

195 April 20

[A LOIZOU, DIMITRIADIS LORIS, JJ]

ANTONIS CONSTANDI ABDOULLA AND ANOTHER,  
AS ADMINISTRATORS OF THE ESTATE OF THE  
DECEASED CONSTANDIS PANAYI ABDOULLA,  
*Appellants-Applicants*

1 DIRECTOR OF LANDS & SURVEYS DEPT OF N'SIA  
2 DISTRICT LANDS OFFICER OF LARNACA,  
*Respondents*

(Civil Appeal No 6400)

*Immovable property Prescription—Acquisition of rights over part  
of land subject-matter of the proceedings—Judgment ordering  
registration of—Execution by reference to texts of drawn up  
order and reasoned judgment*

*Judgment—Execution by reference to texts of reasoned judgment  
and drawn up order* 5

In an action by the appellants the District Court of Larnaca found that their predecessor had for a long time prior to his death been cultivating part of a piece of land subject-matter of the proceedings, but not the whole of it, the uncultivated part extended “over an area of three donums from the boundary of the old Larnaca/Famagusta road”; and after finding, also, that he acquired ownership by prescription of “the property above specified” it ordered that “the above specified piece of land be registered” in the name of the appellant—his heirs 10  
Thereupon the appellants deposited the drawn up order of the judgment together with the full text of the reasoned judgment, to the District Lands Office for the purpose of execution. The District Lands Office after carrying out a local inquiry they defined on the spot and in their plans the area to which 15  
the appellants were entitled and communicated their decision to the appellants As against this decision the appellants filed an appeal to the said District Court under section 80 of the 20

Immovable Property (Tenure Registration and Valuation) Law, Cap. 224.

Upon appeal against the dismissal of their above appeal the appellants contended:

5 a) That there had been a mistake in the way the necessary measurements were carried out (b) that the expression to be found in the judgment of the first Full Court namely that the "uncultivated part extended over an area of three donums from the boundary of the old Larnaca/Famagusta road" was mis-  
10 understood by the D.L.O. inasmuch as the word "area" should relate to the extent and not be taken to be indicative of the distance of the boundary of the area cultivated by the appellants' predecessors in title from the edge of the old Larnaca/Famagusta road, and (c) that the Lands Office, by giving effect to the judgment of the Full Court in the way they did, they in effect varied  
15 or modified or rectified or interfered with the drawn up order of the Court which could not in law be done as there are other procedures to be followed than by comparing the drawn up judgment and order of the Court with the full text of the judgment (see *Orphanides v. Michaelides* (1968) 1 C.L.R. p. 295).  
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*Held*, that the measurements carried out by the Lands Officer, upon whose findings the decision of the District Lands Office was based, were properly made and in compliance with the judgment of the Court; that what the Full Court meant with the  
25 expression "of an area of three donums from the boundary" it is clear that it meant a distance of three donums from the old road and not an extent of three donums adjacent to the old road; that this is evident not only from the ordinary and natural meaning of the words it used; but also by looking at the whole judgment and by seeing what was the evidence before it and as it was accepted by it; that there has been neither rectification  
30 nor any modification of the judgment of the first Full Court by the District Lands Office in any sense; accordingly the appeal must fail.

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*Appeal dismissed.*

Cases referred to:

*Orphanides v. Michaelides* (1968) 1 C.L.R. 295;

*Georgiou v. HjiPhesa* (1970) 1 C.L.R. 58.

**Appeal.**

Appeal by appellants—applicants against the judgment of the District Court of Larnaca (Papadopoulos, P.D.C. and Miltiadou, D.J.) dated the 26th February, 1982 (Appl. No. 44/80) whereby their appeal against the decision of the District Lands Office Larnaca to register, in accordance with a Court order, two plots of land on the heirs of Demetris Abdoulla was dismissed. 5

*G. Constantimides* with *C. Varda (Mts.)*, for the appellants  
*A. M. Angelides*, Senior Counsel of the Republic, for the respondents. 10

A LOIZOU J gave the following judgment of the Court. The appellants, as heirs of Demetris Panayi Abdoulla, late of Livadhia, had instituted in the District Court of Larnaca, against the Attorney-General of the Republic, Action No. 296/1975, and claimed to be registered as the owners of a plot of land shown on an L.R.O plan which had been produced in that action as exhibit No. 1 15

The Full Court, which tried that case, in an elaborate judgment set out the legal principles pertaining to the questions in issue and in particular to the acquisition of ownership through the exercise of prescription, and after it referred to the evidence adduced, arrived at its conclusions and said the following 20

“Having carefully examined the evidence before us we have reached the conclusion that the deceased was, for a long period of time prior to his death, cultivating part of the land subject matter of these proceedings (hatched in red on exh. 1) but not the whole of it. The uncultivated part extended over an area of three donums from the boundary of the old Larnaca/Famagusta road. Beyond that point the land was in the possession and it was cultivated by Demetris Panayi Abdoulla. In our judgment this piece of land was in his possession and he was cultivating it openly and continuously from about the year 1910 till his death in 1943. 25 30 35

In the light of the principles earlier expounded and having regard to our findings we find that the deceased had acquired ownership of the property above specified and was entitled to be registered as the owner of it as far back

as the early nineteen twenties. His rights passed to his heirs who are entitled to be registered as the owners of that part of the subject property that the Court has found to have been in the possession of Demetris Panayi Abdoulla as earlier indicated. Therefore, we order that the above specified piece of land be registered in the name of the plaintiffs. The defendants are adjudged to pay costs for for one advocate”.

Pursuant to that judgment (not appealed), a drawn up order was prepared, which was taken to the District Lands Office, together with the full text of the reasoned judgment of that Court, for the purpose of its execution. The District Lands Office, through one of its officers, carried out a local inquiry and in compliance, as they said, to that judgment and order, they proceeded to define on the spot and in their plans the area to which the plaintiffs in that Action, the present appellants, were entitled. They then gave new plot numbers and after they made the necessary adjustments to the D.L.O. records, the Director of the District Lands Office communicated his decision—dated 18th July, 1980—to the appellants through their counsel as against which they filed an appeal to the District Court of Larnaca under s.80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

The Full Court of Larnaca, under a new composition, having heard the evidence adduced, which in effect consisted of three witnesses, dismissed that appeal on the ground that there had been no error both in the understanding of the real and legal effect of the judgment of the Full Court by the District Lands Officer, or an error in the actual measurements which the D.L.O. had made in implementing that judgment.

As against this judgment of the Full District Court of Larnaca, the appellants filed the present appeal in which they have advanced the arguments that, (a) there had been a mistake in the way the necessary measurements were carried out (b) that the expression to be found in the judgment of the first Full Court namely that the “uncultivated part extended over an area of three donums from the boundary of the old Larnaca/Famagusta road” was misunderstood by the D.L.O. inasmuch as the word “area” should relate to the extent and not be taken to be indicative of the distance of the boundary of the area culti-

vated by the appellants' predecessors in title from the edge of the old Larnaca/Famagusta road, and (c) that the Lands Office, by giving effect to the judgment of the Full Court in the way they did, they in effect varied or modified or rectified or interfered with the drawn up order of the Court which could not in law be done as there are other procedures to be followed than by comparing the drawn up judgment and order of the Court with the full text of the judgment, and in that respect we have been referred to a number of authorities including the case of *Orphanides v. Michaelides* (1968) 1 C.L.R. p. 295.

Having given our best consideration to the arguments advanced and having gone through the various parts of the evidence to which we have been referred by learned counsel in support of her proposition, we have come to the conclusion that there is no merit in this appeal. In the first place the measurements carried out by the Lands Officer, upon whose findings the decision of the District Lands Office was based, were properly made and in compliance with the judgment of the Court. In the second place what the Full Court meant with the expression "of an area of three donums from the boundary" it is clear that it meant a distance of three donums from the old road and not an extent of three donums adjacent to the old road. This is evident not only from the ordinary and natural meaning of the words it used, but also by looking at the whole judgment and by seeing what was the evidence before it and as it was accepted by it. In the third place, there has been neither rectification nor any modification of the judgment of the first Full Court by the District Lands Office in any sense.

The drawn up judgment and order in so far as relevant reads:

"THIS COURT DOTH HEREBY ORDER AND ADJUDGE that the specific piece of land in dispute, i.e. Plot 181/2, 181/3, 181/4, 196/1 and 196/2, under Sh/Pl. XLI 41/33, situate at Voroklini village in the District of Larnaca be registered in the name of the Plaintiffs".

It is apparent that though there is a reference "to the specific piece of land in dispute", yet it was not clearly defined, so reference had to be made to the full text to the judgment of the Full Court to see what was "the specific piece of land in dispute"

and what was adjudged to be registered in the name of the appellants. The reference to the plot numbers goes to "the land in dispute" and not to the part of the property that was ordered to be registered in the name of the appellants. Indeed towards  
5 the end of the passage of the judgment quoted earlier there appears the expression "as earlier indicated" which by itself refers the reader to an earlier passage in it for a complete picture of what was decided.

Therefore the factual position being so we need not embark  
10 on an analysis of the authorities regarding rectification of judgments to which we have been referred and which in our view have no bearing in the present case.

Finally, from a reference made in the judgment of the Full  
15 Court to the case of *Constantinos Nicolaou Georghiou, v. Evangelia Hjigeorghiou Hjiphesa*, (1970) 1 C.L.R. p. 58, to the effect that "a very heavy burden lies on a party questioning the D.L.O.'s decision. The Court will not lightly interfere with the exercise of its discretionary powers", learned counsel for the appellant  
20 has argued that in cases as the present one, the D.L.O. has no discretion in executing a judgment. That is a correct proposition. We agree with counsel on this point but it takes the case of the appellants no further inasmuch as nowhere in the decision of the D.L.O. complained of there appears to have been exercised any discretion.

25 For all the above reasons this appeal is dismissed with costs.

*Appeal dismissed with costs.*