

1982 January 29

[LORIS, STYLIANIDES, PIKIS, JJ.]

ANDREAS HERACLI TSIOLIS,

Appellant.

v.

THE DISTRICT OFFICER NICOSIA,

Respondent.

(Criminal Appeal No. 4288).

5 *Building—Building permit—Construction of pillars, making of iron
reinforcements and concrete walls on all four sides of a well—
In effect construction of water tank with intention to cover
it with a slab—Having regard to intention of appellant
structure in question a “building” within the meaning of section
2 of the Streets and Buildings Regulation Law, Cap. 96—Not
governed by the Wells Law, Cap. 351—Building permit, under
Cap. 96, for its construction necessary—A permit would be neces-
sary even if governed by both above statutes—Because there
10 is no contradiction in the establishment of separate controls
over the same act for different purposes.*

15 *Wells Law, Cap. 351—Well—Owner of, entitled, without securing
a building permit, to build internally the wells under the surface
of the earth and also to construct a parapet over the surface of
the land—Such construction falls outside the definition of “build-
ing” under the Streets and Buildings Regulation Law, Cap. 96.*

*Demolition Order—Consequences of—Not a sufficient reason for not
effectively applying the Law.*

20 Following the granting of a permit to the appellant, under
the Wells Law, Cap. 351, for the sinking of a well on a piece
of land of his he opened a shaft 40' long, 10' wide and 30' deep.
This shaft came within the definition of “well” as set out in
section 2 of Cap. 351. It was later ascertained that the appellant
was in the process of constructing pillars, and made iron rein-
25 forcements and concrete walls on all four sides of the above

shaft; and was in effect constructing a water tank which he intended to cover with a slab.

He was convicted of the offence of commencing the erection of a building and of suffering a building to be erected without a permit, contrary to sections 2, 3 and 20 of the Streets and Buildings Regulation Law, Cap. 96 and was ordered to pull down the building in question unless a permit was secured in respect thereof within two months. 5

Upon appeal against the conviction and the demolition order Counsel for the appellant contended: 10

(a) That as the building operations were only in respect of the well, no building permit was necessary because the matter was governed by the Wells Law, Cap. 351.

(b) That having regard to the totality of the circumstances of this case, including the bona fides of the appellant and the costs of construction, demolition would be disproportionate to the offence. 15

Held, that considering both Laws, i.e. the Wells Law and the Streets and Buildings Regulation Law, which came into operation on the same day—1.9.1946—this Court is of opinion that the owner of a well is entitled, without securing a building permit, to build internally the walls under the surface of the earth and also to construct a parapet over surface of the land; that such construction falls outside the definition of “building” under Cap. 96 because they are not the structures the Law, Cap. 96, intended to control and regulate; that the building, however, the appellant commenced to erect is of different nature and use from well-building below land surface; that it delimits the land or space above and, having regard to the intention of the appellant as elicited in his evidence, as it is perfectly proper to look at the intention of the structure (see *London County Council v. Pearce* [1902] 2 Q.B. 112), it was a structure in the nature of a building within the four corners of the Streets and Buildings Regulation Law; that, therefore, a permit under Cap. 96 was necessary; accordingly the appeal against conviction must fail. 20 25 30 35

Held, further, that even if it were governed by both statutes, i.e. the Wells Law and the Streets and Building Regulation

5 Law, a building permit would be necessary; that there is no inherent contradiction in the establishment of separate controls over the same act for different purposes; that it would have been a strange omission if the legislator had intended to exclude buildings as the one under consideration from the kind of control established by the Streets and Buildings Regulation Law.

10 (2) That though the consequences of a demolition order, if a permit is not eventually given, will be serious this is not a sufficient reason for not effectively applying the Law by making a demolition order.

Appeal dismissed.

Cases referred to:

- 15 *South Wales Aluminium Co. Ltd. v. Assessment Committee for the Neath Assessment Area* [1943] 2 All E.R. 587;
London County Council v. Tamm [1954] 1 All E.R. 389;
London County Council v. Pearce [1902] 2 Q.B. 112.

Appeal against conviction and sentence.

20 Appeal against conviction and sentence by Andreas Heracli Tsiolis who was convicted on the 6th November, 1981 at the District Court of Nicosia (Criminal Case No. 15478/81) on one count of the offence of commencing the erection of a building and suffering a building to be erected without a permit, contrary to sections 2, 3 and 20 of the Streets and Buildings Regulation Law, Cap. 96 and was ordered by A. Ioannides D.J. to pull
 25 down everything referred to in the charge within two months unless a permit was obtained in the meantime.

C. Loizou with *N. Loizou*, for the appellant.

M. Photiou, for the respondent.

Cur. adv. vult.

30 STYLIANIDES J. read the following judgment of the Court. The appellant was convicted of the offence of commencing the erection of a building and of suffering a building to be erected without a permit in that behalf first obtained from the appropriate authority contrary to sections 2, 3 and 20 of the Streets
 35 and Buildings Regulation Law, Cap. 96. The appellant was ordered to pull down everything referred to in the charge unless a permit was secured in respect thereof within two months.

The appeal turns against the conviction and the demolition order.

The appellant is the registered owner of Plot 11/8 in the area of Alithinou village. On 16.4.1979 a permit was granted to him by the District Officer of Nicosia for the sinking of a well thereon under the Wells Law, Cap. 351. Pursuant to the said permit in October, 1979, the appellant by means of an excavator opened a shaft 40' long, 10' wide and 30' deep. 5

This shaft comes within the definition of "well" as set out in s. 2 of the relevant Law, Cap. 351.

One of the conditions attached to the sinking permit was that the water found would be exclusively used for the irrigation of Plot 11/8 only. His applications dated 23.1.1980, 8.8.1980 and 30.3.1981 for a permit to use the water from such well for the irrigation of other lands of his were turned down by the District Officer. 10

On 7.9.1981 he delivered at the office of the District Officer notice, exhibit 1, informing the Authority that he intended to construct the sides with concrete ("na chissi ta plevra") and to cover the well in order to avoid the breeding of mosquitoes. 15

On 15.9.1981 the A.D.I. of the area visited the place and found out that the appellant with the help of a number of labourers was in the process of constructing pillars, he made iron reinforcements and was making concrete walls on all four sides of the aforescribed well. He was in effect constructing a water tank which he intended to cover with a slab. The one side of the construction naturally would not be supporting any soil having regard to the shape and the opening of a shaft by means of an excavator. 20 25

The first question that falls for decision is whether the thing—to use a neutral word—the appellant was constructing was a building within the definition of s. 2 of the Streets and Buildings Regulation Law. 30

His counsel conceded that it was a building. Even without such admission we are of the opinion that it is a building.

The question that poses is a question of Law, the meaning of the word "building" as defined in s. 2. Then a question of fact must be resolved whether any particular construction is within it or not. That is a question of fact although in certain 35

cases it may be one of mixed law and fact. (*South Wales Aluminium Co. Ltd. v. Assessment Committee for the Neath Assessment Area*, [1943] 2 All E.R. 587).

5 It is provided in s. 2 that “building” means “any construction whether of stone, concrete, mud, iron, wood or other material and includes any ——— part of a building or anything affixed ——— or ——— other construction enclosing or delimiting or intending to enclose or delimit any land or space”.

10 The word “construction” used in this context has the same meaning as the word “structure” and the meaning of that word was fully discussed in *The London County Council v. Tann*, [1954] 1 All E.R. 389. For a structure to be a building within the meaning of Chapter 96, it must be one which is used for a purpose for which a building is ordinarily used and for a purpose
15 for which the erection of a building is usually required or at least desirable. A structure enclosing or delimiting or intending to enclose or delimit any land or space is a building.

The construction the appellant was erecting is a building within the meaning of the Law.

20 It was submitted by appellant’s counsel that as the building operations were only in respect of the well, no building permit was necessary and the matter was governed by the Wells Law.

25 The holder of a permit under the Wells Law, upon completion of the sinking, is bound to cover with masonry or fence the well by a stone parapet of not less than 2 feet high—(section 12 of Cap. 351)—so as not to be a source of public danger.

30 We have referred to the definition of a “building” in s. 2 of Cap. 96 for which a permit is required before it is erected. A well, on the other hand, is, according to the definition of s. 2, Cap. 351, a below the surface structure, designed to facilitate bringing water to the surface. It can be in the form of a shaft or borehole.

35 A permit to construct a well would not, in view of the definition, be an authority for the construction of anything above land surface level. The definition of a well limits the works to the sinking of a shaft or borehole sunk on the land, signifying thereby that no works can, in consequence of a permit to sink

a well, be undertaken. Above surface works must, in accordance with s. 12, Cap. 351, be exclusively referable to sealing-off the well, removing thereby a danger that might otherwise be created to persons using the land. If the construction above surface is aimed to be more extensive and not merely intended to remove the danger, a permit under the Streets and Buildings Regulation Law, Cap. 96, is necessary. 5

Having considered both Laws, i.e. the Wells Law and the Streets and Buildings Regulation Law, which came into operation on the same day—1.9.1946—we are of the opinion that the owner of a well is entitled, without securing a building permit, to build internally the walls under the surface of the earth and also to construct a parapet over the surface of the land. Such construction falls outside the definition of “building” of Cap. 96. They are not the structures the Law, Cap. 96, intended to control and regulate. The building, however, the appellant commenced to erect is of different nature and use from well-building below land surface. It delimits the land or space above and, having regard to the intention of the appellant as elicited in his evidence, as it is perfectly proper to look at the intention of the structure (*London County Council v. Pearce*, [1902] 2 Q.B. 112), we are of the view that it is a structure in the nature of a building within the four corners of the Streets and Buildings Regulation Law. 10 15 20

Even if it were governed by both statutes, i.e. the Wells Law and the Streets and Buildings Regulation Law, a building permit would be necessary. There is no inherent contradiction in the establishment of separate controls over the same act for different purposes. In our view it would have been a strange omission if the legislator had intended to exclude buildings as the one under consideration from the kind of control established by the Streets and Buildings Regulation Law. 25 30

Learned counsel for the appellant argued that having regard to the totality of the circumstances of this case, including the bona fides of the accused and the costs of the construction, demolition would be disproportionate to the offence. 35

We are unable to subscribe to that argument. Certainly the consequences of a demolition order, if a permit is not

eventually given, will be serious but this is not a sufficient reason for not effectively applying the Law by making a demolition order.

We are not satisfied that the trial Judge exercised wrongly
5 his discretion in making the demolition order.

Appeal dismissed.