

1982 January 30

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANNIE IOANNOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER  
OF FINANCE AND ANOTHER,

*Respondents.*

(Case No. 268/78).

*Government Lotteries Regulations, 1956–1964—Regulations 9 and  
10—Not ultra vires section 5 of the Lotteries Law, Cap. 74.*

*Lotteries—Prizes—Payment of—To be claimed by presenting and  
delivering up the winning ticket—Regulations 9 and 10 of the  
Government Lotteries Regulations, 1956–1964, made under  
section 5 of the Lotteries Law, Cap. 74.*

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The applicant claimed that she was the owner of the State lottery ticket 065999 which won £8,000 on the 2nd May, 1978; and mistakenly thinking that the said ticket referred to an earlier draw she destroyed it and threw it away. On May 13, 1978 her Counsel wrote to the Accountant-General and claimed to be paid the prize of £8,000 adding that there was evidence proving conclusively that applicant has been the owner of the winning ticket. The Accountant-General rejected applicant's claim on the ground that the lottery Regulations specifically prescribe the presentation and delivery of the ticket and no provision existed for the production of evidence. Hence this recourse.

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The sub judge decision was taken on the basis of regulations 9\* and 10\* of the Government Lotteries Regulations, 1956 to 1964\*\*. Regulation 9 provides that payment shall be claimed by presenting and delivering up the ticket in respect of which

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\* Regulations 9 and 10 are quoted at pp. 138–39 *post*.

\*\* These Regulations were made under section 5(1)(e) of the Lotteries Law, Cap. 74, which provides that the Council of Ministers may make Regulations prescribing the time within which and the manner in which prizes shall be claimed.

the claim is made; and regulation 10 provides that payment of a prize must be claimed in the manner provided by regulation 9.

5 *On the question whether regulations 9 and 10 are ultra-vires the enabling section 5(1) of the Lotteries Law, Cap. 74:*

*Held, that regulations 9 and 10 of the Government Lotteries Regulations 1956 to 1964 are not ultra vires section 5(1) of the Lotteries Law, Cap. 74; accordingly the recourse should fail.*

10 *Application dismissed.*

*Per curiam:* Having reached the conclusion that the Regulations are not ultra vires the Lotteries Law, Cap. 74 I would add that I have my doubts whether the decision complained of could be made the subject of a recourse under Article 146.1 of the Constitution, particularly because it may be a decision regulating civil law rights concerning property.

Cases referred to:

20 *Spyrou and Others (No. 2) v. The Republic (1973) 3 C.L.R. 627;*

*Stavrou v. The Republic (1976) 3 C.L.R. 66.*

#### Recourse.

Recourse against the decision of the respondent not to pay to applicant the sum of £8,000.— (the first prize of the state lottery draw of the 2nd May, 1978.

25 *A. Triantafyllides, for the applicant.*

*N. Charalambous, Senior Counsel of the Republic, for the respondent.*

*Cur. adv. vult.*

30 HADJIANASTASSIOU J. read the following judgment. In the present proceedings, the applicant Annie Ioannou of Nicosia, seeks (a) a declaration that the decision of the respondents not to pay to her the sum of £8,000 the first prize of the state lottery draw of the 2nd May, 1978, is null and void and of no effect whatsoever; and (b) that the decision of the respondents  
35 not to hear or examine applicant's evidence proving her ownership and possession of the winning ticket 065999, is null and void and of no effect whatsoever.

The facts shortly are these:—

The applicant claimed, at all material times, that she was the

owner of the ticket 065999 which won £8,000 on 2nd May, 1978. The applicant mistakenly thinking that the said ticket referred to any earlier draw, destroyed same and threw it away. On 13th May, 1978, counsel for the applicant addressed a letter to the Accountant-General, Ministry of Finance, and had this to say:-

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“On behalf of our client Miss Anni Ioannou, we have been instructed to refer to the State Lottery Draw of the 2nd May, 1978, and to inform you that our client claims to be paid the first prize of £8,000.- as she is, and at all time has been, the lawful owner of the winning ticket No. 065999.

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Our client has inadvertently thrown away the said ticket, so she can not produce it to you. However, our client can conclusively prove that she is, and at all time has been the owner of the said winning ticket and if you are prepared to examine the evidence available, please let us know so that we may produce to you the necessary evidence and witnesses”.

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Indeed, the Accountant-General, on 18th May, 1978, in reply addressed a letter to counsel for the applicant, and had this to say:-

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“With reference to your letter of 13th May, in regard to your client Miss Anni Ioannou who reported the loss of a lottery ticket winning the first prize at the draw of 2.5.1978 I have to inform you that the lottery regulations specifically prescribe the presentation and delivery of the ticket and no provision exists therein for the offer of evidence or the manner in which evidence could be produced.

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I regret, therefore, that I can neither pay the prize or accept evidence therefor”.

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The applicant, feeling aggrieved because of the refusal of the respondents to hear evidence, filed the present recourse and had relied on three legal points: (1) that on the basis of the Law, Cap 74, the owner of the winning ticket is entitled to be paid the prize which the ticket has won; (2) it is nowhere stated in the law that possession rather than ownership is a decisive factor entitling to payment; and (3) any regulations to the contrary are ultra vires the law and, therefore, void.

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On the contrary counsel for the Republic on 19th August, 1978, in his opposition relied on these two grounds of law:

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- (a) that the decision attacked was taken lawfully and is in accordance with the Lotteries Law Cap. 74, as well as with the Government Lotteries Regulations 1956 to 1964; (b) the decision attacked was based on regulation 9 of the Government Lotteries Regulations 1956 to 1964 which is *intra vires* of the Lotteries Law because section 5(e) grants power to the Director of Lotteries to regulate *inter alia* the manner by which the demand would be made for the payment of the winning ticket.

The facts in support of the opposition are these:- Two or three days after the draw of the lottery the applicant, Annie Ioannou, accompanied by an elderly relative visited the accounts department and reported that (a) she has lost the ticket which has won £8,000 and (b) to be informed whether the state lottery would pay to her that sum, if within the next months it would remain unclaimed. Indeed when she was questioned by an official she said that the lottery ticket was bearing No. 065999 which was drawn on the 2nd May, 1978. She further added that she was sure of that number because her godfather gave to her as a present five lottery tickets and that was the reason why she knew the numbers. When it was pointed out to her that she ought to have made an official complaint to the Police as well as giving a statement, the relative accompanied the applicant intervened and said "the truth is that Annie had torn the ticket by mistake". When it was pointed out to the applicant that she ought to bring the pieces in order to try to put them together and to pay the amount to her, she said that that was impossible because she threw away the pieces in the dustbin

On 9th October, 1978, counsel for the respondents sought further directions for particulars regarding ground 1 of the application and counsel appearing on behalf of Mr. Triantafyllides agreed to deliver the said particulars within a period of three weeks. The said particulars regarding ground 1 were delivered to the Registrar and counsel for the respondents, and read as follows:-

1. On the basis of the regulations made under Section 5 (1)(e) of Cap. 74, the ticket has to be presented and delivered to Government as a condition precedent of payment of the prize.
2. The relevant Section 5 (1) (e) provides that the Council of Ministers may make regulations 'prescribing the time

within which and the manner in which prizes shall be claimed'.

3. It is respectfully submitted that the above regulation does not empower the Council of Ministers to make regulations *excluding* the right of the true owner of the lottery ticket to be paid. 5
4. It is nowhere stated in the Lotteries Law Cap. 74 that only the possessor as distinct from the owner is entitled to be paid the winning prize.
5. In the present case the Government relying on the regulations made, in fact excluded the owner of the winning ticket because on the basis of exhibit 2 they refused to receive evidence with a view to their being satisfied that the Applicant was at all material times the owner of the winning ticket. It is submitted that such an important matter regulating the right to claim the prize should have been specially provided for in the Law itself, so that in the absence of a special provision in the contrary, the owner of the ticket as distinct from the mere possessor, has a right to claim the prize. 10 15 20
6. It is submitted that if the Applicant can conclusively prove that she was at all material times the owner of the winning ticket, then she is entitled to payment irrespective of the fact that the ticket has been lost, especially in view of the fact that the prize has not been claimed". 25

Before dealing with the submissions of counsel I think it is necessary to quote regulations 9 and 10 which deal with the payment of prizes. Regulation 9 deals with the payment of prizes and says:-

- "9. Prizes shall be paid by the Director of Lotteries in respect of winning tickets in a lottery in accordance with the following provisions- 30
- (a) payment shall be claimed by presenting and delivering up the ticket in respect of which the claim is made at the place and during the hours appointed for the purpose in the notice published in pursuance of Regulation 5 of these Regulations; 35
  - (b) payment shall be claimed within six months after the day of the draw at which the ticket in respect of which the claim is made was declared a winning ticket; 40

(c) no payment shall be made before the day next following that of the draw at which the ticket was declared a winning ticket or, if that day is a Sunday or public holiday, before the next following day not being a Sunday or public holiday;

(d) payment shall be made to the person who presents the ticket for payment of the prize won by that ticket and such payment shall absolutely discharge the Director of Lotteries, the Government, its servants and agents in respect of the payment of that prize”.

Regulation 10 deals with the forfeiture of unclaimed prize and is in these terms:-

“10. If payment of a prize is not claimed in the manner and within the period prescribed by Regulation 9 of these Regulations, and if the number of the ticket in respect of which the prize was payable shall have been duly published as provided in Regulation 8 of these Regulations, the proceeds of that prize shall upon the expiry of the period aforesaid be forfeited to the Republic of Cyprus and paid into the Consolidated Fund of the Republic for development purposes”.

In addition, I would add that according to the interpretation section of the Lotteries Law Cap. 74, “Government lottery” means a lottery promoted and conducted by the Director under the provisions of Part II; “lottery” means any scheme for distributing prizes by lot or chance; and “ticket” includes, in relation to any lottery or proposed lottery, any document evidencing the claim of a person to participate in the chances of the lottery.

Mr. Triantafyllides counsel for the applicant in support of his grounds of law complained and argued (a) that even if a person has all the evidence that he is the owner of the ticket which was lost he cannot claim the prize unless he can present the ticket. Indeed, counsel for the applicant went on to add (b) that one cannot give even evidence to establish that he was the owner of the ticket because the relevant regulation says clearly that the ticket must be produced and his client is victimized once the ticket was torn and the respondents refused to hear her; (c) that in the light of the statement made counsel argued that those regulations are ultra vires the Lotteries Law Cap. 74 because the respondents cannot regulate ownership

under their powers but only the manner in which the prize can be claimed, and the regulations cannot create or take away right of property.

On the contrary, counsel for the respondent dealing with regulations 9 and 10 and whether such regulations were ultra vires the Lotteries Law Cap. 74 argued that those regulations are not ultra vires the Law and particularly section 5(1)(e) under which regulations are issued for that purpose, viz., that money should be paid only to the person presenting the lottery ticket in question.

Having considered carefully the contentions of both counsel it seems to me that the first question is whether regulations 9 and 10 are ultra vires the Lotteries Law Cap. 74 or not. There is no doubt that regulations 9 and 10 deal with property and on the basis of the Regulations made under section 5(1)(e) of Cap. 74 the ticket in question has to be presented and delivered to Government as a condition of the payment of the prize. With respect, having considered the arguments of both counsel, I have reached the conclusion that regulations 9 and 10 are not ultra vires and I would dismiss the complaint of counsel for the applicant. I would further add that with regard to the correct approach as to whether subsidiary legislation is ultra vires or not, useful guidance can be found in the case of *Savva Chr. Spyrou and Others (No. 2) and The Republic of Cyprus, through The Licensing Authority* (judgment of Triantafyllides P., reported in (1973) 3 C.L.R. 627) and in the judgment of Mr. Justice A. Loizou in *Nicos Stavrou and A. The Republic of Cyprus, through 1. The Minister of Labour and Social Insurance, 2. The Director of Social Insurance, B. Redundancy Fund* reported in (1976) 3 C.L.R. on the very same point.

Having reached the conclusion that the regulations are not ultra vires the Lotteries Law Cap. 74 I would add that I have my doubts whether the decision complained of could be made the subject of a recourse under Article 146.1 of the Constitution, particularly because it may be a decision regulating civil law rights concerning property. For the reasons I have given I would dismiss the recourse.

Recourse dismissed, but in the particular circumstances I am not making any order for costs.

*Application dismissed. No order as to costs*