

1982 October 5

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

LAMBROS CH. NICOLAIDES AND ANOTHER,
Appellants-Defendants,

v.

MARINA M. YEROLEMI,
Respondent-Plaintiff.

(Civil Appeal No. 5799).

Adoption—Adopted persons—Have a right to inherit from the ancestors of their adopters—Sections 10, 11 and 12 of the Adoption Law, Cap. 274.

The sole issue in this appeal was whether adopted persons had a right to inherit from the ancestors of their adopters. 5

Held, that after adoption, an adopted child stands in relation to the adopters and their relations in precisely the same position as a child born in lawful wedlock (see sections 10, 11 and 12 of the Adoption Law, Cap. 274); and has, therefore, a right to inherit from the ancestors of his adopters. 10

Appeal dismissed.

Cases referred to:

- Tano and Another v. Georgi and Others*, 19 C.L.R. 100;
- Stock v. Frank Jones (Tripton) Ltd.* [1978] 1 All E.R. 948;
- Cummins Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd.* [1970] 2 All E.R. 871 at p. 893 (H.L.); 15
- Nothman v. London Borough of Barnet* [1978] 1 All E.R. 1243 (C.A.);
- National Panasonic v. E.C. Commission* [1981] 2 All E.R. 1.

Appeal. 20

Appeal by defendants against the judgment of the District Court Paphos (Savvides, P.D.C. and Kronides, D.J.) dated the 16th September, 1977, (Action No. 1114/76) whereby it was

decided that the plaintiff, as the lawfully adopted child of Maroulla Yerolemi is entitled to inherit per the share of her mother in the estate of the deceased Omeros Demetriades, her father.

- 5 *E. Komodromos*, for the appellants.
 S. G. McBride, for the respondent.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

- 10 PIKIS J.: The right of adopted persons to inherit from the ancestors of their adopters is the question that must be resolved in this appeal. Need arose, in the first place, for the District Court of Paphos to determine the question in order to decide the claim of Marina Yerolemi to share in the inheritance of the
15 father, Omiros Demetriades, of her adoptive mother, Maroulla Yerolemi, who had predeceased her. Maroulla died on 16.2.66 and her father about a year later, on 4.2.67.

- The claim of Marina was resisted, and her right to inherit disputed by Mr. Lambros Nicolaides, the administrator of the property of Ero Demetriadou, a mental patient, the sister of her
20 adoptive mother.

- Marina became the adopted child of Maroulla Yerolemi and her husband, by virtue of an adoption order made by the District Court on 20.1.58. Notwithstanding the admission
25 made before the District Court by the appellant as to the fact of adoption, a vague attempt was made in the notice of appeal to question its efficacy. The attempt was abandoned, as well as any suggestion that the District Court should seek, despite this admission, evidence about its making. We may note, in
30 passing, that an adoption order affects the status of a person and as such is binding not only on the parties immediately connected therewith, but on the world at large.

- Before the District Court, conflicting submissions were made as to the rights of inheritance of an adopted person from the
35 relations of his adopters. For Marina, it was submitted that sections 10, 11 and 12 of the Adoption of Children Law, Cap. 274, confer on adopted children the same rights of inheritance as those enjoyed by any child born in lawful wedlock. There-

fore, their inheritance rights extend, in appropriate circumstances, to rights arising, in law, from the relations of the adopters. The law makes no distinction between the inheritance rights of adopted children and children born in lawful wedlock, either viz-a-viz their adoptive parents or their relations. This assimilation of rights was disputed as unwarranted in law, on behalf of Mr. Nicolaides. It was argued that the rights of inheritance of adopted children are confined to a right to inherit from their adoptive parents as opposed to any of their relations. 5

The Full District Court of Paphos, in an elaborate and well reasoned judgment, upheld the submission made on behalf of Marina, and declared her entitled to inherit as an heir of Omiros Demetriades, deceased. They principally rested their decision on the provisions of ss. 11 and 12 of Cap. 274, the plain wording of which presented, as the learned Judges observed, no difficulty to their construction. A like construction was placed, as they noted, on the corresponding provisions of English legislation, that is sections 13 and 14 of the Adoption Act, 1950, wherefrom the provisions of ss. 11 and 12 apparently originated. They dismissed the submission made on behalf of Mr. Nicolaides that the rights of inheritance of an adopted child, particularly the right to inherit from his adopters and their relations is dependent on ecclesiastical law, or the relationship acknowledged between adopted persons and relations of their adopters, by the ecclesiastical authorities. 10
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Mr. Komodromos raised the same points in arguing the appeal, before us, and submitted that -

- (1) Succession rights are exclusively regulated by the laws of succession embodied in Cyprus in the provisions of the Wills and Succession Law, Cap. 195. 30

In support, he cited a passage from *Dicey & Morris*, "The Conflict of Laws", 10th ed., at p.504, where it is stated:

"Whether an adopted person can succeed to property, should, on principle, be decided by the law governing the succession, not by the law governing the adoption." 35

This is a sound legal proposition but it does not establish, either that Cap. 195 regulates the status of a person,

or that Cap. 195 cannot be amended except by a law specifically designed to amend its provisions.

5 The question of the status of a person, as the learned authors of *Dicey & Morris* note, in the same context, is distinct from that of succession and afortiori it may be the subject of separate legislation.

10 Mr. Komodromos also relied on the decision of the Supreme Court in *Phokion Tano and Eugenia Tano v. Georgi and Others*, XIX C.L.R. 100 (new edition) in support of his submission, that an adopted child does not rank as a legitimate child; therefore, Marina had no right to claim as an heir of Omiros Demetriades.

15 (2) Article 111 of the Constitution makes family relations the province of the law of the Greek-Orthodox Church. Consequently, it is constitutionally imperative to give effect to the provisions of the constituent act of the Holy Synod of Cyprus, dated 25.5.54, whereby the relationship resulting from an adoption is confined to one between the adopters and the adopted.

20 The above submission was made despite the plain provisions of Article 111 and the exemption of adoption from the range of family relations subject to ecclesiastical law.

25 (3) The construction placed by the trial Court of ss. 10, 11 and 12 of Cap. 274, is not warranted by the provisions or tenor of the law.

30 (4) Lastly, Mr. Komodromos laid emphasis on the undesirability of imposing a relationship between strangers, that is the parents of the adopters and the adopted person herself.

35 Having heard Mr. Komodromos and reflected on his submissions, we did not find it necessary to call upon the respondent to raise arguments in reply thereto. In our judgment, it is clear beyond a shadow of doubt, for the reasons following, that after adoption, an adopted child stands in relation to the adopters and their relations in precisely the same position as a child born in lawful wedlock.

The provisions of ss. 10, 11 and 12 supply a conclusive answer to the problem in hand, both as a result of the wording employed by the legislature, as well as a matter of giving effect to the purposes of the law. But first, and in order to avoid confusion, we must state categorically that there is no discernible conflict between the provisions of the Wills and Succession Law, Cap. 195, and those of the Adoption Law, Cap. 274. Cap. 195 regulates succession to movable and immovable property. It establishes who is entitled to succeed but in no way purports to define the status of a person, and far less, precludes the legislature from so doing by means of any other law. It is correct, nevertheless, that in the case of *Tano supra*, Bertram, J., dwelled on the meaning of "lawful" and "legitimate" child, as well as on that of "descendant" in the context of the forerunner of Cap. 195, that is the Wills and Succession Law of 1895 (to be found in the Statute Laws of Cyprus 1878 - 1906, at p.398).

However, nothing said therein by the learned Judge establishes or is intended to lay down that the status of a person is regulated, not to mention exclusively regulated, by Cap. 195. On the contrary, the learned Judge specifically adverted to the implications of different foreign laws on the status of a person as a consideration relevant to ascertaining the claim of the plaintiff - in that case a Frenchman - to inherit under the provisions of Cap. 195. The learned Judge said:

"The expression 'lawful child' must be interpreted according to the law of the foreigner's State, being a matter of status governed by the domicile of the person concerned."

And debating the same subject, he postulated that the claim of the plaintiff to succeed, might fare differently if he was of German and not French domicile. If the submission of Mr. Komodromos was sound and only children born in lawful wedlock could inherit under Cap. 195, an adopted child would be unable to inherit any property even from his adopted parents for, he would not qualify as a "legitimate" child. That is not so. Cap. 195 nowhere purports to define who is a legitimate child; and any child regarded in law as "legitimate", qualifies as a legitimate child under the provisions of Cap. 195.

The Adoption Law, Cap. 274, was enacted in 1954

in order to fill a gap in our law, the same gap that the Adoption Act of 1950 was meant to fill in England. Adoption was unknown to the English common law as a legal institution. The same was true in Cyprus, so the Adoption Law was enacted
5 in order to give legal effect to adoption. It purports to regulate the pre-conditions for the making of an adoption order, as well as the status and rights of an adopted person. Read as a whole, the law confers upon an adopted child, after adoption, the same status and rights as a person born in lawful wedlock. Section
10 10(1) of Cap. 274 specifically creates a filial bond between the adopted and the adopters, the same that subsists between parents and a child born in lawful wedlock, while it severs all bonds between the adopted and his natural parents.

Section 11(1) defines the inheritance rights of the adopted
15 and makes them be the same as those of a child born in lawful wedlock. The learned trial Judges found the language of s.10(1) to accomplish this objective beyond any doubt. We agree. The plain language of the statute must be given effect to as the most authoritative source wherefrom to gather the intention
20 of the legislature. (See *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948). Not only the wording of s.11(1) warrants this interpretation, as the trial Court held, but it must be noted that this interpretation is fully consonant with the purposes of the law, a consideration to which increasing regard is
25 being paid as an aid to the construction of a statute. (See *Cummins Ballrooms Ltd., v. Zenith Investments (Torquay) Ltd.* [1970] 2 All E.R. 871, 893 (H.L.) and *Nothman v. London Borough of Barnet* [1978] 1 All E.R. 1243 (C.A.)). The purpose of the Adoption of Children Law, Cap. 274, as it may be
30 depicted from a consideration of the statute, as a whole, is to recognise adoption as a legal institution and confer upon the adopted child the same status as that of a child of the adopters, born in lawful wedlock. Adoption was introduced as a legal institution in the interests of humanity, in recognition of the
35 fact that a blood relationship is not the only basis upon which parental and filial love can be built, develop and flourish. And there is a continuous tendency to extend recognition of adoption by transcending national barriers. (See the English laws - Adoption Act, 1968, and Children Act, 1975).

40 The remaining provisions of s.11, far from weakening the above interpretation, they aim to strengthen it, particularly

s.11(2)(c) that lays down that reference in any disposition of movables or immovables by an instrument inter vivos or by will after the day of adoption to a person related to the adopted person shall, unless the contrary appears, be construed as reference to the person who would be related to the adopted if he were the child of the adopter born in lawful wedlock. Mr. Komodromos submitted that s.12 weakens the above construction of s.11, assimilating the rights of the adopted to those of a child born in lawful wedlock. He abandoned, however, the attempt made before the trial Court to have s.12 or any other section of the law interpreted by reference to the objects and reasons introducing the Bill that led to the enactment of the Adoption Law, acknowledging that they could have no bearing on the interpretation of statute. The rule that material extraneous to the statute cannot be relied upon as an aid for the interpretation of the statute, was recently acknowledged by the Court of Justice of the European Communities in *National Panasonic v. E.C. Commission* [1981] 2 All E.R. 1. Mr. Komodromos likewise did not press much before us the suggestion that the marginal note be consulted for the construction of s.12. Although the marginal note may throw some light on the scope of a section of the law; it can, under no circumstances, qualify its meaning or be relied upon as a guide for its interpretation. Section 12(1) reinforces, if anything, the provisions of s.11 by laying down that the relationship of an adopted child to children born in lawful wedlock to his parents will be the same as if the adopted had himself been born to the adopters in lawful wedlock. So, the adopted is in all respects regarded in law, after adoption, as a child born to the adopters in lawful wedlock.

For the reasons above given, the appeal is dismissed. As Loizou, J. pointed out at the conclusion of the appeal, the costs of both the appellants and the respondent will be paid out of the estate. We do not adjudge the appellants to pay the costs of the proceedings in view of the novelty of the point and the absence of any authoritative statement on the subject by the Supreme Court in any previous occasion.

The cross appeal directed towards the order for costs made by the trial Court was withdrawn and it is dismissed accordingly, with no order as to costs.

Appeal dismissed.