1987 October 16

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE ESTATE OF COSTAS PANAYIOTIDES, THROUGH THE ADMINISTRATORS GEORGHIOS LOIZOU AND YOULA FRANGOU,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE
2. THE COMMISSIONER OF ESTATE DUTY,

Respondents.

(Case No. 248/85).

Estate duty — Gifts — Whether immovable property gifted by the deceased more than three years before his death, but which was not registered in the name of the donee, is subject to estate duty — Question answered in the affirmative.

Immovable property — Gift of — When perfected.

Immovable property — Subsistence, creation, acquisition or transfer of an estate, interest or right whatsoever in any immovable property — The Immovable Property (Tenure Registration and Valuation) Law, Cap. 224, as amended by Law 3/60, Section 4 — Object and purpose of said section — Milington - Ward v Roubina (1970) 1 C.L.R. 88 adopted — Exclusion of relevant doctrines of common law and equity.

Reasoning of an administrative act — Principles governing the requirement and adequacy of.

The issue in this recourse is whether immovable property, which was gifted by the donor to his wife and children more than three years prior to the death of the donor, but which was not transferred and registered in the donees' names, is subject to estate duty

Held, dismissing the recourse: (1) From the material before the Court it emanates that there is sufficient reasoning of the decision of the respondent Commissioner. Such reasoning appears with sufficient clarity, though in a brief form, in the notice of assessment, where the reason is given that for a gift of immovable property to be valid the transfer should be registered with the Lands Office. Such reasoning, though sufficient by itself, is supplemented by the material in the relevant file of the administration.

(2) A title in immovable property is perfected only by the transfer of the property effected in the proper forms in the appropriate District Lands Office (*Stavrinides v Republic* (1987) 3 C L R 1228 adopted) It follows that it was reasonably open to the respondent to reach the sub judice decision

(3) In addition to the above, section 4 of the Immovable Property (Tenure, Registration and Valuation) Law Cap 224 which was originally embodied in section 3 of Law 8 of 1953 and subsequently amended by Law 3 of 1960 provides that no estate, interest or right whatsoever in any immovable property «shall subsist or shall be created, acquired or transferred except under the provisions of this Law» The object of the introduction of the above provision, its history and scope are very lucidly given in the judgment of the Court of Appeal in the case of Aspasia Millington-Ward v Chloi Roubina (1970) 1 C L R 88 As it was held in this case the intention of the legislature in enacting section 4 of Cap 224 was clearly to exclude expressly the provisions of the common law and the doctrines of equity as far as concerning the creation, acquisition and transfer of any interest whatsoever in any immovable property In the light of the above the Australian case of Re Ward, *Gillet v Ward* (1968) W A R 33 and the New Zealand case of *Scoones v* Galvin and the Public Trustee (1934) N Z L R 1004 are differentiated from the present case both on the facts and on the law applicable

In the present case the mere signing by the deceased of the memoranda of gift does not by itself vest the property in the name of the donees, as for the completion of such gifts and the vesting of any interest in the immovable property concerned a further step was required to be taken by the deceased, that of transferring and having the said properties registered in their names

Recourse dismissed
No order as to costs

Cases referred to

Ioniides v The Republic (1982) 3 C L R 1136,

Stavrinides v The Republic (1987) 3 C L R 1228,

Papageorghiou v Komodromou (1963) 2 C L R 221,

Millington-Ward v Roubina (1970) 1 C L R 88,

Re Ward, Gillet v Ward (1968) W A R 33,

Scoones v Galvin and The Public Trustee (1934) N Z L R p 1004,

Recourse.

Recourse against the assesment raised on the estate of the deceased Costas Panayiotides.

A. Triantafyllides, for the applicants.

A. Evangelou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants are the administrators of the estate of the deceased Costas Panayiotides who died on the 27th September, 1972.

The applicants on 6th June, 1972 delivered to the respondent Commissioner of Estate Duty, a simplified declaration of the deceased's property in which there were included gifts of immovable property made by the deceased more than three years prior to his death. Such gifts consisted of-

(a) 15 building sites which had been gifted to his wife Angeliki Panayiotidou;

(b) 8 building sites gifted to his daughter Youlla Frangou;

(c) 7 building sites gifted to his daughter Sitsa Loizou.

The said building sites originated from a piece of land purchased by the deceased in 1969 which he divided into building sites. The deceased retained 8 building sites for himself and donated the remaining to his wife and two daughters. The division had not by the time of his death been completed by the issue of separate title deeds for each site. Such building sites were sold by the donees by virtue of contracts of sale executed in their names and the proceeds of sale were collected by them.

On the 20th June, 1973, the applicants through their advocate delivered to the respondent Commissioner a plan of the property which had been divided into building sites and photo-copies of the agreements whereby the above sites were gifted to the three persons concerned.

On 25th February, 1981, the respondent Commissioner raised an assessment on the estate of the deceased at £115, 917.- on the basis of which the estate duty payable was £28, 370.10 cent.

On 2nd March, 1981, an objection was made to the above assessment by applicant George Loizou in respect of which an exchange of views took place between the Commissioner of Estate Duty and applicant Youlla T. Frangou with a view to

reaching an agreement. As no agreement was reached the respondent Commissioner proceeded with the determination of the objection and his decision was communicated to the applicants by notice dated 22nd December, 1984. According to such notice the estate duty assessed on the estate of the deceased was £28,370.10 cent plus interest at 4% as from 27th September, 1973 till 28th January, 1980 less £1,000 paid on 29th January, 1980 making a total of £34,564.45 cent, plus interest at 4% on £28,370.10 cent as from 29th January, 1980.

On the said notice the following additional particulars were subscribed:

«For a gift of immovable property to be valid the transfer of such property should be registered with the Lands' Office».

As a result the applicants filed the present recourse whereby they pray for the annulment of the sub judice decision.

The legal grounds raised by applicants in support of their payer are: -

1. The respondents wrongly decided that at the time of his death the deceased was the owner of the plots of land which he had gifted by contracts to his wife and two daughters.

2. In the absence of title deeds for the separate plots of land the only way that the gift could have been made was by means of a contract of gift.

The issue in the present case boils down to whether the immovable property which was gifted to the donees more than three years prior to the death of the deceased, but which was not transferred and registered in their names, is subject to estate duty.

The argument of counsel for applicants in support of his prayer for relief may be briefly summarized as follows:-

In the circumstances of the present case the donor had made an absolute gift of the properties in question and he did everything in his power to perfect such gift by signing the documents embodying the gift, whereby it was expressly stated that the donees had the right to sell anyone of the said building sites and collect the proceeds of sale for their own account. Counsel submitted that the reason the deceased did not execute a proper transfer of the properties in question was because the land was covered by one registration title and there were no separate titles

for each plot and therefore, it was not possible to effect the transfer of each building site separately. Consequently, the deceased applied to the Lands Office for the issue of the various separate title deeds and in the meantime he made a gift of the various plots by virtue of documents of gift executed by him.

Counsel for the respondents, on the other hand, argued that for a gift of immovable property to be completed and become effective, such property should be transferred and registered in the name of the donee in the manner provided by the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as subsequently amended). Counsel further added that under the provisions of the Immovable Property (Transfer and Mortgage) Law of 1965 (Law 9/65) no transfer of immovable property shall be valid unless made in accordance with the provisions of such law and that any attempt to transfer any immovable property otherwise than in accordance with the provisions of the law shall not be effectual to create, vary, transfer, extinguish or in any way affect any rights or interests in any immovable property. Counsel further contended that under the provisions of section 4 of Cap. 224 (which was introduced by Law 8 of 1953) no estate, interest, or right whatsoever, shall subsist or shall be created, acquired or transferred except under the provisions of the said law. He concluded his address by submitting that the gifts in the present case having not been completed by transfer and registration of the properties in the name of the donees were imperfect ones and there is no equity to perfect an imperfect gift.

Before dealing with the above issue which is the main issue before me, I shall briefly deal with a preliminary question raised by counsel for applicants in that the sub judice decision has to be annulled on the ground of lack of due reasoning.

It is well settled that administrative decisions have to be duly reasoned. There is a line of decided cases by the Supreme Court reiterating such principle and explaining its object as well as what circumstances may amount to due reasoning. I need not refer in detail to such cases as it suffices to mention only the case of *Ionides v. The Republic* (1982) 3 C.L.R. 1136 in which at pp. 1149-1150 Loris, J. makes a brief analysis of the principle with reference to decided cases. It reads as follows:-

«It is well settled that administrative decisions have to be duly reasoned; what is due reasoning is a question of degree dependent upon the nature of the decision concerned. (Athos *Georghiades & Others v. The Republic* (1967) 3 C.L.R. 653, at p. 666).

The whole object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned, as well as the Court, on review, to ascertain in each particular case, whether the decision is well founded in fact and in accordance with the law. (*Kittides v. The Republic,* (1973) 3 C.L.R. 123, at p. 143).

Reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto. (*Georghios HjiSavva v. The Republic,* (1972) 3 C.L.R. 174, at p. 205).

Not all the reasons behind the decision need be explicitly stated, and omission to state subsidiary reasons does not render the reasoning inadequate. (*Christos P. Mouzouris v. The Republic,* (1972) 3 C.L.R. 43).»

From the material before me I find that there is sufficient reasoning of the decision of the respondent Commissioner. Such reasoning appears with sufficient clarity, though in a brief form, in the notice of assessment where the reason is given that for a gift of immovable property to be valid the transfer should be registered with the Lands Office. Such reasoning, though sufficient by itself, is supplemented by the material in the relevant file of the administration.

I have, therefore, reached the conclusion that the submission of counsel for applicants that the sub judice decision is not duly reasoned, is untenable.

In the recent case of *Paraskevou Stavrinides and the Republic* (Case No. 95/86, in which judgment was delivered on the 29th July, 1987)* I had the opportunity of dealing with a similar issue. The material part of my judgment, in this respect, which I fully adopt for the purposes of the present case was as follows:-

«I shall now proceed to examine the alternative contention of counsel for applicant that the property in question could

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* *Reported in (1987) 3 C.L.R. 1228*

not be treated as forming part of the estate of the deceased Savvas Koupatos because it was gifted to the applicant more than three years prior to his death.

It is common ground in this case that the alleged gift was completed by the transfer of the property in the name of the applicant in 1983, that is, within the period of three years from the death of the donor.

In Halsbury's Laws of England, 4th Ed. Vol. 20, the following are stated at p. 36, para. 62:-

> '62. *Court will not complete incomplete gift.* Where a gift rests merely in promise, whether written or verbal, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it. A promise made by deed is, however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which, according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do. If a gift is intended to be effectuated by one mode, for example by actual transfer to the donee, the court will not give effect to it by applying one of the other modes.
>
> An incomplete gift can be revoked at any time; there is a power to draw back so long as the gift is incomplete. No question of conscience enters into the matter, for there is no consideration and there is nothing dishonest on the part of an intending donor who chooses to change his mind at any time before the gift is complete.'

A number of authorities were cited by counsel for the respondents to which I need not refer here, as they are to be found in Halsbury's Laws of England (supra). I need only say that from what emanates from those authorities, the test is whether the donor has done everything on his part or whether any act remains to be done by him, and not the donee or trustee, in order to perfect the title to the property concerned. (See *Re Rose, Midland Bank Executor and Trustee Co. Ltd. v. Rose* [1949] Ch. 78; *Re Rose, Rose v. IRC [1952] Ch. 499; Re Fry, Chase National Executors and Trustees Corporation v. Fry* [1946] Ch. 312). A title in real property in Cyprus is

perfected, according to our Law, only by the transfer of the property, effected in the proper forms in the appropriate District Lands Office (see the case of *Rodothea PapaGeorghiou v. Komodromou* (1963) 2 C.L.R. 221).

In the present case there was undoubtedly an intention or promise on the deceased's part to donate his share in the property inherited from his brother, to the applicant. This intention or promise, however, did not materialise until 1983, when the property was actually transferred to the applicant. Applying the Law, as expounded above, to the facts of the present case, I find that it was reasonably open to the Commissioner to reach the sub judice decision.»

In addition to the above I wish further to refer to section 4 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 which was originally embodied in section 3 of Law 8 of 1953 and subsequently amended by Law 3 of 1960, which provides that no estate, interest or right whatsoever in any immovable property «shall subsist or shall be created, acquired or transferred except under the provisions of this Law.»

The object of the introduction of the above provision, its history and scope are very lucidly given in the judgment of the Court of Appeal in the case of *Aspasia Millington-Ward v. Chloi Roubina* (1970) 1 C.L.R. 88 in which at pp. 102 and 103, Josephides, J. had this to say:-

«The history of the events which led to the enactment of that section is well known and is to be found in the case of *Kontou v. Parouti* (1953) 19 C.L.R. 172 at page 175. The judgment in that case was delivered by the Supreme Court of the Colony of Cyprus on the 6th February, 1953, and it was therein adumbrated that, with the abolition of the categories of immovable property, 'the combined effect of the Immovable Property Law (then Cap. 231 and now Cap. 224) and the Courts of Justice Law (at the time section 28(1)(c) of Cap. 11) might well be that, since the law of the Ottoman Land Code has ceased to apply, and as no other provision has been made, the path is clear for the application of the common law. At common law, any person holding an absolute interest in land is entitled to carve out and transfer to another limited estates such as a leasehold chattel interest or an estate for life. However, it is not necessary in the present case to decide

whether the document of the 17th September was an agreement to create a freehold estate'.

The Land Registry Authorities, who were eager to have their Land Register watertight, were disturbed and, as a consequence, Law 8 of 1953, embodying the present section 4, was speedily enacted by the legislative authority and published in the Cyprus Gazette on the 4th March, 1953. We have no doubt whatsoever in our mind that the only intention of the legislature in enacting the present section 4 of Cap. 224 was to exclude expressly the provisions of the Common law and the doctrines of equity as far as immovable property was concerned.»

Learned counsel for applicants in support of his argument sought to rely on two Commonwealth cases in which the question of gifts of immovable property came under consideration. The first is an Australian case of the Supreme Court of Western Australia, *Re Ward; Gillet v. Ward* (1968) W.A.R. 33, and the second, a case of the Supreme Court of New Zealand, *Scoones v. Galvin and the Public Trustee* (1934) N.Z.L.R. p. 1004.

Both the above cases deal with the situation as to when a gift of immovable property may be deemed as having been completed. In the Australian case above, the facts were briefly as follows:

Prior to his death, a donor instructed his solicitors to transfer to his son by way of gift various properties. The transfer document was prepared and signed by the donor and the donee. The donor gave authority for the titles to be delivered by his bank to his solicitors so that the transfer could be registered and instructed his solicitors to have the transfer stamped and registered and then to deliver the titles to the donee. Later, upon being advised of the assessment of stamp duty and gift duty on the transfer, the donor instructed that these duties were to be paid by the donee. The donee agreed to pay them but was not then able to do so. The donor died before the duties had been paid and before the registration of the transfer had been effected.

On an application by the executor of the donor's estate for directions, inter alia, as to whether the lands the subject of the intended gift were assets of the donor's estate it was held that although the donor's solicitors were acting for both the donor and the donee they were holding the documents on behalf of the donee from the date when the donee accepted liability to pay the

assessed duties. The donor had then done everything which it was necessary for him to do to vest the legal estate in the donee and the solicitors were to look to the donee for everything else. The gift was complete before the donor's death.

In the second case the majority of the Court of Appeal in New Zealand concluded that although where a gift of land under the Transfer of Land Acts is intended, the delivery to the donee of a memorandum of transfer is not sufficient, if both the memorandum of transfer and the relevant certificate of title are delivered to the donee or to someone on his behalf there is a perfect gift of the land, for then there is nothing more which it is necessary for the donor to do to complete the gift as the payment of gift duty and the stamping and registration of the transfer can equally well be done by the donee provided that he has the documents.

From what appears from the above case neither in Australia nor in New Zealand is there anything in their legislation expressly requiring that for any transfer of immovable property of whatever nature to be effective the owner or the donor in case of gift, should attend the land registry office and take all necessary steps and make any necessary declarations for effecting such transfer. In both cases it was found that the provisions of their respective legislations were satisfied if a memorandum of transfer and the relevant certificate of title were both delivered to the donee or to solicitors acting on his behalf.

The above cases are differentiated both on the facts and on the law applicable from the present case. In the present case besides the fact that no title deeds were handed with the alleged document of transfer, there is no declaration of transfer in the proper form effected before the Land Registry Office. Under our law, as explained above, for such gifts to have been perfected, further steps should have been taken by the donor, such step being actually and effectually transferring the gifted property in the name of the donees and have it registered in their own names.

The provisions in our legislation as to transfer of property acquired in whatsoever manner are clear and unambiguous. As it was held in *Aspasia Millington-Ward* (supra) the intention of the legislature in enacting section 4 of Cap. 224 was clearly to exclude expressly the provisions of the common law and the doctrines of

equity as far as concerning the creation, acquisition and transfer of any interest whatsoever in any immovable property.

In the present case the mere signing by the deceased of the memoranda of gift does not by itself vest the property in the name of the donees, as for the completion of such gifts and the vesting of any interest in the immovable property concerned a further step was required to be taken by the deceased, that of transferring and having the said properties registered in their names.

Applying the law, as expounded above, to the facts of the present case, I have come to the conclusion that it was reasonably open to the Commissioner of Estate Duty to reach the sub judice decision.

In the result this recourse fails and is hereby dismissed. Bearing in mind the novelty of the point raised, I make no order for costs.

Recourse dismissed.
No order as to costs.