

1986 November 20

[MALACHYOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

D. I. KITROMELIDES KTIMATI KI LTD.,

Applicant,

v.

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 175/75).

Legitimate interest—Relaxation granted to interested party for erection of additional storey on a building under construction—Owners of multi-storey building situated opposite the building under construction challenged said decision by this recourse—No right of said owners under existing legislation has been infringed—In this case it cannot be

5 *said that the decision to grant the relaxation adversely affected legitimate interest of said owners.*

Recourse for annulment—Powers of Court—May examine ex

10 *proprio motu the issue of legitimate interest.*

The applicant, who is the owner of seven-storey building situated opposite a building, which was, at the time, under construction by the interested party, objected to the interested party being granted a relaxation so as to erect

15 an additional storey to those covered by the original permit for the building under construction, on the ground that such an additional storey will obstruct the light and the view of the horizon of applicant's said immovable property. Finally the objection was dismissed and the relaxation granted. Hence the present recourse.

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Counsel for the parties took it for granted that applicant had a legitimate interest to challenge the sub-judice decision.

Held, dismissing the recourse: (1) This Court is entitled to examine the issue of legitimate interest ex proprio motu.

(2) A recourse against a decision, act or omission of any organ, authority or person, exercising any executive or administrative authority can only be filed, if the applicant at the time of its filing had an existing and concrete legitimate interest, which is directly affected by such decision, act or omission. 5

(3) The fact that the applicant is the owner of a neighbouring building does not by itself establish a legitimate interest to attack the building permit issued to the interested party. In this case it cannot be said that any legitimate interest of the applicant was adversely affected by the permit in question. Under the existing legislation the applicant has no legal right under public or private law, which has been infringed by the erection of the building covered by the building permit in question. 10 15

Recourse dismissed.
No order as to costs. 20

Cases referred to:

Kritiotis v. Municipality of Paphos and Others (1986) 3 C.L.R. 322.

Recourse.

Recourse against the decision of the respondent to grant applicant a permit for the erection of an additional storey to its building in Nicosia on plots 165 and 166 of Sh/Pl. XXI. 46.6. III. 25

M. Christofides, for the applicant.

K. Michaelides, for the respondent. 30

Cur. adv. vult.

MALACHTOS J. read the following judgment. Solea Canning Industries Ltd. of Nicosia, was in 1975 erecting a multi-storey building on its immovable property situated in Nicosia at Tripiotis Quarter, being Plots 165 and 166 35

of S/P XXI. 46.6. III under a building permit No. 174/75 issued to it by the respondent Municipality as the appropriate authority, under the Streets and Buildings Regulation Law, Cap. 96. While in process of erecting the said
5 building the interested party applied to the Director of the Department of Planning and Housing for relaxation of the Streets and Buildings Regulations so as to be allowed to erect an additional storey to those covered by the original building permit. According to regulation 66, the respondent,
10 as the appropriate authority, if authorised by the Director of Planning and Housing, is entitled to dispense with the application of the said regulations or to apply them in a less onerous manner. In reality in the case of the interested party, the relaxation affected the building ratio, which was
15 to be raised from 2.2:1 to 2.5:1.

The Director approved the application of the interested party and by his letter dated 30.4.75, authorised the respondent Municipality to relax the relevant regulation. The applicant, D. I. Kitromilides Ktimatiki Ltd., who is the
20 owner of a seven-storey building on Plot 178, of S/P XXI. 46.6. III situated opposite the building of the interested party by letter dated 16.5.75 addressed to the respondent Municipality objected to the relaxation of the relevant regulation in the case of the interested party, stating that the
25 erection of an additional storey by the interested party will obstruct the light and the view of the horizon of its immovable property.

The respondent considered the objection of the applicant at its meeting of 19.5.75 and decided before reaching
30 a decision to request the interested party to state its reasons for the requested relaxation of the regulations and a letter dated 27.6.75 to this effect was addressed to the interested party. Such reasons were given by the interested party by letter dated 4.7.75. The respondent at its meeting of
35 4.8.75 considered the case in the light of the objection of the applicant and reasons given by the interested party and decided to grant the relaxation applied for. The applicant was informed accordingly by letter dated 29.8.75.

As against this decision the applicant filed the present re-

course, claiming a declaration of the Court that the decision of the respondent, which is contained in its letter to the applicant dated 29.8.75, by which a building permit was granted to the interested party for the erection of an additional storey to its building in Nicosia on Plots 165 and 166 of S/P XXI. 46.6. III, is null and void and of no legal effect whatsoever. 5

The grounds of law, on which the recourse is based, as argued by counsel for applicant, may be summarised as follows: 10

1. That there was no valid reason for the relaxation of the existing regulation.

2. That the granting of the permit applied for is contrary to the principle of equality, and

3. That the erection of the additional storey causes damage to the applicant as obstructing the light and the view of the horizon of its immovable property. 15

On the other hand, counsel for the respondent argued that the decision complained of was reached after careful consideration of all relevant factors and that there is no violation of the principle of equality. 20

Although counsel for the parties took it for granted that the applicant had a legitimate interest in the sense of Article 146.2 of the Constitution to file a recourse, nevertheless, in view of the arguments of counsel and the other material placed before me, I feel bound, as I am entitled to do, to examine ex proprio motu this issue. 25

Article 146.2 of the Constitution, reads as follows:

“146.2: Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of 30

a Community, is adversely and directly affected by such decision or act or omission."

5 It follows from the above that a recourse can only be filed before an administrative Court on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority if the applicant at the time of filing the recourse had an existing and concrete legitimate interest, which is directly affected by the act or decision complained of.

10 As it is stated in *Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322, at page 338.

15 "Though traditionally a recourse for annulment of an administrative decision is very widely open, it is not an *actio popularis* open to every citizen of the country. A citizen cannot contest the validity of every administrative act unless he possesses the quality of legitimate interest. Had it been otherwise, the influx of the recourses would paralyse administrative justice and the judicial control would have become illusory; 20 furthermore for practical reasons the administration would also be handicapped in the due performance of its function. The criterion is the existence of a direct relationship and affectation of an interest, material or moral, of the applicant, otherwise the recourse is deprived of its admissibility." 25

30 It is a well settled principle of administrative law that it is on the applicant to satisfy the Court that he has a legitimate interest for the Court to interfere with the decision complained of. In this recourse we are concerned with a case of the owner of a neighbouring building to the building of the interested party for which a building permit for an additional storey was granted, the annulment of which is sought by the present recourse. The fact that the applicant is the owner of a neighbouring building does 35 not by itself establish a legitimate interest to attack a building permit issued by the respondent as the appropriate authority to the interested party. The applicant must also persuade this Court that by the erection of the additional storey, is also adversely affected and injured. In the present

case it cannot be said that the applicant, as owner of a seven-storey building already erected on a building site situated on the other side of the public road, opposite the building site on which the erection of the multi-storey building of the interested party, for which the building permit in question was issued, is adversely affected and injured by such permit. To my mind, under the existing legislation, it is clear that the applicant has no legal right either in the domain of public or private law, which has been infringed by the erection of the building covered by the building permit, the subject matter of this recourse. 5 10

In view of my above decision I consider it unnecessary to pronounce on the other issues raised in this recourse.

Therefore, this recourse is hereby dismissed as the applicant had no legitimate interest as owner of a neighbouring building to attack by a recourse before this Court the sub judice building permit issued to the interested party. 15

On the question of costs I make no order.

Recourse dismissed.
No order as to costs. 20