

1985 March 23

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGE MAVRANTONIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF COMMUNICATIONS  
AND WORKS,
2. THE DIRECTOR OF INLAND TRANSPORT  
DEPARTMENT,
3. THE REGISTRAR OF MOTOR VEHICLES,

*Respondents.*

(Case No. 25/81).

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*Motor Vehicles—Registration—Unladen weight—Amendment—  
Because of bona fide mistake—Regulation 69(a) of the  
Motor Vehicles Regulations 1959-1970—Amendment of  
records relating to unladen weight of applicant's car with-  
out verifying such actual unladen weight but by relying on  
unladen weight of a car of the same model—Such course  
not a bona fide mistake but a breach of statutory duty  
amounting to negligence— Said regulation 69(a) cannot be  
invoked.*

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The applicant was the owner of a 2500/2800 model of  
a BMW car which was imported brand new and was first  
registered in Cyprus on the 27th March, 1971 under re-  
gulations 7 and 8 of the Motor Vehicles (Regulations)  
1959 to 1970, which were then in force. On the certificate  
of registration, issued at that time, it appeared that the un-  
laden weight of the aforesaid vehicle had been entered as  
being 25 cwt. and, accordingly, the applicant renewed his an-  
nual motor car licence from 1971 up to the end of 1980 on  
the basis that the unladen weight of his car was 25 cwt.  
and paid the fees charged for motor cars in the 20 cwt—

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25 cwt. category. On the 1st December, 1980, the respondents informed the applicant that in accordance with the provisions of regulation 69 of the Motor Vehicles and Road Traffic Regulations, 1973 and thereafter, the unladen weight of his vehicle has been amended from 25  
5 cwt to 26 cwt. Hence this recourse.

The car of the applicant was not weighed either on the day of its registration or at any time thereafter by the respondent Authority but the latter weighed a motor car  
10 of the model of applicant's car when it was first imported in Cyprus and its unladen weight was found to be 25 cwt. Subsequently when all other cars of this model, including that of the applicant, were imported were registered as 25 cwt. without actually weighing them. In the  
15 beginning of 1979, when one of these imported vehicles, which was written off the register, was presented again for registration, it was weighed and was found out that its unladen weight was 26 cwt. instead of 25, as recorded in its original certificate of registration. This fact led the  
20 respondents to take the decision complained of.

Counsel for the applicant contended that the decision complained of was outside the ambit of regulation 69(a)\* of the Motor Vehicles and Road Traffic Regulations, 1973, under which regulation it was purported to have been  
25 taken.

*Held*, that since applicant's car was never weighed its exact weight is unknown; that the fact that a car of the same model was weighed by the respondents in 1979, when it was reregistered, is neither here nor there, as  
30 the possibility of many changes on this car might have been carried out and might have changed its original weight, cannot be excluded; that the Registrar of Motor Vehicles in complete disregard of the prescribed procedure laid down by regulation 8(1) of the Motor Vehicles Regulations 1959 to 1970, which provided that the Registrar  
35 before registering any motor vehicle shall verify all the particulars contained in the application for registration of a motor vehicle, and the unladen weight of a motor vehicle is a material particular contained in such applica-

\* Regulation 69(a) is quoted at p. 556 post.

tion, registered on 27th March, 1971, the car of the applicant without verifying as to what its actual unladen weight was; that this cannot be considered as being a bona fide mistake on his part but a breach of statutory duty which, in the last analysis, amounts to negligence and so he cannot invoke the provisions of regulation 69(a); accordingly the sub judge decision must be annulled.

*Sub judge decision  
annulled.*

**Recourse.**

Recourse against the decision of the respondents to alter the registered weight of applicant's motor-car under registration No. F.E. 300.

*A. P. Anastasiades with C. Mavrantonis,  
for the applicant.*

*G. Erotokritou (Mrs.), Counsel for the Republic,  
for the respondents.*

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicant in the present recourse applies, as stated therein, for the following relief:

(a) A declaration of the Court that the decision of the respondents of the 1st December, 1980, to alter, and the ensuing alteration of the registered weight of the applicant's motor car (Reg. No. FE 300) as shown in the Record Book and as it was recorded on the certificate of registration issued on the 27th March, 1971, from 25 cwt. to 26 cwt. is null and void and of no effect whatsoever, and

(b) An Order ordering the respondents and/or either of them to rectify and/or amend the alterations made on the entries in the Record Book and Car Certificate of vehicle FE 300 as issued on the 22nd March, 1971, and to re-enter the weight as being 25 cwt. as originally registered.

The relevant facts of this recourse are as follows:

The applicant is the owner of a 2500/2800 model of a BMW motor car Reg. No. FE 300 which was imported

brand new and was first registered in Cyprus on the 27th March, 1971 under regulations 7 and 8 of the Motor Vehicles (Regulations) 1959 to 1970, which were then in force. On the certificate of registration, issued at that time, it appeared that the unladen weight of the aforesaid vehicle had been entered as being 25 cwt. and, accordingly, the applicant renewed his annual motor car licence from 1971 up to the end of 1980 on the basis that the unladen weight of his car was 25 cwt. and paid the fees charged for motor cars in the 20 cwt. - 25 cwt. category.

It is not in dispute that during the above period no changes were made to the said vehicle such as change of engine, body or chassis.

On the 1st December, 1980, the respondents informed the applicant as follows:-

"I wish to inform you that in accordance with the provisions of Regulation 69 of the Motor Vehicles and Road Traffic Regulations, 1973 and thereafter, the unladen weight of your vehicle under registration No. FE 300 has been amended from 25 cwt. to 26 cwt.

Therefore, you are requested to present yourself at the Motor Car Registry bringing with you the certificate of registration of your aforesaid vehicle for the necessary amendment."

It should be noted here that the Motor Vehicles Regulations 1959 to 1970 were on the 13th July, 1973, revoked and replaced by the Motor Vehicles and Road Traffic Regulations, 1973.

The applicant wrote to the respondents on the 9th December, 1980, objecting to the said amendment and had two meetings with them, one on the 18th December, 1980 and one on the 30th December, 1980, and wrote to them again on the 31st December, 1980, a second letter of protest.

Finally, as it was made clear to him that the annual licence of his motor car could not be renewed unless he presented the certificate of registration for the proposed

amendment, he complied with this requirement and paid the additional charges on the basis that the weight of the vehicle being 26 cwt. for the renewal of the said licence, under protest.

Consequently, on the 23rd January, 1981, he filed the present recourse. 5

The main ground of Law on which this recourse is based is that the decision complained of is outside the ambit of regulation 69(a) of the Motor Vehicles and Road Traffic Regulations, 1973, under which regulation it is purported to have been taken. 10

This regulation reads as follows:-

“69. The Registrar shall have power to amend the records in the registers kept by him in respect of the unladen weight of a motor vehicle in the following cases: 15

(a) when a bona fide mistake has been made;

(b) when authorised changes have been made to the vehicle (such as change of engine, body or chassis)”. 20

It was argued on behalf of the applicant that in accordance with regulation 69(a) the Registrar of Motor Vehicles may alter entries in the Register of Motor Vehicles in cases of a bona fide mistake, but in the present case no such bona fide mistake exists. From 1969 to 1976, when production of the 2500/2800 model of the BMW motor car was discontinued, about one hundred and fifty (150) BMW cars, of this particular model, were registered as being of 25 cwt. unladen weight. The applicant's vehicle was one of them and was registered in 1971. In 1980, nine years later, the respondents purported to alter arbitrarily the unladen weight of the aforesaid vehicles on the basis of a bona fide mistake, claiming, inter alia, that the weighing and inspection of vehicles prior to the 1st February, 1977, was carried out by police officers, whereas after that date it was undertaken by qualified personnel. This, it was argued, could not be considered as a bona fide mistake. Regulation 69 gives only a discretionary power of a very 25 30 35

limited scope which does not include an unfettered discretion to alter the registered weight of vehicles. Thus, the respondents acted in excess of power. Counsel for the respondents, on the other hand, ventured to justify the respondents position by claiming that the same type of mistake had occurred in respect of vehicles of other makes, where the unladen weight of such vehicles was originally recorded as higher than the real one. This, he argued, strengthens the view that the mistake in the case in hand was a bona fide one.

What actually happened in this case, according to the opposition filed on behalf of the respondent authority, a motor car of this model when it was first imported in Cyprus it was weighed unladen and was registered as 25 cwt. Subsequently, all the other cars of this model, including that of the applicant, when imported were registered as their unladen weight being 25 cwt. without actually weighing them.

In the beginning of 1979, when one of these imported vehicles, which was written off the register, was presented again for registration, it was weighed and was found out that its unladen weight was 26 cwt. instead of 25, as recorded in its original certificate of registration. This fact led the respondents to take the decision complained of.

It is clear from the above that the car of the applicant was never weighed either on the day of its registration or at any time thereafter by the respondent authority. Consequently, its exact weight is unknown. The fact that a car of the same model was weighed by the respondents in 1979, when it was reregistered, is neither here nor there, as the possibility of many changes on this car might have been carried out and might have changed its original weight, cannot be excluded. The Registrar of Motor Vehicles in complete disregard of the prescribed procedure laid down by regulation 8(1) of the Motor Vehicles Regulations 1959 to 1970, which provided that the Registrar before registering any motor vehicle shall verify all the particulars contained in the application for registration of a motor vehicle, and the unladen weight of a motor vehicle is a material particular contained in such application, registered

on 27th March, 1971, the car of the applicant without verifying as to what its actual unladen weight was.

To my mind, this cannot be considered as being a bona fide mistake on his part but a breach of statutory duty which, in the last analysis, amounts to negligence and so he cannot invoke the provisions of regulation 69(a). 5

Having decided that the recourse must succeed on the above ground, I consider it unnecessary to deal with the remaining grounds of Law on which the recourse is based.

This recourse, therefore, succeeds and the sub judice decision is hereby annulled. 10

The respondents to pay to the applicant £25.- against his costs.

*Sub judice decision  
annulled. Order for costs  
as above.* 15