

1980 July 19

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS MARKITSIS,

*Applicant,*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondent.*

(Application in Case No. 116/80).

5 *Provisional Order—Principles applicable—Flagrant illegality—Merits of the recourse—Irreparable damage—Recourse against decision revoking cession of vineyards—No irreparable damage—Not certain whether sub judice decision flagrantly illegal or that recourse is either obviously unfounded or that it is bound to succeed—Application for provisional order dismissed.*

10 The District Committee of Paphos for the Management of the requisitioned Turkish Cypriot Properties at one of its meetings, between the 14th January, 1980 and the 7th February, 1980, decided to cede to the applicant certain vineyards for him to cultivate and enjoy. At a subsequent meeting, held on the 10th March, 1980, the said Committee decided to revoke the above decision; but prior to this latter decision it informed the applicant on the 7th March, 1980 that the question of the above  
15 cession was being reconsidered and asked him not to proceed with the cultivation of the vineyards. By letter dated 17th March, 1980 applicant was informed that the above cession was no longer in force and that any cultivation expenses which he had incurred would be assessed and paid to him.

20 *Upon an application for a provisional order, under rule 13 of the Supreme Constitutional Court Rules, 1962, seeking the suspension of the effect of the decision contained in the said letter of the 17th March, 1980, pending the determination of a recourse against such decision:*

*Held*, that the relevant factors in deciding this application are the merits of the case and whether the non-making of the order will cause the applicant irreparable damage; that flagrant illegality is a most material consideration and militates strongly in favour of making the provisional order even though the damage likely to be suffered may not be irreparable; that it does not seem that the applicant is likely to suffer any irreparable damage if the application is refused because whatever expenses he has incurred before the decision complained of with regard to the cultivation etc. of the properties in question he already knows and has, in fact, been invited by the authorities to submit an account for such expenses so that he would be compensated, and as regards the future damage from the loss of the produce of the vineyards such loss may surely be estimated and proved by evidence before a Court of law in case he eventually succeeds in his recourse; that as to the other two factors it cannot on the material before the Court, at this stage, be said with any certainty that there exists flagrant illegality or that the claim of the applicant is either obviously unfounded or that it is bound to succeed; that, therefore, these factors cannot have a decisive effect in the determination of this application; and that, accordingly, the application must fail.

*Application dismissed.*

Cases referred to:

*C.T.C. Consultants Ltd. v. The Cyprus Tourism Organization* (1976) 3 C.L.R. 390; 25

*Procopiou and Others v. The Republic* (1979) 3 C.L.R. 686.

**Application for a provisional order.**

Application for a provisional order, suspending the effect of the decision of the District Officer of Paphos, in his capacity as Chairman of the District Committee of Management of Turkish Cypriot Properties, to the effect that a previous decision of the Committee, ceding to applicant certain vineyards, being requisitioned Turkish Cypriot Properties, was revoked, pending the final determination of a recourse against the validity of such decision.

*A. Ladas*, for the applicant.

*M. Papas*, for the respondent.

*Cur. adv. vult.*

L. LOIZOU J. read the following decision. This is an application for an interim injunction under rule 13 of the Supreme 40

Constitutional Court Rules, 1962, which continue in force by virtue of the provisions of s. 17 of The Administration of Justice (Miscellaneous Provisions) Law, 1964.

5 By the application the applicant seeks the suspension of the effect of the decision contained in the letter of the District Officer of Paphos in his capacity as Chairman of the District Committee of Management of Turkish Cypriot Properties dated 17th March, 1980, whereby he was informed in effect that a previous decision whereby certain vineyards, being requisitioned  
10 Turkish Cypriot Properties, had been ceded to him was revoked and he was not, therefore, entitled to keep, cultivate or enjoy same.

It is convenient and useful to set out briefly the facts in so far as they are relevant for the purposes of this application.

15 At one of the meetings held by the District Committee of Paphos for the Management of the requisitioned Turkish Cypriot Properties between the 14th January, 1980 and the 7th February, 1980, it was decided to cede to the applicant certain vineyards for him to cultivate and enjoy. The minutes of this meeting  
20 are attached to the affidavit in support of the application and is marked "A". The relative part reads as follows:

25 "2. Στόν Χαράλαμπο Μαρκίτση παραχωροῦνται τὰ τεμάχια 609/1 τοῦ 35/34 καὶ 134/1 τοῦ 35/26 ἐκτάσεως 15-0-0 ἀμπέλια (ἀπὸ αὐτὰ πού ἀφαιρέθηκαν ἀπὸ τὴν Θάλεια Προβατᾶ) καθὼς καὶ τὸ τεμάχιο 429 τοῦ 35/49 ἐκτάσεως 3-1-0 ἀμπέλια. Ἐπίσης στόν Χαρ. Μαρκίτση ἐνεκρίθη ἡ ἐνοικίαση ἀμπελιῶν ἐκτάσεως 22-0-0 σκαλῶν, γιὰ ἓνα χρόνο μὲ ἀνανέωση, ἀπὸ αὐτὰ πού διαχειρίζεται ἡ Διοίκηση ἀντὶ τοῦ ποσοῦ τῶν £10.—σὰν ἐνοίκιο."

30 ("2. To Charalambos Markitsis there are ceded plots 609/1 of 35/34 and 134/1 of 35/26 of an extent of 15.0.0 vineyards (out of those that were taken away from Thalia Provata) and plot 429 of 35/49 of an extent 3-1-0 vineyards. There was also approved the lease of vineyards of an extent  
35 of 22-0-0 to Char. Markitsis out of those that are being managed by the District Administration for the sum of £10 as rent").

In consequence of this decision on the 13th February, 1980, an agreement in the form of a licence was entered into between

the Central Committee for the Management of Turkish Cypriot Properties for and on behalf of the Republic of Cyprus and the applicant. The term of the licence, as stated therein, was to expire on the 31st October, 1980, but would in any case automatically expire upon the termination of the requisition order relating to the properties in question. It was, *inter alia*, provided in the conditions of the licence that it could be terminated at any time by the licensor; and that the licensee would not be entitled to any damages. 5

At a meeting of the District Committee of Paphos held on the 10th March, 1980, the Committee did, in fact, revise its previous decision. The minutes of this meeting are also attached to the affidavit in support of the application and are marked "B". The relevant part reads as follows: 10

"I. Ἀρόδες 15  
 α) Ἀναθέωρησε προηγούμενη ἀπόφαση της γιὰ ἀφαίρεση τοῦ κλήρου τῆς Θάλειας Προβατᾶ στις Ἀρόδες ποὺ μετοίκησε σὲ ἄλλην Ἐπαρχία καὶ ἀπεφάσισε ὅπως κατὰ τὴν νέα καλλιεργητικὴ περίοδο ὁ πρὶό πάνω κλῆρος τῆς παραχωρηθεῖ ἐκ νέου ἀφοῦ προηγουμένως ἐγκατασταθεῖ μόνιμα στὸ χωριό." 20

("I. Arodes  
 a) It revoked its previous decision for taking away the lot of Thalia Provata at Arodes who settled in another district and decided that during the re-w cultivation period the above lot be ceded to her afresh after she previously settles permanently at the village"). 25

But prior to the above decision on the 7th March, 1980 the District Officer of Paphos in his capacity as Chairman of the District Committee for the Management of the Turkish Cypriot Properties of Paphos addressed the following letter to the applicant. (This letter is attached to the recourse as *exhibit 2*). 30

"Κύριε,  
 Ἐπιθυμῶ ν' ἀναφερθῶ στὸ θέμα τῶν Τ/Κ ἀμπελιῶν ποὺ κατεῖχε ἡ ἐκτοπισμένη Θάλεια Προβατᾶ στὸ χωριό Τέρρα καὶ τὰ ὁποῖα ἡ Ὑπεπιτροπὴ Ἀναθεωρήσεως καὶ Ἀναδιανομῆς τῶν κλήρων παραχώρησε σὲ σᾶς κατὰ τὴν νέα καλλιεργητικὴ περίοδο 79/80 καὶ νὰ σᾶς πληροφορήσω ὅτι τὸ θέμα τῆς πρὶό πάνω παραχώρησης βρῖσκεται ὑπὸ ἐπανεξέταση. 35

Ὡς ἐκ τούτου καλεῖσθε ὅπως μὴ προβεῖτε στὴν καλλιέργεια

ἢ τὴν ἀξιοποίηση τῶν πιὸ πάνω ἀμπελιῶν μὲ ὁποιοδήποτε τρόπο μέχρι νεωτέρας εἰδοποιήσεως.”

(“Sir

5 I wish to refer to the question of the Turkish Cypriot vineyards that were in the possession of the displaced Thalia Provata at Terra village and which were ceded to you by the sub-Committee for re-consideration and re-division of the lots during the new cultivation period 79/80 and to inform you that the question of the above cession is under  
10 re-consideration.

In view of the above you are requested not to cultivate or develop in any way the above vineyards until further notice”).

15 Ten days later, on the 17th March, 1980, the District Officer again acting in his capacity as Chairman of the District Committee of Paphos for the Management of Turkish Cypriot Properties addressed the following letter to the Applicant:

“Κύριε,

20 Ἐπιθυμῶ ν' ἀναφερθῶ στὴν ἐπιστολὴ μου τῆς 13/2/80 μὲ τὴν ὁποία σᾶς ἔγινε παραχώρηση τῶν Τ/Κ ἀμπελιῶν στὴν Τέρρα/Κ. Ἀρόδες μὲ ἀρ. Τεμ. 609/1, τοῦ Φ/Σχ. 35/34 καὶ 134/1 τοῦ Φ/Σχ. 35/26 ἐκτάσεως 15-0-0 γιὰ τὴν φετεινὴ καλλιεργητικὴ περίοδο καθὼς καὶ στὴν ἐπιστολὴ μου ἡμερ. 7/3/80 μὲ τὴν ὁποία ἐπληροφορεῖσθε ὅτι ἡ πιὸ πάνω παρα-  
25 χώρηση θὰ ἐπανεξετάζετο καὶ ἐκαλεῖσθε νὰ μὴ προβεῖτε σὲ ὁποιαδήποτε ἐπέμβαση στὰ ἀμπέλια αὐτὰ προτοῦ ληφθεῖ τελικὴ ἀπόφαση καὶ νὰ σᾶς πληροφορήσω ὅτι ὕστερα ἀπὸ ἀπόφαση τῆς Κεντρικῆς Ἐπιτροπῆς Προστασίας Τ/Κ Περιουσιῶν ἡ πιὸ πάνω παραχώρηση δὲν ἰσχύει καὶ ἐπομένως  
30 δὲν δικαιούσθε νὰ κρατήσετε, καλλιεργήσετε καὶ καρπωθεῖτε τὰ ἐν λόγω ἀμπέλια.

35 Παρ' ὅλο πού ἔχετε προειδοποιηθεῖ νὰ μὴ ἐπέμβετε στὰ ἀμπέλια λόγω τῆς ἐπανεξετάσεως τῆς παραχωρήσεως ἐν τούτοις τυχόν καλλιεργητικὰ ἔξοδα τὰ ὁποία ἔχετε κάμει θὰ ἐκτιμηθοῦν ἀπὸ ἀρμοδίους λειτουργοὺς τοῦ γραφείου μου καὶ θὰ σᾶς καταβληθοῦν”.

(“Sir,

I wish to refer to my letter of 13.2.80 whereby there were ceded to you the turkish Cypriot vireyards at Terra/K.

Arodes under plot No. 609/I, of Sheet/Plan 35/34 and 134/I of Sheet/Plan 35/26 of an extent of 15-0-0 for this year's cultivation period and to my letter of 7.3.80 whereby you were informed that the above cession would be re-considered and you were called upon not to interfere in any way with the above vineyards before a final decision is taken and to inform you that following a decision of the Central Committee of Protection of Turkish Cypriot properties, the above cession is no longer in force and therefore you are not entitled to retain, cultivate and enjoy the said vineyards.

Though you have been warned not to interfere with the vineyards in view of the re-consideration of the cession any cultivation expenses that have been incurred by you will be assessed by the competent officers of my office and be paid to you").

This letter is also attached to the recourse as *exhibit* 3 and is in fact the decision challenged by the recourse

The applicant thereupon addressed telegrams of protest to the Minister of the Interior and to the District Officer of Paphos and finally on the 27th March, 1980, the District Officer forwarded the following letter to him:

“Κύριε,

Ἐπιθυμῶ ν' ἀναφερθῶ στὰ τηλεγραφήματά σας μὲ ἡμερ. 21/3/80 καὶ 24/3/80 σχετικὰ μὲ ἔνσταση σας γιὰ τὴν ἀφαίρεση ἐκτάσεως Τ/Κ ἀμπελιῶν στὴν Τέρρα καὶ Κάτω Ἀρόδες ποὺ σᾶς παραχωρήθηκαν τὴν φετεινὴ καλλιεργητικὴ περίοδο καὶ νὰ σᾶς πληροφορήσω ὅτι δὲν ἔχω νὰ προσθέσω τίποτε στὴν ἐπιστολὴ μου μὲ ἡμερομηνία 17/3/80 καὶ ἐπομένως ἡ ἔκταση τῶν πιὸ πάνω ἀμπελιῶν δὲν παραμένει στὴν κατοχὴ σας καὶ δὲν δικαιούσθε νὰ συνεχίσετε νὰ τὴν ἀξιοποιεῖτε.

Περαιτέρω ἐπιθυμῶ νὰ σᾶς καλέσω ξανὰ ὅπως μοῦ παρουσιάσετε στοιχεῖα γιὰ τὰ ἔσοδα ποὺ ἔχετε κάμει στ' ἀμπέλια δηλ. καλλιέργεια, κλάδεμα, λίπανση.”.

(“Sir,

I wish to refer to your telegrams dated 21.3.80 and 24.3.80 in connection with your objection for the taking away of an extent of turkish Cypriot vineyards at Terra and Kato Arodes that have been ceded to you for this year's cultiva-

tion period and to inform you that I have nothing to add to my letter dated 17.3.80 and therefore the extent of the above vineyards does not remain in your possession and you are not entitled to continue developing it.

5 Further I wish to call upon you again to produce particulars of the expenses that you incurred in connection with the vineyards that is cultivation, pruning, manuring”).

As it appears from the affidavit in support of the application the interim injunction is sought on two grounds:

10 (a) That the decision complained of is flagrantly illegal and

(b) That if the *sub judice* decision is not suspended the applicant will suffer irreparable harm.

15 Counsel for the respondent by his Opposition opposed the application and in the last paragraph of his affidavit he alleged that in any case the subject-matter of the recourse was not within the domain of public law but of private law and that, therefore, it could not be challenged by a recourse under Article 146 of the Constitution. In his address however, learned counsel chose  
20 not to touch this point. I do not consider it necessary to pronounce on this aspect of the case, which would dispose of the whole recourse if upheld, but I will assume for the purposes of the application which is before me that the subject-matter of the recourse does come within the domain of public law and  
25 that, therefore, a recourse could be made under Article 146.

With regard to the ground of illegality the gist of the careful and elaborate argument of learned counsel for the applicant was that the decision contained in the letter of the District Officer of the 17th March, 1980 (*exhibit 3* in the recourse) is  
30 completely baseless and arbitrary in that it was not based on any decision of the Committee which was the organ with authority to decide the matter. As regards the ground of irreparable damage learned counsel submitted that applicant's future financial loss i.e. the profit from the sale of the produce of the vineyards will not be possible to be precisely ascertained if he  
35 succeeds.

There is a wealth of authority on the principles applicable in applications of this nature. I need only mention two cases

which contain almost a complete list of our case law on this point:

*C.T. C. Consultants Ltd. v. The Cyprus Tourism Organization* (1976) 3 C.L.R. 390 and *Gedeon Procopiou and Others v. The Republic through the Attorney-General of the Republic* (1979) 3 C.L.R. 686. 5

In the present application no question of public interest is involved and in the light of the above authorities the relevant factors in deciding this application are the merits of the case and whether the non-making of the order will cause the applicant irreparable damage. Flagrant illegality is, of course, a most material consideration and militates strongly in favour of making the provisional order even though the damage likely to be suffered may not be irreparable. 10

In this application it does not seem to me that the applicant is likely to suffer any irreparable damage if the application is refused because whatever expenses he has incurred before the decision complained of with regard to the cultivation etc. of the properties in question he already knows and has, in fact, been invited by the authorities to submit an account for such expenses so that he would be compensated, and as regards the future damage from the loss of the produce of the vineyards such loss may surely be estimated and proved by evidence before a Court of law in case he eventually succeeds in his recourse. 15 20

As to the other two factors it cannot on the material before the Court, at this stage, be said with any certainty that there exists flagrant illegality or that the claim of the applicant is either obviously unfounded or that it is bound to succeed. These factors cannot, therefore, have a decisive effect in the determination of this application. 25 30

For all the above reasons this application is dismissed.

The costs of the application will be costs in the cause.

*Application dismissed. Costs in the cause.*