

1957  
Sept. 26,  
Oct. 12  
ERINI  
PAPANTONIOU  
v.  
ATTORNEY-  
GENERAL AND  
ANOTHER.

[ZEKIA AND ZANNETIDES JJ.]

ERINI PAPANTONIOU, *Appellant*,  
AND  
THE ATTORNEY-GENERAL AND ANOTHER,  
*Respondents*.  
(Civil Appeal No. 4223).

*Practice—Action against Government—Declaratory Judgment—  
Attorney-General Defendant—Fiat of Governor necessary—  
Courts of Justice Law, 1953, section 64.*

*Jurisdiction—Action against Government—Declaratory Judgment—  
Action maintainable in District Court.*

*Action against Government—Declaratory Judgment—Petitions of  
Right Act, 1860.*

The appellant brought an action in the District Court against the Government of Cyprus through the Attorney-General claiming a declaration that the Government was liable to repair a portion of a public road adjacent to her property in order to prevent rain water from overflowing into her land.

The appellant did not obtain the written consent of the Governor authorising her to bring the action under the provisions of section 64 of the Courts of Justice Law, 1953.

The trial Judge held that the action was in substance an action in tort, and, as no such claim was maintainable against the Crown, dismissed the action against the Government.

*Held* : (1) that the action was not based on tort ;

(2) that the claim did not relate to acts or omissions where ministerial authority was called in question because the defendant in the action was the Government itself and not any of its ministers, and the action could, therefore, be instituted in the District Court.

*Nearchos Haji Soteriou and others v. B. J. Weston* (1956) 21 C.L.R. 211, referred to :

(3) that the appellant's claim did not fall within the ambit of the Petitions of Right Act, 1860 ; and that the seeking of a declaration constituted a claim under section 64 of the Courts of Justice Law, 1953 ; and

(4) that in view of the provisions of section 64 of the Courts of Justice Law, 1953, the Courts in Cyprus had no jurisdiction to entertain any claim whatsoever against the Government, including a claim for a declaratory judgment, in the absence of the written consent of the Governor.

*Appeal dismissed.*

Cases referred to :

(1) *Haji Soteriou and others v. Weston* (1956) 21 C.L.R. 211.

(2) *Wigg and another v. The Attorney-General for the Irish Free State* (1927) A.C. 674.

(3) *Dyson v. Attorney-General* (1911) 1 K.B. 410.

**Appeal.**

The appellant appealed against the judgment of the District Court of Kyrenia (Evangelides D.J.), dated 26th April, 1957 (Action No. 84/56), dismissing the appellant's claim against the Attorney-General.

*Chr. Mitsides* and *C. Melissas* for the appellant.

*Ali Dana* for the respondents.

The facts sufficiently appear in the judgment of the Court which was delivered by :

ZEKIA J. : The plaintiff-appellant brought an action before the District Court of Kyrenia against the Government of Cyprus through the Attorney-General by which she claimed a declaration that the Government is liable to repair a portion of road (Lapithos—Myrtou) adjacent to the plaintiff's property at Ayios Theodoros quarter in such a manner as not to allow an overflow—presumably of the rain water—into the plaintiff's land and cause damage to it. Although damages were claimed, nothing was alleged in the pleadings to support such a claim.

The defendants by paragraph 1 of the Statement of Defence alleged that "the statement of claim does not disclose any cause of action against the Government of Cyprus; that the facts alleged therein have nothing to do with the Government of Cyprus; that prior to the institution of this action plaintiff never voiced a complaint; that in consequence of the above the action is misconceived and vexatious and will not lie."

The learned District Judge considered that the action was in substance one in tort and, as no such claim is maintainable against the Crown, dismissed the action against the Government.

Alternatively, it has also been argued in the Court below that the claim related to acts or omissions where ministerial authority is called in question and, relying on a recent case of this Court, *Nearchos Haji Soteriou and others v. B. J. Weston* (1956) 21 C.L.R. 211, an action could not have been instituted in the District Courts.

It is apparent from the pleadings, and it has been admitted by the parties, that the plaintiff did not obtain the written consent of the Governor authorising her to bring the action in question although such a consent is indispensable in accordance with Section 64 (2) of the Courts of Justice Law, 1953, in actions with claims against the Government.

The appellant's grounds of appeal were four : (1) That the Court was wrong in deciding that this action was one based on tort. (2) The action was one which could only be brought by petition of right or by an action for a declaratory judgment because the subject-matter relates

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to interference by the Crown with the property of the plaintiff and that the rights of the Crown are affected. (3) Assuming the interference complained of to amount to a tort the remedy lies by proceeding under the Petitions of Right Act, 1860, or by declaration affecting the rights of the Crown. (4) The case has nothing to do with the questioning of the exercise of ministerial authority and therefore the plaintiff need not have instituted proceedings before the Supreme Court.

We are inclined to agree with the appellant on grounds 1 and 4. We are of the opinion that the action was not based on tort; although damages were claimed in the statement of claim, nothing was pleaded to support such a claim and the only issue before the trial court was whether the plaintiff was entitled to a declaratory judgment she claimed for. Paragraph 4 (a) of the statement of claim, no doubt, anticipates as a future event the commission of a civil wrong but none is alleged as having been committed. The present claim therefore is not based on a civil wrong. At any rate the Crown is protected from being sued from the civil wrongs enumerated in the Civil Wrongs Law, all of which relate directly to the commission of torts. It is obvious that ground 4 is not relevant in this case because the defendant is the Government itself and not any of its ministers.

The remaining grounds raise two points for consideration: (a) Whether the action brought could be instituted under the Petitions of Right Act, 1860, and in the alternative (b) Whether the claim, being in the nature of a declaratory judgment affecting the rights of the Crown, could not, independently of any provisions in section 64 (1) and (2) of the Courts of Justice Law, 1953, be maintained. In view of the authorities *i.e.* *Wigg and another v. The Attorney-General for the Irish Free State* (1927) Appeal Cases, 674, and *Dyson v. Attorney-General* (1911) 1 K.B. 410, we are of the opinion that the claim involved in the present action does not fall within the ambit of the Petitions of Right Act, 1860.

Farwell L.J. in the latter case at p. 421 states:

“ In a case like the present the Attorney-General is properly made defendant. It has been settled law for centuries that in a case where the estate of the Crown is directly affected the only course of proceeding is by petition of right, because the Court cannot make a direct order against the Crown to convey its estate without the permission of the Crown, but when the interests of the Crown are only indirectly affected the Courts of Equity, whether the Court of Chancery or the Exchequer on its equity side (see *Deare v. Attorney-General*), could and did make declarations and orders

which did affect the rights of the Crown. The two cases of *Pawlett v. Attorney-General* and *Hodge v. Attorney-General* on the one hand and *Reeve v. Attorney-General* on the other are good illustrations of the distinction."

There remains the last point to be considered, namely, whether the claim for a declaratory judgment, citing the Attorney-General on behalf of the Government as a defendant, could be brought by way of action without *fiat*. In support of the affirmative, the learned counsel of the appellant relied (a) on the authorities just cited and (b) on Order 27, r. 4, which reads :

" No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not."

As we have already stated, on the authorities mentioned, actions for declaratory judgments and orders against the Crown are maintainable in England and a plaintiff is not bound to proceed by petition of right. In view of O. 25, r. 5, which is identical with r. 4 of O. 27 of our Civil Procedure Rules, consequential relief or remedy need not be claimed in such actions.

Section 64, sub-sections 1 and 2, of the Courts of Justice Law, 1953, read as follows :

" (1) No claim of any kind whatsoever, and whether by way of original claim, counter-claim, set-off, or otherwise, against the Government, shall be entertained in any Court unless it be a claim of the same nature as claims which may be preferred against the Crown in England, under the provisions of the Act 23 and 24 Vict., Chap. 34, intituled The Petitions of Right Act, 1860.

(2) No claim which may otherwise lawfully be made against the Government shall be entertained in any Court unless the claimant shall have obtained the written consent of the Governor authorizing such claimant to bring an action in such form and subject to such qualifications as the Governor in respect of such claim may direct, in manner hereinafter provided."

It is clear from this section of the Law that no claim of any kind whatsoever could be entertained unless such claim falls within the ambit of the Petitions of Right Act, 1860. The second sub-section provides that where a claim can lawfully be made against the Government an action shall not be entertained in any Court unless the claimant obtains the written consent of the Governor. In short, this section enacts that any claim against the Government can only be maintained (a) if such a claim is maintainable

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under the Petitions of Right Act, 1860 and (b) a *fiat* is obtained by the claimant to bring an action.

The appellant in this case submitted that her claim falls within the subject-matters where a petition of right would lie and, if not, a declaratory judgment could be maintained without the consent of the Government. The words "no claim of any kind whatsoever" in section 64 (1) are so comprehensive that in our view they leave no room for contention that an action brought by a plaintiff against the Government in respect of a claim, in whatever form that claim is presented, can only be entertained if the provisions of the section are complied with. One cannot reasonably argue that the declaratory judgment sought from the court, admittedly affecting the rights of the Crown, does not constitute a claim against the Government. The plaintiff, in paragraph 4 of her statement of claim, after giving the facts states: "The plaintiff, therefore, institutes the present action by which she claims a declaration by the Court etc., etc.". We cannot see how one can limit the meaning of the word "claim" in section 64 to cases where a relief is sought excluding claims for binding declaration of rights affecting Government interests. There appears to us nothing inconsistent in r. 4 of O. 27 with section 64 of the Courts of Justice Law. Rule 4 lays down that no action or proceeding shall be defeated on the ground that merely a declaratory judgment or order is sought. The appellant in this case fails not because the appellant in her action asked for a declaratory judgment only but because what she asks constitutes a claim against the Government and the Courts have no jurisdiction to entertain such a claim in the absence of a written consent of the Governor. Even if we concede that the subject-matter of the action is one for which a petition of right lies, again for the same reason the application cannot proceed.

For these reasons the appeal is dismissed with costs.

*Appeal dismissed.*