

1982 April 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS G. SPANOS, INFANT, THROUGH HIS FATHER  
AND NEXT FRIEND GEORGE P. SPANOS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF INTERIOR,

*Respondent.*

(Case No. 145/80).

*Child—Name—Change of christian name—Child registered under christian name given by father—Child baptised on initiative of mother, at a time when her relations with father strained, and given another christian name—District Officer registering child under christian name given at baptism on application of the mother and on the strength of certificate of Ecclesiastical Authorities —Application of father for change of name given at baptism rightly refused by District Officer—Because there is nothing in the Births and Deaths Registration Law, 1973 (Law 85/73) authorising him to do so unilaterally—Sections 3, 4, 15 and 16(1) of the Law.*

The applicant was born in Nicosia on the 8th January, 1974 and his birth was registered, on information supplied by his father, at the Office of the District Officer of Nicosia as that of Spyros G. Spanos and the relevant certificate was issued. On the 17th April, 1974, on the initiative of the mother at a time when the father was serving a term of imprisonment and when their relations were not harmonious the child was baptised and was given the name of Yiannakis. On the 27th January, 1977, the mother applied to the Nicosia District Officer, on the strength of the relevant certificate issued by the Ecclesiastical Authorities,

and had the name of the child Yiannakis registered in the relevant register. On the 21st August, 1979, the father applied to the Nicosia District Officer alleging in the relevant affidavit that the correct name of his son should be Spyros as he had been originally registered. By letter dated 11th April, 1980, the respondent District Officer informed the father that he could not alter the last name entered in the relevant register unless he was ordered by the Court to do so. Hence this recourse by the child, through his father, for a declaration that the decision of the respondent to dismiss the application for the change of his name from Yiannakis G. Spanos to Spyros G. Spanos is null and void.

The matter is governed by the Births and Deaths Registration Law, 1973 (Law 85/73) and the relevant sections are sections 3, 4, 15 and 16(1) and are quoted at pp. 160–62 post.

*Held*, that there is nothing in the Births and Deaths Registration Law, 1973 (Law 85/73) authorising the District Officer to change the christian name of the child given at baptism uniterally; that the Christian name of the child in this case cannot be changed without an order of the Court; and that, therefore, the District Officer was right in taking the decision complained of; accordingly the recourse should fail.

*Application dismissed.*

Cases referred to:

- Y. v. Y. (Child's Surname)* [1973] 2 All E.R. 574;  
*D. v. B.* [1977] 3 All E.R. 751;  
*Cox v. Parrott* [1946] 1 All E.R. 321.

**Recourse.**

Recourse against the refusal of the respondent to change the name of the applicant from Yiannakis G. Spanos to Spyros G. Spanos.

*X. Xenopoulos*, for the applicant.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicant,

who is an infant, filed the present recourse through his father, George P. Spanos, as his next friend, claiming, as stated therein, the following relief:

- 5 1. A declaration of the honourable Court that the act and/or decision of the respondent dated 11th April, 1980, to dismiss the application of the applicant for the change of his name from Yiannakis G. Spanos to Spyros G. Spanos, be declared null and void and of no effect whatsoever; and
- 10 2. An order of the honourable Court directing the respondent to amend the Register of the Nicosia District Office so that the name Spyros G. Spanos is entered instead of Yiannakis G. Spanos.

15 The facts of the case, which are not in dispute, shortly put are as follows:

The applicant was born in Nicosia on the 8th January, 1974 and his birth was registered, on information supplied by his father, at the office of the District Officer of Nicosia as that of Spyros G. Spanos and the relevant certificate was issued.

20 On the 17th April, 1974, on the initiative of the mother of the infant, Androniki Ioannou, at a time when the father was serving a term of imprisonment and when their relations were far from being harmonious, the child was baptised and was given the Christian name of Yiannakis.

25 On the 27th January, 1977, the mother applied to the Nicosia District Officer on the strength of the relevant certificate issued by the Ecclesiastical Authorities and had the name of the child Yiannakis registered in the relevant Register.

30 On the 21st August, 1979, the father applied to the Nicosia District Officer alleging in the relevant affidavit that the correct name of his son should be Spyros as he was originally registered.

35 By letter dated 11th April, 1980, the respondent District Officer, after obtaining the advice of the Attorney-General of the Republic, informed the father that he could not alter the last name entered in the relevant register unless he was ordered by the court to do so.

The father being dissatisfied by this decision, filed the present recourse.

The only ground of law on which the application is based, as it appears on the face of it, is that the decision of the respondent dated 11th April, 1980, conflicts with the Births and Deaths Registration Law Cap. 275, as amended by Law 74 of 1967 in that applicant's only legal and/or correct name is Spyros G. Spanos and not Yiannakis G. Spanos. 5

It is clear from the above that counsel for applicant at the time of the filing of this recourse did not have in mind that the Births and Deaths Registration Law Cap. 275 had been repealed by the Births and Deaths Registration Law of 1973 (Law 85/73). This new law has been modelled on the English Births and Deaths Registration Act, 1953. This Act of 1953 partly repealed the Births and Deaths Registration Acts of 1836, 1837, 1874, 1926 and the whole Act of 1947. 10 15

The relevant sections of Law 85/73 as regards registration of Births and change of name are sections 3, 4, 15 and 16(1), respectively, and are almost identical to sections 1, 2, 12 and 13 of the English Act of 1953. They read as follows: 20

“3-(1) Subject to the provisions of this part, the birth of every child born within the Republic shall be registered by the Registrar of Births and Deaths of the village or the town in which the child was born by entering in the Register kept for such village or town such particulars concerning the birth as may be prescribed; and different Registers shall be kept and different particulars may be prescribed for live-births and still-births respectively: 25

Provided that, where a living new-born child is found exposed and no information as to the place of birth is available, the birth shall be registered by the Registrar of Births and Deaths of the village or town in which the child is found. 30

(2) qualified persons to give information concerning a birth are— 35

(a) the father and the mother of the child;

- (b) the occupier of the house in which the child was to the knowledge of the occupier, born;
- (c) any person present at the birth;
- (d) any person having the charge of the child.

5           4. In the case of every birth it shall be the duty—

- (a) of the father and mother of the child; and
- (b) in the case of the death or inability of the father and mother, of each other qualified informant,

10           to give to the Registrar, before the expiration of a period of forty-two days from the date of the birth, information of the particulars required to be registered concerning the birth, and in the presence of the Registrar to sign the Register;

15           Provided that the giving of information and the signing of the Register by any one qualified informant shall act as a discharge of any duty under this section of every other qualified informant.

20           15. At the time of registering the birth of any child, if so required by the informant and upon payment of a fee not exceeding fifty mils, the Superintendent Registrar or the Registrar, depending on the occasion, should provide him with a signed certificate of the entry of the birth in the prescribed form.

25           16(1) Where, before the expiration of twelve months from the date of the registration of the birth of any child, the name by which it was registered is altered or, if it was registered without a name, a name is given to the child, the Registrar or Superintendent Registrar, depending on the occasion, having the custody of the Register in which the Birth was registered, upon delivery to him at any time  
30           of a certificate in the prescribed form signed—

35           (a) If the name was altered or given in baptism either by the person who performed the rite of baptism or by the person who has the custody of the Register, if any, in which the baptism is recorded, or

(b) If a name has not been given to the child in baptism, by the father, mother or guardian of the child or other person procuring the name of the child to be altered or given, and upon the payment of a fee of fifty mils by the person procuring the registration of the name which is referred to in the certificate, forthwith enters in the Register the name mentioned in the certificate without any erasure of the original entry, the name referred in the certificate as having been given to the child, and after stating upon the certificate the fact that the entry has been made, shall forthwith send the certificate to the Registrar General, together with a certified copy of the entry of the birth with the name added under this subsection".

Counsel for applicant, in arguing his case, submitted that the only issue in this recourse is as to which one of the parents has a right to decide as regards the name of a child. He further submitted that the father of a child has priority over the mother as it appears from the wording of sections 3(2)(a) and 4(a) of the Law where the name of the father is referred first as the person qualified to give information to the Registrar concerning the birth. He also argued that even if the wording appearing in the said subsections is interpreted to mean that both parents together should provide the relevant information to the Registrar, then, again, one parent cannot change the name of a child without the consent of the other.

Finally, he submitted, that in the present case the District Officer wrongly accepted the application of the mother for the change of the name of the child without the consent of the father and, consequently, the decision complained of should be declared null and void.

Counsel for the respondent, on the other hand, submitted that both the original entry of the name of the infant, as well as the subsequent change of name, were made by the District Officer in accordance with and in compliance to the provisions of sections 3 and 16 of Law 85 of 1973. There is nothing in the law authorising the respondent authority to erase from the Register or cause the change of the christian name of a child on the application of one of the parents as in the present case, without the consent of the other parent or an order of the court.

Having considered the arguments of both counsel I came to the conclusion that in the present case we are not concerned as to which one of the parents has the right to decide as regards the name of a child, as counsel for applicant submitted. The  
5 question posed is whether the respondent was right in taking the decision complained of contained in his letter of 11.4.1980 by which he rejected the application of the father for the change of the Christian name of the child from Yiannakis to that of Spyros.

10 In the English Case Law, where I resorted for guidance, there is ample authority to the effect that, as a rule, the surname of a child cannot be changed by either the father or the mother unilaterally. In the absence of agreement a parent wishing to change a child's surname should seek the decision of the court.  
15 (See in this respect the case of *Y. v. Y. (Child's Surname)* [1973] 2 All E.R. 574, applied in *D. v. B.* [1977] 3 All E.R. 751). However, as regards the change of the Christian name of a child I could find no authority on the point. The nearest case I was able to trace, was a case decided before the enactment of the  
20 Births and Deaths Registration Act, 1953 and is the case of *Re Parrott's Will Trusts, Cox v. Parrott* [1946] 1 All E.R. 321. In that case by his will the testator gave his residuary estate, subject to the life interest of his wife, to C, on condition that C should "by Deed Poll assume" a certain name, which would  
25 involve C changing not merely his surname but his christian name. There was a gift over in the event of C not complying with this condition. Held: the condition was impossible to fulfil, because a christian name could not be altered by Deed Poll. In the editorial note it is stated that there is little authority  
30 on the point, but it appears to be well established that a Christian name cannot be changed by Deed Poll. Whether this consists of one word or several there is strictly only one Christian name, and the name which may now be added on adoption is in a somewhat anomalous position. The Christian name being  
35 given at baptism and being a matter primarily relating to the Church membership of the holder, it can, on the authority of Lord Coke, be changed at Confirmation if the Bishop finds good and sufficient reason. The only method of change is, presumably, by act of parliament.

40 In the case in hand the District Officer when the child was born registered its birth with the first name as Spyros on informa-

tion given by the father, being one of the persons qualified, under the provisions of sections 3 and 4 of the Law. These two sections are mainly concerned with the birth of a child and it is not necessary or imperative that the child be given a first name upon registration of its birth. This is clear from the wording of section 16 of the Law. 5

About three months later the child was baptised and was given the Christian name of Yiannakis. On 27.1.1977, about three years later, the District Officer, upon delivery to him by the mother of the relevant certificate from the Ecclesiastical Authorities, entered in the Register the name of Yiannakis mentioned therein in compliance with the provisions of section 16(1)(a) of the Law. So, on this occasion the name of the child was not changed on information given by the mother but the District Officer according to the Law he was bound to enter it on the strength of the Ecclesiastical certificate which could be delivered by anybody. 10 15

As I have already said earlier on, we are not concerned in this recourse as to whether the mother of the child or any other person was entitled to give to it the name of Yiannakis at baptism without the consent of the father. This may be a matter to be decided in proceedings before a civil court between the persons concerned. What we are concerned with is the application of the father based on an affidavit to change the Christian name of the child given at baptism, unilaterally. There is nothing in the Law authorising the District Officer to do so and I am of the view that the District Officer was right in taking the decision complained of. The Christian name of the child in the present case cannot be changed without an order of the court. 20 25

For the reasons stated above, this recourse fails and is dismissed with no order as to costs. 30

*Application dismissed. No order as to costs.*