

1986 February 15

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHRYSANTHOS ANTONIOU AND SONS AND ANOTHER,  
*Applicants,*

v.

- 1. NICOSIA MUNICIPALITY,
- 2. NICOSIA MUNICIPAL COUNCIL,
- 3. NICOSIA TOWN CLERK,

*Respondents.*

(Case No. 501/84).

*Executory act—Decision of Municipal Council requiring applicant to abate public nuisance from a plot of land in their possession—Affects applicants' rights and it is, thus, of an executory nature.*

*Recourse for annulment —Parties —Decision by Municipal Council requiring applicants to abate a public nuisance— Communicated by letter written by the Town Clerk, who had not taken part in the process of reaching the decision —Town Clerk wrongly joined as a party.* 5

*Legitimate interest—Omission to reply—Reply received after filing of recourse—Applicants proceeded with substance of the matter—Applicants did not suffer any material detriment by reason of the failure to reply to them—Applicants not entitled to the relief claimed against the omission to reply.* 10  
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By letter dated 7.7.84 the Town Clerk of the Nicosia Municipality informed the applicants that they were required to abate, within a month, a nuisance allegedly committed by them by depositing scrap on a plot of land in Kaimakli. The applicants replied by letter dated 16.8.84. 20

The respondents replied to the said letter by letter dated 14.9.84, which however, as alleged by the applicants was received after the filing of this recourse on the 19.9.84.

5 This recourse is directed both against the decision communicated to the applicants by the letter of 7.7.84 and the omission to reply to the letter of 16.8.84.

10 Counsel for the respondents raised a number of preliminary objections, namely that the Town Clerk was wrongly joined as a party, that the applicants are not entitled to the relief claimed as regards the omission to reply and that the sub judice decision is preparatory to the institution of judicial proceedings against the applicants under section 140 of Cap. 240.

15 *Held*, (1) The authority competent to act in this case is the municipal council of respondent 1 (Section 139 of Cap. 240). The Town Clerk could not be joined as a party to this recourse, especially as he has not taken a part in reaching the sub judice decision.

20 (2) The applicants are not entitled to the relief claimed in respect of the omission to reply, because, first, there was a reply and it is not of any real significance that such reply was received after the filing of the recourse and, secondly, the applicants proceeded with regard to the substance of the matter, and there does not appear to have  
25 suffered any material detriment as a result of such failure.

30 (3) By the letter of 7.7.84 notice was given to the applicants that it had been established to the satisfaction of the respondents that the applicants were committing a public nuisance, which they should abate and that, if they failed to do so, judicial proceedings would be instituted against them. The letter affects applicants' right and it is, thus, of an executory nature. This view is strengthened by the fact that section 140 (d) of Cap. 240 empowers the respondents to abate the nuisance and recover the relevant  
35 expenses from the applicants.

*Order accordingly.*

Cases referred to:

*Kyriakides v. The Republic*, 1 R.S.C.C. 66;

*Ioannides v. The Nicosia Municipality* (1968) 3 C.L.R. 551;

*Sofocleous v. The Republic* (1974) 3 C.L.R. 63.

Recourse.

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Recourse against the decision of the respondents whereby applicants were required to abate, within one month, a nuisance allegedly committed by them by depositing scrap on a plot of land in Kaimakli of which they are the lessees.

*Chr. Clerides*, for the applicants.

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*A. Pandelides*, for the respondents.

*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment. By means of their present recourse the applicants are, in effect, complaining that by a letter addressed to them by the respondent Town Clerk of the Nicosia Municipality, on the 7th July 1984, they were required to abate, within a month, a nuisance allegedly committed by them by depositing scrap on a plot of land in Kaimakli of which they are the lessees.

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The applicants by a letter of their counsel, dated the 16th August 1984, refuted the contents of the said letter of the Town Clerk.

Counsel for the respondent Municipality has raised certain issues which are to be decided as preliminary issues:

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He has submitted that as the Town Clerk is an employee of the respondent Municipality, and he is not on his own a separate and independent administrative organ, he could not be joined separately as a respondent in these proceedings.

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The authority which is competent to act in this case under section 139 of the Municipal Corporations Law, Cap. 240. is respondent 2, the municipal council of respondent

1, the Nicosia Municipality. Consequently this recourse could be filed only against respondents 1 and 2, especially as it does not appear that the Town Clerk, respondent 3, has taken any part at all in the process of reaching the sub  
5 justice decision, but has only notified it to the applicants in his capacity as an employee of respondent 1. Consequently, respondent 3 is not a proper party to these proceedings and this recourse is hereby dismissed in so far as it purports to make him a party to such proceedings.

10 Regarding, next, the complaint of the applicants that the respondents have failed to reply to the letter of their counsel dated 16th August 1984, I agree with counsel for the respondents that the applicants are not entitled to the relief claimed, in this connection, by claim (B) in the motion  
15 for relief in the recourse. I have formed this view because, first, a written reply was given by the respondents on the 14th September 1984 to the said letter of 16th August 1984 and it is of no real significance that such reply was received, as alleged by the applicants, after the filing  
20 of the present recourse on the 19th September 1984. Secondly, as the applicants are seeking redress, by their claim (A) in the motion for relief, in respect of the substance of the matter, they could not complain, at the same time, about the failure to reply in time to their counsel's letter,  
25 of the 16th August 1984, because it does not appear that they have suffered any material detriment as a result of such failure (see, inter alia, *Kyriakides v. The Republic*, 1 R.S.C.C. 66, 77, *Ioannides v. The Nicosia Municipality*, (1968) 3 C.L.R. 551, 554 and *Sofocleous v. The Republic*, (1974) 3 C.L.R. 63, 70).  
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It follows that claim (B) in the motion for relief in the present recourse has to be dismissed.

Lastly, it has been submitted on behalf of the respondents that the sub justice letter of 7th July 1984 does  
35 not communicate to the applicants an executory administrative act or decision which could be challenged by this recourse under Article 146 of the Constitution, but simply informs the applicants of the course which the respondents intend to take and that, therefore, it is preparatory to the  
40 institution of judicial proceedings against the applicants un-

der the provisions of section 140 of Cap. 240.

From the contents of such letter it appears that the applicants were being given notice that due to the way in which they were carrying out their business in the aforementioned plot it was established to the satisfaction of the respondents that the applicants were committing a public nuisance which they should abate, and that if they did not do so judicial proceedings would be instituted against them. 5

In my opinion such letter amounts to a notice affecting the rights of the applicants and it is, thus, of an executory nature which can be challenged by means of the present recourse for annulment. This view of mine is strengthened by the fact that under section 140 (d) of Cap. 240 the respondents are empowered to take steps themselves to abate the nuisance and to recover from the applicants any expenses incurred in this respect, instead of commencing proceedings in the District Court for an order compelling the applicants to abate the nuisance. 10 15

I would like, also, to refer to decisions of an "appropriate authority" under section 15 of the Streets and Buildings Regulation Law, Cap. 96, as amended by section 2 of the Streets and Buildings Regulation (Amendment) Law, 1964 (Law 6/64), to close down buildings unfit for human habitation or to issue notices and make order in respect of buildings in a dangerous state, and to point out that such decisions, notices and orders which are of an executory nature and can be challenged by a recourse for annulment under Article 146 of the Constitution are closely analogous to the sub judice letter in the present instance. 20 25 30

Consequently, the present recourse has to be heard on its merits as regards claim (A) in the motion for relief.

*Order accordingly.*