

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOSIA RACE CLUB,

Applicant,

and

—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondents.

(Case No. 44/72).

Immovable Property—Registration—Can only be effected in the name of the owner of immovable property—Registration in the name of a nominee or agent or any other person holding otherwise than as owner, even if called a trustee, is excluded—Immovable Property
5 *(Tenure, Registration and Valuation) Law, Cap. 224 sections 39–65 and section 2 definition of “Owner”.*

Immovable Property—Transfer—Meaning of—It is a transfer of the title of the property and nothing else.

10 *Administrative Law—Immovable property—Application for transfer of, in a manner excluded by the law—By having it registered in the name of a trustee without transfer of ownership therein to him—No legal obligation on administration to effect such transfer—Administration is allowed to satisfy only the demands of the citizen which the law expressly recognises as such.*

15 *Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9 of 1965), sections 5 and 18—Absence of a provision therein for the transfer or registration of immovable property in the name of a person without the transfer or registration of the ownership in it to the transferee—Does not render the said sections unconstitutional as being contrary to Articles 23 (1) (2) (3) (4) and 28 of the Constitution.*
20

Equality—Article 28 of the Constitution—Principle of equality—When contravened—Absence of legislative provision enabling transfer of immovable property without transfer of ownership in it to the transferee—And existence of provision enabling transfer of
25

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

movables in trust and registration of vakfs—Principle of equality not contravened because there exists a reasonable distinction between the said two categories of properties and between the above immovable property transaction and the creation of a vakf.

Trust—Meaning of—Registration or transfer of immovable property in the name of a person without the transfer or registration of the ownership in it to the transferee—Does not amount to a trust. 5

Constitutional Law—Constitutionality of legislation—Articles 23 and 28 of the Constitution—Sections 5 and 18 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9 of 1965)— Not unconstitutional as being contrary to the said articles. 10

The applicants, a club registered under the relevant law, passed a resolution authorising their Committee to create “a trust and appoint a trustee for the purpose of transferring the immovable property of the club in the name of such trustee”. Thereupon the Committee appointed as trustee the Bank of Cyprus Ltd. and authorised one of its members to transfer, on their behalf, “free of charge” the immovable property of the club in the name of such trustee. 15

Under the terms of a trust deed created for the purpose the applicants retained absolute ownership and control of the property mentioned in the trust deed and the trustee was appointed “to hold the said property to be used, sold, leased, mortgaged or otherwise dealt with, as the appointors from time to time would direct in accordance with the rules of the club..... provided always that the duties of the trustee were restricted solely and only to having the said property registered in his name.....”. 20 25

When the applicants applied in writing to the Director of the Department of Lands and Surveys, requesting that the said property be registered in the name of the Bank of Cyprus Ltd. in its capacity as trustee of the property of the Club the Director wrote back informing them that in order that such a registration could be effected, a written declaration of sale or gift had to be made in accordance with the provisions of s. 18 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/1965) and the Department of Lands and Surveys (Fees and Charges) (Amendment) Law, 1970 (Law 51/1970), and the fees and charges provided by the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 (as amended), be paid. Hence the present recourse. 30 35 40

Section 5 (1) and (2) of Law 9/1965 (*supra*) provides that no transfer of any immovable property is valid, unless made in accordance with the provisions of this Law and no attempts to transfer any immovable property otherwise than in accordance with the provisions of the Law “shall be effected to create, vary, transfer, extinguish or in any way affect any right or interest in any immovable property”.

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Applicants contended:

(a) That what they asked for from the Director was not a transfer within the meaning of the said section 5, but a mere registration in the name of the said trustee without endorsing any conditions of servitude in the certificate to be issued, there being no legal obstacle in registering the property in question in the name of the trustee. And they argued in this respect that section 5 does not say “no transfer..... shall take place” but it only says “no transfer shall be valid”. Consequently, the registration applied for could be effected as the issue of the certificate of registration would not amount to either a sale or a gift, but a mere transfer.

(b) That section 18 (1) (c) of Law 9/1965 enables the Director to act in the present case and effect the transfer prayed for, as a trust falls within the category of “gratis” transfers envisaged by this sub-section.

(c) That in so far as sections 5 and 18 of Law 9 of 1965 do not provide for or prohibit the registration of a trust they are unconstitutional as being contrary to Articles 23 and 28 of the Constitution. Regarding Article 23 applicants claimed that the right of free disposition of immovable property is in this way restricted or limited or taken away, such restriction or limitation or deprivation being outside the ambit of paragraphs 3 and 4 of the said Article. Regarding Article 28 applicants argued that such legal state was discriminatory on the one hand between movables transferred in trust and immovable property, and on the other hand, between vakfs, for which there is provision for registration in section 37 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, and other trusts for which there is no provision for such registration.

1975
Febr. 28

—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Held, (1) In Cyprus, registration can only be effected in the name of the owner of immovable property and a transfer, whether under Law 9 of 1965 or the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 is a transfer of the title of the property and nothing else (see sections 39 to 65 of Law 9/1965 particularly ss. 40 (2), 42, 43 and 44). 5

(2) There can be no registration in the books of the District Lands Office and no consequential issue of a certificate of registration, unless the person so registered is the owner of Immovable Property as defined in s. 2 of Cap. 224 (*supra*). This being so, the registration in the name of a nominee or agent or any other person holding otherwise than as an owner thereof is excluded by our Law, whether he is called a trustee or not. 10

(3) In the absence of any provision by which the registration claimed by the applicants could be effected, there is no legal obligation in the administration to proceed to effect same. In the same way that the citizen has no legal obligation to comply with an unlawful order of the administration, likewise the administration is allowed to satisfy only the demands of the citizen which the law expressly recognises as such (see Kyriacopoulos the Greek Administrative Law, 4th ed. Vol. 1, pp. 199 and 200, and Stasinopoulos, Lectures on Administrative Law, pp. 50, 51 and 52). 15 20

(4) The transaction sought to be created by the applicant does not amount to a trust in its true sense—there being no intention to transfer to the Bank the legal or equitable ownership, in the property. I, therefore, need not determine if in case there is no provision in the law for the registration of a trust, this amounts to interference with the right of free disposition of property safeguarded by Article 23.1 of the Constitution. 25 30

(5) On the other hand, the absence of a provision in the law for the transfer or registration of immovable property in the name of a person without the transfer or registration of the ownership in it to the transferee, does not make Law 9/1965 and at that sections 5 and 18 thereof unconstitutional, as interfering with the right to “dispose of any immovable property”, safeguarded by Article 23.1. This right does not cast a duty on the state to provide corresponding facilities for the registration of every conceivable method of dealing with property. The absence of such a provision does not offend 35 40

Article 23.2 of the Constitution, as being a deprivation, or restriction, or limitation of such right made, except as provided in Article 23 and in particular, paragraphs (3) and (4), as claimed by applicants.

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

5 (6) The right to property safeguarded by Article 23 of the Constitution is not “a right in abstracto, but a right as defined and regulated by the law relating to civil law rights in property and the word “property” in Article 23.1 has to be understood and interpreted in this sense. (See *Evlogimenos and Others* and
10 *The Republic*, 2 R.S.C.C. 139 at p. 142).

(7) Article 28 of the Constitution has not been violated. Once the legal relationship sought to be created by the applicants is not, a trust, (see Underhill, Law of Trusts and Trustees, 12th ed. p. 17), there is no question of comparison between the
15 transaction in question and movables transferred in trust. Furthermore, there could be no discrimination were the settlement of trust of movable property treated in law differently than trusts of immovable property, there being reasonable distinction between these two categories of properties in any
20 event. (See *Mikrommatis* and *The Republic*, 2 R.S.G.C. 125 at p. 131 and *Republic v. Arakian and Others* (1972) 3 C.L.R. 294, at pp. 298-299).

(8) There being a reasonable distinction between the creation of a Vakf and the transaction sought to be registered the absence of a legal provision enabling the registration of this transaction does not violate Article 28 of the Constitution.
25

Application dismissed.

Cases referred to:

Kontou v. Parouti (1953) 19 C.L.R. 172 at p. 175;

30 *Theodorou v. Hadji Antoni*, 1961 C.L.R. 203 at p. 208;

Evlogimenos and Others and *The Republic*; 2 R.S.C.C. 139 at p. 142;

Mikrommatis and *The Republic*, 2 R.S.C.C. 125 at p. 131;

35 *Republic v. Arakian & Others* (1972) 3 C.L.R. 294, at pp. 298-299.

1975

Febr. 28

—

NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Recourse.

Recourse for a declaration that the decision of the respondents, not to register applicant's property under Reg. No. B 1365 and D 377 plot Nos. B 93 and D 321, Ayios Dhometios, in the name of the Bank of Cyprus Ltd., as trustees of applicant's said property unless a written declaration of sale or gift is first made and unless the prescribed fees under Cap. 219 as amended by Laws 10/65 and 81/70 are first paid, is *null and void*.

5

E. Tavernaris with *A. Triantafyllides*, for the applicant.

10

L. Loucaides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

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

15

A. LOIZOU, J.: The applicants, a club registered under the relevant Law, are the owners of immovable property in Ayios Dhometios, Plot Nos. B 93 and D 322, under Reg. Nos. B 1365 and D 377, respectively. Its value was claimed to be £1,000,000.—

By a resolution duly passed at an extraordinary general meeting held on the 28th March, 1970, the Committee of the applicant club were authorized to create, what they call, "a trust and appoint a trustee for the purpose of transferring the immovable property of the club in the name of such trustee". The Committee appointed as such the Bank of Cyprus Ltd. and authorized one of its members to transfer, on their behalf, "free of charge", the said immovable property in the name of the trustee. As claimed in paragraph 3 of the statement of facts relied upon in the application, the applicants retained absolute ownership and control of the property mentioned in the trust deed. By "a trust deed" (*exhibit 1*) the trustee was appointed "to hold the said property to be used, sold, leased, mortgaged or otherwise dealt with, as the appointors from time to time would direct in accordance with the objects and rules of the club and/or as the club in general meeting shall, from time to time resolve, provided always that the duties of the trustee were restricted solely and only to having the said property registered in his name and therefore will have no responsibility whatsoever for the upkeep, maintenance or any other similar responsibility regarding the said property". It was

20

25

30

35

40

also a term of the said agreement that the trustee might, without giving any reason, retire, by giving to the club six months prior notice.

5 In furtherance of the aforesaid agreement an application in writing (*exhibit 2*) was made to the Director of the Department of Lands and Surveys, requesting that the aforesaid property be registered in the name of the Bank of Cyprus Ltd. in its capacity as trustee of the property of the applicant club.

10 On the 6th December, 1971 the Director replied by letter (*exhibit 3*) informing the applicants that in order that such a registration could be effected, a written declaration had to be made in accordance with the provisions of section 18 of the Immovable Property (Transfer and Mortgage) Law, 1965, (Law No. 9 of 1965) and The Department of Lands and Surveys
15 (Fees and Charges) (Amendment) Law, 1970, (Law No. 51 of 1970 as amended by Law 81 of 1970), and the fees and charges provided by Law Cap. 219, as amended by Laws 10 of 1965 and 81 of 1970, be paid.

20 The applicants by letter (*exhibit 4*) asked the Director of Lands and Surveys to inform them on the basis of which section of the law they had to pay fees and charges and what amount, given that the registration of the properties in the name of the trustee should not be considered either as sale, or gift and there
25 was no provision in the aforesaid laws for payment of fees regarding such registration particularly so, since the ownership remained the property of the applicants.

30 The Director by letter (*exhibit 5*) insisted that a declaration had to be made, as provided by section 18 and in particular paragraph (c) of sub-section (1) of the said section, which is to the effect that the transfer of such immovable property to the person named as transferee had been agreed to be made
35 either gratis or for a specified consideration. It was further said therein that it was up to them to specify whether the transfer was gratis or for specified consideration under section 18 of the Law, and when this was done, the fees would be fixed in accordance with the relevant laws.

40 Regarding the question raised in the letter that the ownership of the property would remain in the applicant club, they were told that if in law the ownership could remain in the transferor, whilst under the Law the person holding the title is the owner

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

of the immovable property, was a matter between them and the Bank of Cyprus Ltd. and their legal advisers and any relevant agreement between them could not change or affect the express provisions of the aforesaid Laws.

After the receipt of this last communication, the present recourse was filed, by which the following reliefs are prayed:— 5

- (a) Declaration that the decision of the respondents contained in *exhibits* 3 and 5 attached hereto not to register applicants' property under Reg. No. B 1365 and D 377 plot Nos. B 93 and D 321, respectively, Ayios Dhome-tios, in the name of the Bank of Cyprus Ltd., as trustees of applicants' said property unless there is first made a written declaration of sale or gift and unless the fees prescribed under Cap. 219 as amended by Laws 10/65 and 81/70 are first paid, is *null* and *void* and of no effect whatsoever. 10 15
- (b) Declaration that the decision of the respondents contained in *exhibits* 3 and 5 attached hereto to demand from or require applicants to make a written declaration of sale or gift and to pay transfer fees in accordance with Cap. 219 as amended by laws 10/65 and 81/70 is *null* and *void* and of no effect whatsoever. 20

The first question for determination is whether under the Law, before the transfer of the registration of the aforesaid property of the applicant was effected in the name of the Bank of Cyprus Ltd. the written declarations required to be produced at the District Lands Office by the transferor and transferee of any immovable property had to contain the particulars set out in section 18 of the Immovable Property (Transfer and Mortgage) Law, 1965, (Law No. 9 of 1965), hereinafter referred to as "The Law". 25 30

Under section 5 sub-sections (1) and (2) of the Law, no transfer of any immovable property is valid, unless made in accordance with the provisions of this Law and no attempt to transfer any immovable property otherwise than in accordance with the provisions of the Law "shall be effectual to create, vary, transfer, extinguish or in any way affect any right or interest in any immovable property". 35

The procedure for the declaration of a transfer at the D.L.O. includes, *inter alia*, (section 8 (a)), that the transferor and 40

transferee should declare such transfer before the proper officer in the appropriate District Lands Office, by producing and confirming a signed declaration, as provided in section 18 of the Law, sub-section (1) (c) of which reads as follows:-

5 “(1) (c) in the case of the transferor, a statement that he is the person appearing as the owner of such immovable property and that on a date to be stated he agreed to transfer such immovable property to the person named as transferee either gratis or for a specified consideration:

10 Provided that where two or more immovable properties are included in one declaration of transfer on payment of a consideration, the consideration for each of such immovable properties shall be separately stated”.

15 What is a transfer is defined in section 2 (1) of the Law, as follows:-

“ ‘Transfer’ with its grammatical variations and cognate expressions, means -

- 20 (a) in relation to any immovable property, the passing of the title to such immovable property from one person to another;
- (b)
by the voluntary act of such persons”.

So, a transfer of immovable property within the context of this Law, means a transfer of ownership.

25 Counsel for the applicants contended that what the applicants asked for from the Director of the Department of Lands and Surveys, was not a transfer within the meaning of section 5 of the Law, but a mere registration in the name of the Bank of Cyprus Ltd., without endorsing any conditions of servitude in the certificate to be issued, there being no legal obstacle in
30 registering the property in question in the name of the said Bank. It was argued that section 5 of the Law, does not say “no transfer or registration or mortgage shall take place.....” but it only says “no transfer or mortgage shall be valid.....”.
35 Consequently, the registration applied for could be effected, as the issue of such certificate of registration would not amount to either a sale or a gift, but a mere transfer.

1975
Febr. 28

—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

No doubt, for transfers which do not postulate the transfer of ownership, no provision is made in this Law, and, therefore, compliance with its provisions does not arise. Consequently, its assistance could not be invoked, as it neither supplies the necessary legal authorisation, nor does it impose a duty on the administration to act thereunder.

5

If, on the other hand, a proposed transfer is within those envisaged by the Law, then a demand for compliance with the Law and in particular section 18, is a legitimate one, as a declaration under paragraph (c) of section 18 (1) to the effect that the transfer is either gratis or for a specified consideration, will determine, together with other particulars required to be stated by the Law, the fees and charges to be levied under paragraph 3 of the Schedule to the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Laws 10 of 1965 and 81 of 1970.

10

15

Transfers of title to immovable property from one person to another, with which we are concerned here, are comprehensively governed by this mainly procedural Law, that has amended and consolidated the pre-existing laws relating to such matters and no provision can be found therein authorizing those entrusted with its application to waive any of the provisions of section 18 relating to the declarations that have to be made by the transferors and transferees and the documents to be produced at the District Lands Office when transfers of immovable property are made.

20

25

In the alternative, it has been argued that section 18 (1) (c) of the Law, enables the Director to act in the present case and effect the transfer prayed for, as a trust falls within the category of "gratis transfers" "έκ χαριστικής αίτίας" as these words should be construed to include all transfers made without valuable consideration. This, however, could not arise in the present case, in view of the stand taken by the applicants that they never intended to transfer to the trustee the ownership in the subject property, and I have already given my views regarding the "transfers" to which this Law applies.

30

35

In the light of the aforesaid conclusions, it has to be examined if there is any provision in our Statute Book authorizing the transfer of property without the transfer of ownership in such property, to the transferee.

40

1975
Febr. 28

—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

The Law governing matters relating to tenure, registration and valuation of immovable property in Cyprus, is the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended by Laws C. 3/60, 78/65, 10/66, 75/68 and 51/71.

5 This is an all-embracing Law on matters of immovable property, expressly excluding by section 4 thereof, the operation of the Common Law and the doctrines of equity, as far as immovable property is concerned, with the exception of the law of trust. The enactment of this section by Law 8/53, was
10 necessitated by the attempt made by Hallinan, C.J. in the case of *Kontou v. Parouti* (1953) 19 C.L.R., 172 at p. 175, to introduce the application of the Common Law and Equity in matters of immovable property as well.

15 The question of registration of immovable property is regulated mainly by sections 39-65 of Part III of the Law. A consideration of these provisions together with the definition of "owner" to be found in section 2 of the Law, as meaning, the person entitled to be registered as the owner of any immovable property, whether he is so registered or not, has led me to
20 the conclusion that in Cyprus, registration can only be effected in the name of the owner of immovable property and a transfer, whether under Law 9 of 1965 or the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 is a transfer of the title of the property and nothing else. Sub-section (2)
25 of section 40 of the Law provides that no transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person, unless he is the registered owner of such property, the only exception being, the case of an executor or administrator of an estate of a deceased person,
30 who, for the purposes of this sub-section, is deemed to be the registered owner of any immovable property registered in the name of the deceased. Sections 42, 43 and 44 which deal with the case of compulsory registration of unregistered property, general registration and procedure in individual cases,
35 show that the registration to be made of immovable property is in the name of the respective owner. This interpretation is further borne out by what has been stated in the case of *Theodorou v. Hadji Antoni*, 1961 C.L.R. 203 at p. 208 by Zekia, J. that -

40 "The certificate of registration, as it has been stated by the Supreme Court over and over again is *prima facie* evidence of ownership. A person who claims to defeat the

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

title or part thereof of a holder has either to establish that the registration was effected in the name of the holder by mistake or error, or that, where there is room for acquisition of a prescriptive right, the holder of such certificate has lost his right over the land as it has been adversely possessed by such person”.

5

So, there can be no registration in the books of the District Lands Office and no consequential issue of a certificate of registration, unless the person so registered is the owner of immovable property as defined in section 2 of Cap. 224. This being so, the registration in the name of a nominee or agent or any other person holding otherwise than as an owner thereof, is excluded by our Law, whether he is called a trustee or not.

10

In the absence of any provision by which the registration claimed by the applicants could be effected, there is no legal obligation in the administration to proceed to effect same. As it has been said, in the same way that the citizen has no legal obligation to comply with an unlawful order of the administration, likewise the administration is allowed to satisfy only the demands of the citizen when the law expressly recognises such. (See Kyriacopoulos the Greek Administrative Law, 4th ed. Vol. 1, pp. 199 and 200, and Stasinopoulos, Lectures on Administrative Law, pp. 50, 51 and 52).

15

20

Having answered the question posed and all connected with it issues, I turn now to the next point that calls for determination, namely, that in so far as sections 5 and 18 of the Law (Law No. 9 of 1965) do not provide for or prohibit the registration of such a trust they are unconstitutional as being contrary to Articles 23 and 28 of the Constitution.

25

I deal with the term trust in the sense that it has been used in the present case, that is to say, the absolute ownership and control in the said property remaining with the applicants, a state of affairs which does not bring the transaction within the definition of a trust. The most satisfactory definition of a trust is that by Professor Keeton (The Law of Trusts, 8th ed., 1963, p. 3, quoted in Snell's Principles of Equity, 26th ed., p. 97) which reads:—

30

35

“ A trust is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, whether real or personal, and whether by legal

40

1975
Febr. 28

—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

or equitable title, for the benefit of some persons (of whom he may be one and who are termed *cestuis que trust*) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust”.

It is also pointed out in Snell (*supra* p. 98) dealing with the nature of a trust, the following:—

“ Difficult, however, though it may be to give a simple yet satisfactory definition of a trust, it is easy enough to grasp the general idea of it, which is that one person in whom property is vested is compelled in equity to hold the property for the benefit of another person, or for some purposes other than his own. Thus it has been said, somewhat broadly, that ‘all that is necessary to establish the relation of trustee and *cestui que trust* is to prove that the legal title was in the plaintiff and the equitable title in the defendant’. It is not, however, always accurate to say that the trustee is the legal while the *cestui que trust* is the equitable owner, for the interest of the trustee may be (and often is) equitable only, as where a beneficiary under a settlement himself makes a settlement of his interest while the legal ownership is still in the hands of the trustees of the former settlement, or for some other reason the legal estate is outstanding. It is therefore better to say that the trustee is the nominal, while the *cestui que trust* is the beneficial, owner of the property”.

Useful is also in this respect a reference to what is stated in Salmond on Jurisprudence, 11th ed., p. 256 —

“ Trust property is that which is owned by two persons at the same time, the relation between the two owners being such that one of them is under an obligation to use his ownership for the benefit of the other. The former is called the trustee, and his ownership is trust-ownership; the latter is called the beneficiary, and his is beneficial ownership”.

It has been claimed that the right of free disposition of immovable property is in this way restricted or limited or taken away, such restriction, or limitation or deprivation being outside the ambit of Article 23, paragraphs 3 and 4 of the Constitution.

In view of my conclusion that the transaction sought to be created by the applicants does not amount to a trust in its

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

true sense—there being no intention to transfer to the Bank the legal or equitable ownership in the property, in this instance the legal, as the settlor is the legal owner—I need not determine if in case there is no provision in the law for the registration of a trust, this amounts to interference with the right of free disposition of property safeguarded by Article 23.1 of the Constitution.

On the other hand, the absence of a provision in the law for the transfer or registration of immovable property in the name of a person without the transfer or registration of the ownership in it to the transferee, does not make the law and at that, sections 5 and 18 of Law 9 of 1965 unconstitutional, as interfering with the right to “dispose of any immovable property”, safeguarded by Article 23.1 of the Constitution. This right does not cast a duty on the State to provide corresponding facilities for the registration of every conceivable method of dealing with property. The absence of such a provision does not offend Article 23.2 of the Constitution, as being a deprivation, or restriction, or limitation of such right made, except as provided in Article 23 and in particular, paragraphs (3) and (4), as claimed by the applicants. One should not lose sight of the fact that the right to property safeguarded by Article 23 of the Constitution is not “a right in abstracto but a right as defined and regulated by the law relating to civil law rights in property and the word “property” in paragraph (1) of Article 23 has to be understood and interpreted in this sense”. (See *Evlogimenos and Others* and *The Republic*, 2 R.S.C.C. 139 at p. 142, where it was also held that paragraph (2) of Article 23 protects the aforesaid right to property from deprivation or restriction or limitation effected in the interests of the State or public bodies and not merely under a law regulating civil law rights in property).

Article 28 has been invoked in that this legal state was discriminatory on the one hand between movables transferred in trust and immovable property, and on the other hand, between vakf for which there is provision for registration in section 37 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 and other trusts for which there is no provision for such registration.

Regarding this complaint of discrimination or unequal treatment, it has been said that –

5 “ ‘equal before the law’ in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term ‘discrimination’ in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid”.

10 (*Mikrommatis* and *The Republic*, 2 R.S.C.C., p. 125 at p. 131 and also, *Nishan Arakian & Others v. The Republic* (1972) 3 C.L.R. 294 at pp. 298-299).

15 With reference to the first part of the argument of this ground of law, it should be pointed out that once the legal relationship sought to be created by the applicants is not a trust as the settlor’s interest in the property was not to be transferred to a trustee or the settlor was not declaring himself a trustee of it (see Underhill, *Law of Trusts and Trustees*, 12th ed. p. 17), there is no question of comparison between the transaction in question and movables transferred in trust. Furthermore, there could be no discrimination were the settlement of trust of 20 movable property treated in law differently than trusts of immovable property, there being reasonable distinction between these two categories of properties in any event.

25 So far as the second part of the argument of this ground of law is concerned, in my view, there is a reasonable distinction between them. A vakf, as defined in the *Evcaf and Vakfs Law*, Cap. 337, section 2, means the permanent dedication by a person professing the moslem faith of any property in order that the use of, or the income accruing from, such property may be devoted to any charitable purpose. A charitable 30 purpose, or charity, is defined in the same section, as meaning any purpose for the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the moslem Turkish community. A vakf has a special character and under section 6 (2) of the Law –

35 “ No dedication shall be made for an object which –

- (a) is unlawful or prohibited by Islam;
- (b) is of a limited duration;
- (c) if at the time of the dedication it appears that it will fail;

1975
Febr. 28
—
NICOSIA
RACE CLUB
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

- (d) is subject to a contingency;
- (e) consists of the repair or upkeep of a private tomb except that of a saint;
- (f) is not defined with certainty”.

In addition to the special characteristics of a vakf which has always been considered as a branch of sadaqa or religious gift (see Muhammedan Law, (1931) by Seymour Vesey-Fitzgerald, p. 207), in the case in hand, there is a marked difference between a vakf and the transaction sought to be effected by the applicant Club. 5

Under section 9 (7) of the Evcaf and Vakfs Law, Cap. 337— 10
“upon the registration of a vakfieh, as in this section provided, the subject of the vakf shall for all intents and purposes be considered as vakf”, (vakfieh means the written declaration of vakf as defined in section 8 (a) (ii) of Cap. 337), whereas in the case in hand it has been expressly asserted that the subject of this “trust” shall not cease to belong to the settlor, a situation that constitutes a reasonable distinction between the transaction sought to be registered and the creation of a vakf. 15

For all the above reasons, the present recourse fails and is hereby dismissed, but in the circumstances I make no order as to costs. 20

*Application dismissed.
No order as to costs.*