1983 February 9

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

ANDROMACHI COSTA ALEXANDROU THROUGH HER ATTORNEY-REPRESENTATIVE COSTAS ALEXANDROU,

Appellant

v.

ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent

(*Civil Appeal No* 6311)

Constitutional Law—Liability of the Republic under Article 172 *of the Constitution—Prerequisites—Such liability not dependent on the commission of a civil wrong under the Civil Wrongs Law, Cap.* 148 *or on the concept of vicarious liability—Unlawful occupation of appellant's property by displaced persons—Claim for damages against the Republic due to alleged ratification of such occupation by its servants—No evidence tending to establish prerequisites of liability under Article* 172.

Following the Turkish invasion of Cyprus in the summer of 1974 about 250 refugees took refuge in the semi-completed block of flats of the appellant at Nicosia and remained there for a number of years until accommodation was made available for them by the Government. No steps were ever taken against the occupants either to secure their eviction or recover damages from them.

The appellant sued the Republic for damages claiming that it was legally responsible for the occupation of their property by the refugees and was answerable in law for the loss suffered in consequence. In order to cope with the problems of displacement a special service was set up under the name Care and Rehabilitation of Displaced Persons ("Care"); and the appellant rested her case on a promise by Care Officials to compensate her in due course. Her claim was pegged to the one sounding in tort for the ratification of the trespass. The trial Court did not accept the contention that the unlawful occupation

of appellant's property was on any occasion ratified by Government and dismissed the action. Hence this appeal.

According to the evidence all that the Care Officials did in relation to the occupation of the property was to offer humanitarian relief to the occupants.

Held, for the Republic to be held liable under Article 172 of the Constitution there must in the first place be an unjust ("adikos") act or omission; that an unjust act is one committed without authority in law; that where the doing of an act is sanctioned by law, no liability can conceivably attach to the Republic; that, secondly, the unjust act or omission must be productive of damage; that, thirdly, the injurious act, must have been committed in the exercise or purported exercise of the duties of the officers or authorities of the State; that the State is liable for acts committed in the exercise of an officer's duties when the latter deviates, exceeds or abuses his authority while carrying out his duties; that "purported exercise of duty" encompasses cases where the officer, while apparently engaged in the process of carrying out his duties, he is not so acting as a matter of law or fact; that abuse of authority or office lies at the root of liability of the State under Art. 172; that the liability of the State is not necessarily dependent on the Commission of a civil wrong under the Civil Wrongs Law, Cap. 148 or on the concept of vicarious liability; that in this case there was no evidence tending to establish the prerequisites of liability under Article 172; accordingly the appeal must fail.

Held, further, that the only way the Republic could assume responsibility in law for the occupation of the property outside a contractual arrangement was through the provisions of the Requisition of Property Law 21/62; that Care Officials had no authority in law to effect requisition; that, therefore, the alleged acts of encouragement could not conceivably be committed in the exercise or purported exercise of their duties because an officer can only be said to be acting in purported exercise of his duties if he has authority in law to do the acts he professes to do in the name of that authority.

Appeal dismissed.

Cases referred to:

Eastern Construction Co. v. *National Trust Co.* [1914] A.C. 197 at p. 213;

Georghiou v. *The Attorney-General* (1982) 1 C.L.R. 938.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 18th August, 1981 (Action No. 519/78) whereby her action for £54,120.– for loss of use or profit for wrongful occupation of her property by displaced persons due to the Turkish invasion was dismissed.

E. Efstathiou, for the appellant.

Gl. Hji Petrou, for the respondent.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The appellant is the owner of a building made up of 18 apartments, three-bedroomed and two-bedroomed, spread over five storeys, at Nicosia, not far from the Hilton Hotel. In the summer of 1974 the building was under construction. There was a lot to be done before being rendered habitable. Nevertheless it could offer shelter to those displaced and dispossessed by the Turkish invasion who in their thousands were asking for a roof over their head. Some of them, about 250 in number, took refuge in the semi-completed block of flats of the appellant and in their misery took comfort therein.

The appellant and her family were themselves refugees from the Kyrenia District who left their home at Vassilia in the wake of the Turkish invasion. At first they raised no objection to the occupation of their property by their fellow-refugees. The husband of the appellant, who testified on her behalf, explained that he awaited the return of Archbishop Makarios before defining his future plans with regard to the building. Consequently he suffered the occupation of his property and refrained from making any request to the occupants to vacate the building. He took no steps whatever in that direction until much later when he secured a loan for the completion of the building. This happened when the shattered economy of the country began to pick up and loans were made available in order to stimulate economic activity.

In the meantime the occupants of the building had to content with the vicissitudes of living in an unfinished building lacking

basic facilities and conveniences, such as toilets and sewage and inadequate water supply. A water tap on the ground floor was the only source of water supply for the entire building.

When the appellant secured a loan, efforts were stepped up to obtain vacant possession. These efforts bore no fruit for quite some time because of the refusal of the refugees in occupation to vacate the premises until arrangements were made by the Government for their rehousing. Steps were taken in that direction but time was needed to accomplish the task. So far as one may discern from the evidence before the trial Court, the building was not vacated until arrangements were made for the housing of the occupants in refugees' habitats.

In order to cope with the multiple problems of displacement a special service was set up under the name of Care and Rehabilitation of Displaced Persons, hereafter referred to as "Care", pursuant to a decision of the Council of Ministers in August, 1974. They were assigned the task of helping for the relief and rehabilitation of refugees. Care offered what relief was possible to the occupants of the building by way of supply of foodstuffs and essential appliances and utensils for the running of their households. Also they made a limited financial contribution for the provision of water supply on each storey of the building and temporary arrangements for sewage. At some stage water supply was cut because of the omission or inability of the occupants to meet the cost. After representations to Care the bills were paid as a measure of relief while denying responsibility for the charge and disputing liability. (See letter of the Director to the Water Board in the file under 16-17).

What emerges is that Care provided rudimentary relief for the improvement of the otherwise pitiable conditions of living of the refugees. The assistance was by any standards limited to the minimum because of, no doubt, the magnitude of the problem and limited funds available to provide for the vast needs of refugees.

It was the case for the appellant before the trial Court that the Republic of Cyprus was legally responsible for the occupation of the property by the refugees and was answerable in law for the loss suffered in consequence thereof. No steps were ever

taken, it seems, against the occupants either to secure their eviction or recover damage from them.

The appellant by his statement of claim ascribed liability to the Republic for the loss suffered in consequence of the wrongful occupation of the property by displaced persons because of a series of acts committed by officers of the Care Department allegedly betraying approval and adoption on the part of the Republic of the wrongful occupation of the property. The contention is that these officials facilitated the stay of refugees in the premises by improving their living conditions and by encouraging the occupants to remain in occupation.

The evidence produced at the trial established what was indicated earlier in the judgment. Limited aid was given to make the stay of displaced persons tolerable. Two of the occupants of the property gave evidence at the trial that an official of Care did encourage them to stay but, as they added, even if they wanted to vacate the premises, they had no alternative but to remain in occupation until accommodation was made available by Government.

The appellant also rested her case, as vaguely hinted in the statement of claim and more explicitly stated by the husband of the appellant in evidence, on a promise by Care officials to compensate them in due course. Whatever one might make of these allegations, this claim was pegged to the one sounding in tort for the ratification of the trespass. No claim was made for damages for breach of contract and presumably none could be sustained, for the promise of the officials, even if accepted as correct - an allegation rejected by the trial Court - could not conceivably give rise to a contract because of the absence of essential particulars regarding the basis upon which compensation would be paid. In any event the action was not cast in terms of breach of contract nor was it at any stage argued along such lines.

The appellant claimed (a) £54,120.- for loss of use or profit for the wrongful occupation of the property in the circumstances above mentioned and (b) £69,535.- loss for damage caused to the property. At the commencement of the hearing the parties reached agreement on the quantum of damages in elliptical terms, not disclosing the basis upon which agreement was

reached. All that the agreement provided for was that appellant would be entitled to £12,500.- if successful in the action. (See the minutes of the Court dated 10th July, 1981). Given the separate nature of the two items of damage claimed, it was essential to specify what part of the agreed damages was attributable to either of the two heads of damage set out in the statement of claim. The trial Court in a well reasoned judgment dismissed the claim as unsustainable in law and ill-founded in fact. They laid emphasis on a letter addressed by the Director of Care to the Water Board, detailing the circumstances under which payment of water bills was made and signifying the position of Government on the subject. (See file 16-17). Payment was made for purely humanitarian reasons, it was explained therein, while dissociating Government from any liability in law to pay these bills. Payment was made, as stated in this letter, on an ex gratia basis.

On a review of the evidence in its totality the trial Court dismissed the contention that the unlawful occupation of the property by displaced persons was on any occasion or under any circumstances ratified by Government and pointed out that for ratification to be validly invoked in tort there must be clear adoptive acts, relying on a statement of the law on the subject by Lord Atkinson in *Eastern Construction Co. v. National Trust* Co., [1914] A.C. 197, 213.

The liability of the Republic for injurious acts of its officers or authorities of the Republic came up for consideration before the Supreme Court in *Symeon Georghiou v. The Attorney-General*, decided on 12.11.82 (not yet reported)*. We dwelt on the ambit and implications of Article 172 in an attempt to define the liability of the State for acts of its servants. Liability under Art. 172, it was held, is a species of public law liability, irrespective of whether the acts giving rise to injury were committed in the domain of private law. The liability of the State is not necessarily dependent on the commission of a civil wrong under the Civil Wrongs Law, Cap. 148, or on the application of the concept of vicarious liability of a master for acts of his servants as encountered in Cap. 148 or any other law. The liability of the State under Art. 172 is in no way correlated to liability of the master in private law or dependent on the commission of a tort at civil law.

* Now reported in (1982) 1 C.L.R. 938.

Article 172 defines the prerequisites for liability of the State for acts of its servants as well as the ambit of such liability. What may be regulated by law are matters secondary thereto. For the Republic to be held liable there must in the first place be an unjust ("adikos") act or omission. An unjust act is one committed without authority in law. Where the doing of an act is sanctioned by law, no liability can conceivably attach to the Republic. Secondly, the unjust act or omission must be productive of damage. Thirdly, the injurious act, in the sense above defined, must have been committed in the exercise or purported exercice of the duties of the officers or authorities of the State. The State is liable for acts committed in the exercice of an officer's duties when the latter deviates, exceeds or abuses his authority while carrying out his duties. "Purported exercice of duty" encompasses cases where the officer, while apparently engaged in the process of carrying out his duties, he is not so acting as a matter of law or fact. It was pointed out in the case of *Georghiou* (supra) that abuse of authority or office lies at the root of liability of the State under Art. 172.

The first question to be answered in this appeal is whether there was evidence tending to establish the prerequisites of liability under Art. 172. We are of the opinion that on no view of the evidence could liability be ascribed to the Republic. Mr. Efstathiou urged strongly upon this Court that the finding of the trial Court rejecting the evidence for the plaintiff that officers of Care encouraged the inmates of the building and the husband of the plaintiff to believe that Government would assume responsibility for the occupation of the premises by displaced tenants, is unsatisfactory. Even if we were to sustain this submission, the appellant would not be able to carry his case further or succeed in this appeal. The evidence was vague and as far as alleged communications with displaced persons to stay in the premises are concerned, they could hardly be construed as anything other than an attempt to comfort those in need and engender in them a degree of hope.

As far as the husband of the owner is concerned, the evidence is vague and uncertain. If anything, it was apt to create liabilities in contract, not in tort, and, as we pointed out at the outset, this case sounds exclusively in tort. Therefore, although we find the grounds upon which this evidence was rejected by the trial Court rather unconvincing, omission from consideration of this finding could not help the appellant.

The case for the appellant was framed and argued on the premise that the Republic was vicariously liable for acts of its servants under Cap. 148 and that through its servants it ratified the acts of displaced persons in entering the land of the appellant and putting it under their occupation. As indicated, Cap. 148 is not the framework for liability of the State.

Examining the evidence in the context of Art. 172, the picture emerging is the following: All the Care officials did in relation to the occupation of the property was to offer humanitarian relief to the occupants, something they were entitled to do. In fact this was their duty. Further, their acts were in no way productive of injury. If anything, they limited the damage that might otherwise be caused to the building especially by the provision of sanitary facilities and the installation of a sewage system.

The suggestion that the acts of Care employees evidenced anything like adoption of unauthorised entry or occupation of the premises is unrealistic in view of the evidence before the trial Court and totally devoid of substance. The only way the Republic could assume responsibility in law for the occupation of the property outside a contractual arrangement was through the provisions of the Requisition of Property Law 21/62. Care officials had no authority in law to effect requisition. Therefore, the alleged acts of encouragement could not conceivably be committed in the exercise or purported exercise of their duties. As earlier explained, an officer can only be said to be acting in purported exercise of his duties if he has authority in law to do the acts he professes to do in the name of that authority.

In our judgment the premises for holding the State liable for the occupation of the property by refugees, who found themselves in the most necessitous circumstances, were never laid before the trial Court. The appeal fails. It is dismissed. However, we shall make no order as to costs considering that the appeal was taken before the decision of the Supreme Court in the case of *Symeon Georghiou v. The Attorney-General* (supra) that explained the legal framework of liability of the State under Article 172.

Appeal dismissed. No order as to costs.