

1988 July 27

[SAVVIDES,J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1. IAKOVOS GEORGHIADES,
- 2. MELJAY ESTATES LTD. ,

Applicants,

v.

- 1. THE DISTRICT LANDS OFFICER, NICOSIA,
- 2. THE DIRECTOR OF LANDS AND SURVEYS
DEPARTMENT,
- 3. THE ATTORNEY- GENERAL OF THE REPUBLIC,

Respondents.

(Case No. 286/87).

5 *Immovable Property—Transfer fees—Refund of—The Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Laws 10/65-2/82, section 9(3)—Shareholders of company were applicant 1, his wife and two other companies, each of which had as shareholders applicant 1 and his wife—Such companies are entities separate from their shareholders—Conditions for refund under section 9(3) not satisfied.*

Companies—A company has a personality distinct from its members.

Reasoning of an administrative act—Reference to relevant section of the law—In the circumstances the requirement of reasoning is satisfied.

10 This recourse, which impugned the validity of the decision to turn down refund of the transfer fees of immovable property paid by a company on the ground that the conditions of the aforesaid section 9(3) were not satisfied, was dismissed for the reasons indicated in the hereinabove headnote.

Recourse dismissed.

15 *No order as to costs.*

*Cases referred to:**Salomon v. Salomon* [1897] A.C. 22.**Recourse.**

Recourse against the decision of the respondents refusing applicants' claim for the refund of transfer fees.

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A. Poetis, for the applicants.*Chr. Ioannides*, for the respondents.*Cur. adv. vult.*

SAVVIDES J. read the following judgment. Applicants by the present recourse challenge the decision of the respondents communicated to the applicants by letter of respondent 1 dated 23rd January, 1987, refusing applicants' claim for the refund of transfer fees.

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I must note here that although in the title of the recourse the 1st respondent is referred to as the District Lands Officer, Nicosia, the letter containing the sub judice decision was in fact written by the District Lands Officer of Larnaca. I will consider this misstatement in the title as being due to an oversight on the part of counsel and any reference in this judgment to respondent 1 will be deemed as referring to the District Lands Officer of Larnaca.

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Applicant 1 is a shareholder and a Director of applicant 2 company. On or about the 28th May, 1980, a contract of sale was entered between the owners of three building sites under registration Nos. 5836, 5837, 5838 and applicant 1 for the sum of £80,000.- The said contract was deposited with the Larnaca District Lands Registry Office on the 30th May, 1980 under No. 121/80.

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On the 17th February, 1981, both interested parties i.e. the seller and the applicant as purchaser appeared before the District

5 Lands Registry Office at Larnaca and it was agreed that the said sites be transferred in the name of applicant 2 as applicant 1 assigned his rights in respect of such contract to applicant 2. The declared price was not accepted as it was found by the Lands Registry Office to be lower than the market value and the Land Registry Office insisted and collected transfer fees on the amount of £120,000.- which was the market value of the property at the material time. The transfer fees paid amounted to £7,275.75.

10 The shareholders of applicant 2 company at the material time were applicant 1 and his wife, Interchange Ltd, and Interchange Services Ltd.

15 By letter dated 19th January, 1987, signed by applicant 1 acting on behalf of both applicants applicant 1 claimed from respondent 1 the refund of the transfer fees paid basing his claim on s.9 (2) of Law 31/76 which provides for the refund of transfer fees in cases where property is transferred to a company the shareholders of which are close relatives and provided that within a period of five years from the declaration of transfer no other person acquired any share in the company.

20 Respondent 1 by letter dated 23rd January, 1987, refused such application. The contents of such letter read as follows:

 "I return herewith all documents submitted and wish to inform you that your case does not fall within the provisions of s. 9(2) of Law 31/76."

25 As a result applicants filed the present recourse challenging the sub judice decision.

30 The legal ground on which the recourse is based is that the respondents acted in violation of s. 9(2) of Law 31/76. In arguing his case counsel for applicants expounded on the said ground and he further contended that the sub judice decision lacks due reasoning.

Section 9(2) of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by laws 10/65 - 2/82 provides as follows:

" Οσάκις ακίνητος ιδιοκτησία μεταβιβάζεται εις εταιρείαν της οποίας μόνοι μέτοχοι είναι οιοιδήποτε των ακολούθων, ήτοι του μεταβιβάσαντος δικαιοπαρόχου και στενών συγγενών αυτού, και καθ' οιονδήποτε χρόνον προσάγεται εις τον Διευθυντήν ικανοποιητική, κατά την κρίσιν αυτού, απόδειξις του γεγονότος ότι, κατά την διάρκειαν πενταετίας από της ημερομηνίας της δηλώσεως μεταβιβάσεως ή, εάν τοιαύτη είναι η περίπτωση, μέχρι της εντός της προαναφερθείσης περιόδου τυχόν διαλύσεως ή εκκαθαρίσεως της εταιρείας, ουδέν πρόσωπον άλλο του μεταβιβάσαντος δικαιοπαρόχου και των αυτών ή ετέρων στενών συγγενών αυτού απέκτησεν οιανδήποτε μετοχήν της εταιρείας άλλως ή αιτία θανάτου, ο διευθυντής επιστρέφει εις την εταιρείαν το ποσόν των κατά τον χρόνον της δηλώσεως μεταβιβάσεως επιβληθέντων και εισπραχθέντων τελών και δικαιωμάτων, μειωμένον κατά ποσόν ίσον προς 4 επί τοις εκατόν της κατά την ημερομηνίαν της προαναφερθείσης δηλώσεως μεταβιβάσεως εκτετιμημένης αξίας της μεταβιβασθείσης ακινήτου ιδιοκτησίας.

The translation in English reads:

("Whenever immovable property is transferred to a company the only shareholders of which are any of the following, that is the transferor and close relatives of his, and at any time is produced to the Director satisfactory, in his opinion, proof of the fact that, during the five-year period from the date of the declaration of transfer or, if such is the case, until the dissolution or liquidation of the company within the aforesaid period, no person other than the transferee and the same or other close relatives of his has acquired any share in the company other than by reason of death, the Director refunds to the company the amount of the fees and charges imposed and collected at the time of the declaration of transfer, reduced by an amount

equal to 4 per cent on the assessed value of the immovable property transferred as on the date of the aforesaid declaration of transfer.")

5 It is further provided by sub-section (3) of s. 9 that for the purposes of sub-sections (1) and (2) "close relative" in relation to a person means the husband or wife of such person and relatives within the third degree of relationship.

10 It has been argued by counsel for applicants that the shareholders of applicant 2 company in the name of which the properties were transferred fell within the definition of sub-section (3) of section 9 in that the only shareholders at the material time were applicant 1 and his wife and that the other two companies which owned shares in applicant 2, namely, Interchange Ltd. and Interchange Services Ltd. were companies holding shares as trustees
15 of the applicant and his wife respectively and there were no other shareholders in the said companies. It is the gist of the argument of counsel for applicants that the only shareholder in Interchange Ltd. was applicant 1 and in the Interchange Services Ltd. his wife. The trust deeds which were signed on behalf of the said
20 companies that they were holding their shares in applicant 2 company as trustees for the account of applicant 1 and his wife, were submitted together with other documents to respondent 1. In accordance with counsel's argument the two companies should be considered as belonging to applicant 1 and his wife respectively
25 and once there was no other shareholder in applicant 2 company the transfer fees should be refunded to the applicants in the present case as satisfying the definition of "close relatives" under sub-section (3) of s. 9 of the relevant law.

30 Counsel further contended that the sub judge decision merely mentions that the case does not fall within the provisions of s.9 (2) without giving any reasons in that respect and, therefore, the sub judge decision has also to be annulled on this ground.

Counsel for the respondents by his written address submitted that the present case does not fall within the provisions of s.9(2)

as the applicants do not fall within the definition of sub-section (3) i.e. the relation of husband and wife or relation of up to the third degree has not been established.

I shall dispose first briefly of the argument of counsel for applicants that the decision is not duly reasoned. 5

A perusal of the letter of respondent 1 clearly shows that the application was refused for the sole reason that it does not fall within the provisions of s. 9(2) of Law 31/76. The provisions of such section are clear and they provide for the refund of transfer fees in a particular case such as the one on which the applicants seek to rely. Therefore, in my view, the reference to the relevant section amounts to sufficient reasoning in the present case. Furthermore a perusal of the documents which were submitted by applicants and which were attached to the letter of respondent 1 embodying the sub judge decision supplement his reasoning in that the provisions of the law were not satisfied. 10 15

As a result the sole question which poses for consideration is whether the applicants are entitled to the refund of the transfer fees paid when the three building sites were registered in the name of applicant 2. 20

There is no dispute in the present case that the time period contemplated by s. 9(2) has in fact elapsed. The property was acquired by applicant 2 in 1981 and the application for refund was submitted on the 19th January, 1987.

It is common ground that at all material times the shareholders in applicant 2 company were applicants 1, his wife and two other companies allegedly belonging to applicants 1 and 2. It is a well established principle of law that a company is a legal entity independent of its shareholders. (See *Salomon v. Salomon* [1897] A. C. 22). Bearing in mind this principle I cannot treat the two companies, namely, Interchange Ltd. and Interchange Services Ltd. as being in fact any legal entities other than the ones acquired by them by operation of law and such legal entities are different from 25 30

5 those of their shareholders. In view of such finding the shareholders in applicant 2 company were not only the two persons related to each other to the degree provided by sub-section (3) of s. 9 but also two other independent legal entities, the two companies above mentioned, between, whom and applicant 1 and his wife no relation as defined sub-section (3) of s.9 could exist.

In the result I find that it was reasonably open to the respondents to treat applicants' application as not falling within the provisions of s.9 of the law.

10 In the result this recourse fails and is hereby dismissed but in the circumstances I make no order for costs.

*Recourse dismissed.
No order as to costs.*