

The claims made in 1900 and 1901 were heard and decided. If those applications were by any chance still alive it might assist the Plaintiffs. But that those applications were heard and finished. The present is an entirely new application—a new “dawa”—and it is more than 15 years after the judgment and cannot be heard.

The appeal must therefore be dismissed with costs.

Appeal dismissed.

TYSER, C.J.
&
BERTRAM,
J.
JOSEPH
CIRILLI
AND SONS
v.
KYPRIANO
CHRISTO-
DOULOU
AND
OTHERS

[TYSER, C.J. AND BERTRAM, J.]

HAJI GEORGI HAJI KYRIAKOU AND ANOTHER

v.

KYPRIANO MANUEL.

TYSER, C.J.
&
BERTRAM,
J.
1910
December 2

IMMOVEABLE PROPERTY—OBLIGATION OF COURT TO ENFORCE REGISTERED TITLE.

A Court cannot refuse to enforce a registered title on the ground that the registration was made erroneously where there is no claim to set aside the registration by a person lawfully entitled to be registered for the property in question.

Plaintiffs and Defendant both claimed title to a certain property by long possession, but neither had in fact acquired a prescriptive right. Plaintiffs nevertheless procured a Village Certificate and having obtained registration upon the basis of the certificate, sued the Defendant upon their qochan. The Defendant by a cross-action claimed a right to registration on the ground of prescription, but failed to prove his claim. The District Court (being equally divided) nevertheless dismissed the Plaintiffs' claim on the ground that their qochan had been obtained by a false certificate.

HELD: that the Plaintiffs were entitled to the enforcement of their registered title.

This was an appeal from a judgment of the District Court of Nicosia.

The case consisted of an action and a cross-action. The title set up by both parties was based upon long possession, but as a matter of fact neither party had had undisputed possession long enough to constitute a prescriptive title. The Plaintiffs nevertheless succeeded in procuring a village certificate that they had been in possession of the land for the necessary period, and having obtained a qochan upon the basis of the certificate, sued upon the qochan. The Defendant by his cross-action claimed a right to set aside this qochan, and a declaration of his right to be registered on the ground of prescription.

The District Court (Holmes, P.D.C., and Makrides, J.) was unanimously of opinion that Defendant had failed to prove his claim to a prescriptive title, and the cross-action of the Defendant was accordingly dismissed. With regard to the original action however Holmes, P.D.C., being of opinion that the Plaintiffs' qochan was issued upon a false village certificate, held that Plaintiffs were not entitled to

TYSER, C.J. judgment. Makrides, J., was of opinion that Plaintiffs were entitled & BERTRAM, to judgment upon their registered title, and, the Court being equally divided, judgment was entered for the Defendant.

J.
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 HAJI
 GEORGI
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 KYRIAKOU
 AND
 OTHER
 v.
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The Plaintiffs appealed.

Paschales Constantinides and Theodotou for the Appellants.

Artemis for the Respondents.

The Court allowed the appeal.

Judgment: THE CHIEF JUSTICE: The effect of the judgment now appealed against is that the Plaintiffs' title-deed was issued upon a false certificate: that that title-deed ought to be set aside, and that consequently his action must be dismissed with costs.

As a matter of fact there was no claim in the cross-action to set aside the Plaintiffs' qochan on this ground, but this was not a judgment in the cross-action. It was a judgment in the original "action" in which the Plaintiffs were suing upon their registered title. As a matter of fact the Judges were not unanimous—but let us assume that this was a unanimous judgment—what would then be the position?

The Court would be claiming a right to go behind the qochan issued by the Government, when there is no claim in that respect by any party to the action, and no right to the land in question has been proved by any party to the action, simply because the Court thinks the qochan was wrongly given.

If the case is put in that way I do not see how the decision can be supported. The Courts are not Courts of Appeal from the Land Registry Office. All that the Court does is this that where by the subsistence of any registration injury is done to some one who is entitled to the land, and where the person aggrieved comes into Court to assert his rights as against the person registered, the Court hears his claim and makes a declaration of his rights, and the Land Registry Office acts upon the Court's declaration.

The Court has no right to take the qochan into its own hands, and, without the qochan's being challenged by any person entitled to the property, to decline to enforce it.

The appeal must therefore be allowed with costs.

BERTRAM, J.: I agree. No claim to have this qochan set aside on the ground that it was given on a false certificate was made in the cross-action, and even if it had been made it could not have succeeded, as the Defendant was neither herself registered nor entitled to be registered either on the ground of prescription or otherwise.

It is clear from the case of *Juma v. Halil Imam* (1899) 5 C.L.R., 16, that a person who has neither a qochan nor a right to a qochan cannot challenge a trespasser. Much less can he challenge a person armed with a qochan. And if the Defendant is not entitled to challenge the Plaintiff's qochan by cross-action, still less can he do so by way of defence.

Appeal allowed.

[**TYSER, C.J. AND BERTRAM, J.**]
HARIT EFFENDI HASSAN FEDAYI
v.
MULLAH MUSTAFA MULLAH HUSSEIN KOUMBI.

ACKNOWLEDGMENT OF DEBT—AGREEMENT TO BREAK THE LAW—MEJELLE, ART. 1610—AGREEMENT FOR PAYMENT OF UNQUALIFIED PERSON FOR PRACTISING AS ADVOCATE—"PRACTISING AS AN ADVOCATE"—ADVOCATES' LAW, 1894.

Defendant by an agreement in writing appointed the Plaintiff as his agent to effect the partition of certain properties in which he was interested, to engage an advocate in the event of litigation, to conduct his business in the Land Registry Office, and to carry out any compromise that might be come to in any matter in dispute, and undertook to pay him £30 for his services.

HELD: that this agreement was not illegal, as engaging an unqualified person to practice as an advocate, inasmuch as the services to be rendered were neither among the services enumerated in the definition of "practising as an advocate" in the Advocates' Law, 1894, nor such services as in the nature of things could only be rendered by an advocate, and that consequently a bond given in pursuance of this agreement was enforceable.

SEMBLE: The Court will not enforce an acknowledgment of debt though in customary form within Art. 1610 of the Mejelle if it is shewn that it is given in pursuance of an agreement retaining an unqualified person to practice as an advocate.

This was an appeal from a judgment of the District Court of Nicosia disallowing a claim for £30, made under an agreement, for certain services rendered by the Plaintiff to the Defendant.

The agreement was as follows:—

"I hereby appoint Ahmed Harit Effendi Fedayi Effendi as my agent for the sum of £30, authorising him to divide with my co-shareholders the properties which came to me by inheritance from the late Naim Bey Mehmed Agha Koumbi Hassan; and if any action is brought before the Court either on my behalf or against me to appoint an advocate to conduct the case; and to supervise any business I may have at the Land Registry Office, and if there is any necessity for me to make a compromise with any of my co-shareholders to carry it out accordingly."

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