

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

K.E.M. (TAXI) LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS AUTHORITY,

Respondent.

K.E.M.
(TAXI) LTD.
v.
REPUBLIC
(PERMITS
AUTHORITY)

(Case No. 613/73).

*Motor Transport—Road service licence—Public service vehicle—
Converted into a private one and sold in 1969—Its alienation
brought to an end the existence of a right of its former owners
to have it replaced at a later stage (1973)—As there did not exist
at such time a public service vehicle owned by them—And the
road service licence which had been issued to them earlier in
respect thereof had lapsed—Kaminaros v. Republic (1971) 3
C.L.R. 445 and p. 448 followed—Proviso to s. 8(1) of the Motor
Transport (Regulation) Law, 1964 (Law 16 of 1964) cannot be
invoked.*

The applicants were the owners of a public service vehicle under Registration No. AU 6 which was until April 1967 licensed to circulate as a taxi or trans-urban taxi; in 1969 it was converted into a private one and in July of that year ceased belonging to them. By means of an application dated 27th September, 1973, the applicants applied for a road service licence in replacement of the one which belonged to the said vehicle AU 6 on the ground that this vehicle has been sold for financial reasons as a private one and its 'T' has been retained for use on the new vehicle.

The respondent authority turned down the application at its meeting held in October 1973 having come to the conclusion that "a taxi licence belongs both to the vehicle and to the person and in the case in hand the vehicle has been alienated by the applicants a long time ago".

In challenging the validity of this refusal applicants submitted that their case was one of replacement of a vehicle and that the

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case stands or falls in the interpretation of section 8(1)* of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964) and in particular the proviso thereof.

Held, that the alienation of motor car AU 6 in 1969 brought to an end the existence of a right to have it replaced in October, 1973 when the application leading to the *sub judice* decision was filed; that there did not exist a public service vehicle at the time owned by the applicants and that the road service licence which had been issued earlier to the applicants in respect of the said motor car had lapsed (see *Kaminaros and Another v. The Republic* (1971) 3 C.L.R. 445 at p. 448); that the prerequisite of the existence of a road service licence for the said motor car AU 6 at the time, did not exist and consequently the proviso to section 8(1) of the Law could not be invoked; and that, accordingly the *sub judice* decision was properly taken and this application will have to be dismissed.

Application dismissed.

Cases referred to:

Kaminaros & Another v. The Republic (1971) 3 C.L.R. 445 at p. 448; 20

Christodoulou v. The Republic (1972) 3 C.L.R. 290.

Recourse.

Recourse against the decision of the respondent Permits Authority refusing applicants' application for the replacement of a road service licence of a taxi, Reg. No. AU. 6, with a new one. 25

A. Panayiotou, for the applicants.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:— 30

A. LOIZOU, J.: This recourse is directed against the decision of the respondent, Licensing Authority, of the 19th October, 1973, whereby the application of the applicants for the replacement of a taxi, Reg. No. AU 6, with a new one, was refused.

The facts so far as relevant which appear extensively in the file of the respondent Authority (*exhibit 2*), the application and the opposition, as well as the documents attached thereto and 35

* Quoted at p. 291 *post*.

the affidavit sworn by one of the Directors of the applicants filed at the conclusion of the proceedings dated 5th June, 1975, are the following:

5 The applicants have been engaged for the last 20 years in the transport business all over Cyprus. On the 8th February, 1965, an application was made to the Licensing Authority under section 17 of the Motor Transport (Regulation) Law, 1964, Law 16/64, for the issue of a licence regarding motor-vehicle AU 6, a five-seat taxi for the trans-urban traffic areas connecting Li-
10 massol and Paphos towns, being a public service vehicle licensed as such on the date of the coming into operation of the Law. The said vehicle, however, was licensed as a taxi in respect of the urban traffic area of Limassol (*exhibit 2*, red 3) and it continued being so licensed from year to year until July, 1969. (See
15 *exhibit 2*, red 14). Unlike the first application where a licence was asked for the trans-urban traffic area, the subsequent applications submitted from year to year were for a road service for the urban traffic area of Limassol.

20 With their letter dated 1. 6. 1968 (*exhibit 3*), the applicants enclosed a list of their vehicles, which, according to them, on 19. 11. 1964 were circulating as trans-urban taxis and requested that trans-urban road service licences be granted in respect of certain vehicles named in the letter, including the said vehicle AU 6 which was stated to have been serving the Limassol-Pa-
25 phos route and so declared to be in their original application (*exhibit 2*, red 1).

By another application dated 28. 1. 1968 (*exhibit 2*, red 13), the applicants sought permission for the registration of a new car as "agoreon" (public) taxi, in replacement of vehicle TAU
30 6 "agoreon" (public) taxi which would be converted into a private one.

The respondent Authority at its meeting of the 28th February, 1969, approved the said application and the applicants were informed accordingly by letter dated 1. 3. 1969 (*exhibit 2*, reds
35 15 and 16), in which it was stated that the permit related to the replacement of an urban taxi and that it would be valid for three months, as from that date.

The respondent Authority at its meeting of the 20th January, 1970 (*exhibit 2*, red 18), considered and approved the appli-
40 cation of the applicants dated 1. 6. 1968 for the grant of trans-

urban licence to the said vehicle AU 6 and they were informed of this decision by letter dated 28. 1. 1970 (*exhibit 2*, red 19) in which it was also stated that “Nicosia” would be its basis; they were also called upon to complete certain forms required by law, and were further reminded that the permit was valid for three months and on condition that the vehicle was of the permitted dimensions.

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By letter dated the 15th March, 1971 (*exhibit 2*, red 21), the applicants requested that the approval for the trans-urban licence be renewed, as the vehicle in question was at the garage for repairs. Upon a decision to that effect, a representative of the applicants attended the meeting of the respondent Authority of the 10th July, 1971. The said representative mentioned that the responsible officer of their Company, through his own negligence, did not renew the licences of a number of their vehicles, including taxi AU 6, that the said non-renewal was not done purposely, and requested that their applications be considered as new ones.

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The respondent Authority having considered the whole matter, decided that the position should be further inquired into by the Office of the Transport Control Officer and the vehicles be mechanically checked, and it should also be ascertained up to which date such vehicles were licensed. The respondent Authority considered the matter at its meeting of the 6th June, 1972 (*exhibit 2*, red 31) and in view of the fact that when the applicants submitted their written application on 8. 2. 1965 they stated therein that they were applying for a licence in respect of the Limassol-Paphos route they decided to approve the application for the grant of a trans-urban licence in respect of the said vehicle which had been completely destroyed due to a traffic accident and as same was licensed during the years 1969, 1970 and in respect of the year 1971 it was licensed from 1. 4. 1971 to 30. 9. 1971 they approved same.

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By its decision of the 10th June, 1972, the respondent Authority decided for the reasons stated therein, to which I need not refer, that the decision of the 6th June, 1972 should not be communicated to the parties concerned until a final decision was taken at one of its future meetings (*exhibit 2*, red 34).

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At its meeting of the 20th June, 1972 the respondent Authority decided to renew the licence of the said vehicle AU 6, to circulate as a trans-urban taxi, (*exhibit 2*, red 37), and by letter

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dated the 30th June, 1972 (red 39) communicating the said decision, on the same terms as decided on the 28th January, 1970, but that the vehicle would be serving Limassol—Paphos route instead of operating, based at Nicosia, as the original decision communicated to the applicants by the letter of the 20th January, 1970, was.

On the 3rd July, 1972, there followed a second application on behalf of the applicants for permission to replace the said vehicle with a new one. The respondent Authority at its meeting of the 7th July, 1972 after an exchange of views between its members, decided to approve this second application for replacement, because, as stated, "The vehicles of the applicants had been destroyed in road accidents and that the same procedure as the one followed in similar instances should be followed".

The applicants were informed of this decision by letter dated 8. 7. 1972 wherein it was also stated that after replacement the vehicle AU 6 would remain a private car. (Red 45).

The respondent Authority upon receiving information concerning the status and ownership of the vehicle in question which was to the effect that it was on 2. 4. 1969 converted into a private one and that it ceased to belong to the applicants with effect from 18. 7. 1969, at its meeting of 14. 7. 1972 (reds 48-47) decided to summon the applicants before it for the purpose of giving an explanation with regard to the two matters which had not been placed before the Authority at its previous meeting (red 47) namely:

- (a) Whether vehicle AU 6 was in 1969 replaced by a new vehicle and which is the vehicle that replaced it.
- (b) And whether that vehicle belonged to the Company or stood registered in the name of any other person.

The respondent Authority considered the matter at its meeting of 25. 7. 1972 when they heard Mr. L. Markides on behalf of the applicants who said:- "..... this vehicle (AU 6) was circulating until April, 1967 as urban and trans-urban taxi as no licence was required for trans-urban taxis. For financial reasons we sold it and we retained the 'T' in order to use it on a new vehicle. The reasons for applying to replace AU 6 is because, as I have already mentioned, we have retained the 'T' that belonged to AU 6 which had been converted into a private one". Re-

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plying to a question from the Chairman as to whether AU 6 was replaced with a new one Mr. Markides said, "No because we have not received the approval from the Licensing Authority". Thereupon the Authority reserved its decision.

By an application dated 27. 9. 1973 the applicants applied again, and this is the third application for replacement of AU 6 with a new one. The respondent Authority considered this application at its meeting of 19. 10. 1973 (*exhibit 2, red 54*) and their minutes read as follows:

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Documents produced:

Previous minutes of Permits Authority dated 25. 7. 1972 (*red 52*) which mention that Mr. Markides stated that for financial reasons he sold this vehicle as a private one and retained 'T' in order to place it on the new vehicle.

The Licensing Authority considered the above application and in view of the fact that a taxi licence belongs both to the vehicle and to the person and in the case in hand the vehicle has been alienated by the applicants a long time ago, it turned down the application".

The applicants were informed of the above decision by letter dated 23. 10. 1973 against which the present recourse is directed.

The above factual situation is not disputed by the parties though the applicants did on the 5. 6. 1975 file an affidavit setting out the above facts and putting forward their own version as to the stand they had taken.

From the above narration of the facts it is revealed that the vehicle in question has, since April, 1967, stopped circulating as a taxi or trans-urban taxi and that in April, 1969 was converted into a private one and in July of that year ceased belonging to the applicants. Furthermore, the applicants failed to disclose to the respondent Authority the said fact which was only discovered when the Authority conducted an inquiry about it in 1972, as hereinabove set out. Previous renewals of the licence of vehicle AU 6 were made on the representation of the applicants that same was in existence and was either at the garage for repairs (see *exh. 2, red 21*) or completely destroyed due to a traffic accident (see *exh. 2, red 31*).

Counsel for the applicants has submitted that their case was one of replacement of a vehicle and that the case stands or falls on the interpretation of section 8(1) of the Motor Transport (Regulation) Law, 1964 and in particular the proviso thereof.

5 The said section, so far as relevant, reads as follows:—

“ 8.—(1) The licensing authority may at its discretion grant a road service licence or impose such conditions as the licensing authority may deem fit in the circumstances:

10 Provided that where a public service vehicle in respect of which a road service licence has been granted is put out of circulation, the owner thereof shall be entitled to receive, subject to the provisions of this or of any other relevant Law, a road service licence in respect of any vehicle with which he proposes to replace such public service vehicle”.

15 It has been argued on behalf of the applicants that a lapse of time is permitted by the Law between the withdrawal from circulation of a public service vehicle and its replacement by another, and there is no time limit prescribed by this Law regarding the length of this period that may lapse between the putting out of
20 circulation and the replacement of a public service vehicle. Therefore, the moment a public service vehicle is put out of circulation, a right of replacement comes into existence by virtue of this proviso. Further, I was invited to distinguish the cases of *Kaminaros and Another v. The Republic* (1971) 3 C.L.R. 445
25 at p. 448 and *Christodoulou v. The Republic* (1972) 3 C.L.R. 290, on the ground that the withdrawal and the replacement of such a vehicle is the crux of the differentiation of our case from them.

30 On the other hand, counsel for the respondent Authority has argued that this proviso has four prerequisites which must exist at the time of the filing of the application for replacement before same is invoked, namely, that there must be a public service vehicle which has a road service licence, ownership of same and a withdrawal from circulation.

35 In my view, the alienation of motorcar AU 6 in 1969 brought to an end the existence of a right to have it replaced in October, 1973 when the application leading to the *sub judice* decision was filed. There did not exist a public service vehicle at the time owned by the applicants, and on the authority of *Kaminaros case (supra)* the road service licence which had been issued earlier
40 to the applicants in respect of motorcar AU 6 had lapsed.

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Therefore, the prerequisite of the existence of a road service licence for motorcar AU 6 at the time, did not exist and consequently the proviso could not be invoked.

Therefore, for all the above reasons the *sub judice* decision was properly taken and this application is dismissed but in the circumstances I make no order as to costs.

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Application dismissed. No order as to costs.