

1986 December 23

[LORIS. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTONIS KOURTELLAS,

Applicant

v.

THE MINISTER OF FINANCE, THROUGH
THE CUSTOMS AUTHORITY,

Respondent

(Case No. 317/8)

*Customs and Excise Duties—Motor Vehicles, importation
by Cypriots—Exemption from import duty—Order 18.
82 of the Council of Ministers—“Permanent settlement
abroad—Not synonymous to residence—It imports notice
of real home and indicates the quality rather than the
length of residence.*

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During the period August, 1971 to August 1975 the applicant, a Cypriot born in Cyprus in 1968, worked in various countries as a Mechanical Plant Erector with several construction companies for periods ranging from 3-8 months per each year, returning at intervals in Cyprus. During his return to Cyprus in July, 1974 he was called up and served with the National Guard up to August-September, 1974.

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In April, 1975 he got married in Cyprus, and, together with his wife, went to Libya in September, 1975 working as a mechanical plant erector with a Libyan - Italian company, until February, 1984, when he returned to Cyprus with his family to “stay for good.”

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On 16.3.84 he submitted an application as a repatriated Cypriot for exemption from import duty in respect of his

imported saloon car. The application was turned down on the ground that the applicant had not completed 10 years permanent and continuous residence abroad. Hence the present recourse.

Held, dismissing the recourse: (1) "Permanent settlement" in Order 188/82 is not synonymous to residence. It indicates a quality of residence rather than its length. It carries with it the notion of a real or permanent home, (*Matsas v. The Republic* (1985) 3 C.L.R. 54 and *Michael v. The Republic* (1986) 3 C.L.R. 2067 adopted). 5 10

(2) During the period 1971-1975 the applicant worked in five different countries. It cannot be maintained that he had an intention to settle permanently in such countries. He was simply working there and in consequence he had to reside in those countries so long as his work necessitated such residence. Moreover, during that period he returned to Cyprus for more than 5 or 6 times. 15

(3) In the light of the above the sub judice decision was reasonably open to the respondent.

Recourse dismissed. 20
No order as to costs.

Cases referred to:

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

Michael v. The Republic (1986) 3 C.L.R. 2067.

Recourse. 25

Recourse against the decision of the respondent whereby applicant's application for exemption from import duty, as a repatriated Cypriot, of his saloon car was turned down.

P. Angelides, for the applicant. 30

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 impugnes the decision of the Director of Customs dated 23.1.85 (vide Appendix 5 attached to the opposition) whereby his application dated 16.3.84 for exemption from import duty, as a repatriated Cypriot, of his saloon car under Regn. No. NN 262, was turned down.

The salient facts of this case are very briefly as follows:

The applicant, a Cypriot born in 1948 at Kaimakli, Nicosia District, worked as a Mechanical Plant Erector with several construction companies, including J. & P. Ltd. of Cyprus, in various places outside Cyprus including Dubai, Libya, Muscat, Oman and Jeda in Saudi Arabia, during the period August, 1971 to August 1975.

The applicant who was single, during the aforementioned period, worked in the various countries aforesaid for periods ranging from 3 -8 months, returning at intervals to Cyprus.

As the applicant stated on oath before me, during his return to Cyprus in July, 1984, he was called up and served with the National Guard up to August - September, 1974; when demobilized he went to work at Dubai.

In April, 1975, the applicant got married in Cyprus and together with his wife, namely Anastassia, went to Benghazi—Libya in September where he was working as a mechanical plant erector with the National Construction Co. Ltd., (A Libyan—Italian company); the applicant continued so working in Libya up to February, 1984 when he returned to Cyprus with his family, consisting of his wife and four minor children, intending to “establish his own business in Cyprus and stay for good.” (Vide his letter dated 20.3.84 addressed to the respondent—Appendix 2 attached to the opposition).

On 16th March, 1984, the applicant submitted to the Director of Customs and Excise an application for exemption from import duty, as a repatriated Cypriot, in respect of his imported saloon car under reg. No. NN 262.

The respondent, after considering the aforesaid appli-

cation of the applicant (appendix 1 attached to the opposition), and holding an inquiry on the matter, addressed a letter to the applicant dated 23.1.85 (appendix 5 attached to the opposition) communicating thereby to him the sub judice decision, whereby applicant's said application was turned down on the ground that the applicant had not completed 10 years permanent and continuous residence abroad. 5

Hence the present recourse.

The relevant Order of the Council of Ministers on which the applicant based his aforesaid application for exemption from import duty in respect of his aforesaid vehicle as a repatriated Cypriot, was published in the Official Gazette of the Republic on 11.6.82 under No. 188/82 (vide C.G. 1783 of 11.6.82 supplement No. 3 No. 188 at p. 885). The material part thereof reads as follows: 10 15

«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. 20 25

Νοείται περαιτέρω

Η απαλλαγή καλύπτει μόνον ένα όχημα δι' εκάστην οικογένειαν».

(English Translation).

“Motor vehicles of categories 87.02.11 and 87.02.19 imported by Cypriots who having permanently settled abroad for a continuous period of at least 10 years, return and settle permanently in the Republic, provided that the importation is made within a reasonable time from their arrival at the discretion of the Director: 30 35

Provided further

The relief covers only one vehicle for each family.”

5 It is clear from the unequivocal wording of the Order set out above, that same covers only motor vehicles of the categories therein mentioned imported by Cypriots who:

“(i) having permanently settled abroad for a continuous period of at least 10 years,

10 (ii) return and settle permanently in the Republic...”,

provided that the importation of the vehicle in question is made within a reasonable time from their arrival, at the discretion of the Director.

15 “Permanent settlement” envisaged by the aforesaid Order of the Council of Ministers received judicial interpretation in the following cases inter alios:

In *Matsas v. Republic* (1985) 3 C.L.R. 54, where at p. 61 A. Loizou J. stated the following:

20 “To my mind permanent settlement carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence.”

In *Philippos Michael v. The Republic* (case No. 552/84—judgment delivered on 21.11.1986—not yet reported*)
25 Stylianides J. stated the following:

30 “‘Permanent establishment’ is not synonymous to ‘residence’. Residence alone is not sufficient. Permanent establishment indicates a quality of residence rather than its length. The duration of the residence, i.e. regular physical presence in a place, is only one of a number of relevant factors. An element of intention to reside and establish is required...”

I am in full agreement with the opinions expressed by my learned brethren in the aforesaid cases, to the effect

* Reported in (1987) 3 C.L.R. 2067

that an element of intention to settle permanently is required.

The respondent in the case under consideration turned down the request of the applicant for the importation of a duty-free car on the ground that "the applicant had not completed 10 years permanent and continuous residence abroad."

Having given to the matter my best consideration I have come to the conclusion that the sub-judice decision was reasonably open to the respondent for the following reasons:

It is abundantly clear from the material before me (Appendices 1, 2 and 4 attached to the opposition and the evidence of the applicant given viva voce before me) that the applicant who was born on 10.4.48 at Kaimakli, Nicosia District, left Cyprus in July 1971 with a view to working abroad as mechanical plant erector. At the beginning he worked in Libya for Messrs J. & P. Ltd of Cyprus from 17.9.71 - 4.4.72 (vide Appendix 4); thereafter he joined other construction companies and worked in Jeda, Muscat (1.2.74 - 31.5.74), Oman and Dubai up to August 1975.

Thus during the period 1971 to 1975 the applicant who was employed by several construction companies worked on their instructions in five different places abroad. It cannot therefore be seriously maintained that during the aforesaid period the applicant had an intention to settle permanently in the aforesaid five countries; he was simply working there and as a consequence he had to reside in those countries so long as his work necessitated such residence.

Furthermore during the period aforesaid, the applicant was not residing continuously in the said five countries as at intervals he was returning to Cyprus. As the applicant himself stated on oath before me, during the period of 1971 to 1975 he returned to Cyprus for more than 5 or 6 times, staying in Cyprus for periods not exceeding 2 months on each occasion with the exception of his re-

turn from Muscat (after 31.5.74—Appendix 4) when he was called up and served in the National Guard in July 1974 up to August - September 1974; when demobilized he went to work at Dubai (16.12.74 - 3.8.75—Appendix 4).

It seems that the applicant who got married in Cyprus on 1.4.75 took his wife with him in September 1975 and ever since he settled down permanently in Benghazi-Libya where he was working regularly as a mechanical plant erector with the National Construction Co. Ltd., (A Libyan - Italian Company), having obtained a working permit from the Libyan Government to that effect.

The applicant may be considered to have permanently settled in Libya for a continuous period covering September 1975 up to the end of February 1984 when he returned with his family and settled down in Cyprus (vide his letter dated 20.3.84 - Appendix 2). But the period of September 1975 - February 1984 is hardly a period of $8\frac{1}{2}$ years, whilst the relevant Order of the Council of Ministers requires "permanent settlement abroad for a continuous period of at least 10 years."

In the result present recourse fails and is accordingly dismissed.

Let there be no order as to its costs.

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Recourse dismissed.
No order as to costs.