

1988 August 30

(A. LOIZOU, P., DEMETRIADES, SAVVIDES, STYLIANIDES, PIKIS, KOURRIS, JJ.)

THE REPUBLIC OF CYPRUS,

v.

- 1. PANAYIOTIS AGAPIOU PANAGI, ALIAS KAFKARIS,
- 2. CHARALAMBOS ANTONIOU MICHAEL, ALIAS AEROPOROS,
- 3. ANDREAS ANTONIOU MICHAEL, ALIAS AEROPOROS,

Accused.

(Question of Law Reserved No. 260).

Courts of Justice — Assize Court — Composition of — The Courts of Justice Law, 1960 (14/60), Section 5 (as amended by Law 58/72, s.4) — Whether there can participate in its composition more than one President of District Court — Question determined in the negative. 5

Construction of Statutes — Words clear and unambiguous — Natural and ordinary meaning of — Should be given effect — No room for applying any other rule for construction.

The question of law reserved in this case under s.148(1) of the Criminal Procedure Law, Cap. 155 is whether, in the light of section 5 of the Courts of Justice Law, 14/60, as amended by s.4 of Law 58/72, there can participate in the composition of an Assize Court two Presidents of District Court. 10

Held: (1) When the wording of the Law is by itself clear and unambiguous, then to the words used by the legislator there is given their natural and ordinary meaning, and the intention of the legislator in such an instance is drawn from them and there does not exist any reason to refer to any other rule of construction for ascertaining the intention of the legislator. 15

(2) The provision in question is clear, unambiguous and imperative and leaves no room for any doubt. Consequently there are no margins for more than one President of a District Court to participate in its composition. 20

Order accordingly.

(Note: This is an English translation of the judgment in Greek appearing at pp. 124-129 ante).

Question of Law Reserved.

Question of Law reserved by the Assize Court of Limassol sitting at Nicosia under section 148 of the Criminal Procedure Law, Cap. 155 on the application of the Honourable Attorney-General of the Republic regarding the composition of the above Assize Court in view of the fact that as from 1st September, 1988 two Presidents would be participating in it as the appointment of Y. Constantinides to President would commence as from that date.

10 *M. Triantafyllides, Attorney-General of the Republic with M. Kyprianou, Senior Counsel of the Republic, A. Vassiliades and G. HadjiPetrou, for the Republic.*

Chr. Pourgourides with P. Erotokritou, for the accused.

Cur. adv. vult.

15 A. LOIZOUP read the following judgment of the Court. This is our opinion to the Question of Law Reserved by the Assize Court of Limassol, which by virtue of a decision of this Court sits in Nicosia for the trial of Criminal Case No. 23069/87, having been reserved on the application of the Honourable Attorney-General of the Republic under the provisions of Section 148(1) of the
20 Criminal Procedure Law, Cap. 155.

The three accused are charged before this Assize Court on the first count for conspiracy to murder Panikos Michael and on counts 2, 3, and 4 for the premeditated murder of Panikos Michael, Christakis Michael and Michael Michael. Accused 2 and
25 3 face also charges of possession of explosive substances. On the 3rd June, 1988 the hearing of the case commenced before the Assize Court composed of their Honours Chr. Artemides, President, Y. Constantinides, Senior District Judge and S. Nathanael, Acting District Judge.

30 In the course of the proceedings the Honourable Attorney-General of the Republic submitted to the Assize Court certain applications which were dismissed. Thereafter applications for the issue of Orders of Certiorari and Mandamus for the quashing of the said Decisions of the Assize Court were filed in the Supreme
35 Court. By order of the learned Justice Malachtos, the further hearing of the case was stayed until the trial of the said applications. The learned Justice dismissed the applications on the 30th July 1988 and the Honourable Attorney-General appealed from the said judgments and these appeals under numbers 7685,

and 7686 were fixed for hearing by the Full Bench on the 29th August 1988.

On the 12th August, the Honourable Attorney-General raised the question regarding the composition of the Assize Court. More concretely he submitted that as from the 1st September 1988 the composition of the Assize Court would not be in accordance with the Law as there were participating in it two Presidents, that is their Honours Chr. Artemides and Y. Constantinides. The appointment of Y. Constantinides as President commenced as from that date. The grounds of law advanced by the Honourable Attorney-General in support of his submission touch the construction of Section 5 of the Courts of Justice Law 1960 (Law No. 14 of 1960), as it has been amended by Section 4 of the Courts of Justice (Amendment) Law 1972 (Law No. 58 of 1972). The submission was that the provisions of this section do not allow the participation of more than one President in the composition of an Assize Court.

The Assize Court by its Decision dismissed this submission of the Honourable Attorney-General.

After the aforesaid Decision, the Honourable Attorney-General applied under Section 148(1) of the Criminal Procedure Law, Cap. 155 that the Assize Court reserved the said Question of Law for the opinion of the Supreme Court as it ought to do once the question which was raised was in the view of the Assize Court a legal one.

The Question of Law reserved is the following:

«Whether in view of the fact that His Honour Y. Constantinides, Senior District Judge will be as from the 1st September 1988, President of a District Court, the Assize Court with its present composition may in view of Section 5 of the Courts of Justice Law, 1960 (Law No. 14 of 1960), as it has been amended by Section 4 of the Courts of Justice (Amendment) Law 1972 (Law No. 58 of 1972), hear further this case on the 3rd September 1988, when it had fixed it for continuation before it in view of the fact that then the Court will be composed by two Presidents and one District Judge.»

The Assize Courts have been established by Sections 3 of the Courts of Justice Law 1960, which was enacted in view of the provisions of Article 152.1 of the Constitution. By the same Law the composition, the jurisdiction and their powers are prescribed.

Their composition is prescribed by Section 5, which provides the following:

5 «5. An Assize Court shall be composed of a President of a District Court, who shall preside, and two Senior District Judges or District Judges, to be nominated by the Supreme Court:

10 Provided that the Supreme Court may, in any case other than in a case where the accused is charged with an offence punishable with death, when the circumstances so require, direct that an Assize Court may be composed of three Senior District Judges to be nominated by the Supreme Court to be presided over by one of such Senior District Judges as the Supreme Court may designate.»

15 For the purposes of the Decision it is not necessary to deal at length with the principles governing the construction of statutes, suffice it to say that when the wording of the Law is by itself clear and unambiguous, then to the words used by the legislator there is given their natural and ordinary meaning, and the intention of the legislator in such an instance is drawn from them and there
20 does not exist any reason to refer to any other rule of construction for ascertaining the intention of the legislator. This principle has so well been established that there does not exist any need to refer to any concrete authority.

25 Section 5 as it is formulated provides that the Assize Court «shall be composed of one President District Court ... and will be under the chairmanship of the President of the District Court.»

30 This provision is clear, unambiguous and imperative and leaves no room for any doubt. Consequently there are no margins for more than one President of a District Court to participate in its composition and we cannot give any other construction to this provision.

35 On the other hand the proviso to this section aims exclusively to give to the Supreme Court power to constitute an Assize Court without the presence of a President of a District Court. This proviso not only it does not change the intentions of the legislator as they are framed in the main body of the section but it may be said that it strengthens them because in the case of the main part of the section apart from the reference to one President, it goes on and says that «it will be under the chairmanship of a President,

District Court» whereas in the instances where an Assize Court is set up on the basis of the powers given by the proviso, it is required that the Supreme Court should direct which of the members of the Assize Court shall preside

For these reasons our answer to the Question of Law Reserved for the opinion of the Supreme Court is that there cannot participate in the composition of an Assize Court more than one President, District Court and consequently as from the 1st, September 1988 its composition will be contrary to the provisions of the Law and cannot be seized after that date of this case. 5 10

Given that it is necessary to have the Assize Court recomposed, it is desirable that its new composition in its totality should change since the trial must commence ab initio. This matter, however, will be considered by the Supreme Court on the basis of its powers under the Law. 15

Order accordingly.