

1987 January 23

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOULOS A THEODOULOU

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND/OR
THE DIRECTOR OF CUSTOMS AND EXCISE,

Respondents

(Case No 57/86)

Customs and Excise Duties — Motor vehicles importation of by Cypriots — Exemption from import duty — The Customs and Excise Duties Laws, 1978 - 1985, section 11(2) — Order 188/82 of the Council of Ministers — The notion of «permanent settlement abroad» — Review of the Case Law of this Court

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By means of this recourse the applicant challenges the validity of the decision, whereby his application for the duty free importation of a motor car was turned down on the ground that his stay abroad was of a temporary nature

It is common ground that during the period 14 11 74 till 2 8 85 the applicant was continuously employed and residing in Saudi Arabia with the exception of short periods, when he was coming to Cyprus on leave

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The applicant's family, however, did not follow him, but stayed in Cyprus in a house rented by him and his children were continuously attending schools in Cyprus. Moreover, the applicant did not acquire from the Government of Saudi Arabia a permit for permanent residence therein

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Held, dismissing the recourse (1) The three prerequisites for the relief under Order 188/82 of the Council of Ministers are permanent settlement abroad for at least ten years, return to Cyprus and permanent settlement in the Republic, and importation of the car within a reasonable time from the date of arrival at the discretion of the Director of Customs

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(2) In the light of the case Law of this Court relevant to the notion of permanent settlement abroad and bearing in mind the particular circumstances of this case, and especially the fact that applicant's family was residing in Cyprus during the whole period of applicant's stay abroad, that his

children attended schools in Cyprus and that he could not obtain a permit for permanent residence in Saudi Arabia, this Court is of the opinion that it was reasonably open to the Director to find that the applicant had not settled permanently abroad.

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Recourse dismissed.
No order as to costs.

Cases referred to:

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

Rossides v. The Republic (1984) 3 C.L.R. 1482;

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Mavronichis v. The Republic (1985) 3 C.L.R. 2301;

Leonida v. The Republic (1986) 3 C.L.R. 2022;

Neocleous v. The Republic (1986) 3 C.L.R. 1435;

Ioannou v. The Republic (1986) 3 C.L.R. 1263;

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

15 **Recourse.**

Recourse against the refusal of the respondents to allow applicant to import a motor car free of duty as a repatriated Cypriot.

A. *Panayiotou*, for the applicant.

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S. *Georghiadis*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

25 SAWIDES J. read the following judgment. The applicant, by this recourse, challenges the refusal of the Director of the Department of Customs and Excise to allow him to import a motor car free of duty.

30 The applicant is a Cypriot who was employed in Saudi Arabia as from the 14th November, 1974 till 2.8.1985 by a firm of building contractors, namely Alfadi, Binladen and J & P Corp. Ltd. During such period he was residing in Saudi Arabia and used to visit Cyprus at various intervals. On the 2nd August, 1985, he resigned

from the said firm and returned to Cyprus On 15 10.85 he submitted an application to the Director of the Department of Customs and Excise for exemption from the payment of import duty in respect of a motor car

The applicant was requested by the respondent to supply certain information concerning his family, residence of the members of his family during the period he was working abroad, whether he maintained a house in Cyprus and other relevant matters **5**

On 21 10 85 applicant supplied the information requested according to which his family, consisting of his wife and two children, did not reside with him in Saudi Arabia during his stay there, but were living in Cyprus in a house rented by him. His children were attending schools in Cyprus and he returned to Cyprus with the intention to erect a building and start a business of his own and resettle here His application was refused by the Director of the Department of Customs and Excise, whose decision was communicated to the applicant by registered letter dated the 29th November, 1985, on the ground that his stay abroad was of a temporary nature and did not constitute permanent settlement there **10**
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The relevant order of the Council of Ministers under section 11(2) of the Customs and Excise Duties Laws, 1978 - 1985 enabling the duty free importation of motor vehicles by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years return and settle permanently in Cyprus, provided that the importation is made within a reasonable time after their return, was published in the official Gazette of the Republic dated 11 6 1982 under Not 188/82 (Third Supplement, Part I). **25**

According to the provisions of such order a Cypriot is entitled to exemption, if the following prerequisites are satisfied **30**

- (a) Permanent settlement abroad for at least 10 years;
- (b) Return to Cyprus and permanent settlement in the Republic.
- (c) Importation of the car within a reasonable time from the date of arrival at the discretion of the Director. **35**

The question which poses for consideration in this case is whether the applicant satisfies the above prerequisites

It is common ground in this case that the applicant for the period

as from the 14th November, 1974, when he went to Saudi Arabia till the 2nd August, 1985, when he returned to Cyprus, he was continuously employed and residing in Saudi Arabia with the exception of short periods when he was coming to Cyprus on

5 leave

According to the letter of the applicant of the 21st October, 1985, addressed to the Director of the Department of Customs and Excise, his family did not follow him abroad, but stayed in Cyprus in a house rented by him, and his children for the period as
10 from 1974 till October, 1985, were continuously attending schools in Cyprus

By his written address counsel for applicant admitted that applicant had no permit for permanent residence abroad, as the Government of Saudi Arabia does not give a permit for permanent
15 residence to foreigners irrespective of the extent of the period of their residence there for purposes of employment Counsel contended that irrespective of the fact that the Government of Saudi Arabia does not grant permits for permanent settlement there, the fact that the applicant resided and worked there continuously for
20 a period of 11 years satisfies the requirement of permanent settlement abroad for the purposes of Notification 188/82 entitling him to a duty-free car

The contents of the order published under Notification 188/82 came up for consideration in a number of cases of this court and I
25 need not expound further on this matter (see in this respect, inter alia *Matsas v The Republic* (1985) 3 C L R 54, *Rossides v The Republic* (1984) 3 C L R 1482, *Mavronichis v The Republic* (1985) 3 C L R 2301, *Leonida v The Republic* (Case No 422/85 in which judgment was delivered on 28 11 86 not yet reported) *

30 The interpretation of the prerequisite of «permanent settlement» has been considered in a series of cases of this court In *Matsas v The Republic* (supra) A Loizou, J said the following at p 61

35 «To my mind permanent settlement comes with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence »

In *Phivos Neocleous v The Republic*, (Case No 465/85

* Reported in (1986) 3 C L R 2022

judgment delivered on the 24th May, 1986, not yet reported)*
Triantafyllides, P in dealing with a recourse challenging a similar
refusal of the Director of the Department of Customs and Excise,
by a Cypriot who had been continuously residing and working in
Saudi Arabia as from the 9th December, 1974 till the 30th
January, 1985, concluded as follows: 5

«In the light of the case-law of our Supreme Court relevant to
the notion of permanent settlement abroad, such as *Razis v. The
Republic* (1979) 3 C.L.R. 127, 135, *Rossides v. The Republic*, 10
(1984) 3 C.L.R. 1482, 1486 and *Matsas v. The Republic* 10
(1985) 3 C.L.R. 54, 58-62, and bearing, also, in mind the
particular circumstances of the present case and, especially,
that the family of the applicant was residing in Cyprus during
all the time when he was abroad, that his salary was remitted
to Cyprus for the needs of his family and that he was paying
social insurance contributions in Cyprus, I am of the view that
it was legally and reasonably open to the respondent Director
of Customs to find that the applicant had not settled
permanently abroad and to refuse on this ground the
applicant's application for duty free importation of his motor
car.» 20

A similar approach on the matter is found in the judgment of
Pikis, J. in *Charalambos Ioannou v. The Republic* (Case No. 415/
85, judgment delivered on the 9th July, 1986, not yet reported**),
where the applicant stayed and worked in Saudi Arabia from
1968-1982 and in which it was held that: 25

«.....The question that must be answered is whether 10
years stay in a foreign country immediately qualifies the stayer
as a permanent settler in that country for the purposes of the
Order. I think not. The concept of permanent settlement is not
tied to the length of stay but to the element of permanence
associated with physical stay. If the legislature intended to
make length of stay the sole criterion for exemption, it was
wholly unnecessary to make any reference to permanent
settlement.» 30
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* Reported in (1986) 3 C L R 1435

** Reported in (1986) 3 C L R 1263

Stylianides J in dealing with a similar issue in the case of *Philippos Michael v The Republic* (Case No 552/84 judgment delivered on the 21st November, 1986, not yet reported*), after an extensive analysis of the matter said the following

5 «'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
10 presence in a place is only one of a number of relevant
factors An element of intention to reside and establish is
required Evidence of intention may be important where the
period or periods of residence are such as to point to both
directions It is not possible for a person to be permanently
settled in the Republic and in another country The intention
15 of permanently settling may be gathered from the conduct
and action consistent with such settlement Though
permanent settlement cannot be assimilated to domicile, it is
akin to it and pronouncements on domicile are very relevant
and helpful »

20 In the light of the Case Law of our Supreme Court relevant to
the notion of permanent settlement abroad as above, and bearing
also in mind the particular circumstances of the present case and
especially the fact that the applicant could not acquire a permit for
permanent settlement in Saudi Arabia that his family was residing
25 in Cyprus during the whole period when he was abroad and his
children were attending schools in Cyprus, I am of the view that it
was legally and reasonably open to the respondent Director of
Customs and Excise to find that the applicant had not settled
permanently abroad and to refuse on this ground his application
30 for duty free importation of a motor car

Before concluding, however I wish to add that I share the view
of counsel for the respondents that it would have been just and
equitable if the order published under Notification 188/82 and the
proviso thereto were amended to cover also cases of Cypriots who
35 after a long continuous residence abroad over 10 years, for
purposes of employment return to settle in Cyprus, bearing in
mind the fact they have remitted here most of their earnings of
foreign currency I also endorse the opinion expressed by

* Reported in (1986) 3 C L R 2067

Stylianides. J. in the case of *Philippos Michael* (supra) that there are weighty considerations for the Minister of Finance to examine such cases favourably in the exercise of his powers under the proviso to the order.

In the result, this recourse fails and is hereby dismissed, but in the circumstances I make no order for costs. 5

Recourse dismissed.

No order as to costs.