

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SKYFROST CO. LTD., AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REGISTRAR OF COMPANIES,

Respondent.

(Cases Nos. 87/78, 88/78 and 89/78).

Companies (Fees and Charges) Regulations, 1977—Item 11 of the Appendix not unconstitutional as being contrary to Articles 6 and 28 of the Constitution.

5 *Equality and discrimination—Articles 28 and 6 of the Constitution—*
Differentiations reasonably warranted by the inherent nature of
things do not amount to discrimination—Companies (Fees and
Charges) Regulations, 1977.—Provision in item 11 of the Appendix
thereto for imposition of a higher fee, for the registration of a
10 *charge or mortgage on a ship, than that provided by items 9 and*
10 for other registrations—Not unconstitutional as being contrary
to the above Articles—Because there is a reasonable basis for
the classifications and differentiations made—And because the
legislature has freedom not only to choose the subjects to be

taxed or charged with fees, but also to choose the manner and rates of such taxes, fees and charges.

Companies (Fees and charges) Regulations, 1977—Fees and charges provided under item 11 of Appendix thereto—Are payable even if the amount involved in the mortgage is in foreign currency 5
—Meaning of the word “amount” appearing in the said item 11.

Fees and charges—Registration of mortgage on a ship—Companies (Fees and Charges) Regulations, 1977.

The three applicants are limited liability companies and are registered in Cyprus as such; each one of them is the owner of one ship. When the applicant companies made their respective ships as security by way of mortgage for the advance to them of an amount of U.S. 1,100,000 dollars by a French Bank, they delivered to the respondent, for registration as charges, copies of each mortgage and the other documents required by Law for the purpose. (See sections 90 and 91 of the Companies Law, Cap. 113). The respondent, acting under item 11* of the Appendix to the Companies (Fees and Charges) Regulations, 1977, imposed the sum of C£100 as fees for the registration of each mortgage. 10
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Hence the present recourse.

Counsel for the applicant companies contended:

- (a) That the application of the said item 11 constitutes a discrimination, contrary to Article 28.1 of the Constitution, against the applicant companies because they were ordered to pay C£100 as fees whilst other persons, for the registration of other charges, pay smaller sums by virtue of items 9** and 10*** of the said Regulations. 25
- (b) That the fees under item 11 are payable only when the amount involved in the mortgage is in Cyprus pounds and not in dollars or any other foreign currency. 30

Held, dismissing the recourses (1) that differentiations reasonably warranted by the inherent nature of things do not amount

* Quoted at p. 5 *post*.

** Item 9 is quoted at p. 5 *post* and refers to the registration of a charge other than a charge or mortgage on a ship or mortgage on immovable property.

*** Item 10 provides for the registration of a mortgage on immovable property irrespective of its amount, and the fee is fixed at C£2.

to discrimination under Articles 6 and 28 of the Constitution (see, *inter alia*, *Mikrommatis v. The Republic*, 2 R.S.C.C. 125); that the regulations imposing the fees are not unconstitutional as they cover distinct classes of subject matters which by their very nature justify the differentiation made in the fees payable in each instance; and that there is a reasonable basis for such classification.

(2) That the legislature has the freedom not only to choose the subjects to be taxed or charged with fees but also the manner and rates of such taxes, fees and charges; that it is obvious from the tenor of numerous laws enacted since Independence that shipping and matters relating thereto have been placed on a different footing than other subject-matters and other transactions; that a concrete policy is pursued thereby which constitutes the reasonable basis behind the classifications and differentiations made; and that, accordingly, contention (a) above will be dismissed. (See *The Interest Law, 1977* (Law 2 of 1977) as an example of a differentiation made by the legislature in relation to shipping and matters relating thereto).

(3) That these fees are payable on an *ad valorem* basis and the value of a mortgage whether declared in U.S. dollars or other foreign currency can be ascertained by their conversion into Cyprus pounds and the word "amount" appearing in item 11 of the Appendix, means the value in Cyprus pounds in whatever currency the sum is stated to be in the relevant instrument; and that, accordingly, contention (b) above will fail.

Applications dismissed.

Cases referred to:

- Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173 at p. 182;
Brown-Forman Co. v. Kentucky (1910) 54 Law. Ed. 883;
Mikrommatis v. The Republic, 2 R.S.C.C. 125;
Cons antinou v. The Republic (1966) 3 C.L.R. 572.

Recourses.

Recourses against the decision of the respondent to impose under the *Companies (Fees and Charges) Regulations, 1977*, a fee of £100.—(one hundred pounds) for the registration of a mortgage on a ship owned by each one of the applicants.

L. Papaphilippou, for the applicants.
Cl. Antoniadis, Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. These three recourses have been heard together as they present common questions of Law and fact, in that the three applicant companies challenge thereby the validity of the decision of the respondent to impose under the Companies (Fees and Charges) Regulations, 1977, a fee of hundred pounds for the registration of a mortgage on a ship owned by each one of them. 5

The said fee was imposed under item 11 of the Appendix to the aforesaid Regulations, which have been published in Supplement No. 3 Part I, to the Official Gazette of the Republic of the 31.12.1977 under Notifications No. 338 and 339, pages 985 and 989, respectively. 10

The facts of the case are briefly as follows:-

Each applicant company is registered in Cyprus as such, with limited liability and each one of them is the owner of one ship, namely the "Skyfrost", the "Windfrost", and the "Seafrost". The applicant companies made their respective ships as security by way of mortgage for the advance to them of an amount of U.S. 1,100,000 dollars by the Banque Internationale Pour L' Afrique Occidentale S.A., of Paris France. In compliance with sections 90 and 91 of the Companies Law, Cap. 113, the applicant companies delivered on the 16th January, 1978 to the respondent for registration as charges, copies of each mortgage and the other documents required by Law for the purpose. The respondent imposed for the registration of each mortgage the sum of a hundred pounds as fees, which each applicant company paid, but as mentioned in their letters of the 16th January, (*exhibit "B"* attached to each application), with reservation of their right to claim its refund on the ground that "the application of item 11 of the Appendix to the Companies (Fees and Charges) Regulations, 1977, is unconstitutional". 15
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The grounds of Law upon which these recourses are based are:-

"(1) That the application of item 11 of the Appendix to the Companies (Fees and Charges) Regulations, 1977, constitutes discrimination against each applicant Company by which it was compelled to pay C£100.- as fees for 35

the registration of a mortgage on the ship as compared with other persons which on the basis of the aforesaid regulations and under items 9 and 10, they pay much smaller sums or fees, and

- 5 (2) The respondent acted in excess of power and/or without legal authorization and/or a regulatory provision as the aforesaid regulations provide, for the registration of a mortgage or a charge on a ship in Cyprus pounds and not in dollars or in foreign exchange.”

10 Item 9 of the Appendix to the aforesaid Regulations provides that for the registration of a charge other than a charge or mortgage on a ship or mortgage on immovable property:

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|----|--|-------|
| | (a) For an amount up to C£2,000.- | C£3.- |
| | (b) For an amount exceeding C£2,000.- | |
| 15 | but not exceeding C£10,000.- | 5.- |
| | (c) For an amount exceeding C£10,000.- | |
| | but not exceeding C£25,000.- | 8.- |
| | (d) For an amount exceeding C£25,000.- | 12.- |

20 Item 10 provides for the registration of a mortgage on immovable property irrespective of its amount, and the fee is fixed at C£2.-.

Item 11 provides for the registration of a charge or mortgage on a ship as follows:

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|----|---|--------|
| | (a) For an amount up to C£50,000.- | C£25.- |
| 25 | (b) For an amount exceeding C£50,000.- | |
| | but not exceeding C£100,000.- | 50.- |
| | (c) For an amount exceeding C£100,000.- | |
| | but not exceeding C£250,000.- | 75.- |
| | (d) For an amount exceeding C£250,000.- | |
| 30 | but not exceeding C£500,000.- | 100.- |
| | (e) For an amount exceeding C£500,000.- | 150.- |

Item 12 provides for a charge created by an instrument other than mortgage on a ship registered in the Cyprus register or share thereof, or any other interest in it on the maximum amount

secured by the said instrument, 200 mils for every hundred pounds or part thereof.

It was given by way of example on behalf of the applicant companies in order to stress the point of unconstitutionality, that if the interpretation given to the aforesaid Regulations was correct, the result would be that if one was to borrow C£500,000.- and offer to his creditor a mortgage on immovable property the fee would be only C£2.-. If he would offer any other charge, including a debenture or the machinery of a factory, the fee would be C£12.-. In the case, however, of a ship, according to item 11 the fee would be C£150.-. Consequently the aforesaid Regulations provide a different fee depending on the nature of the subject given as a security and this results in discrimination against the person who offers a ship as such security, vis a vis the other persons who offer different securities. This discrimination is therefore unconstitutional as it offends Article 28.1 of the Constitution.

In support of this contention reference was made to what was said in the case of *Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R., p. 173, at p. 182, where it was said:-

“Legislative provisions which make arbitrary or unreasonable differentiations, not justified by the intrinsic nature of things, contravene Article 28. In *Mikrommatis and The Republic* (2 R.S.C.C. 125) it was held that section 19 of the Income Tax Law, Cap. 323, a pre-Constitution enactment, was to a certain extent unconstitutional, as introducing a discrimination on the ground of sex contrary to Article 28, and had to be applied modified accordingly (under Article 188.4 of the Constitution). On the other hand, reasonable differentiations were upheld, as not being contrary to Article 28, in the cases of *Haros and The Republic* (4 R.S.C.C. 39) and *In re HjiKyriacos and Sons Ltd.* (5 R.S.C.C. 22)”.

Counsel for the applicant companies has also argued that this was not a reasonable classification and that for such classification to be possible and not discriminatory, it must be neither capricious nor arbitrary, but it must rest upon some reasonable consideration of difference or policy, in which case there is no denial of equal protection of the laws as stated in the case of *Brown-Forman Co. v. Kentucky* (1910) 54 Law. Ed., 883.

The answer of the respondent is that the collection of fees under item 11 of the Appendix does not constitute discrimination against the applicant companies as compared with fees collected under items 9 and 10 thereof for a number of reasons. The fees collected under item 9 are not in substance less as they are in addition to those collected under item 12 of the Appendix. Also the fees for the registration of a mortgage on immovable property under item 10 of the Regulations are in addition to the Lands Office fees collected under the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Law No. 81 of 1970, whereby under item 3 of the Schedule thereto the fee payable on the registration of a mortgage is one per cent on the amount advanced. Moreover, this amount is in addition to the amount of stamps required to be affixed on the agreement by the Stamps Law 1963-1972, item 3 of the First Schedule, which would amount to C£5,725.-for the registration of a mortgage on immovable property for a sum of C£500,000.-namely, C£5,000.- under the first Law and C£725.- under the second Law.

It was further argued that mortgages on immovable property are not registered with the Registrar of Companies, but are simply recorded as provided by section 91(3) of the Companies Law, Cap. 113 whereas other charges including the mortgage of a ship are registered otherwise they are void under section 90, subsection (1) of the said Law.

Furthermore it was pointed out that under The Stamp (Amendment) Law 1972, (Law 38 of 1972) item 3 (b) (e) of the First Schedule any instrument relating to the mortgage of a ship registered in the Cyprus register or share thereof or any other agreement, are exempted from the payment of fees; even if, therefore, the fee of C£30.-for the registration of a mortgage on a ship under the third Schedule to the Merchant Shipping (Registration of Ships etc.) Law 1963 (Law No. 45 of 1963), payable on ships which exceed one thousand tons gross but do not exceed two thousand tons gross, (as it is the tonnage of the three ships in question), yet the fees for the registration of a charge or mortgage of a ship are by far less.

The case of *Mikrommatis v. The Republic*, 2 R.S.C.C., p. 125, and that of *Constantinou v. The Republic* (1966) 3 C.L.R.; 572, and the principles enunciated therein have been invoked in

support of the proposition that an instance of discrimination can only arise if different treatment is met out in two cases which are similar in all material respects. Differentiations reasonably warranted by the inherent nature of things do not amount to discrimination under Articles 6 and 28 of the Constitution. 5

I need not really embark into a study of the amount of the different fees imposed on different transactions. It is sufficient for the purpose of determining this ground of law to note the very worthy argument of learned counsel for the respondent and say that the regulations imposing the fees and challenged by the present recourses are not unconstitutional as they cover distinct classes of subject matters which by their very nature justify the differentiation made in the fees payable in each instance. 10 15

To my mind there is a reasonable basis for such classification. No doubt the legislature has the freedom not only to choose the subjects to be taxed or charged with fees, but also the manner and rates of such taxes, fees and charges. It is obvious from the tenor of numerous laws enacted since Independence that shipping and matters relating thereto have been placed on a different footing than other subject-matters and other transactions. A concrete policy is pursued thereby which constitutes the reasonable basis behind the classifications and differentiations made. 20 25

The Interest Law 1977 (Law No. 2 of 1977) which repealed and substituted the old Interest Law, Cap. 150, may be pointed out as an example of a differentiation made by the legislature in relation to shipping and matters relating thereto. By section 7 thereof the restrictions on the rate of lawful interest as governed by sections 3, 4, 5 and 6 of that law, do not apply to debts or obligations entered into in foreign currencies with a non Cypriot resident which provision is obviously for the benefit of shipping companies and mortgages and debts contracted in respect of ships. This becomes clearer if one considers also that the said section applies to obligations entered into "after the 25th June, 1963, which date coincides with the date that the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963, (Law 45 of 1963), came into force. Moreover, the Regulations imposed a similar burden on every 30 35 40

person with reference to that particular kind of transaction and property on the same basis and in my view these Regulations cannot be declared as unconstitutional on the ground that the result of the imposition of such fees and charges is to impose
5 unequal burden on different persons. For all these reasons this ground of law fails.

The second ground of law relied upon by the applicant companies, namely that the fees under item 11 are payable only when the amount involved in the mortgage is in Cyprus pounds
10 and not in dollars or any other foreign currency, can be briefly answered by the fact that these fees are payable on an ad valorem basis and the value of a mortgage whether declared in U.S. dollars or other foreign currency can be ascertained by their conversion into Cyprus pounds and the word "amount"
15 appearing in item 11 of the Appendix, means the value in Cyprus pounds in whatever currency the sum is stated to be in the relevant instrument. This ground also fails.

For all the above reasons the present recourses are dismissed, but I make no order as to costs.

20 *Applications dismissed. No order as to costs.*