

1985 November 7

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS SHAKALLIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF CUSTOMS AUTHORITY,

Respondent.

(Case No. 138/85).

The Customs and Excise Duties Law 18/78—Sub-heading 19 of item 01 of the Fourth Schedule and Order 188/82 of the Council of Ministers—Exemption from import duty on Motor Vehicles imported by Cypriots—The words “permanent settlement abroad” in the said Order—Interpretation of—Context does not require to give to the said words any meaning other than their natural meaning—Applicant, a Cypriot born abroad, his parents being permanently settled in the country he was born—His application, made after he came to Cyprus for permanent settlement, for the importation of a car duty free, correctly turned down—Because the word “settle” has the meaning of voluntary and intentional action to settle and such capacity cannot be attributed to a child which is considered as ordinarily resident in his parents’ matrimonial home.

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Words and Phrases: “Permanent settlement abroad” in Order 188/82 of the Council of Ministers.

The applicant is a Cypriot National born in Zaire in 1950, his parents being permanent residents in that country. In 1960 he came in Cyprus and attended Terra-Santa School Nicosia as a boarder until 1970. In March 1970 he went to England for studies, having obtained

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exemption from military service on the ground that he was permanently residing outside Cyprus.

5 In January 1980 the applicant came to Cyprus for holidays, when he met his present wife with whom he went back to Zaire where he stayed until the 14.1.83 when he returned to Cyprus. On the 18.1.83 he joined the National Guard in compliance with the law once he had decided to settle permanently in Cyprus.

10 On the 11.5.83 the applicant submitted an application for the duty free importation of his car (which he had been allowed earlier to import duty free as a temporary visitor) as a repatriated Cypriot by virtue of sub-heading 19 of item 01 of the Fourth Schedule to the Customs and Excise Duty Law 18/78 and Order 188/82*.

15 The said application was rejected on the ground that the applicant had never been a permanent resident of Cyprus before his alleged emigration abroad and, therefore, he did not return for settlement in Cyprus after emigration herefrom.

20 Hence the present recourse, the outcome of which depends on the interpretation to be given to the said Order 188/82. The respondent's position is that the Order applies only to Cypriots who were born in Cyprus emigrated abroad and returned in circumstances set out in the Order.
25 The applicant's position was that the Order applies to Cypriots who after "residence" abroad for a continuous period of ten years return and settle permanently in the Republic.

30 *Held, dismissing the recourse*, that as it was held in *Matsas v The Republic* (1985) 3 C.L.R. 54 the words "permanent settlement abroad" in Order 188/82 are common words and there is no context requiring that they should be given other than their natural meaning in accordance with their accepted usage, that they have the notion of emigration for the purpose of working. It appears
35 that the differentiation made by the respondent between Cypriots, who leave Cyprus and adopt voluntarily and for settled purposes as part of their regular order of life

* This Order is quoted at p. 2574.

another country and those who could not do so because they were born in that country from parents, who had done so much earlier, is a legitimate and reasonable one.

Recourse dismissed.

No order as to costs.

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Cases referred to:

Matsas v. The Republic (1985) 3 C.L.R. 54;

Regina v. Barnett L.B.C. Ex p. Shah [1983] 2 W.L.R. 16

Recourse.

Recourse against the decision of the respondent whereby applicant's application for the duty free importation of his motor vehicle PE 269 as a repatriated Cypriot was turned down. 10

A. Petoufas, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent. 15

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicant is a Cypriot National born in Zaire in 1950, his parents being permanent residents in that country. In 1960 he returned with his mother to Cyprus and attended the Terra-Santa School Nicosia as a boarder until 1970. His mother returned to Zaire in 1962 and he remained in Cyprus under the guardianship of an aunt of his. In March, 1970, the applicant went to England for studies having obtained exemption from liability for service in the National Guard on the ground that he was permanently residing outside Cyprus (Appendix II). It was obvious that he claimed and it was accordingly considered by the authorities that his permanent residence was that of his parents, his stay in Cyprus being a temporary one for the purpose of his education. 20
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He came to Cyprus for holidays on the 3rd January 1980, when he met his present wife to whom he was married and with whom he went back to Zaire where he stayed until 35

the 14th January 1983 when he returned to Cyprus.

On the 18th January, 1983 he joined the National Guard in compliance with the law once he had decided to settle permanently in Cyprus.

5 The applicant on the 15th January 1983, cleared from bonded warehouse his new car under Registration No. PE 269 which he was allowed to import free of import duty as a temporary visitor by virtue of the Temporary Importation (Private Vehicles and Aircraft) Regulations of 1968,
10 issued under the provisions of section 35 of the Customs and Excise Law, 1967 (Law No. 82 of 1967).

This decision was issued once the applicant made a declaration in the prescribed Customs' Form C 104, under No. B 77856 dated 15th March, 1983 (Appendix IV), as
15 follows:

"I declare that I am temporarily importing the goods specified for the purpose of using them for pleasure at Cyprus and I undertake to comply with the conditions laid down in the Laws and Regulations
20 of the Republic ..."

He was originally allowed to so use his vehicle until the 14th June 1983 when he had either to re-export it or make arrangements for it in one of the ways specified by Law as set out at the back of Form C 104, (Appendix V),
25 which was either clearance for home use by payment of the customs' duties or storing in an approved bonded warehouse.

On the 11th May, 1983, the applicant submitted an application for the duty free importation of his said vehicle as a repatriated Cypriot by virtue of sub-heading 19 of Item 01 of the Fourth Schedule to the Customs and Excise Duties Law 1978 (Law No. 18 of 1978) and Order No. 188/82. The date of his resettlement in Cyprus was given as the 14th January 1983, the date he returned.

35 As pointed out in the opposition that although there was some contradiction between the two statements of the applicant, yet it was considered expedient that he be given extension for the use of the motor-car in question without the payment of import duty in order that the Custom's Au-

thorities might examine his application for relief.

Order No. 188/82 published in the Official Gazette of the Republic No. 1783 dated 11th June, 1982 Supplement III, (1) page 885, reads as follows:

«Μηχανοκίνητα οχήματα των κλάσεων 87.02.11 και 87.02.19 εισαγόμενα υπό Κυπρίων οι οποίοι κατόπι μόνιμου εγκαταστάσεως εις το εξωτερικόν δια συνεχή περίοδον τουλάχιστον 10 ετών επανέρχονται και εγκαθίστανται μόνιμως εν τη Δημοκρατία νοουμένου ότι η εισαγωγή γίνεται εντός ευλόγου χρονικού διαστήματος από της αφίξεως των κατά την κρίσιν του Διευθυντού.» 5 10

In English it reads:-

“Vehicles of the categories 87.02.11 and 87.02.19 imported by Cypriots who after permanent settlement abroad for a continuous period of at least ten years, return and settle permanently in the Republic provided that the importation is made within a reasonable time since their arrival according to the judgment of the director. The relief from import duty covers only one vehicle for every family.” 15 20

It is clear from this Order that a person seeking such a relief has to satisfy the respondent Director of Customs that he went and permanently settled abroad for at least ten years continuously and that he returned to settle permanently in Cyprus. 25

The application of the applicant was turned down as shown in the letter of the respondent, dated 17th December, 1984, (Appendix III) which in so far as material reads as follows: 30

“I refer to your application dated 11th May, 1983, for relief on the above vehicle under sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law and regret to inform you that it was not found possible to accede to your request for the reason stated below:- 35

You were never a permanent resident of Cyprus before your alleged emigration abroad and, therefore,

you have not returned for settlement in Cyprus after emigration herefrom."

5 As rightly pointed out by counsel for the applicant to which counsel for the respondent agreed, the case turns on the correct interpretation and application of Order No. 188/82 which as seen from the sub judge decision it has been taken by the respondent that it applies only to Cypriots who were born in Cyprus, emigrated abroad and returned in circumstances as set out in the Order.

10 The argument advanced in support of this proposition was that Cypriots who were born abroad do not come within the ambit of the said provisions, not only because it cannot be said that they returned for permanent settle-
15 ment in Cyprus, but because it cannot also be said that these Cypriots by nationality "settle" permanently abroad by the mere fact of their birth there. It is significant in this respect that the term "settlement" and not "residence" is used.

20 The word "settle" has the meaning of voluntary and intentional action to settle and such capacity cannot be attributed to a child which is considered as ordinarily resident in his parents' matrimonial home (See Dicey and Morris The Conflict of Laws 10th Ed. Vol. 1, p. 144.)

25 It was argued that for the applicant to come within the said Order same should provide for Cypriots who after "residence" abroad for a continuous period of ten years return and settle permanently in the Republic. In other words the word "residence" should replace the word "settlement" and omit the word "return". It appears that this interpretation of
30 the respondent is contained in an internal circular which is quoted in the address of counsel for the applicant and which reads:-

35 "3 (v) 'returns' must be taken to refer to Cypriots who having emigrated abroad return with the intention of taking up permanent residence in Cyprus. This excludes Cypriots born outside Cyprus."

Counsel for the applicant has urged that there should not be given such narrow and literary construction to the word "return", and that the legislator by the use of the

word "return" wanted actually to use the word "repatriated", hence the rule of literary interpretation, the one which could not offer a solution to the issue before the Court.

In the case of *Matsas v. The Republic* (1985) 3 C.L.R. p. 54, the said order came under judicial examination but in respect of different facts. 5

As regards the words "permanent settlement abroad" to be found in the said order, it was held that they are common words and there is no context requiring that they should be given other than their natural meaning in accordance with their accepted usage, that they have the notion of immigration for the purpose of working and they exclude travel abroad for the purpose of studies. 10

It was further held that the term "permanent settlement" carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence. 15

As stated by me in the said judgment at p. 60, "In statutory enactments as the one under consideration the safest course is to take the words used therein in their natural and ordinary meaning unless the framework of the enactment or its legal context in which they are used requires a different meaning which is not the present case." I see no reason why I should not abide by it. 20 25

Reference is made therein to a passage of Lord Scarman's judgment at p. 26-27 in *Regina v. Barnet L.B.C. Ex. p. Shah* [1983] 2 W.L.R. 16, which reads:-

"I unhesitatingly subscribe to the view that 'ordinary resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration." 30

A significant part of the aforesaid passage is the expression "which he has adopted voluntarily and for settled purposes as part of the regular order of his life". It seems that the respondent differentiates by his decision between 35

those Cypriots that leave Cyprus and adopt voluntarily and for settled purposes as part of their regular order of life another country and those that could not do so because they were born in that country from parents, who had done so much earlier.

This appears to be a legitimate and reasonable differentiation though it may appear rather odd because had on this construction the parents of the applicant returned and settled permanently in the Republic, they would be entitled to customs' relief on their vehicle, whereas the applicant who was born of such parents is considered not to be so entitled. There may be a reason for it which is not for me to question.

For all the above reasons I have come to the conclusion that the construction placed on the Order in question and its application to the facts of the present case is correct and consequently this recourse has to and is hereby dismissed.

In the circumstances, however, there will be no order as to costs.

Recourse dismissed.

No order as to costs.