

1985 August 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THE ADMINISTRATORS OF THE ESTATE OF  
CHINNACOLANDAY KRISHNA PILLAY, DECEASED,  
ADAMOS ADAMIDES AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTRY OF FINANCE,  
2. THE COMMISSIONER OF ESTATE DUTY,

*Respondents.*

(Case No. 277/83).

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*Estate Duty—The Estate Duty Law 67/1962 as amended by  
Laws 71/1968 and 3/1976 ss. 56\* and 37 to 42 both in-  
clusive—Estate duty paid—Application for refund of estate  
duty paid—On the ground that in accordance with a deci-  
5 sion of a District Court issued in respect of an Originating  
Summons, filed after the payment of the duty, the de-  
ceased's property was subject to community with his wife  
in accordance with the Law of South Africa and, there-  
fore, its net value was below the amount subject to estate  
10 duty—Applicant's failure to appeal by way of recourse as  
provided by the said sections 37 to 42 both inclusive not  
due to lack of knowledge, but to lack of diligence on the  
part of the applicants—Applicants failed to make any  
effort of any kind to discover that the property was subject  
15 to community—Effect of such failure.*

The applicants are the administrators of the estate of  
the deceased C.K.P., who died on 21.9.1978.

The respondent Commissioner, acting on the basis of an  
allegation contained in the simplified declaration of de-  
20 ceased's property in Cyprus, delivered to him by the ap-

\* Section 56 is quoted at p 1765 post.

plicants, that the deceased was not domiciled in Cyprus at the time of his death, (his domicile of origin being in South Africa and his domicile of choice in the U. K.) did not take into consideration the deceased's property abroad in assessing the amount of estate duty payable, which was thus assessed as nil on the 8.2.1980. 5

On the 1.9.1980, after having been established that the domicile of the deceased at the time of his death was in Cyprus, the applicants submitted to the Commissioner a supplement to the above simplified declaration, requesting the revision of the above assessment. As a result the respondent Commissioner assessed the estate duty payable at £5,004.300 mils. After an objection by the applicant he revised the assessment to £4,364.300 mils. This sum was paid by the applicants on 27.9.80. The District Court of Limassol by its judgment in the Originating Summons 3/81 decided inter alia that the property of the deceased as well as his liabilities as at the time of his death consisted of the one half of those shown in his name at the time of his death. This pronouncement was made in determining a question in the summons "whether the assets and liabilities of the estate ..... would be wholly or in part considered as falling into common ownership with his wife..... according to the South Africa legal system of community of property". 10  
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Relying on the above judgment the applicants applied for the refund of the estate duty and the interest paid on the ground that the value of the net estate of the deceased was below the amount subject to estate duty. The respondent Commissioner rejected the application for refund and communicated his decision by letter dated 22.4.1983 which reads as follows: 30

"1. Repayment of money paid as Estate Duty is governed by section 56 of the Estate Duty Law which provides that where a claim is made to the Commissioner of Estate Duty for the return of any Estate Duty overpaid, such amount must be refunded, provided the claim is made within three years of the date of issue of the notice of assessment and it is proved to the satisfaction of the Commissioner that the money have been overpaid. 35  
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2. Accordingly whenever the above condition is satisfied the Commissioner must refund the overpaid money. This is not so, however, where the proviso to section 56 paragraph (b) applies. This provides that nothing in this section shall confer or be deemed to confer on any person any right to prefer a claim for the return or any right to a return of any money paid as Estate Duty on any ground which has been or could have been raised by such person by way of appeal under this Law.

3. No appeal by way of a recourse was made before and the right to a return under section 56 has been extinguished by virtue of the proviso thereto.

4. Consequently no money could be refunded in the present case."

As a result of this decision the applicants filed the present recourse.

*Held*, dismissing the recourse (1) It is the paramount duty of the administrators of an estate to make all inquiries to find out all matters concerning an estate under administration, to establish the rights and interests of the beneficiaries and heirs and how the property should devolve. In this case the applicant had an obligation to find out that the wife of the deceased was entitled to one half of the estate as of right, this having been held in trust for her by the deceased. They had ample time to do so from February 1979 when the letters of administration were granted to September 1980 when the estate duty was paid. So their failure to appeal by way of recourse as provided in sections 37 to 42 both inclusive of the Estate Duty Law 67/62 as amended by Laws 71/68 and 3/76 was not due, as alleged, to ignorance that the deceased's property was subject to community with his wife but to lack of diligence.

(2) There is nothing on record to show that the applicant had made any effort of any kind which would have led them to discover that the property was subject to community with the deceased's wife. The only ground of their objection against the assessment of £5,004.300 was that it was excessive. They could at that time raise the question of domicile or institute proceedings in the District

Court and ask from the respondent extension of time as provided under proviso (a) of s. 56 of Law 67/1962. Instead the applicants paid the revised duty at a time when they knew that the deceased might not be of a Cyprus domicile or that part of his property might belong to his wife, for which matters on 14.1.1981, i.e. only 3 months later, they filed Originating Summons 3/81 in the District Court of Limassol.

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*Recourse dismissed.*

*No order for costs.*

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Cases referred to:

*The Queen v. Special Commissioners of Income Tax* [1888]  
T. C. 332.

**Recourse.**

Recourse against the decision of the respondents whereby applicants' application for the refund of the estate duty paid in respect of the property of the deceased Chinnacolanday Krishna Pillay was rejected.

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*Fr. Saveriades*, for the applicants.

*M. Photiou*, for the respondents.

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*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicants who are the administrators of the estate of Chinnacolanday Krishna Pillay, late of Limassol, seek a declaration of the Court that the decision of the respondent Commissioner by which their application for the refund of the estate duty paid in respect of the property of said deceased was rejected, is illegal, arbitrary, in excess and/or in abuse of power, null and void and of no legal effect whatsoever.

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The applicants, as stated above, are the administrators of the estate of the deceased Chinnacolanday Krishna Pillay, late of Limassol, who died on the 21.9.1978.

Letters of Administration with Will Annexed of the estate of the deceased were granted to the applicants by the District Court of Limassol in Probate Application 25/79 on

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6.2.1979. On the 30.3.1979 the applicants delivered to the respondent Commissioner a Simplified Declaration of the deceased's property in Cyprus, contending that he was not domiciled in Cyprus at the time of his death, his domicile of origin being South African and his last domicile of choice being in the United Kingdom. The respondent Commissioner, acting on the assumption that the deceased was not of Cypriot domicile at the time of his death, did not take into consideration his property abroad in assessing the amount of estate duty payable which was thus assessed as nill on the 8.2.1980.

On the 1.9.1980, after having been established that the domicile of the deceased at the time of his death was in Cyprus, the applicants submitted a supplement to the Simplified Declaration of property already filed and requested the respondent Commissioner to revise his earlier assessment accordingly. On 13.9.1980 the respondent Commissioner made an additional assessment of estate duty payable in respect of the estate of the deceased to the amount of £5,004.300 mils and notice of the assessment was issued to the applicants.

On the 24.9.1980 the applicants raised an objection against such assessment on the ground that it was excessive as regards the deceased's property in Cyprus. The respondent Commissioner after considering the applicants' objection decided to revise the assessment to £4,364.300 mils and on 25.9.1980 communicated his decision to the applicants who paid the above sum on 27.9.1980.

On the 15.1.1981 applicant 1 informed the respondent Commissioner that an application had been made to the District Court of Limassol, for the determination by the Court of a number of questions arising in the administration of the estate of the deceased, including the question "whether the assets and liabilities of the estate of the deceased Chinnacolanday K. Pillay .... would wholly or in part be considered as falling into common ownership with his wife Caroline M. Pillay according to the South African legal system of community of property....", and he contended that in the event the above question was answered in the affirmative then the assessment of the estate duty should be revised accordingly.

On the 13.5.1982 applicant 1 again wrote to the respondent Commissioner to inform him that on the 27.4.1982 the District Court of Limassol by its judgment in the Originating Summons No. 3/81 decided inter alia that the property of the deceased as well as his liabilities as at the time of his death consisted of the one half of those shown in his name at the time of his death, in view of which he requested a refund of all the estate duty and the interest paid on the ground that the value of the net estate of the deceased was below the amount subject to estate duty. 5  
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The respondent Commissioner considered the matter and decided to reject the applicants' claim. His relevant decision communicated by letter dated 22.4.83 is as follows:

"1. Repayment of money paid as Estate Duty is governed by section 56 of the Estate Duty Law which provides that where a claim is made to the Commissioner of Estate Duty for the return of any Estate Duty overpaid, such amount must be refunded, provided the claim is made within three years of the date of issue of the notice of assessment and it is proved to the satisfaction of the Commissioner that the money have been overpaid. 15  
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2. Accordingly whenever the above condition is satisfied the Commissioner must refund the overpaid money. This is not so, however where the proviso to section 56 paragraph (b) applies. This provides that nothing in this section shall confer or be deemed to confer on any person any right to prefer a claim for the return or any right to a return of any money paid as Estate Duty on any ground which has been or could have been raised by such person by way of appeal under this Law. 25  
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3. No appeal by way of a recourse was made before and the right to a return section 56 has been extinguished by virtue of the proviso thereto. 35

4. Consequently no money could be refunded in the present case."

As a result of this decision the applicants filed the present recourse. Section 56 of the Estate Duty Law, 1962,

(Law No. 67 of 1962) as amended by Laws Nos. 71 of 1968 and 3 of 1976 reads as follows:

5 "56. If at any time within three years of the date of issue of a notice of assessment a claim is made to the Commissioner for the return of any moneys paid as estate duty and it is proved to the satisfaction of the Commissioner that such estate duty has been overpaid, it shall be lawful for the Commissioner and he is hereby required to return the amount of duty which  
10 has been overpaid:

Provided that -

- 15 (a) Where by reason of any proceeding at law, any debt due from the deceased which might be allowed as a deduction has not been ascertained, and in consequence thereof the executor was prevented from claiming refund of estate duty as aforesaid within the said term of three years it shall be lawful for the Commissioner to allow such further time for making a claim as may appear to him to be  
20 reasonable;
- (b) nothing in this section shall confer or be deemed to confer any person any right to prefer a claim for the return, or any right to a return, of any moneys paid as estate duty on any ground which has been  
25 or could have been raised by such person by way of appeal under this Law."

30 The applicants' main argument is that they were unable to raise the matter by way of an appeal as provided by proviso (b) to section 56 of the Estate Duty Law, 1962, (Law 67 of 1962) within the prescribed period because they were not aware of the provisions of the law of South Africa as regards community of property of spouses, therefore, they submitted, the said proviso cannot be applicable in their case.

35 It may be as they claim that they were not aware before September 1980—when they paid the estate duty in question—that the deceased's property was subject to community with his wife. However I do not think that this

can constitute a valid justification or reason for their not having appealed under the Law.

It is well established and accepted that it is the paramount duty of the administrators of an estate,—an obligation of the utmost importance,—to make all inquiries to find out all matters concerning an estate under administration, to establish the rights and interests of the beneficiaries and heirs and how such property should devolve. 5

In the present instance, in order to ascertain what the deceased's property was, the applicants had an obligation to find out that the wife of the deceased was entitled to one half of the estate as of right, this having been held in trust for her by the deceased. They also had ample time to do so from February 1979 when letters of administration were granted to September 1980 when the estate duty was paid more than a year and a half. So the least that I can say is that they failed to appeal by way of recourse as provided by sections 37 to 42 of the Law both inclusive, not through lack of knowledge but through lack of diligence. 10 15

In the case of *The Queen v. Special Commissioners of Income Tax* [1888] 2 T. C. 332 at p. 350, a case where repayment of overpaid income tax was requested, Esher M. R. on the effect of time limits imposed by statute had this to say: 20

“I think you must give an interpretation, as I say, which will make it applicable to each particular case, and the real construction of it, to my mind is this. It must be in as short a time as in the particular case, by exertion the party can fairly be said to have found out and to have proved; it is not simply to say that it is within a reasonable time as a general mode; it is in the shortest time that he can do it if he has made every exertion which he ought to have made. So that if a person really delays the examination of his affairs, although it may not be unreasonable for him to delay, if he really delays it beyond the time when, if he had made all the exertion he ought to have made, he would have found it out sooner, he is too late;” 25 30 35

and further down at pp. 350-351: 40



5 "I have just laid down the rule of conduct for the person who has to inquire into it, what he is bound to satisfy himself of. To my mind, it is clear that the only persons who can inquire into this in the first instance, at all events, are the General Commissioners. They are the persons who must, in the first instance, at all events, determine that point, but they are to determine it, mind, according to the rule which I laid down. The question they have to ask themselves is this: Are we satisfied that this person has used every exertion which can be expected of a business man, and, having used that exertion, has he found out and proved to us this case of his within the time within which by means of making exertions, he ought to have done?"

20 There is nothing before me to show that the applicants had made any effort of any kind which would have led them to discover that the property of the deceased was subject to community and I am thus not satisfied that, to use the words of Esher M.R., they used every exertion to determine the obligations and affairs of the estate.

25 Moreover when the respondent on 13.9.1980 raised an additional assessment of £5,004.300 mils, the applicants objected on 24.9.1980 and their only ground of objection was that the assessment was excessive. They could at that time raise the question of domicile of the deceased, or institute at that time proceedings in the District Court and ask from the respondent extension of time as provided under proviso (a) to s.56. Instead the applicants accepted the new assessment and proceeded with the payment of the duty in question, without raising the issue of the deceased's domicile at a time when they knew that he might not be of a Cyprus domicile or that part of his property might belong to his wife Caroline M. Pillay, for which matters on 14.1.1981 i.e. only 3 months later, they filed in the District Court of Limassol for decision, Originating Application No. 3/81.

40 For this reason the recourse must fail and is hereby dismissed, with no order as to costs.

*Recourse dismissed.  
No order as to costs.*