

1980 March 8

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF THE "LIMASSOL POOR RELIEF
COMMITTEE"

and

IN THE MATTER OF THE CHARITIES LAW, CAP. 41

BETWEEN: THE TRUSTEES OF THE "LIMASSOL POOR
RELIEF COMMITTEE",

Plaintiffs,

and

THE ATTORNEY-GENERAL,

Defendant.

(Charity Application No. 2/79).

*Charitable trusts—Disposition of property—Sanctioning by the Court—
Principles applicable—Section 13(c) of the Charities Law, Cap.
41—Disposition for benefit and advantage of the Charity—San-
ctioned subject to terms.*

5 The plaintiffs are the trustees of the "Limassol Poor Relief
Committee", a charitable trust* created by a trust deed dated
May 20, 1953 and registered under section 2 of the Charities
Law, Cap. 41. On March 9, 1979 the plaintiffs decided to
10 transfer by way of gift to the Limassol Municipality certain
immovable property owned by the trust on condition, *inter alia*,
that the said Municipality will undertake to use the property in
question in furtherance of object (b) of the Charity and that it
will pay off the debt of the Charity to the Bank of Cyprus Limited

* The main objects of the Charity are:

- "(a) to distribute to the poor of Limassol after registering same and to old disabled persons regular financial assistance or any other kind of rehabilitation;
- (b) to lease or erect and to maintain a Hostel or Hostels in Limassol for the housing therein of old persons incapable of work and of supporting themselves".

which, on December 31, 1978, amounted to C£15,734. Hence this application for an order of the Court sanctioning the above disposition of property.

Counsel for the Attorney-General has not opposed the present application but he submitted that the agreement to be entered into between the plaintiffs and the Limassol Municipality should cast an obligation on the said Municipality "to admit, keep and maintain the old and incapacitated persons who are unable to work".

Held, that though this Court has power to sanction the disposition of the property concerned of the Charity, if it is satisfied that such disposition is for the benefit and advantage of the Charity (see section 13(c) of the Charities Law, Cap. 41), such a power has to be exercised cautiously and sparingly; that the disposition of property of the Charity, in relation to which the sanction of this Court is being sought, is for the benefit and advantage of the Charity, in the sense that, through such disposition object (b) of the Charity will continue to be fulfilled by the Limassol Municipality which is one of the co-founders of the Charity, and, at the same time, the Charity will be relieved of the burden of its obligation to the Bank of Cyprus Limited and it will, thus, be enabled to pursue more effectively its object (a); that, therefore, the applied for order will be made subject to the term that the agreement to be entered into, in this connection, by the plaintiffs and the Limassol Municipality will make clear and unambiguous provision, as suggested by the Attorney-General of the Republic, and, also, that it will be, as envisaged by means of clause 5 of such agreement, approved by the Council of Ministers.

Order accordingly.

Cases referred to:

Mitsis Lemythou Commercial School v. Attorney-General of the Republic, 1964 C.L.R. 1;

The Bishop of Kitium and Others as Trustees of the Dianellos Charity (No. 1) v. The Attorney-General of the Republic (1971) 1 C.L.R. 92 at p. 105;

"The Orphanage and Training School, Demetrakis G. Dianellos of Larnaca" v. The Attorney-General of the Republic (1977) 1 C.L.R. 302 at p. 310;

The Trustees of the "Mitsis Lemythou Commercial School" v. The Attorney-General of the Republic (1972) 1 C.L.R. 49;
Attorney-General v. The Archbishop of York, 51 E.R. 1126;
Re Ashton Charity, 52 E.R. 1119;
5 *Re Colston's Hospital*, 54 E.R. 6;
St. Mary Magdalen College, Oxford v. The Attorney-General,
10 E.R. 1267 at p. 1273.

Charity Application.

Application by the Trustees of the Charity known as the
10 "Limassol Poor Relief Committee" under section 13(c) of the
Charities Law, Cap. 41, for an order sanctioning "the disposition
by way of gift on behalf of the Limassol Poor Relief Committee
to the Municipality of Limassol and the registration in the Land
Registration Office in the name of the said Municipality of the
15 immovable property owned by the said Limassol Poor Relief
Committee and registered in its name by Registration No.
22597 dated 12th February, 1968, in Ayia Phylaxis at locality
'Angathia' opposite Tsirion Stadium together with all buildings
erected thereon including a small church known as 'Ayios
20 Panteleimon' and with all trees growing thereon."

J. Potamitis, for the plaintiffs.

Gl. HadjiPetrou, for the defendant.

Cur. adv. vult.

25 TRIANTAFYLLIDES P. read the following judgment. By means
of the present application the plaintiffs seek from this Court an
order sanctioning "the disposition by way of gift on behalf of
the Limassol Poor Relief Committee to the Municipality of
Limassol and the registration in the Land Registration Office in
the name of the said Municipality of the immovable property
30 owned by the said Limassol Poor Relief Committee and
registered in its name by Registration No. 22597 dated 12
February, 1968 in Ayia Phylaxis at locality 'Angathia' opposite
Tsirion Stadium together with all buildings erected thereon
including a small church known as 'Ayios Panteleimon' and with
35 all trees growing thereon."

As it appears from the material before me the "Limassol
Poor Relief Committee"—the trustees of which are the plaintiffs
in these proceedings—is a charitable trust created by a trust

deed dated May 20, 1953; it has been registered under section 2 of the Charities Law, Cap. 41, as a corporate body (and it will be referred to hereinafter as the "Charity").

The said Charity has, as it appears from the aforementioned deed, two main charitable objects, which are:-

(a) to distribute to the poor of Limassol after registering same and to old disabled persons regular financial assistance or any other kind of rehabilitation;

(b) to lease or erect and to maintain a Hostel or Hostels in Limassol for the housing therein of old persons incapable of work and of supporting themselves".

It is to be noted that the said objects have all along been pursued in cooperation with, and with the financial and other assistance of, the Limassol Municipality which appoints two out of the eight trustees of the Charity.

At a meeting on March 9, 1979—the minutes of which are, apparently through an oversight, dated erroneously "21st February, 1978"—the plaintiffs decided to transfer to the Limassol Municipality the immovable property, in respect of which the sanction of this Court is being sought, on certain terms which are set out in the minutes of the said meeting and which need not be reproduced in full in this judgment; it is sufficient to state that by virtue of such terms the Limassol Municipality will undertake to use the property in question in furtherance of object (b), above, of the Charity and that the Limassol Municipality will pay off the debt of the Charity to the Bank of Cyprus Limited which, on December 31, 1978 amounted to C£15,734.

In pursuance of the aforesaid decision of the plaintiffs, and for the purposes of its implementation, there was prepared a draft agreement between the Charity and the Limassol Municipality, a copy of which has been filed by counsel for the plaintiffs and was, also, made available to counsel for the defendant.

It is well settled that this Court possesses jurisdiction to entertain and deal with the present application of the plaintiffs (see, *inter alia*, *Mitsis Lemythou Commercial School v. Attorney-General of the Republic*, 1964 C.L.R. 1) and that the law

applicable is Cap. 41 and the law relating to charitable trusts for the time being in force in England (see section 15 of Cap. 41, as well as *The Bishop of Kitium and Others as Trustees of the Dianellos Charity (No. 1) v. The Attorney-General of the Republic*, (1971) 1 C.L.R. 92, 105, and "*The Orphanage and Training School, Demetrakis G. Dianellos of Larnaca*" v. *The Attorney-General of the Republic*, (1977) 1 C.L.R. 302, 310).

Section 13(c) of Cap. 41 reads as follows:-

- “13. The Supreme Court shall have power and jurisdiction-
- 10 (a)
- (b)
- (c) to sanction the sale or other disposition of any property subject to a charitable trust on being satisfied that such sale or disposition is for the benefit and advantage of the charity.”
- 15

As it is expressly stated in section 13(c), above, this Court can sanction the disposition of the property concerned of the Charity, as applied for by the plaintiffs, if it is satisfied that such disposition is for the benefit and advantage of the Charity (and see, in this respect, also, the case of the *Mitsis Lemythou Commercial School, supra*, the case of *The Trustees of the “Mitsis Lemythou Commercial School” v. The Attorney-General of the Republic*, (1972) 1 C.L.R. 49, the English cases of *Attorney-General v. The Archbishop of York*, 51 E.R. 1126, *Re Ashton Charity*, 52 E.R. 1119, *Re Colston’s Hospital*, 54 E.R. 6, and Halsbury’s Laws of England, 3rd ed., vol. 4, p. 339, para. 696).

It has been stressed that a power such as that conferred by means of section 13(c) of Cap. 41 has to be exercised cautiously and sparingly (see, *inter alia*, Halsbury’s, *supra*, p. 339, para. 696, and the case of *St. Mary Magdalen College, Oxford v. The Attorney-General*, 10 E.R. 1267, 1273).

Counsel for the Attorney-General has not opposed the present application; he has, however, submitted that the agreement to be entered into between the plaintiffs and the Limassol Municipality should cast an obligation on the said Municipality “to admit, keep and maintain the old and incapacitated persons who are unable to work”.

After perusing all the material before me, in the light of the relevant provisions and principles of law, I find that I have been satisfied that the disposition of property of the Charity, in relation to which the sanction of this Court is being sought, is for the benefit and advantage of the Charity, in the sense that, through such disposition, object (b), above, of the Charity will continue to be fulfilled by the Limassol Municipality which is one of the co-founders of the Charity and, at the same time, the Charity will be relieved of the burden of its aforementioned obligation to the Bank of Cyprus Limited and it will, thus, be enabled to pursue more effectively its object (a), above. I have, therefore, decided to make the applied for order subject to the term that the agreement to be entered into, in this connection, by the plaintiffs and the Limassol Municipality will make clear and unambiguous provision, as suggested by the Attorney-General of the Republic, and, also, that it will be, as envisaged by means of clause 5 of such agreement, approved by the Council of Ministers.

There is, therefore, hereby made an order accordingly. As regards costs I have decided to make no order in relation thereto, but I consider fit to express the view that the Limassol Municipality should indemnify the plaintiffs in respect of the costs of the present proceedings.

Order accordingly.