

(1988)

1988 March 12

[LORIS, J.]

CONSTITUTION.

MAROULLA GEORGHIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, AND/OR

1. THE MINISTRY OF INTERIOR AND/OR

2. THE COUNCIL OF MINISTERS AND/OR

3. THE DISTRICT OFFICER PAPHOS,

Respondents.

(Case No. 596/86).

Omission in the sense of Art. 146.1 of the Constitution—Annulment of an act—Failure for a time to reconsider matter—Finally matter reconsidered—Once there has been such a reconsideration; the omission could not be impugned by this recourse.

*Competency—Antoniades and Others v. Municipal Council of Paphos (1985) 5
3 C.L.R. 1695 cited with approval.*

The sub judge decision in this case, whereby applicant's application for a new dwelling (the application was based on a decision of the Council of Ministers) was turned down, following reconsideration after an annulling decision of this Court, was annulled for lack of due inquiry leading to misconception of fact. 10

*Sub judge decision annulled.
No order as to costs.*

Cases referred to:

Goulielmos v. E.S.C. (1983) 3 C.L.R. 883; 15

Antoniades and Others v. The Municipal Council of Paphos (1985) 3
C.L.R. 1695.

Recourse.

5 Recourse against both the omission of the respondents to re-examine applicant's application for new dwellings at the locality Ambelitis where the villages of Statos and Ayios Photios were re-located after landslides had occurred in such villages in 1969 and the decision of respondent 3 to turn down applicant's application for such new dwelling house.

10 *A. S. Angelides*, for the applicant.

Chr. Ioannides, for the respondents.

Cur. adv. vult.

15 LORIS J. read the following judgment. Several applicants challenged by means of recourse No. 32/70 which was tried together with recourses Nos. 333/69, and 33/70 the decision of the respondents, not to provide to them new dwellings at the locality "Ambelitis", where the villages of Statos and Ayios Photios were relocated after landslides had occurred at such villages in 1969.

20 The applicant in the present recourse was one of the applicants in recourse No. 32/70; she was alleging therein that she had at the material time, a second dwelling house which was destined to be given as dowry to an unmarried daughter of hers and that she was accordingly entitled pursuant to the provisions in a relevant
25 decision of the Council of Ministers dated the 15th May 1969 (No. 8737)—which is Appendix "A" attached to the opposition in the present recourse—to a second new dwelling.

30 The aforesaid applications of the applicants in the said recourse for new dwellings, were refused by the respondent on the ground that the applicants did not come within the ambit of para (m) in the aforesaid decision of the Council of Ministers which reads:

"(μ) εις περιπτώσεις καθ' ας οικογένειά τις κατείχεν
ετέραν οικίαν προοριζομένην δια την αποκατάστασιν
ανυπάνδρου θυγατρός αυτής, αυτή θα δικαιούται εις
ετέραν νέαν κατοικίαν".

English Translation:

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"(m) in cases in which a family possessed another dwelling
destined for the advancement of an unmarried daughter it will
be entitled to another new dwelling".

The aforesaid recourses, which were tried together resulted in
the annulment of the relevant decisions (vide *Michaelides and* 10
Others v. The Republic (1984) 3 C.L.R. 1522 where at page
1524 the following were stated verbatim: "... the sub judice
administrative decisions have to be annulled and the applications
of the applicants for new dwellings have to be re-examined.")

It seems that inspite of the fact that the aforesaid judgment was 15
delivered on 18.2.84 none of the respondents in the aforesaid
cases re-examined the applications for new dwellings of the
applicants including the applicant in the present recourse up to
11.6.86, when the applicant in the present recourse moved the
District Officer of Paphos by means of a new application dated 20
11.6.86 which was turned down by Respondent No. 3 (vide
letter of the District Officer of Paphos dated 15.7.86 - appendix
'B' attached to the opposition).

Hence the present recourse; the prayer in the recourse is
twofold: Prayer No. 1 refers to the decision of Respondent No. 3 25
set out in his letter of 15.7.86 (Appendix 'B') whilst prayer No. 2
impugnes the alleged omission of all three Respondents to re-
examine the application of the applicant.

I hold the view that prayer No. 2 should be dismissed, once the
application was re-examined by Respondent No. 3 inspite of the 30

fact that the latter acted belatedly and after being moved by the application dated 11.6.86 submitted by the applicant. Once a re-examination of the application was carried out by Respondent No. 3 there can be no omission any more (*Goulielmos v. E.S.C.* 5 (1983) 3 C.L.R. 883 at p. 902); there simply exists a refusal of Respondent No. 3 after re-examining the application which is being impugned by virtue of prayer No. 1, which I shall now proceed to examine.

Many points have been raised by learned counsel for applicant 10 in impugning the sub-judice decision of Respondent No. 3. I shall confine myself in examining the most important and substantial ones notably the question of competence of respondent No. 3 and the issue of due inquiry, as most of the remaining issues savour of academic interest only.

15 The issue of competence of an administrative organ has been dealt with, in a number of cases but I shall confine myself in referring to the recent case of *Antoniades & Others v. The Municipal Council of Paphos* (1985) 3 C.L.R. 1695 where my brother Judge Pikis summed up in an admirable and exhaustive 20 way the topic of competence, which I fully endorse.

In the case under consideration, I hold the view that Respondent No. 3 had competence in re-examining the application of the applicant, as he is the representative of Respondent No. 1 in the District of Paphos and any application to 25 Respondent No. 2 or Respondent No. 1 would have been referred to Respondent No. 3 for examination. In this connection we must not lose sight of the fact that the applicant herself chose to apply to Respondent No. 3 who was duty bound to reply pursuant to the provisions of Article 29 of the Constitution. In 30 this connection I should perhaps add, independently of the fact that Respondent No. 3 has competence in the matter, that the three respondents in the present recourse, as well as in the aforesaid recourses of 1969 and 1970, were joined in the alternative.

Having carefully examined the sub-judice decision of Respondent No. 3, I hold the view that Respondent No. 3 failed to carry out due inquiry and as a result he acted under misconception as to material facts. It is apparent from his letter dated 15.7.86, that the refusal of the respondent is mainly based on two grounds: 5

(a) On the allegation that the applicant had no daughter over 18 years of age as allegedly envisaged by para (m) of the decision of the Council of Ministers under No. 8737 dated 15.5.69.

(b) The applicant had no second dwelling in the old village. 10

Both above assertions of Respondent No. 3 are incorrect.

The decision of the Council of Ministers under No. 8737 dated 15.5.69 is set out in Appendix 'B' attached to the opposition; the relevant paragraph (m) which has already been referred to earlier on in the present judgment does not mention anything about the age of "the daughter"; it simply speaks of an unmarried daughter. 15

As regards the 2nd ground it seems that Respondent No. 3 failed to heed the existence of a certificate emanating from the Chairman and members of the respective village Commission (vide Appendix Γ) dated 26.1.70 certifying to the effect that the applicant was at all material times the owner of a second dwelling in the village under Registration No. 5276 dated 8.4.42 covered by plot 252 of Sheet/Plan 46/10 within the village of Statos, which was, according to the aforesaid certification, habitable on 8.1.69 i.e. immediately prior to the occurrence of the devastating landslides that occurred in the village of Statos, in 1969. 20 25

In the result the recourse against the sub-judice decision of respondent No. 3 succeeds; and the sub-judice decision is accordingly annulled. Let there be no order as to costs.

Sub judice decision annulled. 30
No order as to costs.