

1958
April 22,
1959
Dec. 31

IOULIANI
PAPADOPOULOU
v.
THE ATTORNEY
GENERAL

[ZANNETIDES, J.]

IN THE MATTER OF SECTION 38 OF THE ESTATE DUTY
LAW, CAP. 294,

AND

IN THE MATTER OF THE ESTATE OF THE DECEASED
CHRISTODOULOS PAPADOPOULLOS OF TANGANYIKA,

AND

IN THE MATTER OF IOULIANI PAPADOPOULOU, H.L.'R
OF THE ABOVE-MENTIONED DECEASED, OF KALLEPIA,
Appellant,

AND

THE ATTORNEY-GENERAL

Respondent.

(*Estate Duty Appeal No. 24*).

*Estate Duty—Estate—Definition of—Domicile—The Estate Duty
Law, Cap. 294 section 2—Domicile of origin—Domicile of
choice.*

*Evidence—Evidence of intention—Identity card issued by the
Authorities—The word “residence” inserted therein—Effect—
Effect of such card on the question of “domicile” in that country.*

Section 2 of the Estate Duty Law, Cap. 294, provides. *inter
alia*:—

“estate means”—(a) in the case of a deceased person who was at the time of his death domiciled in Cyprus all property.....wherever situate, except immovable property not situate in Cyprus, and (b) in the case of a deceased person who was not domiciled in Cyprus, all property in Cyprus.....”. The main point in issue in this case was whether the deceased, at the time of his death, was domiciled in Cyprus or Tanganyika, being common ground that, in view of section 2 (*supra*), if he were domiciled in Tanganyika, his property there could not form part of his estate liable to estate duty in Cyprus. There was no dispute that domicile of origin of the deceased was in Cyprus. The question was whether he had abandoned it and had acquired a domicile of choice in Tanganyika. Mention of the word “residence” in an identity card issued to the deceased by the Tanganyika Authorities was not considered by the Court as having any bearing on the matter.

Held: (1) Applying the law in this particular case I am bound to find that the domicile of origin of the deceased was in Cyprus. He was born here and lived here up to the age of 19. The question now turns on this: Did he on the evidence abandon his domicile of origin and acquire a new domicile in Tanganyika? Two elements are necessary to acquire

a domicile of choice: Firstly, the fact of actual residence in a particular place; secondly, the intention to live there permanently or indefinitely.

(2) In the present case we have the fact that the deceased left Cyprus and went to Tanganyika in 1913 and he settled and lived always there until his death in 1950, and that during this long period he only visited Cyprus twice on a short stay for a holiday. We have also the fact that he never showed any interest in some plots of land that his parents gave him. On the contrary, we have the fact that he was buying land in Tanganyika where he was able to build up a business in coffee planting. We have it that he took to Tanganyika two of his nieces, settled them in matrimony and established them there.

(3) A point was made regarding exhibit 2—the identity document—in which there is an entry regarding deceased's description and where the word "domicile" is struck out and the word "residence" is inserted instead, and it was therefore alleged that deceased was simply resident and not domiciled in Tanganyika. In my opinion this can have no bearing on the case since all the other evidence shows a clear intention of permanently settling there. I may say that this document cannot even be considered as declaration of intention on the part of the deceased. It was an entry made by the authorities there in a document which the deceased required to travel about and establish his identity, and cannot be considered to have any bearing on the intention of the deceased.

Statement of the law by Lord Buckmaster in *Ross v. Ellison* (or *Ross*) (1930) A.C. 1 at p.6, cited with approval by the Privy Council in *Tennekoon v. Duraisamy* (1958) 2 All F.R. 479 at p. 484, followed.

(4) In the present case if we were to look for declaration of intention on the part of the deceased this may be found in exhibit No. 1, which is a letter addressed by the Government of Tanganyika to the deceased in reply to an application by the deceased for a certificate of permanent residence.

(5) With all this evidence before me I find no difficulty to conclude that the deceased at the time of his death had abandoned his domicile of origin, i.e. Cyprus, and had acquired Tanganyika as his domicile of choice. This disposes of the main point of the appeal.

Appeal allowed. Assessment varied accordingly.

Cases referred to:

Tennekoon v. Duraisamy, (1958) 2 All E.R. 479. P.C. .

Ross v. Ellison (or *Ross*) (1930) A.C.1.

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Estate Duty Appeal.

Against the assessment made by the Commissioner of Estate Duty in relation to the estate of Christodoulos Papadopoulos, who died in Cyprus, by his sole heir, his sister Iouliani, under section 38 of the Estate Duty Law, Cap. 294, the requirements of sections 39 and 40 of the same law having been complied with.

G. Ioannides for the appellant.

D. Goodbody for the respondent.

Cur. adv. vult.

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

ZANNETIDES, J. : This is an appeal against the assessment made by the Commissioner of Estate Duty in relation to the estate of a certain Christodoulos Papadopoulos of Kallepia, Paphos, who died in Cyprus on the 17th December, 1950 ; the appeal is made by his only sister Iouliani Papadopoulou, of Kallepia, who is the sole heir of the deceased. It is made under section 38 of the Estate Duty Law, the requirements of sections 39 and 40 of the same law having been, apparently, complied with.

The grounds of appeal, although numerous in the notice of appeal, were confined at the hearing to the single ground whether the deceased was, at the time of his death, domiciled in Cyprus or Tanganyika, being common ground that if he were domiciled in Tanganyika, his property there, whether movable or immovable, could not form part of his estate here for the purposes of Estate Duty, in accordance with the definition of "estate" in section 2, the definition section of the above law. There was also another ground of appeal regarding the value of the immovable property of the deceased in Cyprus which was valued by the Commissioner of Estate Duty at £990 and which the appellant contends that it is worth £450 at the maximum.

With regard to the question of domicile the evidence is that the deceased was born at Kallepia village in the district of Paphos on the 11th of April, 1894, and that he left Cyprus in 1913 at the age of 19 and went and settled in Tanganyika where he was able to build up a business in coffee growing, and became a land owner of coffee plantations there ; that he always lived there until his death which occurred on the 17th December, 1950, in Cyprus, while he was on a visit here. While here he became ill and died after an operation. From 1913 when he left Cyprus until his death in December, 1950, he visited Cyprus only twice on a holiday ; the first time in 1930 and the second time in 1946. His parents had given him some plots of land at Kallepia and Letymbou, but he never showed any interest in that property, and some of the plots

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he sold out on his visits to Cyprus, and some he left to his sister (the appellant) to enjoy them free. It is also in evidence that while in Tanganyika he brought there two of his nieces, daughters of the appellant, provided them with dowry, settled them in matrimony there and they are living with their husbands and children in Tanganyika. It is also in evidence that on his last visit in 1950 his intention was to take with him to Tanganyika, his sister (the appellant) and her husband. After his death there were found amongst his personal effects two documents which were produced in evidence as exhibits 1 and 2. Exhibit 1 is a letter dated 16th January, 1950, addressed by the Immigration Officer of Tanganyika to the deceased, and exhibit 2 is an identity and travelling document issued to the deceased by the Tanganyika Government on the 22nd February, 1950. This is the only evidence in the case and I am called to decide on this evidence whether the deceased at the time of his death was domiciled in Cyprus or whether he had abandoned his domicile of origin and had acquired a domicile of choice in Tanganyika.

In our statute law provisions of domicile may be found in sections 5 to 13 of the Wills and Succession Law, Cap. 220, which are in line with the common law of England and the English cases on the subject. Applying the law in this particular case I am bound to find that the domicile of origin of the deceased was Cyprus. He was born here and lived here up to the age of 19, and the question now turns on this: Did he on the evidence abandon his domicile of origin and acquire a new domicile in Tanganyika? a domicile of choice as it is called. Two elements are necessary to acquire a domicile of choice. Firstly, the fact of actual residence in a particular place; secondly, the intention to permanently or indefinitely live there.

In the present case we have the fact that the deceased left Cyprus and went to Tanganyika in 1913 and he settled and lived always there until his death in 1950, and that during this long period he only visited Cyprus twice on a short stay for a holiday. We have also the fact that he never showed any interest in some plots of land that his parents gave him. On the contrary, we have the fact that he was buying land in Tanganyika where he was able to build up a business in coffee planting. We have it that he took to Tanganyika two of his nieces, settled them in matrimony and established them there.

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A somewhat similar case is the case of *TENNEKON V. DURAISAMY* (1958) 2 All E.R. 479, at p. 484, in which the Privy Council cited with approval the statement in the case in *ROSS V. ELLISON* (or *ROSS*) (1930) A.C.1 at p. 6, where LORD BUCKMASTER observed:

“Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the person to whom, the purposes for which and the circumstances in which they are made and they must further be fortified and carried into effect by conduct and action consistent with the declared expression”.

In the present case if we were to look for declaration of intention on the part of the deceased this may be found in exhibit No.1, which is a letter addressed by the Government of Tanganyika to the deceased in reply to an application by the deceased for a certificate of permanent residence.

With all this evidence before me I find no difficulty to conclude that the deceased at the time of his death had abandoned his domicile of origin, i.e. Cyprus, and had acquired Tanganyika as his domicile of choice. This disposes of the main point of the appeal.

With regard to the other ground of appeal regarding the value of the movables of the deceased in Cyprus, the evidence is only one way. It is the evidence of the appellant's husband which stood uncontradicted and which I have no reason to doubt. He stated clearly that the value of that property cannot exceed £450, and I find that it is worth that amount.

The result is that in reckoning the estate of the deceased, the value of his property in Tanganyika should be left out and the figure £450 substituted for the figure £990 for the value of his immovable property in Cyprus. After the necessary calculation the amount to be paid as estate duty is fixed at £40 (scale £2,000—£2,500; schedule of the Law). Each party to pay its costs. Had all the above facts been brought to the notice of the Commissioner of Estate Duty he might not have insisted on his estimate.

*Appeal allowed.
Assessment varied accordingly.*