

1968  
Oct. 19

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

CARABET  
S. TERZIAN  
v.  
REPUBLIC  
(REGISTRAR OF  
TRADE MARKS)

CARABET S. TERZIAN,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE REGISTRAR OF TRADE MARKS,

*Respondent.*

(Case No. 104/68).

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*Trade Marks—Costs in proceedings for registration of a trade mark before the Registrar of Trade Marks—Order for costs made against the unsuccessful Applicant in such Trade Marks application—Notwithstanding that the person who appeared for the opponents in such proceedings was not an advocate—Recourse against such order—The Respondent Registrar acted within the proper exercise of his powers—Absence of prescribed fees in relation to trade marks proceedings before the Registrar does not vitiate such order for costs—The Trade Marks Law Cap. 268 section 42—The Trade Marks Rules, 1951, rule 14.*

*Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Whether or not a recourse lies in a matter such as the present one—Question left open.*

*Constitutional Law—Advocate—Professional rights—Article 25.1 and 2 of the Constitution—Appearance by persons who are not advocates in trade marks proceedings before the Registrar—Not unconstitutional—Matter subject to legislation—Article 25.2*

*Advocates—Professional rights—Trade Marks proceedings—See above.*

*Recourse under Article 146 of the Constitution—See above.*

In this case the Applicant complains by his recourse under Article 146 of the Constitution against an order for costs made against him by the Respondent Registrar of Trade Marks in an unsuccessful application, by the Applicant, for the registration in Cyprus of the word "Mazola" as a trade mark.

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It was argued on behalf of the Applicant that, since the person who appeared for the opponents in the proceedings, before the Registrar was not an advocate, such person was not so entitled to appear and, consequently, it was not possible or proper for the Registrar to make the order for £36 costs in favour of the opponents. It was, further, argued that the course adopted by the Respondent encourages persons who are not advocates to appear in trade mark proceedings and to compete, thus, with advocates, which is contrary to the advocates' professional rights safeguarded by Article 25 of the constitution.

Article 25 of the Constitution provides:

“1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the ....”.

Dismissing the recourse, the Court:

*Held*, (1). I leave open the question whether or not a recourse under Article 146 of the Constitution lies in the present case; I have followed such a course because this recourse, even if entertainable, cannot succeed in any case, in the circumstances.

(2) (a) It is clear from rule 14 of the Trade Marks Rules, 1951, that it is possible for a person who is not an advocate to act as agent in trade marks proceedings before the Registrar. Moreover under section 42 of the Trade Marks Law, Cap. 268, the Registrar has “power to award to any party such costs as he may consider reasonable”.

(b) I do find that the Respondent has acted within the proper exercise of his powers under rule 14 and section 42 (*supra*), and that the costs awarded are not in any way unreasonable; also, I find nothing vitiating the *sub judice* decision of the Respondent Registrar in the fact that, in the absence of fees prescribed for the purposes of trade marks proceedings, he may possibly have based the computation of the costs on the analogy of fees for civil proceedings before a District Court.

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(3) There is nothing unconstitutional in the action of the Respondent awarding costs as aforesaid. If it is, for any reason given in paragraph 2 of Article 25 of the Constitution, necessary not to allow persons other than advocates to represent parties in trade marks proceedings then this would be a matter to be provided for by legislation.

*Recourse dismissed with £8 costs.*

### **Recourse.**

Recourse against an order for costs made against Applicant by the Respondent Registrar of Trade Marks, as a result of an unsuccessful application by the Applicant, for the registration in Cyprus of the word “Mazola” as a trade mark.

*A. Emilianides*, for the Applicant.

*A. Frangos*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: In this case the Applicant complains against an order for costs made against him by the Respondent Registrar of Trade Marks, as a result of an unsuccessful application, by the Applicant, for the registration in Cyprus of the word “Mazola” as a trade mark.

The said order is to be found at the end of the relevant decision of the Registrar, on the substance of the trade mark application, which is dated the 1st February, 1968, (see *exhibit 1*); the Applicant was ordered thereby, to pay £36.250 mils costs to the opponents of such application.

I have decided to leave, in this case, open the question as to whether or not a matter such as the present one could have been brought before this Court under Article 146 of the Constitution; I have followed such a course because, in my opinion, this recourse, even if entertainable under Article 146, cannot succeed, in any case, in the circumstances.

It has been argued, first, by the Applicant that a certain Mr. Psaras, the general manager of Messrs. Saba & Co.—a concern which undertakes trade marks work—who appeared for the opponents of the registration of the trade mark, in the proceedings before the Respondent, was not an advocate in Cyprus and, therefore, he was not entitled so to appear,

and it was not possible, or proper, for the Respondent to make an order for costs in favour of the opponents.

But it is clear from rule 14 of the Trade Marks Rules, 1951, that it is possible for a person who is not an advocate to act as agent in trade marks proceedings before the Respondent. Moreover, under section 42 of the Trade Marks Law, Cap. 268, the Respondent has "power to award to any party such costs as he may consider reasonable."

Having gone into the circumstances of the present matter, I do find that the Respondent has acted within the proper exercise of his powers, under the aforesaid rule 14 and section 42, and that the costs awarded (in *exhibit 2*) are not in any way unreasonable; also, I find nothing vitiating the *sub judice* decision of the Respondent in the fact that, in the absence of fees prescribed for the purposes of trade marks proceedings, he may possibly have based the computation of the costs on the analogy of fees for civil proceedings before a District Court.

It has been argued that the course adopted by the Respondent encourages persons who are not advocates in Cyprus to appear in trade marks proceedings and to compete, in this manner, with advocates, and that this is contrary to the professional rights of advocates; and in the Application in this recourse reference is made, in this respect, to Article 25 of the Constitution. I can find nothing in Article 25, or elsewhere in the Constitution, which would lead me in the conclusion that the action of the Respondent, which is complained of by this recourse, is unconstitutional. If it is, for any reason given in Article 25.2 of the Constitution, necessary not to allow persons other than advocates to represent parties in trade marks proceedings then this is a matter to be provided for by legislation.

In the circumstances the recourse fails and it is dismissed accordingly, with costs, which I assess at £8.

*Application dismissed.*

*Order for costs as aforesaid.*

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