

1. THE INHABITANTS OF THE VILLAGE OF KARPASHIA, NAMELY HADJI MARKOS P. HADJI MARKOU AND SIXTY-ONE OTHERS,
2. THE TURKISH INHABITANTS OF THE VILLAGE OF DHIORIOS, NAMELY HALIL FIKRET AND ONE HUNDRED AND THIRTY-EIGHT OTHERS,

Appellants,

v.

1. THE CHURCH COMMITTEE OF AYIA MARINA CHURCH OF DHIORIOS,
2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondents.

INHABITANTS
OF THE
VILLAGE
OF KARPASHIA,
ETC. AND
OTHERS
v.
CHURCH
COMMITTEE
OF AYIA
MARINA
CHURCH OF
DHIORIOS
AND ANOTHER

(Civil Appeal No. 4898).

Immovable Property—Application by respondent No. 1 (a religious corporation) to the Director of Lands and Surveys (respondent No. 2) for registration in its name of a piece of land under section 41(1) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—Objection by another party (appellants No. 1) to such registration claiming the land in question by virtue of prescription—Decision of the Director (respondent No. 2) granting said application and rejecting objection thereto declared by the Supreme Court to be invalid as having been reached without competence—Parties should have been given full opportunity of vindicating their legal rights in a Court with all the safeguards as to proof and admissibility of evidence (Hassidoff v. Santi and Others (1970) 1 C.L.R. 220, followed).

“Person aggrieved” in section 80 of Cap. 224 (supra)—Entitled under section 80 to appeal to the District Court against decisions of the Director of Lands and Surveys—Cf. section 41 (1) of the Law (supra)—Notice of Director’s decision referred to above given to appellants No. 1 who had lodged an objection to the aforesaid application of respondent No. 1—No notice to appellants No. 2 who have not lodged an objection—Both appellants held to be persons “aggrieved” by the said decision and, therefore, entitled to lodge an appeal to the District Court under section 80 of the Law.

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INHABITANTS
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Appeal under section 80 of the Immovable Property etc. etc. Law, Cap. 224 against decisions of the Director of Lands and Surveys—Cf. section 41(1)—Appeal to the District Court—Against the judgment of the District Court given on such appeal under section 80, the appellants took the present appeal to the Supreme Court, which, allowing the appeal, set aside the judgment of the District Court and declared invalid the sub judice decision of the Director of Lands and Surveys, respondent No. 2.

Words and Phrases—“ Person aggrieved ” in section 80 of Cap. 224 (supra).

The respondent No. 1 being a religious corporation applied to the Director of Lands and Surveys (respondent No. 2) under section 41(1) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 that an area of land situated at Dhiorios village under Plot 219 be registered in its name. The appellants No. 1 by a letter dated March 23, 1968, objected to the registration of the land in question in the name of respondent No. 1 claiming rights of ownership thereon acquired by prescription. The respondent No. 2 by letter dated April 19, 1969 informed the appellants No. 1 that, after careful consideration of the matter, he decided to grant the application of respondent No. 1 and register the property in the latter's name and that they (appellants No. 1) had thirty days within which to obtain an order of the Court to the contrary. The appellants No. 1 (and also appellants No. 2) lodged an appeal to the District Court of Kyrenia under section 80 of the said Law, Cap. 224 against the aforesaid decision of the Director of Lands and Surveys (respondent No. 2). The District Court of Kyrenia dismissed the aforesaid appeal and it is against this dismissal that the appellants took the present appeal in the Supreme Court.

Allowing the appeal and setting aside the aforementioned decision of respondent No. 2, the Supreme Court :—

Held, (1). It is not within the competence of the respondent No. 2 (the Director of Lands and Surveys), under section 41(1) of the statute (Cap. 224 *supra*), to decide on the validity of conflicting claims regarding rights in respect of immovable property.

(2) That being so we are of the view that the parties to these proceedings should have been given full opportunity of vindicating their legal rights in a Court, for example by a civil

action for a declaration as to title or otherwise, with all the safeguards as to proof and admissibility of evidence. (See *Hassidoff v. Santi and Others* (1970) 1 C.L.R. 220).

(3) In the result this appeal is allowed, the decision of the Kyrenia District Court is set aside and the *sub judice* decision of respondent No. 2 is declared to be invalid as having been reached without competence.

Appeal allowed. No order as to costs.

Cases referred to :

Hassidoff v. Santi and Others (1970) 1 C.L.R. 220.

Appeal.

Appeal by applicants against the judgment of the District Court of Kyrenia (A. Loizou, P.D.C. and Demetriades, D.J.) dated 16th October, 1970 (application Nos. 2/69 and 3/69) whereby their appeals, under s. 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, against a decision of respondent No. 2, were dismissed.

M. M. Houry, for the appellants.

A. Triantafyllides with *A. Christofides*, for respondent No. 1.

S. Nicolaidis, for respondent No. 2.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The appellants appeal against a judgment of the Kyrenia District Court by means of which there were dismissed appeals which the appellants had made to the said District Court, under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, against a decision of respondent No. 2, the Director of Lands and Surveys, which is to be found in a letter addressed to appellants No. 1 and dated the 19th April, 1969. It was stated in that letter that respondent No. 2 had decided to register an area of land at Dhiorios (plot 219 sheet-plan 11/35) in the name of respondent No. 1 and that appellants No. 1 had thirty days within which to obtain a Court Order to the contrary. As a result appellants No. 1, as well as appellants No. 2, who came to know of this decision of respondent No. 2, appealed against it, as aforementioned, to the Kyrenia District Court.

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The first issue which has to be decided is whether the appellants could, in the circumstances, have appealed under section 80 of Cap. 224. In dealing with this issue it is useful to refer to some salient facts of this case :—

The respondent No. 1, being a religious corporation, applied, under section 41 (1) of Cap. 224, that the land in question be registered in its name.

When respondent No. 2 received the relevant application of respondent No. 1 he proceeded to examine the matter ; appellants No. 1 found out about the application and they objected to the registration in the name of respondent No. 1, by a letter dated the 23rd March, 1968 ; it is to be derived therefrom that appellants No. 1, in effect, based their objection on rights of their own acquired by prescription ; respondent No. 2 informed appellants No. 1, by his already mentioned letter of the 19th April, 1969, that, in relation to their objection, he had decided, after careful consideration of the matter, to grant the application of respondent No. 1.

Under section 41 (1) of Cap. 224 respondent No. 2 was empowered, but not bound, to grant the said application ; and once he had received from appellants No. 1 a written objection thereto it was, in our view, lawfully open to him to communicate to them in writing his decision, as he has done.

In the light of the foregoing we have no difficulty in holding that appellants No. 1 were persons “aggrieved” by the decision of respondent No. 2—in the sense of section 80 of Cap. 224—and they were entitled to appeal under such section.

We see no sufficient reason to differentiate between appellants No. 1 and appellants No. 2, who did not lodge an objection and were, consequently, not informed by respondent No. 2 of his decision ; appellants No. 2 were persons whose interests were allegedly affected by such decision and once it came to their knowledge they were, also, persons “aggrieved” thereby and entitled to appeal against it under section 80.

We shall deal next with the merits of the appeal before us :

It is to be clearly understood from the contents of the letter of the 19th April, 1969, that respondent No. 2 reached

his complained of decision after examination of the conflicting claims to the property concerned of respondent No. 1 and appellants No. 1 and that he decided, eventually, that respondent No. 1 was entitled to such property.

It has not been seriously disputed, during the hearing before us, that it is not within the competence of respondent No. 2, under section 41 (1), to decide on the validity of conflicting claims regarding rights in respect of immovable property ; that being so we are of the view that the parties to these proceedings should have been given full opportunity of vindicating their legal rights in a Court, for example by a civil action for a declaration as to title or otherwise, with all the safeguards as to proof and admissibility of evidence. (See *Hassidoff v. Santi and Others*, (1970) 1 C.L.R. 220).

In the circumstances, this appeal, has to be allowed, the appealed from decision of the Kyrenia District Court has to be set aside and the *sub judice* decision of respondent No. 2 has to be declared to be invalid as having been reached without competence.

Regarding costs we are not prepared to make any order either in respect of the costs in the Court below or in respect of the costs of the appeal.

*Appeal allowed ; no order
as to costs.*

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