

1974

Febr. 8

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IOANNIS
KYRIACOU
STRATOURA

v.

REPUBLIC
(DISTRICT
OFFICER
KYRENIA
AND ANOTHER)

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS KYRIACOU STRATOURA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER KYRENIA AND ANOTHER,

Respondents.

(Case No. 26/73).

Injury to property—Payment of Compensation for Injury to Property Law, 1962 (Law No. 57/1962)—“Damage or destruction” in section 2 of the Law—It includes damage caused by fire set accidentally or intentionally—Tax paying inhabitants liable to pay compensation irrespective of whether the damage caused is accidental or intentional—Provided it was caused by unknown persons—Inhabitants referred to above are meant to be the inhabitants of the village within the lands of which the property of the complainant is situate—Section 3 (1) of the said Law—Andreou and Others v. The Republic (1973) 3 C.L.R. 534, followed.

Words and Phrases—“Damage or destruction” in section 2 of the said Law 57/1962.

Compensation—Payment of compensation for injury to property—See above.

Villages—Village administration—Payment of compensation for injury to property—See supra.

The applicant in this recourse claimed compensation for the damage caused to his field, situate within the boundaries of the village of Ayios Ermolaos, by fire set accidentally by persons unknown. The claim was based on the Payment of Compensation for Injury to Property Law, 1962 (Law 57/1962); it was refused by the competent District Officer, Kyrenia, on the ground that the statute does not cover damage by fire caused accidentally.

The learned Judge, following the case *Andreou and Others v. The Republic of Cyprus* (1973) 3 C.L.R. 534, annulled the said refusal and:-

Held, (1) The term "damage or destruction" as defined in section 2 of the said Law 57/1962 includes damage caused by fire; and for any damage or destruction which is caused to property by persons unknown, the tax paying inhabitants of the village within the lands of which the property is situate, shall be liable to pay compensation to the complainant under section 3 (1) of the said Law 57/1962; and it makes no difference whether the damage caused is accidental or intentional so long as it has been caused by unknown persons, as in the present case (*Andreou's case supra followed*).

(2) Consequently, the Court declares that the decision of the respondent District Officer of Kyrenia whereby the applicant's claim for compensation under the said Law was turned down, is *null and void* and of no effect whatsoever. The Court awards £25 costs in favour of applicant.

*Sub judice decision annulled.
Order for costs as above.*

Cases referred to:

Andreou and Others v. The Republic (1973) 3 C.L.R. 534 (*followed*).

Recourse.

Recourse against the decision of the respondent District Officer, Kyrenia, contained in his letter of the 9th November, 1972, by which the applicant was informed that his case in connection with damage caused by fire to his property could not be examined any further.

A. *Protopapas* with A. *Angelides*, for the applicant.

Cl. *Antoniades*, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse is a farmer and is the owner of a field situated at locality "Farmakoyou".

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in the area of Ayios Ermolaos village in the Kyrenia district. On or about the 31st July, 1972, a fire broke out in the said field of the applicant which, according to his allegations, caused damage to agricultural products and other articles belonging to him. By letter dated 2.8.72 (blue 2 of *exhibit 2*), the applicant gave notice of the said damage to the Chairman and Members of the Village Commission of Ayios Ermolaos. He also notified the Myrtou police. This was done in compliance with section 4 of the Payment of Compensation for Injury to Property Law, 1962 (Law 57/62).

On the 6.8.72, the Village Commission inspected the property of the applicant and assessed the damage to the amount of £10.- and issued the relative certificate (blue 2A of *exhibit 2*).

On 2.10.72 the applicant addressed a letter to the District Officer of Kyrenia, to whom the case was referred to (blues 3 and 4 of *exhibit 2*) by which he was enquiring as to what had happened with his complaint. The District Officer of Kyrenia by letter dated 9.11.72, *exhibit 1*, informed the applicant that his case could not be investigated any further. This letter reads as follows:

“ I wish to refer to your letter dated 2nd October, 1972 with regard to the damage caused by fire to your property at locality ‘Farmakoyou’ of Ayios Ermolaos, and to inform you that your case cannot be examined any further under the provisions of the Payment of Compensation for Injury to Property Law 57/62 for the following reasons:—

- (a) from the police investigations, which were carried out it appears that the fire was caused accidentally by a lighted cigarette end thrown by an unknown person passing by; and
- (b) from the certification of the Village Commission it appears that they did not verify the existence of any corn, barley or any other crop besides stalk (about 100 sacks)”.

On the 18th January, 1973, the applicant filed the present recourse by which he claims a declaration of the Court that the decision of the respondent District Officer of Kyrenia contained in his letter of the 9th November, 1972, by which the applicant is informed that his case which is referred in his letter of the 2nd October, 1972, in connection with damage caused

by fire to his property at locality "Farmakoyou" of Ayios Ermolaos, cannot be examined any further, is wholly non-existent and is *null* and *void* and of no legal effect.

Two points fall for consideration in this recourse –

- (a) whether the term "damage or destruction" as defined in section 2 of Law 57/62, includes damage caused by fire and
- (b) if the term "damage or destruction" includes damage caused by fire whether it does cover fire set accidentally by unknown persons or it covers only fire that was set intentionally.

.. When the case came on for hearing, counsel for the respondent stated that the District Officer acted on advice from the office of the Attorney-General, that the damage caused to the applicant was not covered by the provisions of Law 57/62. This view was taken before the issue of judgment of this Court in Recourse No. 181/72, *Nikodimos Andreou and Others of Lemona v. The Republic of Cyprus, through the District Officer, Paphos* (1973) 3 C.L.R. 534.

It was decided in that case that the term "damage or destruction" as defined in section 2 of Law 57/62, includes damage caused by fire. It was also decided that for any damage or destruction which is caused to property by persons unknown, the tax paying inhabitants of the village within the lands of which the property is situate, shall be liable to pay compensation to the complainant under section 3 (1) of Law 57/62. It makes no difference whether the damage caused is accidental or intentional so long as it has been caused by unknown persons, as in the present case.

In view of the above, this Court declares that the decision of the respondent District Officer of Kyrenia contained in his letter of the 9th November, 1972, is *null* and *void* and of no legal effect whatsoever.

The respondent to pay to the applicant the sum of £25.- against his costs.

*Sub judice decision annulled;
order for costs as above.*

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