

1986 April 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. KEM TAXI LTD., TRADING UNDER THE
BUSINESS NAME KEM TOURS,
2. M. & M. TRANSPORT LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS
AND WORKS,

Respondent.

(Case No. 476/83).

Company Law—A company limited is a legal entity separate and distinct from its members (Rule in *Salomon v. Salomon* [1897] A.C. 22)—Business name under which a company is trading—Not an entity separate from the company—Sub judge decision treating applicant 2 company not as a separate entity from applicant 1 company—It has to be annulled.

The Road Transport (Regulation) Law 9,82, ss. 3(2), 5(3) and 10—Cars hired without a driver (Z cars)—Regulated by s. 10—Fixing criteria upon which the Licensing Authority should act—Relevant decision taken at a meeting with participation of, inter alios, the Director-General of the Ministry of Communications and Works and the Chairman of the Licensing Authority—Licensing Authority acting upon such criteria—Criteria not within s. 10—Fixing of criteria outside the powers that can be entrusted to the Chairman of the Authority under s. 3(2)—The decision of the Authority has to be annulled—As it constituted an intermediary step leading to the sub judge de-

cision of the respondent Minister, the sub judice decision should also be annulled.

Administrative Law—General principles—Discretionary powers vested in an administrative organ by legislation—Cannot be assumed or regulated by a hierarchically superior organ—Except with regard to legality or where it is otherwise provided by Law.

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Applicant 1 is a limited company trading, inter alia, under the business name KEM TOURS. On 13.4.1982 applicant 1 filed two applications, one in its registered name for the grant to it of 101 licences for cars, "hired without a driver" (Z cars) and one in its business name for the grant of another 50 such licences. On the same day applicant 2 applied for the grant to it of 50 licences for Z cars.

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On 28.9.1982 a meeting was held at the Office of the Director-General of the Ministry of Communications and Works attended by him and another officer of the Ministry, the Director of the Department of Inland Transport and the Chairman of the Licensing Authority. During the meeting a decision was taken that about 200 new licences for "Z" cars should be granted "as a first step, for the reinforcement of the competition in accordance with the following criteria*....."

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On the 30.9.82 the Licensing Authority met to consider the applicants' said applications as well as some other pending applications for licences in respect of "Z" cars. The Licensing Authority applied the criteria laid down by the said meeting of the 28.9.82.

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The applicants' said applications were dismissed and as a result they filed hierarchical recourses to the Minister of Communications and Works. The Minister allowed the recourse of applicant 1 in part and directed the Licensing Authority to grant to it 8 licences, but he dismissed the two other recourses on the ground that applicant 2 (M. and M. TRANSPORT LTD.) and KEM TOURS are related to applicant 1 company to which

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* The criteria are quoted at pp. 709-710 post.

"Z" licences had been granted as aforesaid. It should be noted that L. and T. Markides were shareholders in all the companies.

As a result the applicants filed the present Recourse.

5 *Held*, annulling the sub judice decision: (1) It is well settled that a company is a separate legal entity distinct from its members. The Minister in this case has not treated applicant 2 as a legal entity separate from applicant 1 and has, thus, acted under a misconception of
10 Law and his decision as regards applicant 2 is legally unfounded. The Minister should have considered the recourse of applicant 2 on its own merits. Since he has not done so, he failed to carry out a due inquiry.

15 (2) The position is not, however, the same in the case of applicant 1. A business name, under which a company trades, is not a legal entity separate from the company itself.

20 (3) The contention of the applicants that the views of the Cyprus Tourism Organisation have not been taken into consideration is unfounded.

25 (4) Section 10 of Law 9/82 regulates the granting of "Z" licences. The criteria fixed by the meeting of the 28.9.82 are not within its provisions. Furthermore the fixing of criteria upon which the Licensing Authority should act is not within the matters that can be entrusted under s. 3(2) of the same law to the Chairman of the Authority. In the absence of any express provision to the contrary, discretionary powers vested by legislation in an administrative organ cannot be assumed or regulated, except with regard to legality, by any hierarchical superior
30 organ.

35 It follows that the decision of the Licensing Authority is invalid as it was based on such criteria; and as such decision is an intermediate step leading to the decision of the Minister, the latter must also be annulled with regard to both applicants.

Sub judice decision annulled.

No order as to costs

Cur. adv. vult.

Cases referred to:

Salomon v. Salomon [1897] A. C. 22:

Michaelides v. Gavrielides (1980) 1 C.L.R. 244:

Bank of Cyprus (Holdings) Ltd. v. The Republic (1985)
3 C.L.R. 1883; 5

Peletico Ltd. v. The Republic (1985) 3 C.L.R. 1582:

Georghiades v. The Republic (1982) 3 C.L.R. 16.

Recourse.

Recourse against the dismissal of applicants' hierarchical recourses against the refusal of the Licensing Authority to grant applicants "Z" licences. 10

Ph. Valiantis, for the applicant.

M. Tsiappa (Mrs.), for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant No. 1, a limited company trading, inter alia, under the business name KEM TOURS and applicant No. 2 also a limited company, are engaged in transports and hirings of cars of category "Z" (hired without a driver). 15

On 13.4.1982 both applicants applied to the Licensing Authority (the L. A.) for the grant to them of a number of licences for cars "hired without a driver" ("Z" cars). Applicant 1 in fact filed two applications, one in the registered name of the company for the grant to it of 101 licences and another in its trading name of KEM TOURS for the grant to it of 50 licences, whereas applicant 2 applied for the grant to it of 50 licences. 20 25

From the material before me it appears that an inquiry was made on the 26th April, 1982 at a meeting attended by three officers of the Inland Transport Department and representatives of the Cyprus Tourism Organisation (the C.T.O.), the Hoteliers' Union and of the various unions of transport companies including the Pancyprian Union of 30

owners of "Z" cars. According to the minutes of such meeting, the presiding officer of the Inland Transport Department invited those who attended to express their views on the sufficiency of the number of the existing "Z" cars.

5 The representatives of the C.T.O. stressed the need for high standards and sufficiency of all services necessary for tourists especially in countries like Cyprus which wished to cope with the demands of tourists. He made reference to an inquiry carried out by the C.T.O. in 1981 for the period
10 July and August, 1981 and November and December of the same year as to the tourist movement in Cyprus and the demand for "Z" cars. Expounding on the figures of the number of tourists during each month of the year, the representative of the C.T.O. concluded that the tourist
15 period in Cyprus had been extended from six to ten months and that the number of tourists was increasing steadily and a further increase was expected. Also that complaints had been expressed on several occasions that the standard of the cars hired was not satisfactory in certain cases.

20 The owners of "Z" cars expressed the view that the existing "Z" licences were sufficient to meet the needs of the Island and that in case the Government was considering the grant of new licences, persons who were professionally engaged in the business of renting "Z" cars should be preferred. The representative of the Hoteliers' Union expressed
25 the view that there should be a close co-operation between the C.T.O., the Union of owners of "Z" cars and the hoteliers for the purpose of eliminating any complaints which may arise on the matter.

30 On the 10th September, 1982, a meeting was convened by the Minister of Communications and Works under his chairmanship which was attended by the Director-General of the Ministry, the Director and another officer of the Inland Transport Department, and six representatives of
35 the Pancyprian Union of Owners of "Z" cars. The Director of applicant (1) who is also a shareholder of applicant 2, was one of the six representatives of the Pancyprian Union of Owners who attended the meeting and in fact, according to the minutes of the meeting, participated in the discussion
40 which took place and supported the view that in case the

Government would decide to issue new licences, such licences should be issued to persons professionally engaged in the renting of "Z" cars and not to any other persons who had no relation with the profession. At such meeting the Director-General of the Ministry expressed the view that on the basis of the material collected by the Inland Transport Department there was a good reason for the grant of a number of additional licences. The main reasons he advanced in support of his proposal, were that:

(1) The Licensing Authority had not issued any "Z" licences since 1973.

(2) Holders of "Z" licences sell same at the price of £2,500.- each.

(3) There had been a 63% increase of tourists in Cyprus, since 1973.

(4) The tourist period was extended from four months a year in 1973 to a much longer period.

(5) "Z" vehicles according to figures supplied by the Cyprus Tourism Organisation are not sufficient during the months of peak, which results to the increase of their hiring charges.

Another representative of the owners of "Z" cars who attended the meeting expressed the view that existing licences were more than enough and that the majority of tourist are transported in groups by buses or taxis and therefore, if additional "Z" licences were granted, then a destructive competition would be created between the owners of "Z" cars.

The minutes of the said meeting end as follows:

"5. The Minister said that the Government, taking into consideration the material mentioned by Mr. Hadjianastassiou, holds the view that the granting of "Z" licences is indicated: -

(a) to owners of a small number of "Z" cars so that their business would be viable,

- (b) to persons who have their area of activity in isolated areas such as Tillyria, Polis tis Chrysochous and Troodos,
- 5 (c) to repatriated persons who wish to establish a business in this field of activity and
- (d) to displaced persons.”

Another meeting took place in the office of the Director-General of the Ministry, attended by him, and another officer of his Ministry, the Director of the Department of
10 Inland Transport and another officer of the same Department who had also attended the meetings of 26.4.82 and 10.9.82 and the Chairman of the L. A. Paragraph 3 of the minutes of this meeting (where no reference is made as to its date, but as stated by counsel of applicant, it has
15 taken place on 28.9.1982, reads as follows:

“3. As it seems a greater demand for “Z” cars appears compared to their supply. As a matter of policy it has been decided by the Ministry of Communications and Works and the Department of Inland
20 Transport that about 200 new licences should be granted, as a first step, for the reinforcement of the competition in accordance with the following criteria: -

- 25 (a) To owners who possess today a small number of “Z”, additional licences should be granted so that they possess up to 15 “Z” cars for the purpose that this business should become viable.
- (b) To permanently repatriated persons who wish to activate in this field.
- 30 (c) To displaced persons in order to help them establish business units.
- (d) To persons not possessing “Z” licences and wish to activate and have their area of activity in areas far from urban centres, such as the area
35 of Tillyria, Polis Chrysochous, Troodos, etc.
- (e) To persons possessing the means, capabilities and

willingness to establish viable business units in this field and who are engaged in similar activities."

On 10.9.82 the Transport Controller prepared a report in connection with the applications of KEM TAXI LTD., KEM TAXI LTD. operating under the business name KEM TOURS STRATA TOURS LTD., and M. & M. TRANSPORT LTD. (applicant 2) which totalled 252 licences in all, in which he stated, inter alia, that L. and T. Markides were shareholders in all the companies.

The L. A. met on the 30th September, 1982, in order to consider the applications. The minutes of its meeting read as follows:

"Mr. Anastassiades, Director of the D.I.T. briefed the members of the L. A. on the matter of the criteria and material that the L. A. should take into consideration in granting these licences.

Thereafter, minutes of the meeting of the D.I.T. with the C.T.O. and PAKRO, minutes of the meeting of representatives of PAKRO with the Minister of Communications and Works, reports of the District Transport Controller of Nicosia, Limassol, Larnaca and Paphos were read.

The L. A. having taken into consideration that:

- (1) it has not issued any licences to "Z" cars since 1973,
- (2) "Z" licences are sold at the price of £2,500,
- (3) a growth of the populations has occurred since 1973,
- (4) a 63% increase of tourists has occurred since 1973,
- (5) the tourist season has been extended from 4 months in 1973 to many more, and
- (6) "Z" cars are not, in accordance with the findings of the C.T.O., sufficient during the tourist peak

months with the result that their hiring charges are increased.

decided to grant "Z" licences to the following:

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5 The L. A. proceeded then with the grant of a number of "Z" licences (218) rejecting amongst others, the applica-
10 tions of the applicants. As stated at p. 8 of the minutes of this meeting, the Licensing Authority adopted and applied the criteria and policy laid down at the meeting of 28.9. 1982, to which reference has been made earlier.

15 The applicants filed hierarchical recourses to the Minister of Communications and Works in accordance with the provisions of the law. Hierarchical recourses Nos. 24/67/2426 of applicant 2, 24/67/2427 of the KEM TAXI LTD. and recourse 24/67/2428 of KEM TOURS LTD. were heard by the Minister together, on the 26th April, 1983. At the hearing of the said recourses, Mr. L. Markides appeared on behalf of all applicants and gave evidence in support of the hierarchical recourses and answered
20 questions put to him. The Minister on the basis of the material before him and bearing in mind the evidence given on behalf of the applicants, allowed partly the hierarchical recourse of KEM TAXI LTD. and by his decision dated the 2nd July, 1983, invited the L. A. to grant to it eight
25 additional "Z" licences. By a further decision dated the 14th September, 1983, the Minister dismissed the hierarchical recourses of the applicants for the following reasons, as stated therein:

30 "Having taken into consideration all the facts of the cases and particularly the fact that these two companies are related with KEM TAXI LTD. to which 8 "Z" licences have been granted after the partial acceptance of its recourse No. 24/67/2427 I dismiss these recourses."

35 The contents of such decision were brought to the notice of the applicants by letter of the Director-General of the Ministry of Communications and Works dated the 21st September, 1983.

As a result, the applicants filed the present recourse challenging the said decision and praying for a declaration that the decision of the Minister is null and void and without any legal effect.

The applicants based their recourse on the following legal grounds: 5

(1) The respondent acted under full misconception of fact for the following reasons:

- (a) He did not examine or take seriously into consideration and/or evaluate the fact that the existing "Z" cars are not sufficient to serve the clients of the applicants and the demand for such cars. 10
- (b) He did not examine and/or evaluate the fact that the public and the tourism are better served with the circulation of a bigger number of "Z" cars. 15
- (c) He did not take into consideration the fact that the applicants are different legal persons.
- (d) He did not take any cognizance of the facts which were placed before him by the applicants and/or he failed to carry out a full inquiry into the matter. 20

2. The reasoning given is not legally sound as each of the applicants is a different legal person and the respondent should have treated them as such and not as one person.

3. The sub judice decision lacks due or sufficient reasoning. 25

4. The respondent did not take into consideration the views of the C.T.O.

By his opposition the respondent contended that the sub judice decision was taken in the proper exercise of the authority vested in him on the basis of all facts and circumstances of the case and that it was duly and legally reasoned and in compliance with the Law and the Regulations. 30

In expounding on his legal grounds counsel for applicant submitted that:- 35

(a) The applicants are two independent legal entities and they should have been treated as such.

5 (b) Both the L. A. and the Minister in dealing with the hierarchical recourse failed to take into consideration the views of the C.T.O., as provided by section 10(2) of the Motor Transport (Regulation) Law, 1982.

10 (c) The fixing of certain criteria on which the L. A. should act deprived it of the exercise of a discretion on the matter and by adopting such criteria, its discretion was eliminated.

15 (d) The Minister did not take into consideration the evidence of the representative of the applicants who gave particulars of the foreign tourist companies represented by them and their requirements for "Z" cars to meet their demands.

(e) That the sub judice decision lacks legal or due reasoning as the reasoning given was based on legal and factual misconception.

20 It is well settled that the company is a separate legal entity distinct from its members and that it should be treated as such in all respects. This principle which was enunciated in *Salomon v. Salomon* [1897] A. C. 22, has been followed by our courts in the cases of *Michaelides v. Gavrieliides* (1980) 1 C.L.R. 244. *The Bank of Cyprus (Holdings) Ltd. v. The Republic* (1985) 3 C.L.R. 1883 (a Full Bench case) and *Peletico Ltd. v. Republic* (1985) 3 C.L.R. 1582.

30 The reason for which the Minister dismissed the hierarchical recourses of the applicants was that they are related to another company, KEM TAXI LTD., to which "Z" licences were granted as a result of the partial acceptance of its hierarchical recourse. The Minister in this case has not treated applicant 2 as a legal entity separate to that of KEM TAXI LTD. and proceeded to determine the case as if the two companies were in fact constituting one
35 legal person. I, therefore, find that the decision of the Minister concerning applicant 2 is based on a misconception of the law and the reason given in his decision for dis-

missing the application is legally unfounded. The Minister should have considered the hierarchical recourse of applicant 2 on its own merits and decide same accordingly and not proceed on the assumption that the two companies were related to each other and that by granting the KEM TAXI LTD. 8 additional licences the claim of applicant 2 was also satisfied. In this respect, I find that the Minister failed to carry out a due inquiry as to whether applicant's 2 recourse was justified in the circumstances or not. Therefore, this ground of law concerning applicant 2 succeeds and the sub judice decision is annulled in this respect. 5 10

The position is not, however, the same in the case of applicant 1. Applicant 1 is KEM TAXI LTD. trading under the business name of KEM TOURS. The hierarchical recourse of KEM TAXI LTD. was partly allowed and 8 licences were granted to it. The hierarchical recourse of KEM TOURS was dismissed for the same reason as that of applicant 2. A business name, however, under which a company trades, is not a legal entity separate from the company itself. I therefore find that it was reasonable in the circumstances, to the Minister not to treat the first applicant as a separate legal entity from KEM TAXI LTD., and this ground, as far as it concerns this applicant, is consequently dismissed. 15 20

I come next to consider the other grounds concerning the first applicant. I find myself unable to accept the contention of the applicant that the views of the C.T.O. have not been taken into consideration. Under the provisions of the law (section 10(2) of Law 9/82), such views have to be obtained. It is clear from the material before me that the views of the C.T.O. were taken into consideration by the L. A. An inquiry was carried out as to the needs for "Z" cars and the C.T.O. expressed its views at the meeting of 26.4.1982 (reference to which has been made earlier). It is also evident from the minutes of the meeting of the L.A. on 30/9/1982. that the minutes of the above meeting, containing the views of the C.T.O. and other material, were placed before the L. A. before it reached its decision. This ground therefore fails. 25 30 35

Coming now to consider ground (c), concerning the fixing of criteria on which the L.A. should act, it is evident from the extensive statement of facts made earlier that such criteria were not in fact fixed by the L.A. but partly by the Minister and partly by officers of the Ministry of Communications and Works and the Department of Inland Transport, in the presence also of the chairman of the L.A.

Section 5 (3) of Law 9/82 gives a discretionary power to the L.A. in granting road use licences and there is nothing either in the Law or the Regulations, imposing any criteria for its exercise. Section 10 of the same Law regulates the granting of "Z" licences. The criteria fixed as above are not within the provisions of section 10. Also section 3 (9) provides that the L.A. may entrust its chairman with the exercise of certain powers named therein. The fixing of criteria upon which the L.A. should act is not within the matters enumerated in this section which can be entrusted to the chairman of the L.A.

It has been held in the case of *Georghiades v. Republic* (1982) 3 C.L.R. 16 at p. 28 (making reference to the case of *Araouzos v. Republic* (1968) 3 C.L.R. 287), that discretionary powers vested by legislation in an administrative organ cannot be assumed or regulated, except with regard to legality, by any hierarchically superior organ, in the absence of any express provision to that effect.

As I said earlier there is no provision in the Law or the Regulations imposing such criteria as in the present case, restricting the discretionary power of the L.A., or conferring upon any person or body of persons, the power to impose such criteria. For this reason, I find that the decision of the L.A. is invalid, as it was based on such criteria and must be annulled. Since the decision of the L.A. is an intermediate step leading to the decision

of the Minister, the latter must also be annulled, with regard to both applicants.

In the result, this recourse succeeds and the sub judice decision is annulled with no order for costs.

*Sub judice decision
annulled. No order
as to costs.*

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