicosia-Kyrenia, on the 22nd January, 1962, like the concurrence of the Director of Water Development on which the said decision to grant the aforesaid permit was based, is *null and void* and of no effect whatsoever.

*Declaration accordingly.*