

1984 March 31

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AYIOS ANDRONIKOS DEVELOPMENT CO. LTD.,  
*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF INTERIOR,  
2. THE DIRECTOR OF LANDS AND SURVEYS,  
3. THE MINISTER OF FINANCE,

*Respondents.*

(Case No. 28/81).

*Immovable property—Transfer—Double transfer process—Sale of an area of land, under contract of sale—Which was divided into building plots by purchaser and sold to various persons—Respondent Director of Lands and Surveys could not lawfully accept a transfer directly by the original owner to the purchasers of any of the building plots—Section 18(1)(c) of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65).* 5

*Administrative practice—Not consonant with the proper application of the law—Does not create a legal situation enabling applicants to succeed in their recourse.* 10

*Costs—Unsuccessful applicant—No order of costs against him because his complaint not devoid of moral merit even though not well-founded in law.*

The applicants a land development company, by a contract of sale, dated 4th September 1975, bought from Kykko Monastery a large area of land for the purpose of dividing it into building plots and selling them eventually to other persons. 15

The Lands Office refused to accept direct transfers by Kykko Monastery to purchasers of the plots and, consequently, the applicants had to comply with the double transfer process 20

(from Kykko Monastery to the applicants and from the applicants to the purchasers) which was insisted upon by the Lands Office. The applicants did so, and paid the relevant transfer fees, under protest, and then this recourse was filed.

5           *Held*, that section 18(1)(c)\* of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65) could not be duly and truly complied with if the building plots concerned were transferred directly by Kykko Monastery to the purchasers to whom the said plots had been sold not by the Monastery  
10 but by the applicants; that, consequently, no declarations of transfer by Kykko Monastery to the said purchasers could be made, especially as the Monastery had never actually agreed on any particular dates to transfer to their purchasers the building plots in question either gratis or for a specified consideration; and, therefore, the Lands Office could not lawfully accept a  
15 transfer to be made directly by the Monastery to a purchaser of any one of the building plots; accordingly the recourse should fail.

20           *Held*, further, (1) that though in accordance with an administrative practice, which was revoked in 1981 the direct transfer was possible, as such administrative practice was not consonant with the proper application of section 18(1)(c) of Law 9/65 it cannot be treated as creating a legal situation enabling the applicants to succeed in their present recourse.

25           (2) That no order for costs will be made against the applicants because, though their complaint was not well-founded in law, it is not devoid of moral merit.

*Application dismissed.*

Cases referred to:

30           *P.M. Tseriotis Ltd. v. Republic* (1970) 3 C.L.R. 135 at p. 143;  
*Makrides v. Republic* (1979) 3 C.L.R. 584 at p. 601.

\* Section 18(1)(c) provides as follows:

"18(1) The written declarations required to be produced at the District Lands Office by the transferor and transferee of any immovable property shall contain the particulars following, that is to say—

(c) in the case of the transferor, a statement that he is the person appearing as the owner of such immovable property and that on a date to be stated he agreed to transfer such immovable property to the person named as transferee either gratis or for a specified consideration:".

**Recourse.**

Recourse against the decision of the respondents not to accept the transfer of a number of building plots directly from Kykko Monastery to their purchasers, to whom they were sold by the applicants, and to insist that they should be transferred first by Kykko Monastery to applicants and then by the applicants to the said purchasers.

*A. Triantafyllides with M. Cleopas and G. Triantafyllides, for the applicants.*

*M. Kyprianou, Senior Counsel of the Republic, for the respondents.*

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants complain, in effect, against the decision of the Director of Lands and Surveys not to accept the transfer of a number of building plots directly from Kykko Monastery to their purchasers, to whom they were sold by the applicants, and to insist that they should be transferred first by Kykko Monastery to the applicants and then by the applicants to the said purchasers.

The applicants are a land development company which by a contract of sale, dated 4th September 1975, has bought from Kykko Monastery a large area of land for the purpose of dividing it into building plots and selling them eventually to other persons.

The said contract of sale was deposited by the applicants at the Nicosia District Lands Office in accordance with the provisions of the Sale of Land (Specific Performance) Law, Cap. 232, as amended by the Sale of Land (Specific Performance) (Amendment) Law, 1970 (Law 50/70) and the Sale of Land (Specific Performance) (Amendment) Law, 1972 (Law 96/72).

As already stated the Lands Office refused to accept direct transfers by Kykko Monastery to purchasers of the plots and, consequently, the applicants had to comply with the complained of double transfer process (from Kykko Monastery to the applicants and from the applicants to the purchasers) which was insisted upon by the Lands Office. The applicants did so, and paid the relevant transfer fees, under protest, and then this recourse was filed.

In adopting its aforementioned stand in the matter the Department of Lands and Surveys gave substantially the following reasons, which appear in a document dated 14th November 1980:

- 5 (a) That the initial contract between Kykko Monastery and the applicants did not refer to the same immovable property which is referred to in the contract between the applicants and the purchaser-transferee.
- 10 (b) That the amount paid as consideration is not identical in that the amount which was received by Kykko Monastery was not the same as that which was paid by the purchaser-transferee to the applicants.
- (c) That it could not be stated in the declaration of transfer that the purchase price was paid as consideration by the purchaser-transferee to Kykko Monastery.

15 As it was pointed out in the aforesaid document dated 14th November 1980, for a particular building plot the applicants had paid to Kykko Monastery a price of C£1,440 whereas it has been sold by them to its purchaser at the price of C£4,650.

20 A relevant legislative provision is section 18(1) of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65), which reads as follows:

25 "18.—(1) The written declarations required to be produced at the District Lands Office by the transferor and transferee of any immovable property shall contain the particulars following, that is to say—

- (a) a description of the immovable property proposed to be transferred by reference to its situation, the number and date of registration, the assessed value and the share or interest desired to be transferred;
- 30 (b) a statement on whether or not there is any change in the condition of the immovable property proposed to be transferred as described in the registration therefor and on the nature of any such change and a statement on whether or not there is any subsisting tenancy
- 35 of such immovable property;
- (c) in the case of the transferor, a statement that he is

the person appearing as the owner of such immovable property and that on a date to be stated he agreed to transfer such immovable property to the person named as transferee either gratis or for a specified consideration:

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Provided that where two or more immovable properties are included in one declaration of transfer on payment of a consideration, the consideration for each of such immovable properties shall be separately stated;

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- (d) in the case of the transferee, a statement that he has agreed to accept the transfer of such immovable property on the terms stated in the statement of the transferor;
- (e) a statement that there is no agreement for the re-transfer to the transferor of such immovable property on any payment or on the occurrence of any event;
- (f) a statement confirming that the parties know each other and giving particulars of any relationship existing between them; and
- (g) a statement that the parties desire that the immovable property be registered in the name of the transferee".

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Particular attention is drawn to the provisions of paragraph (c) of subsection (1) of section 18, above, which for obvious reasons could not be duly and truly complied with if the building plots concerned were transferred directly by Kykko Monastery to the purchasers to whom the said plots had been sold not by the Monastery but by the applicants. Consequently, no declarations of transfer by Kykko Monastery to the aforementioned purchasers could be made, especially as the Monastery had never actually agreed on any particular dates to transfer to their purchasers the building plots in question either gratis or for a specified consideration; and, therefore, the Lands Office could not lawfully accept a transfer to be made directly by the Monastery to a purchaser of any one of the building plots.

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Counsel for the applicants referred to an administrative practice which was being followed by the Department of Lands and

Surveys at the material time, on the basis of a circular dated 27th December 1979 which was addressed by the said Department to all District Lands Offices. It might, indeed, be argued that in accordance with such practice, which was in force at the material time, the direct transfers by Kykko Monastery to the purchasers to whom the applicants had sold building plots could have been accepted by the Lands Office; and such practice remained in force until it was revoked on 17th February 1981. In any event, however, as the said administrative practice was not consonant with the proper application of section 18(1)(c) of Law 9/65 it cannot be treated as creating a legal situation enabling the applicants to succeed in their present recourse (see, inter alia, in this respect, *P.M. Tseriotis Ltd. v. The Republic*, (1970) 3 C.L.R. 135, 143 and *Makrides v. The Republic*, (1979) 3 C.L.R. 584, 601).

For all the foregoing reasons this recourse fails. But in spite of my decision that this recourse should be dismissed I am not prepared to make an order of costs against the applicants because, though I have not found the applicants' complaint to be well-founded in law, I do think that it is not devoid of moral merit.

*Recourse dismissed with no order as to costs.*