

1985 December 20

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

LAMBROS DIAKOS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

(Case No. 797/85).

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*The Customs and Excise Duties Laws, 1978-1981—Ss.2 and 11  
—The Order of the Council of Ministers made under  
s.11(2) and published on 13.9.79 under Not. No. 221/  
79—Import duty—Refusal to exempt applicant from pay- 5  
ment of import duty in respect of motor car for invalid  
persons—The organ vested with competence to decide  
such an application for exemption is the Director of the  
Department of Customs—As therefore the respondent  
lacked competence in the matter, his decision has no legal 10  
effect whatsoever.*

The applicant by this recourse impugns the refusal of the Minister of Finance to exempt the applicant from the payment of import duty in relation to a motor car for invalid persons.

The respondent did not file an opposition as in the opinion of counsel appearing for him the competence in the matter lay with the Director of the Department of Customs. 15

*Held, annulling the sub judice decision:*

(1) In accordance with the legislative provisions on which the applicant's application for exemption from the payment of import duty was based, namely s.11 of the 20

Customs and Excise Duties Laws 1978-1981 and the Order of the Council of Ministers made under s.11(2) of the said Law and published in the Official Gazette on 13.9.79 (Not. No. 221/79) the competence to decide the application for exemption lay with the Director of the Department of Customs. In case of affirmative decision by the Director the Minister of Finance has competence to decide the extent of the relief.

(2) As the respondent Minister had no competence the sub judice decision can have no legal effect whatsoever.

*Sub judice decision annulled.  
No order as to costs.*

Cases referred to:

*Kyriacou v. The Republic* (1985) 3 C.L.R. 2414.

15 **Recourse.**

Recourse against the decision of the respondent whereby he refused to exempt applicant from payment of import duty in relation to a motor car for invalid persons.

P. *Angelides*, for the applicant.

20 S. *Georghiades*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondent Minister of Finance set out in a letter addressed on his behalf on 12.8.85 to the applicant, whereby he refused to exempt the applicant from payment of import duty in relation to a motor-car for invalid persons.

The respondent did not file an opposition. Instead a letter addressed to the Registry of this Court on his behalf was filed by the learned counsel of the Republic appearing for him, whereby this Court was informed that the respondent did not intend to oppose the application as it was the view of learned counsel appearing for him, that in view of the provisions of s. 11 of law 18/78 as amended and

Notification 221/79 published in the Official Gazette No. 1553 dated 13.9.79 the competence lay with the Director of the Department of Customs with a view to deciding whether the applicant is entitled to an exemption from import duty for a car for invalid persons and in the case of affirmative decision of the Director of Customs the Minister can then decide only the extent of the exemption in question. 5

In the letter as aforesaid it was further stated that the Minister of Finance had decided as per letter of 12.8.85, i.e. the decision communicated to the applicant, without any competence and in excess of authority. 10

Learned counsel appearing for the respondent on 13.12.1985 repeated the aforesaid contents of his letter filed with the Registry on 3.12.1985 and invited this Court to annul the aforesaid decision on the ground of lack of competence on behalf of the respondent Minister to adjudicate on the matter, submitting at the same time that the Court need not proceed to examine the case on its merits. 15

Learned counsel for applicant thereupon invited this Court to annul the decision of the respondent set out in the letter of 12.8.85 which is attached as exhibit A to the present recourse. 20

The relevant legislative provision on which the applicant's application for exemption is based, is section 11 of the Customs and Excise Duties Laws, 1978-81, and the Order of the Council of Ministers made under s. 11(2), published in the Official Gazette 1553 on 13.9.79 under Notification 221/79. 25

Having given the matter my best consideration I hold the view that the provisions of s. 11(1) of Law 18/78 (repealed and substituted by s. 2 of Law 50/85) where reference is made to the "Director", and para. (b) of the Order of the Council of Ministers under Notification 221/79 as aforesaid, the organ vested with competence to decide the application of the applicant is the "Director" of the Department of Customs. (See s. 2(2) of the Customs & Excise Duties Laws, 1978-1981 and s.2(1) of the Customs and Excise Law, 1967-1977). 30 35

Neither the Minister of Finance nor the Director-General of the said Ministry had any competence to determine the application in question. The Minister of Finance is simply empowered to decide the extent of the relief, if and when  
5 the application of the applicant is accepted by the Director of the Department of Customs.

As the respondent Minister lacked competence the sub  
10. justice decision can have no legal effect whatsoever. (Vide; Decision in case No. 414/85 of *Elias Kyriacou v. Republic* in which judgment was delivered on 22.11.85—still unreported).\*

In the result the decision of the respondent Minister set  
15 out in the letter of 12.8.85 attached to the recourse as exhibit A, is hereby declared null and devoid of any legal effect whatever.

In view of the statement made by counsel for applicant before me as to costs, there will be no order as to costs.

*Sub judice decision annulled.  
No order as to costs.*

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\* Reported in (1985) 3 C.L.R. 2414.