

1988 May 14

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. ANDROULLA YIOLITES-CHARALAMBIDES,  
2. GEORGHIOS L. CHARALAMBIDES,  
3. IOANNIS L. CHARALAMBIDES, THROUGH  
THEIR AUTHORISED REPRESENTATIVE  
LEONTIOS CHARALAMBIDES,

*Applicants,*

v.

THE MUNICIPALITY OF LIMASSOL,

*Respondents.*

(Case No. 405187).

*Practice—Recourse for annulment—Intervention by third parties for purpose of being joined as interested parties—Principles applicable—Absence of formal opposition to application does not predetermine its fate.*

This is an application by the owners of petrol stations, situated on or near Nicos Pattichis Street, in Limassol, to intervene and take part as interested parties in this recourse, which is directed against the refusal to grant to the applicants a permit for the erection of a petrol station. 5

The application was not opposed.

Held, dismissing the application: (1) Absence of opposition does not seal the outcome of the application. The matter is one of public law.

(2) The interest of the intervener must be separate and distinct from that of the general public. It need not be identical with that of the respondent. 10

(3) The erection of a petrol station is a matter wholly different from the

3 C.L.R. **Yiolites & Others v. L' ssol Municipality**

licensing of the operation of a station. The sub judge decision was taken solely under the Streets and Buidings Regulation Law and the Regulations made thereunder. Applicants do not have an interest distinct from that of the general public.

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*Application dismissed.*

*Cases referred to:*

*Vorkas and Others v. The Republic* (1984) 3 C.L.R. 87;

*Josephides v. The Republic*, 2 R.S.C.C. 72;

*Theodorides and Others v. Ploussiou* (1977) 3 C.L.R. 319.

10 **Application**

Application by third parties for leave to intervene as interested parties.

*E. Theodoulou*, for applicants (interveners).

*R. Michaelides*, for respondents - applicants in the recourse.

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*Y. Potamitis*, for respondents.

*Cur. adv. vult.*

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PIKIS J. read the following judgment. This is an application by the owners of four petrol stations situate on or near Nicos Pattichis Street, Limassol, for leave to intervene in the proceedings and take part as interested parties. They want to be heard in support of the decision of the Municipality of Limassol, refusing an application of the pursuers for the issuance of a building permit to erect a petrol station on Nicos Pattichis Street. The Municipality raised no objection to the intervention. For their part the applicants in the main cause reconciled, in the end, to the participation in the proceedings of the petrol station owners as interested parties. Earlier, they objected to their intervention on the ground that

they had no legitimate interest to defend. Their application was rejected on the basis of the relevant provisions of the Streets and Buildings Law - Cap. 96, and Regulations made thereunder, solely affecting the exercise of the statutory powers of the Municipality of Limassol.

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Examination of the opposition supports the view that the application for a building permit was refused for reasons wholly unconnected with the interest of the interveners or likely prejudice to their business interests. It was exclusively based on the view taken of the relevant provisions of the law and Regulations, in conjunction with plans for future development of the area.

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The absence of formal opposition to the application for intervention does not seal the fate of the application. The matter at issue is not one inter partes but a matter of public law also necessitating examination of a procedural step from the angle of public interest. *In Vorkas and Others v. Republic* (1984) 3 C.L.R. 87 we had occasion to consider the nature of the interest necessary to justify joinder of someone as an interested party. (See, also, *Josephides v. Republic*, 2 R.S.C.C. 72, 75; and *Theodorides and Others v. Ploussiou* (1976) 3 C.L.R. 319). The intervener must have an interest akin to that of an applicant though not necessarily identical. *Professor Tsatsos* takes the view that a more flexible rule applies to determine the legislation of joinder of an interested party. We need not debate the matter at any great length in this case, save to stress that the interest of the intervener must be separate and distinct from that of the general public or any particular section of it. Proceedings of judicial review of administrative action are not in the nature of *actio popularis* either for the purpose of identifying the interest of the applicant or that of the intervener. This having been said we must add that the interest of the intervener in supporting the decision under review need not be identical with that of the decision - making body.

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The interest of the suggested interveners in the sustenance of the decision here under review is no different from that of the general public or large sections of it, such as the townsmen of Li-

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5    massol or of the quarter where the building site is situate. The decision is founded on the application of building law and Regulations made thereunder taken in the interest of town planning. Hence they lack the distinct personal interest necessary to justify joinder as interested parties.

10    The erection of a building designed to accommodate a petrol station is a matter wholly separate from the licensing of the operation of the station. For premises to be used as a petrol station, a licence is required under the provisions of the Petroleum Law, Cap. 272. Had the decision at issue concerned the licensing and the use of the premises as a petrol station, presently inexistent, they might conceivably have a legitimate interest to support through intervention as interested parties. No definite answer  
15    need be given to that question either for, it does not arise for consideration or decision. Suffice to rule that the applicants have no right to intervene. Their application is, therefore, dismissed.

*Application dismissed.*