

1981 December 2

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF THE CHARITIES LAW, CAP. 41.

HIS BEATITUDE THE ARCHBISHOP OF CYPRUS
AND OTHERS,

Plaintiffs,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Defendant.

(Charity Application No. 3/80).

Charitable trusts—Practice—Application for appointment of new trustees—Not complying with rule 11 of the Charities Rules of Court—Dismissed.

5 This was an application by the trustees of a Charitable trust for an order of this Court that they should be replaced as trustees by the members of the Village Commission of Agros.

10 The application was not made in accordance with rule 11* of the Charities Rules of Court because in the material placed before the Court there were stated neither the names of the proposed new trustees nor their descriptions and residences; also, there were no affidavits of fitness of the proposed new trustees and there have not been filed their consents to act in the trust.

15 *Held*, that the present application cannot be granted as it does not comply with rule 11 of the Charities Rules of Court; accordingly the application must fail.

Application dismissed.

* Rule 11 provides as follows:

"11. Where the application is for the appointment of a new trustee or trustees the summons shall state the name, description and residence of every trustee proposed to be appointed and in addition to the affidavit referred to in rule 3 hereof shall be supported by an affidavit of the fitness of every such trustee together with his signed consent to act in the trust. Such consent shall be in the form No. 2 in the Appendix hereto and the signature thereto shall be certified either by a Registrar of the Supreme Court or by a certifying officer".

Cases referred to:

Trustees of the Cyprus Overseas Relief Fund v. The Attorney-General of the Republic (1978) 1 C.L.R. 430.

Charity Application.

Application, by the Trustees of the trust created by Kyriacos G. Apeitos, under section 13(b) of the Charities Law, Cap. 41 for an order that they be replaced by the Village Commission of Agros. 5

A. S. Angelides, for the plaintiffs.

G. Constantinou (Miss), Counsel of the Republic, for the defendant. 10

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. The plaintiffs, who are the trustees of a charitable trust created on September 23, 1976, by the late Kyriacos G. Apeitos, of Nicosia, for the benefit of Agros village, are seeking an order of this Court that they should be replaced as trustees by the members of the Village Commission of Agros. 15

In the present case I have not had the opportunity of hearing argument from counsel on the issue of whether the competent Court to make the appointments of new trustees is the appropriate District Court, under the Trustee Law, Cap. 193 (see section 40(1) of such Law) or whether I could adopt the same course as in *The Trustees of the Cyprus Overseas Relief Fund v. The Attorney-General of the Republic*, (1978) 1 C.L.R. 430, and proceed to appoint the new trustees in the exercise of the powers vested in the Supreme Court by section 13(b) of the Charities Law, Cap. 41, and by the relevant inherent jurisdiction of the Supreme Court. 20 25

I do not, however, have to pronounce on the above issue, not do I have to deal with the merits of this case, because I cannot, in any event, grant the present application, as it does not comply with rule 11 of the Charities Rules of Court (see Subsidiary Legislation of Cyprus, Revised Edition, 1954, vol. II, p. 417, at p. 418). 30 35

The said rule 11 reads as follows:

"11. Where the application is for the appointment of a new trustee or trustees the summons shall state the name,

description and residence of every trustee proposed to be appointed and in addition to the affidavit referred to in rule 3 hereof shall be supported by an affidavit of the fitness of every such trustee together with his signed consent to act in the trust. Such consent shall be in the form No. 2 in the Appendix hereto and the signature thereto shall be certified either by a Registrar of the Supreme Court or by a certifying officer".

In the material placed before me there are stated neither the names of the proposed new trustees nor their descriptions and residences; also, there are no affidavits of fitness of the proposed new trustees and there have not been filed their consents to act in the trust.

I have considered whether I could adjourn this application in order to enable the plaintiffs to comply with the said rule 11, but I find that there are so many material elements lacking that I think that the better course is to dismiss it and leave open to the plaintiffs the possibility of filing a new application complying, in every respect, with the relevant Law and Rules of Court.

Before doing so it would be useful for the plaintiffs to consider whether, in the circumstances of this case, they should apply again to this Court or whether they should apply to the competent District Court, under Cap. 193; and, also, whether it is really a feasible course to appoint as new trustees the members of a Village Commission, the composition of which is bound to change periodically, with the result that new applications for the appointments of new trustees will continuously become necessary.

This application is dismissed for the above reasons.

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Application dismissed.