

1985 April 17

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY COSTAS
MOSCHATOS, FOR AN ORDER OF MANDAMUS,

(Application No. 68/84).

Civil Procedure—Registration of judgment (memorandum) under section 53 of the Civil Procedure Law, Cap. 6—Not prolonged as provided by section 56—No longer in force.

5 *Limitation of Actions (Suspension) Law, 1964 (Law 57/64)—Registration of judgment (memorandum) under section 53 of the Civil Procedure Law, Cap. 6—Not an “action” in the sense of section 2 of Law 57/64.*

10 *Mandamus—Granted in order to enforce performance of public duty—Refusal of District Lands Office to deal with transfer of immovable property on ground that there had been registered a judgment in relation to such property under section 53 of the Civil Procedure Law, Cap. 6—Said registration not prolonged as provided by section 56 of*
15 *Cap. 6 and no longer in force—District Lands Office under the public duty to deal with transfer in accordance with the provisions of section 8 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65)—Said duty mandatory and not merely discretionary—And had to be performed in the domain of private and not of public*
20 *Law—Remedy for its enforcement not a recourse under Article 146 of the Constitution but an order of mandamus under Article 155.4.*

25 The applicant sought to transfer to a certain Aphrodite HadjiAnastassi, of Nicosia, immovable property of his at Kaimakli, consisting of a house and land, but the District Lands Office in Nicosia refused to deal with such transfer on the ground that there had been registered in relation to such property, under section 53 of Cap. 6, the judgment given against the applicant as the defendant in action
30 4303/69 in the District Court of Nicosia.

Though no application was made under section 56(2)(a)

of Cap. 6 for prolongation of the registration of the judgment concerned, and consequently it ceased to be in force, under section 55 of Cap. 6, two years after it was effected, the Lands Office took the view that such registration was still in force inasmuch as the period of one month prior to its expiration, within which an application could be made for its prolongation, was a "limitation period" in the sense of section 2 of the Limitation of Actions (Suspension) Law, 1964 (Law 57/64), and such period had, therefore, been suspended and had not yet expired.

Upon an application for an order of mandamus:

Held, (1) that registration of a judgment under section 53 of Cap. 6, which is a mode of execution, is not an "action" in the sense of section 2 of Law 57/64, so that the aforesaid period in section 56(2)(a) of Cap. 6 could be treated as a "limitation period" in the sense of section 2 of Law 57/64; and that, consequently, at the material time there was no longer in force in relation to the property concerned of the applicant the aforesaid registration of the judgment given in the above action and which was not prolonged in accordance with the provisions of section 56 of Cap. 6.

(2) That an order of mandamus is granted in order to enforce the performance of a public duty; that it was the public duty of the District Lands Office in Nicosia to deal with the matter of the transfer of the aforesaid property of the applicant in accordance with the provisions of section 8 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65); and it was mandatory, and not merely discretionary, to deal with the matter of the transfer of the property of the applicant under the said section 8; and that, therefore, an order of mandamus will be granted.

Held, further, that the said public duty had to be performed in relation to a matter in the domain of private, and not of public Law; and, therefore, it cannot be said that the remedy for its enforcement is a recourse

under Article 146 of the Constitution and not an order of mandamus under Article 155.4 of the Constitution.

Application granted.

Cases referred to:

- 5 *M.D.M. Estate Developments v. N.P. Lanitis Co. Ltd. and the Republic of Cyprus through the Attorney-General (District Court Nicosia Action No. 4395/83);*
Pavlou v. N.P. Lanitis (Application in District Court Nicosia 23/84);
- 10 *Leftis v. Police (1973) 2 C.L.R. 87;*
In re S. & G. Colocassides Co. Ltd. and President of Industrial Disputes Court (1977) 1 C.L.R. 59;
Charitonos v. Chief of Police (1979) 1 C.L.R. 616;
In re Malikides (1980) 1 C.L.R. 472;
- 15 *Republic v. M.D.M. Estates Developments Ltd. (1982) 3 C.L.R. 642;*
In re Asdjian (1981) 1 C.L.R. 470;
In re Kalathas (1982) 1 C.L.R. 835.

Application.

- 20 Application by Costas Moschatos for an order of mandamus directing the officer in charge of the District Lands Office in Nicosia to proceed with the matter of the transfer of applicant's property.
- 25 *Ph. Clerides with Chr. Clerides and L. Parparinos,*
 for the applicant.
- M. Cleridou-Tsiappa (Mrs.),* for the respondents.

Cur. adv. vult.

- 30 TRIANTAFYLLIDES P. read the following judgment. The salient facts of this case, in which an order of mandamus is being applied for, are that the applicant, on or about the 17th May 1984, sought to transfer to a certain Aphrodite HadjiAnastassi, of Nicosia, immovable property of his

at Kaimakli, consisting of a house and land, but the District Lands Office in Nicosia refused to deal with such transfer on the ground that there had been registered in relation to such property the judgment given against the applicant as the defendant in action 4303/69 in the District Court of Nicosia. 5

The said judgment had been registered as a charge (Memorandum No. 107/71) on the property in question of the applicant under section 53 of the Civil Procedure Law, Cap. 6. 10

It appears from the material before me that, though no application was made under section 56(2) (a) of Cap. 6 for prolongation of the registration of the judgment concerned, and consequently it ceased to be in force, under section 55 of Cap. 6, two years after it was effected, the Lands Office took the view that such registration is still in force inasmuch as the period of one month prior to its expiration, within which an application could be made for its prolongation, is a "limitation period" in the sense of section 2 of the Limitation of Actions (Suspension) Law, 1964 (Law 57/64), and such period has, therefore, been suspended and has not yet expired. 15 20

I cannot agree that registration of a judgment under section 53 of Cap. 6, which is a mode of execution, is an "action" in the sense of section 2 of Law 57/64, so that the aforesaid period in section 56(2) (a) of Cap. 6 could be treated as a "limitation period" in the sense of section 2 of Law 57/64; and in this respect I am in agreement with the already expressed similar views of Nikitas P.D.C. in a Ruling given on the 16th March 1984 in *M.D.M. Estate Developments Ltd. v. N. P. Lanitis Co. Ltd. and the Republic of Cyprus through the Attorney-General* (action DCN 4395/83) and of Poyadjis P.D.C. in a Ruling given on the 16th June 1984 in *Pavlou v. N. P. Lanitis Co. Ltd.* (application DCN 23/84). Consequently, at the material time there was no longer in force in relation to the property concerned of the applicant the aforesaid registration of the judgment given in action DCN 4303/69 against the applicant, which was effected in 1971 (Memorandum No. 107/71) and which was not prolonged in accordance with the provisions of section 56 of Cap. 6. 25 30 35 40

It is well settled that an order of mandamus is granted in order to enforce the performance of a public duty (see, inter alia, *Leftis v. The Police*, (1973) 2 C.L.R. 87, *In re S. & G. Colocassides Co. Ltd. and President of Industrial Disputes Court*, (1977) 1 C.L.R. 59, and *Haritonos v. Chief of Police*, (1979) 1 C.L.R. 616).

In this case it was the public duty of the District Lands Office in Nicosia to deal with the matter of the transfer of the aforesaid property of the applicant in accordance with the provisions of section 8 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65); and it was mandatory, and not merely discretionary, to deal with the matter of the transfer of the property of the applicant under the said section 8 (see, inter alia, *In re Malikides*, (1980) 1 C.L.R. 472).

The aforementioned public duty had to be performed in relation to a matter in the domain of private, and not of public, Law (see, inter alia, *The Republic v. M.D.M. Estate Developments Ltd.*, (1982) 3 C.L.R. 642) and, therefore, it cannot be said that the remedy for its enforcement is a recourse under Article 146 of the Constitution and not an order of mandamus under Article 155.4 of the Constitution (see, inter alia, *In re Asdjian*, (1981) 1 C.L.R. 470, and *In re Kalathas*, (1982) 1 C.L.R. 835).

Moreover, I am of the view that not only an order of mandamus can be made in the present instance but that, also, such order is the most effective remedy in the circumstances (see, inter alia, the *Leftis* case, supra).

I, therefore, grant an order of mandamus directing the Officer in charge of the District Lands Office in Nicosia to deal with the matter of the transfer of the property of the applicant in accordance with section 8 of Law 9/65; and, of course, in doing so, there should be borne in mind that it has been found by this judgment that there is no longer subsisting the registration, under section 53 of Cap. 6, of the judgment in question which led the District Lands Office in Nicosia to refuse to deal with the transfer of the property concerned.

I do not propose to make any order as to the costs of this application.

Application granted.