

1971  
Jan. 30,  
Mar. 19

[JOSEPHIDES, J.]

THE BISHOP OF KITTIUM AND OTHERS AS TRUSTEES  
OF THE DIANELLOS CHARITY (NO. 2),

*Plaintiffs,*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Defendant.*

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THE BISHOP  
OF KITTIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 2)

v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

(Charity Application No. 2/71).

*Charitable trusts—Application to sanction agreement for the sale of trust property—Sections 13 and 14 of the Charities Law, Cap. 41—Sale price agreed upon held to be the fair market value of the property in question—And that the sale is to the benefit and advantage of the charity—Agreement sanctioned subject to terms, having regard to the charity's project sanctioned by the Court.*

*Charity—See supra.*

*Trusts—See supra.*

*Observations by the Court as to the duty of the Charity Trustees not to delay in applying for the Court's sanction of their proposed action so that the Court may have adequate time to hear and consider such matters unhurriedly.*

The facts sufficiently appear in the following directions and judgment given by the Court in granting this application made by the trustees of the Dianellos Charity.

**Charity Application.**

Application by the members of the Board of Management of the Charity known as the "Orphanage and Training School, Demetrakis G. Dianellos of Larnaca", for the sanction of the sale of a piece of land belonging to the said charity.

*G. M. Nicolaidis, for the plaintiffs.*

*A. Frangos, Senior Counsel of the Republic, for the defendant.*

The following directions were made by:

JOSEPHIDES, J. : It would appear that the valuation report does not give any comparable sales on the eastern

side of the Pedieos river, that is, the side on which the trust property in question is situate. The two comparable sales relied upon by the valuer are some distance away from the western bank of the river.

2. In the circumstances it is considered that a second valuation report, independently of the first, should be prepared by another valuer with long experience in such matters, such as Mr. Mavroudis.

3. It is noted that the contract of sale signed by the trustees and the purchasers lays down a time limit for completion of the transfer until the 31st March, 1971, irrespective of whether the Court will have had time to consider and decide the matter by that date. The contract itself shows that the parties must have agreed on this sale over nine months ago (see payment of £40,000 (forty thousand pounds) which was made on 23.4.1970, stated in clause 3 of the contract), and they signed this contract only five days ago (25.1.71).

4. All possible consideration will be given for an early date of hearing but the Court cannot be hurried, considering the extent and locality of the trust property and the magnitude of the transaction; and the parties cannot force the hand of the Court to give priority to this case over other urgent appeals and cases, already in hand, which have been filed long ago.

5. On the filing of the valuation report (on oath) directed under paragraph 2 above, the present application will be fixed for hearing.

Dated the 30th January, 1971.

The following judgment was delivered by:—

JOSEPHIDES, J.: The present application, which was filed on the 29th January, 1971, is for the sanction of the sale of the property, described below, which belongs to the charity known as the "Orphanage and Training School, Demetrakis G. Dianellos of Larnaca" (see Cap. 353). The property in question is situate in Gladstone Street, Nicosia, and is known as "Palace Hotel", under Registration No. 258, dated 19.6.1935, sheet/plan XXI/46.4.IV, block 26, plot 34 (Ayios Andreas quarter), and it is of an area of 6 donums, 2 evleks and 2,300 sq. ft. This property was bought by the late Demetrakis Dianellos and registered in his name in 1935. At that time there were buildings standing thereon but they were destroyed by fire many years ago.

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The pre-history of this application appears in the judgment of this Court given on the 17th February, 1971, in Charity Application No. 1/70\*. The facts material to the present application are briefly as follows :

The late Demetrakis Dianellos directed under his will that, after payment of the legacies, any cash left should be utilised in erecting a hotel on his property known as " Sun Hall " in Larnaca. It is the trustees' case that the cash left was insufficient and that they were unable to raise the necessary funds to do so and, eventually, they entered into an agreement with the Holy Archbishopric of Cyprus on the 1st November, 1967, for the purpose of developing the above property. This agreement was approved by the Court on the 17th February, 1971, in Charity Application No. 1/70. In the feasibility report directed by the Court in the said Charity Application No. 1/70, it appeared that it would not be profitable for the charity to carry out a project of this magnitude if they did not have sufficient funds themselves to finance it. In the view of the expert it would be unprofitable to raise a big loan and have to pay interest on that. Eventually the trustees decided to sell the property, which is the subject of the present application, and some other property in Larnaca, which formed the subject of another application (No. 1/71) which was approved by this Court on the 17th February, 1971. It is against this background that the Court has to consider the present application for the sale of the property in question.

The purchaser is Kermia Company Ltd. and the agreement was signed on the 25th January, 1971 ; and it has been produced before the Court. The main conditions are that the agreed sale price is £180,000 (one hundred and eighty thousand pounds) plus £5,000 (five thousand pounds) interest up to the 31st March, 1971, less the transfer fees at the Land Registry which amount to approximately £7,000 (seven thousand pounds). The net result is that the charity will receive a net amount of about £178,000 (one hundred and seventy-eight thousand pounds). It is stated in the agreement that the sum of £40,000 (forty thousand pounds) was paid on account on the 23rd April, 1970, and another sum of £5,000 (five thousand pounds) on the 2nd June, 1970.

The minutes of the trustees put in evidence show that they considered this matter on three different occasions : On the 20th February, 1970, the 26th February, 1970 and

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\* Reported in this Part at p. 92 *ante*.

the 7th January, 1971. At first they wanted to sell the property in 1966 but no purchaser was found and, eventually, in 1970 the sale was advertised in two issues of the newspaper "Phileleftheros", on the 22nd and 23rd January, 1970, in two issues of the newspaper "Makhi", on the 18th and 21st January, 1970, and in the newspaper "Agon", on the 18th and 20th January, 1970. The only firm offer which the trustees had, came at first from the Bank of Cyprus Ltd. and it was for £160,000 (one hundred and sixty thousand pounds). This was turned down on the 20th February, 1970 and, eventually, it was the Kermia Company Ltd., which appears to be a subsidiary of the Bank of Cyprus, Ltd., who agreed to buy the property as already stated.

I have before me in evidence the valuation of this property by two land valuers, Mr. Frixos Kimonis, a retired Land Registry officer, and Mr. John Mavroudis, a retired Land Registry and Estate Department official with a very long experience. I have no difficulty in saying that I rely on the evidence of Mr. Mavroudis.

I have considered both valuations and I think that I ought to summarise them for the purposes of the record. That of Mr. Kimonis is as follows: He subdivides the property into two zones: Zone "A" and zone "B". Zone "A" has an area of 70,000 sq. ft. with a frontage of 220 ft. on Gladstone Street, which is situate in one of the best localities in Nicosia. The depth of the whole property is 500 ft. Zone "B", as subdivided by Mr. Kimonis, has an area of 25,900 sq. ft. He values zone "A" at £2 per sq. ft. and zone "B" at £1 per sq. ft. The net result of his valuation is £165,900. The comparable sales on which he relied for this valuation are situate as follows: The first is in Acheon Street (Nicosia), and the second in Metochiou Street (not distant from the first property). Both properties are situate on the western side of the Pedieos river, whilst the trust property under consideration is on the eastern side, some distance away from the aforesaid properties.

Mr. Mavroudis has produced a number of comparable sales on the eastern side of the river following the directions given by this Court (on 30.1.1971) after the filing of the present application. Mr. Mavroudis's valuation is as follows: He subdivides the property in three zones, viz. zone "A" 50,000 sq. ft. at £2.200 mils per sq. ft.; zone "B" 30,000 sq. ft. at £1.100 mils per sq. ft.; and zone "C" 13,000 sq. ft. at £0.900 mils per sq. ft. This makes a total of £154,700 on which he adds an increase of 8% for the

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compactness of the property. The grand total is £167,076. Both in his valuation report and in his evidence before the Court Mr. Mavroudis relied on the following comparable sales :—

The first comparable sale in his first report is plot 153, next to the CYTA building, near the Cyprus Museum, in Nicosia. The price for which that property was sold in 1968 was £2,620 mils per sq. ft. Mr. Mavroudis explained that that property had special value for the purchaser, the CYTA Corporation, as it was next to its main building. Moreover, that plot (No.153) was of an area of 9,536 sq. ft. and, being a building site of a size bigger than the usual site, there might have been, in his opinion, many interested prospective purchasers. Comparing that plot with the trust property under consideration, which is of a very big area, Mr. Mavroudis was of the view that the number of prospective purchasers in respect of the latter property would be very small. He valued zone "A" of the trust property at £2,200 mils per sq. ft. as an average price because he was of the view that the front part of zone "A" had a higher value, but the rear part of that zone was bound to have a lower value per square foot.

Pausing here, I think I ought to say that what weighs with the Court in deciding this matter is that the potentiality of developing the trust property was rather limited owing to the lack of a thoroughfare leading from Gladstone Street to the river or some other place or connecting it with another road, as stated by Mr. Mavroudis.

The second comparable sale is plot 173, a triangular site, on the Metochiou-Acheon Street, of an area of 12,080 sq. ft., which was sold in November, 1969, at £2,400 mils per sq. ft. The third sale is in Ayios Dhometios and I do not think it is comparable at all.

The fourth sale is on Grivas Digenis Avenue, near the bridge and by the "C. D. Hay Garage". It has no access on the avenue, and it was sold in 1967 at £1,433 mils per sq. ft. The property abuts on the river and a supporting wall had to be built on the river side. The fifth sale is a property in Passiades Street, Nicosia. It was sold in May, 1970, at £2,665 mils per sq. ft. The sixth sale is a soap factory, known as the Kyriakides Soap Factory, at the corner of Kennedy Avenue and Niki Street, on the border-line of Nicosia and Strovolos, at £1,750 mils per sq. ft. Finally, we have the sale of a corner property on Diagoras and Chr. Sozos Streets, of an area of 10,284 sq. ft. which was sold in September, 1968, at £60,000 that is, at £5,835 mils

per sq. ft. This was bought by the present purchasers (Kermia Company Ltd.) who, according to Mr. Mavroudis, were in need of the property in order to develop the adjoining plot which they acquired previously. In his view this was a high price and, in addition, there were buildings in good condition standing on the land in Diagoras Street. Moreover, it is situate in a better locality, which is being developed more rapidly for commercial purposes as well as residential, than that in Gladstone Street in which the trust property is situate.

Mr. Mavroudis, who also acts as a land agent, further stated in evidence that, when he saw the sale of the trust property in question advertised, he tried to buy it for two clients of his in 1970 but they found the price of £180,000 high and they said that they were not interested because one should take into account that in order to develop such property would have to spend about one million pounds.

Mr. Frangos, who appeared on behalf of the Attorney-General of the Republic, stated that the sale price agreed upon between the trustees and the purchasers was considered to be the fair market value, and he supported the application of the trustees.

I have given my best consideration to this case and relying on (a) the fact that the sale of this property was advertised widely and that there was no other offer for the property in question, and (b) the expert valuers' evidence, I am satisfied that the sale price agreed upon is the fair market value of the property and that the sale is to the benefit and advantage of the charity, viewing that it is made with the exclusive purpose of financing the "Sun-Hall" project as approved by this Court on the 17th February, 1971 (in Charity Application No. 1/70), which accords with the wishes of the donor.

In the circumstances I make the following *ORDER* :

1. The Agreement of Sale dated the 25th January, 1971, between the Dianellos Charity (as described in the title of these proceedings) and Kermia Company Ltd., is hereby approved, and it is directed that such agreement be carried into effect.

2. The whole of the proceeds of sale (and interest) of this property, which forms the subject of the Agreement in paragraph 1 above, that is to say, the sum of £185,000 (one hundred and eighty-five thousand pounds), less the

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Land Registry transfer fees, shall be utilised exclusively in financing the "Sun Hall" project as approved by this Court on the 17th February, 1971, in Charity Application No. 1/70.

3. As already directed in the aforesaid Charity Application No. 1/70 on the 17th February, 1971, the trustees shall open a separate bank account and/or separate deposit or fixed deposit account in which they shall forthwith lodge the sum of £45,000 (forty-five thousand pounds) already collected on account, as well as the balance of the proceeds of sale as soon as it is collected from the purchasers. Such moneys shall be utilised exclusively in financing the aforesaid project, and nothing else.

4. The trustees shall, as directed in Charity Application No. 1/70, file with the Court, within six months from the 17th February, 1971, a progress report, including in that report the action taken in implementing the present Order.

*Application granted.*

*Mr. Nicolaidis :* I am grateful to Your Honour for the speedy way, rather the priority given by this Court in hearing and determining this application, and Mr. Frangos, on behalf of the Attorney-General of the Republic, joins me in this.