

1982 April 21

[TRIANTAFYLIDIS, P., DEMETRIADES AND SAVVIDES, JJ.]

CHRISTINA MICHAEL HJI SAVVA AND OTHERS,  
*Appellants.*

v.

APOSTOLOS THOMA LOIZOU,  
*Respondent.*

(Civil Appeal No. 5740).

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*Immovable property—Right of way—Grant of, by Director of the Department of Lands and Surveys on application by one of the two joint owners of dominant tenement—No notice of the application given to the other joint owner and his position not considered by the Director when taking his decision—All joint owners of dominant tenement had to be joined in the application to the Director—Decision of Director set aside—Section 11(a) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as amended by Law 10/1966).* 5

The respondent was the owner of two-thirds share in a piece of land at Paliometochi. Upon his application the Director of the Department of Lands and Surveys, in the exercise of his powers under section 11(a) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as amended by section 3 of Law 10/1966) decided to grant to him a right of passage through the adjoining land of the appellants. The trial Court dismissed the appeal of the appellants against the above decision and hence this appeal. 10 15

Though it was undisputed that the respondent was the owner of two-thirds of the dominant tenement at no stage of the proceedings the owner of the remaining one-third share was notified of the application to the Lands Office or his position considered by the Director when taking his decision. 20

*Held*, that there was failure of the Director of the Department of Lands and Surveys to determine the application of the respondent who was only part owner of the property in favour of 25

which the right of passage was granted, without asking for the other joint owner to join in the application or, at least, notifying him of the application; that such failure is fatal in these proceedings and that if respondent insists on his claim for a right of passage, he has to join in his application to the Director all joint owners of the property in favour of which the right of passage is claimed; accordingly the appeal must be allowed and the decision of the Director be set aside.

*Appeal allowed.*

10 Cases referred to:

*Marcoullis and Others v. Tsakkistos and Another* (1970) 1 C.L.R. 1;

*Williams v. British Gas Corporation* (reported in the Journal of Planning and Environment Law, October, 1980 p. 686).

15 **Appeal.**

Appeal against the judgment of the District Court of Nicosia (Artemides, D.J.) dated the 27th June, 1977 (Appl. No. 3/76) whereby appellant's application by way of appeal against the decision of the Director of Lands and Surveys for a right of passage compulsorily imposed by the Director through the property of the appellants was dismissed.

*G. Platritis*, for the appellants.

*I. Typographos*, for the respondent.

*Cur. adv. vult.*

25 TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: The present appeal is against the decision of the District Court of Nicosia, whereby the application of the appellants by way of appeal against the decision of the Director of Lands and Surveys for a right of passage compulsorily imposed by the Director of Lands and Surveys through the property of the appellants and in favour of the property of the respondent and whereby the compensation payable by the respondent was also fixed under the provisions of section 11(a) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended by section 3 of Law 10/66, was dismissed.

The appellants are the owners of a piece of land under Regi-

stration 23999 at Paliometochi, Plot 173 by one-third share each. The respondent is the owner of two-thirds share of a partly adjoining piece of land under Registration 20799, Plot 174/1. In view of the fact that the property of the respondent had no access to the public road, the respondent applied to the Director of Lands and Surveys for the acquisition of a right of passage through the property of the appellants. The Director of Lands and Surveys in the exercise of his powers under section 11(a) of Cap. 224, as amended by section 3 of Law 10/66, decided to grant to the respondent a right of passage in favour of Plot 173 through the property of the appellants and assessed the compensation payable by the respondent to the appellants for such way in the sum of £329.—

The appellants appealed against the decision of the Director of Lands and Surveys by filing an application to the District Court under No. 3/76 under the provisions of sections 80 and 81 of Cap. 224. The District Court of Nicosia after considering the arguments advanced by both parties and the reasoned decision of the Director of Lands and Surveys dismissed the appeal of the appellants: hence, the present appeal was filed.

Subsequent to the filing of the appeal, by leave of the Court, two new grounds of appeal were added, one of which, ground (e), was as follows:

(e) The Court below erred in not taking into consideration the fact that the respondent was not the absolute owner of Plot 174/1 but the owner of only 2/3 shares, the other co-owner not joining him in his application for the granting of the route of access a fact which may prejudice the rights of other persons. This very fact is not even made mention in the decision of the Court below.

Before considering the various grounds of appeal advanced by counsel for the appellants, we find it expedient to deal with ground (e) of the appeal.

It is an undisputed fact that respondent is the owner of two thirds of Plot 174/1, the dominant tenement, in favour of which the right of passage was granted and that at no stage of the proceedings the owner of the remaining one-third share was notified of the original application to the Lands Office or his

position considered by the Director of Lands and Surveys when taking his decision.

Under Order 9 rule 10 of the Civil Procedure Rules, power is given to the Court to order that any parties who ought to have been joined as plaintiffs or defendants or whose presence before the Court may be necessary to be joined in the proceedings in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. In the present case, the joint owner of Plot 174/1 was not a party either in the application before the Director of Lands and Surveys or in the proceedings before the Court.

In *Marcoullis and Others v. Tsakistos and Another* (1970) 1 C.L.R. 1, the Supreme Court in dealing with an appeal in a case where a party was not joined in the proceedings, whose addition was found necessary, ordered a retrial of the case. In the judgment of the Court at page 6, it was said:

“In a situation such as the present one we have to set aside the trial Court’s finding; we might either proceed to determine ourselves, in its proper context, the issue of the conflicting registrations, or, instead, order a new trial. We have decided to resort to the latter course because, inter alia, all necessary parties do not seem to be before this Court at present. Once it was alleged by the respondents that the property of the appellants was to be found in plot 10, the grazing ground of Trahoni village, there should have been an order, by the Court of first instance, under Order 9, rule 10, of the Civil Procedure Rules, joining the registered owner of such plot 10—the Government—as a necessary party to the proceedings; and such an order will still have to be made in relation to the new trial unless the respondents abandon their aforesaid allegation”.

In a recent decision of the English Lands Tribunal in Reference 227/79 of the 3rd July, 1980, *Williams v. British Gas Corporation* reported in the *Journal of Planning and Environment Law*, October, 1980, p. 686 for compensation for pollution caused to lakes full of rainbow trout of which the applicant was joint owner with his wife, the Tribunal in considering the position

where only one of the two joint owners of the property affected made the claim, decided that:

“The claimant had no locus standi to commence or maintain the proceedings unless his wife was joined with him as claimant, for, although as between themselves, joint tenants (and therefore joint owners) had separate rights, as against everyone else they were in the position of a single owner. Apart from equitable remedies inter se, one joint tenant could not commence proceedings without the aid of the others. The notice of reference must therefore be struck out, unless the claimant’s wife was joined with him as claimant”.

In the case before us we have reached the conclusion that there was failure of the Director of Lands and Surveys to determine the application of the respondent who was only part owner of the property in favour of which the right of passage was granted, without asking for the other joint owner to join in the application or, at least, notifying him of the application. We find such failure fatal in these proceedings and we find that if respondent insists on his claim for a right of passage, he has to join in his application to the Director of Lands and Surveys all joint owners of the property in favour of which the right of passage is claimed.

Having found so, we find it unnecessary to deal with all other grounds raised in this appeal.

In the result, the appeal is allowed with costs in favour of the appellants and the decision of the Director of Lands and Surveys is set aside. Respondent at liberty to file a new application with the Lands Office for a right of passage, provided all joint owners of Plot 174/1 are made parties in such application.

*Appeal allowed with costs.*