

1988 June 14
[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA A. ANTONIADES, Applicant,

THE REPUBLIC OF CYPRUS THROUGH
THE DIRECTOR OF INLAND REVENUE DEPARTMENT, Respondent.

(Case No. 174/87).

Taxation—Capital Gains—The Capital Gains Tax, 1980 (Law 52/1980)—Whether a disposition was made before or after its enactment—Contract providing for transfer and registration in the name of purchaser (a company limited by shares) or any person or company the purchaser may indicate—New contracts with other companies—In the circumstances, such new contracts were treated as independent from the first one.

Immovable Property—Transfer—The Land Transfer Amendment Law 1890, sections 4 and 7 (now sections 5 and 59 of Cap. 228)—Documents produced at Land Registry Office—Deemed to be true.

10 The applicant and her father were joint owners of a plot of land. By contract made in 1979 they agreed to sell it to "Kotsonis Estates Ltd". They undertook to "transfer and register" it in the name of the purchasers "or any person or persons or company indicated by the purchasers." The price was £115,000.

15 The plot was divided into two parts, each one of which was registered in 1981 in the joint names of applicant and her father. The one part was sold in 1981 to "Pelesa Tourist Enterprises Ltd." for £63,888. Moreover, in 1982 the applicant and her father granted a power of attorney to "Kotsonis Estates Ltd." empowering the latter to register such part to any person or
20 company.

The other part was sold in 1982 to "Matsis and Kotsonis Drilling Ltd." for £51,112. By a further agreement made in 1983 "Matsis and Kotsonis Drilling Ltd." were substituted by "Melounda Development Ltd." On 15.7.83 the applicant and her father made a new contract with the last mentioned company, selling such part for £55,050. 5

The relevant transfers were made in 1983. The respondent considered that dispositions were made after the enactment of Law 52/80 and, consequently, subjected them to Capital Gains Tax, whereas the applicant contended that the disposition was made in 1979 and whatever was done thereafter was in furtherance of the said undertaking in the agreement of 1979. 10

Held, dismissing the recourse: (1) The new contracts were entered into not in pursuance of the undertaking in the original contract, but were entirely new agreements intending to substitute the original one. Under the said clause 4 there was no obligation to enter into new agreement, but only to "transfer and register." 15

(2) In any event one cannot go behind the documents as produced at the Land Registry Office, as by virtue of sections 4 and 7 of the Land Transfer Amendment Law 1890, Law No. 19 of 1890 - (now sections 5 and 59 respectively, of Cap. 228) such documents are deemed to be true except in cases where fraud or false entries are claimed to have been made. 20

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Adis Ltd. v. The Republic (1986) 3 C.L.R. 900;

Varnavides and Others v. The Republic (1986) 3 C.L.R. 1385. 25

Recourse.

Recourse against the decision of the respondent to impose on applicant capital gains tax and interest thereon at 9% for the disposition of her property at Pissouri and Limassol.

Th. Ioannides, for the applicant.

Y. Lazarou, for the respondent.

Cur. adv. vult.

5 A. LOIZOU P. read the following judgment. The applicant in this recourse seeks a declaration of the Court that (a) the decision of the respondent Director to impose upon her capital gains tax and interest thereon at 9% as from 25th October 1983 and (b) the valuation of the market value of her sold property being excessive, are null and void and of no legal effect whatsoever.

10 The applicant was joint owner with her father to the extent of 1/2 share each, of land at Pissouri, Limassol, plot No. 51 Sheet/Plan LVII/14 reg. No. 21315 of an area of 45 donums and 1 evlek.

15 By virtue of contract dated 2st December 1979 the applicant and her father, agreed to sell the aforesaid property to the company "Kotsonis Estates Ltd" for the amount of £115,000.- to be paid by specified instalments, failure of payment of which bearing interest at 6%.

Also, clause 4 of the said agreement provided as follows:

20 "Moreover the sellers ... are obliged upon payment to them by the buyer of the whole of the balance ... to transfer and register immediately the aforesaid property in the name of the purchaser or any person or persons or company indicated by the purchaser."

25 The applicant and her father - as they allege - at the request of the purchasers - divided the property into two parts which were registered on the 3rd November 1981, jointly in her name and her father's to the extent of 1/2 share each. Meanwhile on the 7th July 1981 an agreement was signed by the applicant and her father for
30 the sale of one of the newly registered parts, under Reg. No.

25476, to a company called "Pelesa Tourist Enterprises Ltd" for the amount of £63,888-. The relevant deed of transfer was signed on the 28th April 1982.

On the 2nd March 1982 the applicant and her father signed an agreement of sale to the company "Matsis and Kotsonis Drilling Ltd.," of the second part under Reg. No. 25475, for the price of £51,112.-, the remaining balance of £36.000. to be paid by the 15th June 1982, plus interest at 9%. 5

On the 5th July 1983 the applicant and her father signed a further agreement with "Matsis and Kotsonis Drilling Ltd" and another company called "Melounda Development Ltd" whereby "Matsis & Kotsonis" was substituted as purchaser by the latter company "Melounda" and whereby the rights and obligations stemming from the contract of sale dated 2nd April 1982 were transferred to the substitute purchaser for the same amount of £51,112.-. It was further agreed therein that no further payment was to be made by the substitute purchaser to the applicant and her father, all moneys due having been paid. 10 15

Subsequently on the 25th July, 1983 the applicant entered into an agreement with "Melounda Development Ltd" for the sale of plot reg. No. 25475 for the amount of £55,050.- which as stated therein was paid in cash. The relevant transfer was effected on the 6th December 1983. 20

The respondent Director considering that the aforesaid sales were effected by the applicant and her father after the coming into force of the Capital Gains Tax Law 1980, (Law No. 52 of 1980) - hereinafter to be referred to as the law, levied tax upon them as follows: 25

(a) Re plot reg. No. 25476, at the market price of £25,000.-, as at 27th June 1978, and sale price of £37,000.-, tax £1,500.-. 30

(b) Re plot reg. 25475, at the market price of £15,000.-, as at 27th June 1978, and sale price of £37,500.-, tax £1,500.-.

As a result the applicant filed the present recourse the essence of which concerns the date of the disposition of the aforesaid immovable properties.

5 It was contended by the applicant that the respondent director acted contrary to the provisions of section 10 of the Law, in that, it was alleged there had not been any disposal in the wide sense of the word because at the time of the said disposal the applicant was not in fact the owner as any sale by the applicant of the property in question took place prior to the coming into effect of the Law and is therefore not liable to tax.

15 The respondents on the other hand argued that the further agreements of sale entered into by the applicant were not to give effect to clause 4 of the original agreement of the 21st December 1979, but in order to terminate and substitute such agreement and the fact that it was subdivided and new agreements were entered into with different parties shows a clear intention to rescind the original agreement. In any case it was contended, the declarations of transfer submitted to the Land Registry Office show clearly that the disponers were the applicant and her father.

20 From a perusal of the various documents which are before me, I can reach no other conclusion but that the new contracts were entered into not in pursuance of clause 4 of the original contract but were entirely new agreements intending to substitute the original with new. Under the said clause 4 there was no obligation to enter into new agreements but only to "transfer and register". The intention to enter into new agreements becomes even more obvious in the case of plot Reg. No. 254/75 where the terms are not even the same as those of the original contract.

30 Even if it were to be as the applicant alleges, nevertheless one cannot go behind the documents produced at the Land Registry Office, as by virtue of sections 4 and 7 of the Land Transfer Amendment Law 1890, Law No. 19 of 1890 - (now sections 5 and 59 respectively, of Cap. 228) such documents are deemed to be true except in cases where fraud or false entries are claimed to

have been made.

To this effect it was stated in *Adis Ltd. v. Republic* (1986) 3 C.L.R. 900 at p. 907:-

"I must say at this stage that a Declaration of Transfer is formal document prescribed by Law and one cannot accept anything inconsistent with its contents merely because it is useful so to do on a given occasion. By this I am not referring to the cases where fraud or false entries are claimed to have been committed in respect of such declaration." 5

Similarly in the case of *Varnavides and others v. Republic* (1986) 3 C.L.R. 1385 it was held at p. 1394. 10

"As already stated above, it is before the L.R.O. and it has so been declared at the time of the transfer the said transfer was by way of sale. The applicants and their father made at the time of the transfer the requisite declarations to that effect and all the formalities were complied with. It was never alleged in the past that such declarations were false or untrue or that the sale was fictitious. This Court cannot go behind what was stated in the Official documents at the Land Registry which in law are deemed to be true." 15 20

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

Recourse dismissed.

No order as to costs.