

1988 March 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANASTASSIA N. DEMETRIOU,

Applicant.

v.

THE DISTRICT OFFICER OF LIMASSOL,

Respondent.

(Case No. 72/86).

5 *Administrative act—Legality of—Should be judged on the basis of law in force at the time of its issuance, provided there has not been an unreasonable delay on the part of the administration—The citizen's right to expeditious determination of his application corresponds to the duty cast on administration under Article 29—Application for a building permit—Simple case—Three months—Unreasonable delay—Argument invoking inherent difficulties by reason of summer vacations in justification of such delay—Untenable.*

10 *Constitutional Law—Right to address the authorities—Constitution, Art. 29—Citizen's right to expeditious determination, if his application corresponds to the duty cast on the administration under Art. 29.*

On 29.6.85 the applicant applied for a building permit for the erection of a shop on a plot of land. On 5.9.85 restrictions related to water supply affecting the area were imposed and on 27.9.85 the property of the applicant was included in Zone Z in virtue of a Regulatory Act, published on the same day. 5

As a result the application was dismissed. Hence this recourse.

Counsel for the respondent tried to justify the delay in replying to applicant's application by suggesting: (a) that a period of 3 months is not an unusual margin of time for cases of this sort, and (b) that owing to summer vacations the relevant departments are not fully manned. 10

Held, annulling the sub judice decision

(1) The legality of an administrative act, including an act relating to a building permit, should be judged on the basis of the law in force at the time of its issuance, subject to the qualification that the administrative Authorities must heed and dispose of a citizen's application for a building permit, expeditiously. In other words, the rights of the applicant must be determined in accordance with the law in force when it would be reasonable to decide the matter. 15

(2) The right to the expeditious determination of the application corresponds to the duty cast on the administration by Art. 29 of the Constitution (*Lemis and Others v. District Administration of Nicosia* (1986) 3 C.L.R. 2226 adopted). 20

(3) This was a simple application. The delay was unreasonable. The argument invoking difficulties inherent to summer vacations is untenable.

Sub judice decision annulled. 25
No order as to costs.

Cases referred to:

Lordou and Others v. The Republic (1968) 3 C.L.R. 427;

Loiziana Hotels Ltd. v. The Municipality of Famagusta (1971) 3 C.L.R. 466; 30

Lemis and Others v. District Administration of Nicosia, (1986) 3 C.L.R. 2226.

Recourse.

Recourse against the refusal of the respondent to issue a building permit to applicant for the erection of a shop in her field situated at Alassa village in Limassol District.

5 *S. Karapatakis*, for the applicant.

Chr. Ioannides, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondent, set out in his letter dated 23.11.85, whereby her application dated 29.6.85 for a permit to build a shop in her field situated at Alassa village, Limassol District, covered by plot 113/1 of Sheet/Plan LIII/14 was turned down by the respondent.

15 Applicant is and was at all material times, the registered owner of a field of 2 donums and 3300 sq. feet in extent, at Alassa village, Limassol District under Registration No. 2129 dated 27.9.84 covered by plot 113/1 of Sheet/Plan LIII/14.

20 On 29.6.85 the applicant submitted to the respondent an application, accompanied by all necessary documents including plans, for a building permit designed to secure a permit for the building of a shop in her aforesaid field.

25 At the time of the filing of the application and for a period of about three months thereafter, there were no restrictions in respect of the species and the nature of the intended development under the legislation in force, and the building ratio was 2.2:1.

On 27.9.85 Regulatory Administrative Act 243/85 was published in the Official Gazette of the Republic (vide Appendix "A")

attached to the opposition) whereby the aforesaid property of the applicant was included in zone Z entailing many restrictions which are set out in the aforesaid Regulatory Act, plus a reduction to the building ratio, which was reduced to 0.01:1.

The restrictions thus imposed had a direct bearing on applicant's application for the building permit in question rendering it incompatible with the new regulations on 27.9.85. 5

On 23.11.85 the respondent addressed a letter to the applicant (vide Exhibit 1 attached to the recourse) whereby the granting of the building permit applied for, was refused. The said letter states inter alia that applicant's "application cannot be proceeded with, as the plot (the property of the applicant) is situated outside the area of the water supply of the village and within zone "Z" which was fixed by the Regulatory Administrative Act 243/85." J

The applicant feeling aggrieved filed the present recourse, praying for a declaration to the effect that the refusal of the Respondent to grant the building permit applied for, is null and devoid of any legal effect. 15

Learned counsel for the applicant in his written address submitted that the decision ought to be annulled in view of the failure of the respondent to consider the application of 29.6.85, by reference to the law applicable at the time of its submission: counsel maintained, that the respondent was guilty of unreasonable delay in examining the application for the building permit applied for, and thus he could not rely on changes in the law to deny to the applicant rights that the law recognised to him at the time it would have been reasonable for the respondent to determine the application. 20 25

Counsel for applicant argued forcefully that had it not been for the unreasonable delay of the respondent for a period of about 3 months, neither the restrictions as to water supply—which have been imposed as late as the 5th September 1985—nor the restrictions imposed by virtue of Regulatory Administrative Act 243/85, 30

on 27.9.85 would have had any bearing on applicants' application for a building permit, which would have been otherwise granted by the respondent as the applicant had complied with all the requisites of the law and the regulations in force at the time of
5 the application.

Learned counsel for the respondent did not deny that the restrictions as to water-supply have been imposed in the area as late as the 5th September 1985. Nor he denied the incompatibility of the Regulatory Order under No. 243/85 with the application for
10 the granting of the building permit in question. He simply confined himself in denying the alleged unreasonable delay of the respondent in examining the application in question.

Counsel for the respondent maintained that as the application in question was submitted on 27.9.85 and as the office of the Respondent - like all other Government Departments - is not fully
15 manned during Summer time, owing to the Summer Vacations, the relevant departments cannot manage to examine "immediately" every application. And the learned counsel concluded "After all, 3 months' time is not an unusual margin of time with a view to examining an application for a building permit, which presupposes
20 a quite complicated procedure."

Before proceeding any further with the examination of the merits of this case I consider it pertinent at this stage, to deal as briefly as possible, with the legal aspect thereof.

25 The relevant issue was decided as early as 1968 in the case of *Lordou & Others v. The Republic* (1968) 3 C.L.R. 427 which was followed by the judgment in *Loiziana Hotels Ltd v. The Municipality of Famagusta* (1971) 3 C.L.R. 466. The principles set out in the aforesaid cases were reiterated thereafter in a considerable
30 number of cases and recently were summed up by my brother Judge Piki in the case of *Lemis & Others v. District Administration of Nicosia* (1986) 3 C.L.R. 2226 (at pp. 2230-31) as follows:

"The principles that emerge from a study of the case-law are the following:

(a) The law applicable is that in force at the time the decision is taken. This is so notwithstanding changes introduced in the law between the date of the petitioning of the Authorities and the time the decision is taken; unless the new law or Regulations expressly exclude from their ambit applications submitted before enactment. 5

(b) Section 4(1) of the Streets and Buildings Regulation Law, Cap. 96, does not justify any departure from the above principle of administrative law. On the contrary, it is fashioned to its application and enforcement. 10

(c) The application of the rule under (a) above, is subject to the qualification that administrative Authorities must heed and dispose of a citizen's application for a building permit, expeditiously. If they are guilty of unreasonable delay, they cannot rely on changes in the law to deny to the applicant rights that the law gave him at the time when it would have been reasonable for the Authorities to determine the application. 15

In other words, the rights of the applicant must be determined in accordance with the law in force when it would be reasonable to decide the matter." 20

In the light of the case law above cited the single question which falls for determination is whether the time that elapsed between the filing of the application for the building permit in question, and the sub judice decision of the respondent was a reasonable one or not. 25

I am in full agreement with the statement of my brother Judge Pikis in the case of *Lemis & Others* (supra) at p. 2231 that:

"The applicant for a building permit has, of course, the right to the expeditious determination of his application corre- 30

sponding to the duty cast on the Administration by Article 29 to take cognizance of and determine citizens' petitions expeditiously."

5 In the case under consideration the applicant submitted to the respondent her aforesaid application, accompanied by all necessary documents including plans, on 29.6.85.

The respondent turned down her application on 23.11.85 allowing in the meantime almost three months time to elapse after the filing of the application and before the publication of the
10 Regulatory Order on 27.9.85 without determining the application. Having given to the matter my best consideration I hold the view that the facts of this particular case point clearly to unreasonable delay on behalf of the respondent; I cannot agree with the submission of learned counsel for the respondent that "three
15 months' time is not an unusual margin of time with a view to examining an application for a building permit;" it was a simple application for the issue of a building permit in respect of a shop within a field at Alassa village and I fail to see "the quite complicated procedure" for the issue of such a permit, as submitted;
20 furthermore it is clear that the applicant submitted together with her application all required documents and plans (which were returned to her together with the letter of respondent dated 23.11.85 - vide Exhibit 2 attached to the recourse) which would have rendered possible the issue of the permit as a matter
25 of course, according to the laws and regulations applicable both at the time of the submission of the application as well as for a period of about three months thereafter.

The other leg of the submission of counsel for the respondent attempting to justify the unreasonable delay of the Respondent by
30 invoking difficulties inherent to Summer Vacations is untenable. The applicant having complied with the requirement of the law and the regulations cannot be punished merely because it so happened that she applied for a permit on the eve or during the Summer vacations.

35 Having held as above, on the merits of the case, I consider it

unnecessary to pronounce on the question of alleged unconstitutionality of the Regulatory Administrative Act No. 243/85, an issue raised by the applicant in the alternative.

In the result present recourse succeeds and the sub judice decision is hereby declared null and void. Let there be no order as to costs. 5

Sub judice decision annulled.
No order as to costs.