

1986 September 16

{TRIANTAFYLIDIS, P., MALACHTOS, SAVVIDES.  
STYLIANIDES, KOURRIS, JJ.}

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE TENDER BOARD,  
2. THE ACCOUNTANT GENERAL,

*Appellants,*

v.

K.M.C. MOTORS LIMITED,

*Respondents.*

(Revisional Jurisdiction Appeal No. 495).

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*Appeal— Revisional Jurisdiction Appeal— Amendment of—  
Notice of—Principles applicable.*

*Legitimate interest—One of the matters that can be inquired  
into by the Court ex proprio motu.*

5 Counsel for appellants applied for leave to amend the notice of appeal by introducing a new ground of law alleging lack of legitimate interest on behalf of the respondents to challenge by the recourse the sub judice decision of appellant 1.

10 Counsel for the respondents opposed the application on the following grounds, namely that a long time has elapsed since the filing of the appeal (17.5.85) and the application for amendment (10.6.86), that no justification was given for waiting so long, and that the question  
15 sought to be raised had been raised at the trial and, therefore, it was within the knowledge of the appellant, who had ample time to raise it earlier.

*Held*, allowing the application: (1) It is well settled  
20 that in administrative recourses the Court can go ex proprio motu into certain matters and, in particular, matters touching the existence of a legitimate interest.

(2) Bearing in mind the aforesaid principle and the fact that the question of legitimate interest had been raised before the first instance Court, but it was left undecided, the application for amendment would be granted in the interests of justice.

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*Application granted.*  
*No order as to costs.*

Cases referred to:

- Nissis (No. 2) v. The Republic* (1967) 3 C.L.R. 671;  
*Papadopoulou v. Polycarpou* (1968) 1 C.L.R. 352; 10  
*Michael v. Kyriakou and Others* (1968) 1 C.L.R. 405;  
*Vassiades v. Michaelides Bros* (1973) 1 C.L.R. 80;  
*Attorney-General (No. 1) v. Adamsa Ltd.* (1975) 1  
C.L.R. 8;  
*St. Nicolas Shipping Co. Ltd. v. Nissho-Iwai Co. Ltd.* 15  
(1984) 1 C.L.R. 604;  
*Lambrakis v. The Republic* (1970) 3 C.L.R. 72;  
*Constantinou and Others v. The Republic* (1974) 3  
C.L.R. 416.

**Application.** 20

Application by counsel for appellants for leave to amend the notice of appeal by introducing a new ground of law.

*M. Photiou*, for the appellants.

*A. Constantinou* for *L. Papaphilippou*, for the  
respondents. 25

*Cur. adv. vult.*

TRIANAFYLLIDES P.: The decision of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: In the course of the hearing of the present appeal counsel for appellants applied for leave to amend his 30

notice of appeal by introducing a new ground of law alleging that the respondents had no legitimate interest to challenge by this recourse the sub judice decision of appellant 1.

5 Counsel for appellants contended that the new ground touches the jurisdiction of the court in that the act complained of could not have been challenged by a recourse. The question of lack of legitimate interest by the respondents, counsel added, was raised by him before the  
10 trial court but it was left undecided. Counsel finally submitted that when this court is dealing with a revisional appeal it is seized of the case de novo and any matters which were raised before the trial court and not decided can be raised before this court which has the power to  
15 adjudicate ex proprio motu even on matters not raised by the parties but their adjudication is considered essential by the court.

Counsel for the respondents, successful applicants before the first instance Court, opposed the application and  
20 argued that -

(a) very long time has elapsed since the filing of the appeal (17.5.1985) and the application for amendment (10.6.86);

(b) no justification is given for having waited till this  
25 very late stage to make the application;

(c) the question sought to be introduced was raised at the trial and, therefore, it was within the knowledge of the appellants and they had ample time to raise it earlier.

Counsel finally submitted that the discretionary power  
30 of the Court to allow amendments of notices of appeal should be sparingly exercised and that in the present case bearing in mind the fact that the hearing of the appeal has already commenced, the application should be dismissed.

The question of amendment of a notice of appeal and  
35 the principles underlying the exercise of the Court's discretion to allow an amendment, have been considered by the Supreme Court in a series of cases.

In *Nissis (No. 2) v. The Republic* (1967) 3 C.L.R. 671. The Full Bench held at p. 674 as follows:

“Under rule 2 of the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964, the provisions of Order 35 of the Civil Procedure Rules—governing civil appeals—are applicable, *mutatis mutandis*, to an appeal such as the present one.” 5

The Full Bench in the above case, after expounding on the proper approach of an appellate Court to a ground raised for the first time on appeal and after making reference to the English case law and the principles emanating from the decisions of the Greek Council of State, refused to allow the appellant to amend his notice of appeal and raise on appeal a ground not raised before the trial Court. 10 15

In *Papadopoulou v. Polykarpou* (1968) 1 C.L.R. 352 at pp. 359, 360, it was held that:

“According to the rule on which the application for amendment is based, the notice of appeal may be amended at any time as the Court of Appeal may think fit. Generally speaking, amendment of the notice at such late stage, tends to disturb the proceedings and embarrass the other side. They should be discouraged; and should be very sparingly allowed.” 20

In *Michael v. Kyriakou & Others*, 1968 1 C.L.R. 405 at p. 406, the following observations are reported: 25

“This is, indeed, a most regrettable state of affairs. Time and time again this Court has stressed the obvious necessity for the grounds of appeal to be properly drafted (see *Hji-Costa (No. 2) v. The Republic* (1965) 2 C.L.R. 95; *Papadonoullou v. Polykarpou*, reported in this Vol. at p. 352 ante;) and that applications for leave to amend the grounds of appeal should be filed well in advance (see *S.O.R.E.L. Ltd. v. Servos* (reported in this Vol. at p. 123 ante).” 30 35

In *Vassiades v. Michaelides Bros.* (1973) 1 C.L.R. p. 80 at p. 81, we read:

5 "It is quite clear that by the proposed new ground the appellant is seeking, at this very late stage, during the hearing of the appeal, to extend considerably the basis on which he challenges the judgment appealed from. In the light of the particular circumstances of this case we are not prepared to exercise our discretion in favour of the appellant; and, therefore, this application is dismissed."

10 *In Attorney-General of the Republic (No. 1) v. Adamsa Ltd. (1975) 1 C.L.R. 8 at p. 10, it is stated:*

15 "Under rule 4 of Order 35 of the Civil Procedure Rules this Court has an unfettered discretion as regards granting or refusing leave for the amendment of the notice of appeal at any stage; it is not, however, to be assumed that leave to amend will be granted as a matter of course in every case where it is applied for; because if that was so then there would be no need to exercise the discretion in question; in each case such discretion has to be exercised judicially."

20 The principles applicable in cases of an application for amendment of the grounds of appeal have been recently expounded by the Full Bench in the case of *St. Nicolas Shipping Co. Ltd. v. Nissho-Iwai Co. Ltd. (1984) 1 C.L.R. 604*, in which the Full Bench after reviewing the authorities on the matter, allowed the amendment of the notice of appeal by the addition of certain of the grounds only and refused to allow the amendment of other grounds because, as stated therein - "by deciding otherwise, we would have at this very late stage allowed appellants to extend and alter considerably the basis on which the judgment appealed from is challenged."

30 It is, however, a well settled principle that in administrative recourses the Court acting under Article 146 of the Constitution can go into certain matters *ex proprio motu*, and, in particular, matters touching the existence of a legitimate interest. Thus, in *Lambrakis v. The Republic (1970) 3 C.L.R. 72 at pp. 73, 74*, it was held that:

"Let it be made clear, however, that what is primarily before this Court, for examination as to its validity,

is the decision which is the subject-matter of the recourse. The parties to the recourse are of a secondary importance, in the sense that they were only heard in support or against the validity of its subject-matter.

In examining such validity this Court, acting under Article 146 of the Constitution, can go into certain matters, *ex officio*, and it can take cognizance of other matters only after they have been raised and established to its satisfaction by anyone of the parties.”

In *Constantinidou and Others v. The Republic* (1974) 3 C.L.R. 416 at p. 418, it reads:

“..... litigation under Article 146 of the Constitution is a matter of public law and the presence of an existing legitimate interest has to be inquired into by an administrative Court even *ex proprio motu*.”

In the circumstances of the present case and bearing in mind - (a) the fact that the question of legitimate interest was raised before the first instance Court but it was not decided, and (b) the principle that the presence of an existing legitimate interest is a matter which may be inquired into by an administrative Court even *ex proprio motu*, we have decided that in the interests of justice we should allow the application and we shall afford the opportunity to counsel on both sides to advance their arguments on this issue.

Bearing in mind the fact that the application for amendment has been contested and it had to be heard, we find that it is proper to make no order for costs for this application.

*Application granted.  
No order as to costs.*