

1985 December 9

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

MARIOS MACHLOUZARIDES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT,

*Respondents.**(Revisional Jurisdiction Appeal No. 452).*

Administrative Law—Agreement granting an option to purchase immovable property—Deposit of such agreement with the District Lands Office under the Sale of Land (Specific Performance) Law, Cap. 232 as amended by Laws 50/70 and 96/72—Cancellation of such deposit on the ground that the agreement does not constitute a contract of sale in accordance with the provisions of Cap. 232—In the circumstances such cancellation came under the domain of Private Law, and, consequently, cannot be challenged by a recourse under Article 146 of the Constitution. 5 10

On the 25.4.79 the appellant deposited with the District Lands Office at Paphos under the provisions of the Sale of Land (Specific Performance) Law, Cap. 232 as amended by Laws 50/70 and 96/72 an agreement between him and a certain Christos Ioannides whereby the appellant had obtained an option to purchase immovable property situated at Peyia village in the District of Paphos. 15

By letter dated 2.6.79 the District Lands Officer informed the appellant that "... the said specific performance was cancelled as the document deposited ... does not constitute a contract of sale in accordance with the provisions of Cap. 232". 20

As a result applicant filed a recourse to this Court

under Article 146 of the Constitution, challenging the validity of the said cancellation. The President of the Court dismissed the said recourse* on the ground that the sub
5 *proprietary rights and as such it came within the domain*
of Private Law. Hence the present appeal.

Held, dismissing the appeal, that in the light of the principles established by the case law and on the totality
10 of the circumstances the President of this Court rightly
found that the sub judge decision came within the domain
of Private Law and that consequently it is not capable of
being the subject of a recourse under Article 146 of the
Constitution.

Note: The absence of any comment on the observations
15 made by the President of this Court* should in no way be
construed as a disagreement with the correctness of such
observations.

Appeal dismissed.
No order as to costs.

20 Cases referred to:

Platis v. The Republic (1979) 3 C.L.R. 384;

Angelidou v. The Republic (1982) 3 C.L.R. 62.

Appeal.

25 Appeal against the judgment of the President of the
Supreme Court of Cyprus (Triantafyllides, P.) given on
the 2nd March, 1985 (Revisional Jurisdiction Case No.
284/79)* whereby appellant's recourse against the decision
of the respondents to cancel the agreement deposited with
30 the District Lands Office Paphos for specific performance
was dismissed.

A. Eftychiou, for the appellant.

M. Kyprianou, Senior Counsel of the Republic with
A. Vassiliades, for the respondents.

* See *Machlouzarides v. The Republic* (1985) 3 C.L.R. 2279.

G. Triantafyllides, for the interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the learned President of this Court, by which he dismissed the recourse of the appellant on the ground that the sub judice decision challenged thereby was one regulating primarily Civil Law proprietary rights of the parties and therefore it came within the domain of Private Law and not of Public Law. Indeed he did point out, that the fact that it gave rise to a legal issue, which might attract the interest of the public, is not sufficient to bring the matter within the domain of Public Law and so being the legal position the sub judice decision could not be challenged by means of a recourse under Article 146 of the Constitution.

The facts relevant to the sole issue raised in this appeal are these. The appellant and a certain Christos Ioannides entered on the 2nd April 1979, into an agreement by virtue of which there was granted to the appellant, in consideration of an amount of money, option to purchase the immovable property belonging to the former and situated at Peyia village in the District of Paphos. On the 25th April 1979, the appellant deposited that agreement with the District Lands Office at Paphos, under the provisions of the Sale of Land (Specific Performance) Law Cap. 232 as amended by the Sale of Land (Specific Performance) (Amendment) Law 1970 (Law No. 50 of 1970) and the Sale of Land (Specific Performance) (Amendment) Law 1972 (Law No. 96 of 1972).

Later the said Ioannides questioned the validity of the deposit of the said agreement and he was allowed by the District Lands Officer at Paphos to have the said property transferred in the name of Stella Ioannidou. The District Lands Officer at Paphos acted in that way as he had taken the view that the agreement which was deposited on the 25th April 1979 was not a contract of sale within the provisions of Law Cap. 232 as amended. In fact both the appellant and the said Christos Ioannides were informed by the District Lands Officer by letter dated the 2nd June, 1979 that "on advice from the Attorney-General of the

Republic the said specific performance was cancelled as the document deposited with the District Lands Office, Paphos, on the 25th April 1979, does not constitute a contract of sale in accordance with the provisions of Cap. 232."

5 Upon receiving this communication the appellant filed his recourse in this Court and also challenged the said decision of the District Lands Officer by means of an appeal in the District Court of Paphos, made under section 80 of the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224. That appeal, however, was adjourned
10 *sine die pending the outcome of this recourse.*

There existed a consensus among counsel appearing for the parties and the interested party as well, that the sub
15 *judice decision fell within the domain of Public Law as the provisions of Cap. 232 as amended had as a primary purpose the regulation in the public interest, of the interests of purchasers of land and that according to counsel appearing for the interested party, the sub judice decision raised also the issue of whether an agreement granting an option to purchase land could be deposited under the said Law and so there arose a legal issue in the domain of Public Law, because it was of general public interest and was not*
20 *limited only to the facts of this particular case.*

The learned President invited argument on this funda-
25 *mental for this jurisdiction issue acting ex proprio motu as he was entitled to do in this respect acting on authority (Platis v. The Republic (1979) 3 C.L.R. 384 at p. 390 and Angelidou v. The Republic (1982) 3 C.L.R. 62 at p. 65, etc.) that an administrative Court is not bound by the sub-*
30 *missions of the parties even by way of consensus.*

The learned President then referred to the constant case-
law of this Court where the question of the distinction be-
tween the domain of Public Law and Private Law was
examined and the test of such distinction was laid down.
35 He quoted at some length from the cases of *HadjiKyriacou v. HadjiApostolou* 3 R.S.C.C. 89, at pp. 90-91; *Valana v. The Republic* 3 R.S.C.C. 91 at pp. 93-94; *Asproftas v. The Republic* (1973) 3 C.L.R. 366; *The Republic v. M.D.M. Estate Developments Limited* (1982) 3 C.L.R. 642, fol-

lowed subsequently in the cases of *Kalisperas Estate Company Ltd., v. Minister of Interior* (1982) 3 C.L.R. 509; *Koudounaris Food Products Ltd. v. The Republic* (1982) 3 C.L.R. 530; and finally to the more recent one of *Antoniou v. The Republic* (1984) 3 C.L.R. 623 where the demarcation line between acts of the administration in the domain of public and private Law is properly depicted by Pikis, J., at pp. 626-627 and which we fully endorse and consider it as equally applicable to the circumstances of the case.

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He said:

“The ascertainment of the rights of citizens to immovable property is primarily of interest to the parties immediately affected thereby. The public has but a remote interest in the matter.

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The Supreme Court was alive to the conceptual difficulties inherent in drawing the dividing line between acts of administration in the domain of public law on the one hand and in the domain of private law on the other. In one sense the public is interested in every decision of the administration. Underlying the above decision is the appreciation by the Court that the degree of interest on the part of the public in actions of the administration varies in proportion to the extent to which such decisions are likely to affect the public or sections of it. The Supreme Constitutional Court adopted a practical test to chart the line of demarcation between decisions in the domain of public and private law. It revolves round the primary object of the act or decision. If the decision is primarily aimed to promote public purpose it falls in the domain of public law; otherwise in that of private law. Naturally the public has a livelier interest in public purposes.”

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Applying the principles stated in the Case Law referred to above, to the particular circumstances of the case, the learned President then reached the conclusion to which al-

ready reference has been made at the commencement of this judgment.

5 On the totality of the circumstances before us and in the light of the clearly stated principles of Law, we have no difficulty in concluding that the case has rightly been found by the learned President to fall within the domain of Private Law and not of Public Law and that consequently the decision reached in the circumstances is not capable of being the subject of a recourse under Article 146 of
10 the Constitution.

Before concluding, however, we would like to say that the absence of any comment by us on the observations made by the learned President regarding the nature and the legal character of the document that has to be lodged with the
15 District Lands Office, in order to qualify under the provisions of Cap. 232 in no way should be construed as a disagreement on our part with the correctness of those observations.

20 For all the above reasons the appeal is dismissed but in the circumstances there will be no order as to costs.

Appeal dismissed.

No order as to costs.