

1983 January 13

[TRIANTAFYLIDIS, P., L. LOIZOU, A. LOIZOU, LORIS, STYLIANIDES,
PIKIS, JJ.]

ANNIE IOANNOU,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(*Revisional Jurisdiction Appeal No. 264*).

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

The sole issue in this appeal was whether regulations 9* and 10* of the Government Lotteries Regulations, 1956, made in exercise of the powers given by section 5 of the Lotteries Law, Cap. 74, and which provided, inter alia, about the manner of payment of winning tickets in a lottery, were ultra vires Cap. 74. 5

Held, Loris and Pikis, JJ. dissenting, that regulations 9 and 10 of the Government Lotteries Regulations, 1956, are not ultra vires the Lotteries Law, Cap. 74 (*Stavrou v. Republic* (1976) 3 C.L.R. 66 distinguished). 10

Appeal dismissed.

Cases referred to:

- Stavrou v. Republic* (1976) 3 C.L.R. 66;
- Malachtou v. The Attorney-General* (1981) 1 C.L.R. 543 at p. 548; 15
- Slattery v. Neylor* [1888] 13 App. Cas. 446;
- Dearden v. Townsend* [1865] L.R. 1 Q.B. 10;
- Huffam v. N. Staffordshire Ry* [1894] 2 Q.B. 821.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 30th January, 1982 (Revisional Jurisdiction Case No. 268/78)** whereby appellant's recourse against the decision of the respondent not 20

* Regulations 9 and 10 are quoted at p. 83 post.

** Reported in (1982) 3 C.L.R. 134.

to pay appellant the sum of £8,000.- the first prize of the state lottery draw of 2nd May, 1978 was dismissed.

M. Cleopas, for the appellant.

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

Cur. adv. vult.

10 TRIANTAFYLIDIS P.: Mr. Justice A. Loizou will deliver the first judgment which is the judgment of the majority of the Court, consisting of Mr. Justice L. Loizou, Mr. Justice A. Loizou,
10 Mr. Justice Stylianides, and myself.

15 A. LOIZOU J.: This is an appeal from the judgment of a Judge of this Court by which he dismissed the recourse of the appellant made under Article 146 of the Constitution against the
15 decision of the Accountant General in his capacity as Director of Lotteries whereby he had refused to pay to the appellant
15 the sum of C£8,000, the first prize of the State Lottery Draw of the 2nd May, 1978, and he had refused to hear or examine
20 evidence proving her ownership and possession of the winning ticket 065999. The ground upon which the said recourse was
20 dismissed was that regulations 9 and 10 of the Government Lotteries Regulations 1956 made in exercise of the powers
20 given by section 5 of the Lotteries Law, Cap. 74, as amended, are not ultra vires, as claimed by the appellant.

25 The facts of the case, as they appear clearly in the judgment of the learned trial Judge are as follows:-

30 The appellant claimed that she was the owner of the aforesaid lottery ticket which won C£8,000.- on the draw of the 2nd May, 1978. Inadvertently thinking that the said ticket referred to
30 some earlier draw, she destroyed same and threw it away. On the 13th May, 1978, counsel for the appellant addressed a letter to the Accountant General that his client had inadvertently
30 thrown away the ticket so she could not produce it for payment, but as she could conclusively prove that she was its owner,
35 asked him if he was prepared to examine the evidence available so that they might produce to him the necessary evidence and
35 witnesses. The Accountant General relying in the Lottery Regulations rejected the claim of the applicant on the ground
35 that the said Regulations 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, and concluded by saying that he regretted that he "could neither pay the price or accept evidence therefor".

The grounds of appeal, as argued before us, are set out in the notice of appeal and they are the following:- 5

- (1) The trial Court erroneously decided that the Regulations are not ultra vires the Law, Cap. 74;
- (2) Such Regulations in fact go beyond the ambit of Cap. 74 and exclude the right of the true owner of the winning lottery ticket to receive the proceeds of the winning ticket; 10
- (3) The relevant Regulations lay down that possession, as distinct from ownership, is the correct criterion, whereas Cap. 74 nowhere so provides; 15
- (4) The respondents should have heard and examined applicant's evidence proving ownership of the ticket and they should pay to her the first prize of C£8,000.- (eight thousand pounds).

Section 5(1)(e) and subsection 2 thereof, as amended, read as follows:- 20

"5(1) - The Council of Ministers may make Regulations prescribing all matters which are necessary or convenient to be prescribed for giving effect to the foregoing provisions of this Part, and in particular - 25

(e) for prescribing the time within which and the manner in which prizes shall be claimed.

(2) - Regulations made under this section may provide for a sentence of imprisonment for a period not exceeding one year or for fine not exceeding C£300.- or both sentences, and in addition in the case of an agent appointed for the sale of tickets or sub agent of such agent, for the annulment of the appointment of the agents for any violation of these regulations or omission to comply to their provisions, and that in certain events to be specified and after such time as shall be specified the proceeds of unclaimed prizes shall be 30 35

forfeited to the Government and paid into the Development Funds of the Republic”.

Regulations 9 and 10 of the Government Lotteries Regulations of 1956, published in Supplement 3 to the Cyprus Gazette No. 3145 of the 18th May, 1956, under Notification No. 418, p. 378 et seq. read as follows:-

“9. - Prizes shall be paid by the Director of Lotteries in respect of winning tickets in a lottery in accordance with the following provisions -

- 10 (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;
- 15 (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;
- 20 (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;
- 25 (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.

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 Government and paid into the Development Funds of the Republic”.

Having heard counsel on both sides we have come to the conclusion that the approach of the learned trial Judge was

correct. Section 5 of the Law which is the empowering provision for the making of the Regulations challenged by this recourse has to be read as a whole and together with the definition of the word "ticket" given in section 2(1) of the Law which provides that "it 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". This definition shows that the claim of a person to participate in the chances of the lottery are evidenced by a ticket regarding the form and contents of which provision may be made in the Regulations as provided by section 5(1)(c) which provides accordingly and does not introduce the notion submitted by counsel for the appellant that a claim for payment can be supported by any kind of document other than a ticket.

The second point supporting the view that the Regulations in question are *intra vires* stems from the provision of paragraph (e) of section 5 subsection 1, which provides for prescribing the time and the manner in which prizes shall be claimed. Once the ticket evidences the claim of a person to participate in the chances of a lottery it is legitimate to provide by Regulation and insist that the manner in which prizes shall be claimed must be by means of presenting the ticket, evidencing the participation of a claimant to such lottery. Unclaimed prizes therefore may exist where the evidence of participation and the proof of the claim in the form of a ticket is not presented. Furthermore under subsection 2 thereof, power is given for the making of Regulations prescribing that "in certain events to be specified the proceeds of unclaimed prizes shall be forfeited"; in other words there may be provision in the regulations as to when prizes may be considered as unclaimed because of the non-production of the prescribed ticket as to what to do with them, and in that respect there exists paragraph (f) of section 5 subsection 1, empowering the making of Regulations providing for the disposal of unclaimed prizes. It is clear therefore that provision for the forfeiture of prizes and their disposal exists in the Law itself.

The case of *Stavrou v. The Republic* (1976) 3 C.L.R. p. 66 is distinguishable as there did not exist in the enabling law anything that could be considered as empowering the inclusion in the Regulations of provisions authorising the forfeiture of

the benefits under the Termination of Employment Law 1967. It was because of that, that the provision regarding the manner in which the redundancy payment was to be made to an employee was found as not capable of introducing by Regulation the extinguishment of the right to payment, whereas in the Lottery Law provision for such forfeiture is expressly made.

For all the above reasons this appeal is dismissed with no order as to costs.

10 TRIANTAFYLIDIS P.: Mr. Justice Pikiis will deliver a separate judgment.

PIKIS J.: I find myself unable to agree with the majority of my brothers from whose judgment I dissent. In my judgment, the appeal ought to be allowed. Below, I explain the reasons why.

15 It is unnecessary to recite the facts of the case, eloquently recounted in the majority judgment given by Mr. Justice A. Loizou. What I want to emphasize is that appellant lost no time in asserting she was the owner of the winning ticket and claiming the money to which she felt she was entitled.
20 Her misfortune arose from the destruction of the ticket as a result of a mistake. No suggestion has been made that anyone other than the appellant claimed ownership of the winning ticket for the lottery conducted on 2.5.1978, despite the lapse of four and a half years—a factor that, no doubt, reinforces
25 the genuineness of her claim.

The Accountant General, in exercise of the powers vested in him by regulation 9 of the State Lottery Regulations of 1956 (unaffected by subsequent amendments), refused payment on the ground that the winning ticket was not produced. There-
30 after, in exercise of the powers vested in him by regulation 10 of the aforementioned State Lottery Regulations, treated the proceeds as forfeited for the benefit of the Republic of Cyprus. As a result, the appellant was denied payment of the amount of £8,000.— she would have been able to collect had she been
35 able to produce the ticket. The case was pursued before the trial Court as it was before us, on a single legal issue, i.e. whether regulations 9 & 10 were ultra-vires the enabling law—s.5(1)(e) of the Lotteries Law, Cap. 74, enabling the Governor, now the Council of Ministers, to make regulations for “prescribing

the time within which and the manner in which prizes shall be claimed". Otherwise if intra-vires, the aforesaid regulations not only confer power upon the Accountant General to withhold payment but make this course imperative, as well as consequent forfeiture for the benefit of the Republic of Cyprus. 5

The learned trial Judge, in a thoroughly reasoned judgment—if we may say so with respect—concluded that the regulations were intra-vires and, consequently, dismissed the recourse. At the end of his judgment, he expressed certain reservations as to the justiciability of the claim for the annulment of the decision of the Accountant General under Article 146 of the Constitution but refrained from expressing a final opinion on a subject not taken up before him. I note these reservations without probing further into the matter as neither side has deemed it appropriate to pursue the issue before us. 10 15

The appeal mainly turns on the powers conferred by the enabling law on those to whom power to make regulations was delegated and the by-product of delegation. The pertinent question is whether power was conferred by the parent law to make collection of the winning money absolutely dependent on the production of the ticket. 20

As it was pointed out in argument, the definition of "ticket" in the Lotteries Law, does not make its production a condition precedent to collecting the proceeds to which a holder is entitled. All it requires is the acquisition of a ticket for the purpose of participating in the lottery. No argument has been raised and none could be entertained that the limitation of the period within which the winner of the lottery should make a claim was beyond the powers of those entrusted with the making of the bye-laws. Regulation 9 limits the time to six months, a reasonable period, as it can be said, for the proper management of the lottery. The question we must resolve is a narrow one—whether it was open to the delegates to make collection of the money solely dependent on the production of the ticket. 25 30

In the submission of the appellant, this was beyond their powers, as well as an unreasonable provision to make, that constitutes another recognised ground upon which a bye-law may be struck down as ultra-vires. 35

The approach to the interpretation and construction of subsidiary legislation was debated by the Supreme Court in *Malachtou v. The Attorney-General* (1981) 1 C.L.R. 543. Judicial approach to the subject is reflected by the following statement of the law, appearing at p. 548:—

“Subsidiary legislation enacted without just cause will be declared ultra-vires (see, inter alia, *Laker Airways Ltd. v. The Department of Trade* [1967] 2 Q.B. 643 (C.A.); *Chester v. Bateson* [1920] 1 K.B. 829; *Customs & Excise Commissioners v. Cure and Deeley Ltd.* [1962] 1 Q.B. 340; *Meade v. London Borough of Haringey* [1979] 2 All E.R. 1016). A body to which power is delegated to legislate must derive authority from the provisions of the enabling enactment, and any attempt to by-pass or transgress the limits set thereto will be struck down as ultra-vires. They cannot infer the existence of any authority to legislate, other than that expressly conferred by law, and must, therefore, confine themselves to the four corners of the enabling enactment. Any relaxation of this approach would certainly undermine the system of separation of powers that pervades our system of law and finds expression in the Constitution”.

It is in this spirit we must approach regulations 9 and 10 and decide whether they are reconcilable with the provisions of the enabling law.

Section 4 of Cap. 74 lays down, in terms imperative, that the proceeds of the sale of the tickets shall, “subject to deduction of the monies apportioned for prizes and such other deductions as the Governor may approve, be paid into the Development Funds of the Colony”. The plain provisions of the law confer a statutory right upon the winner of a ticket to the proceeds from the sale of tickets in proportion to the money won. The right is absolute. It does not depend upon the exercise of any discretionary powers on the part of the organisers of the lottery or the Accountant-General. And the question arising is whether s.5(1)(e) of the law bestows power upon the Council to treat the right as extinguished in the event of non production of the ticket. In *Stavrou v. The Republic* (1976) 3 C.L.R. 66, A. Loizou, J., had to construe a provision very much similar to that set out in s.5(1)(e) in connection with payments under

the Termination of Employment Law 1967—24/67, in particular whether the expressions “prescribe” and “manner” confer a right by means of regulating payment to provide for the extinguishment of the right. The learned Judge concluded: “It is apparent from the meaning of the aforesaid expressions and words (*our note*, the words were ‘prescribe’ and ‘manner’), that the regulation and administration of the Fund, by prescribing the manner in which redundancy payment is to be made to the employee, does not include, in any way, the power to make all regulations for the extinguishment of the right to payment after the expiration of six months from the day it became payable”. In the case of the Termination of Employment Law, a statutory right was vested to payment and, as in the present case, the delegates were entrusted with power to regulate the manner of its payment. Did the provision of s.5(1)(e), empowering the Council to regulate the manner in which prizes could be paid, be construed as a power entitling them to provide for the abolition of the right in the event of non production of the ticket? Our answer is in the negative. The very word “manner” suggests regulation and not definition of the right or qualification of it. The Council could conceivably envisage the production of the ticket as entitling the holder to immediate payment and make payment in every other case dependent upon proof, strict though it might be; and conditional on the lapse of a certain period of time, for example two years, in order to eliminate the possibility of a fraudulent claim. But they had no power, by invoking the right, to make regulations pertaining to procedural matters, to provide for the abolition of the right. The exercise of any such power would conflict with the clear provisions of s.4 and defeat the right otherwise vested in the winner as aforementioned. So, in our judgment, that part of reg. 9, providing for the extinguishment or lapse of the right in the event of inability to produce the winning ticket, is ultra-vires the law and, as such, invalid. But, in our judgment, reg. 9 is bad on another score as well: Because it is unreasonable.

Unreasonableness is the least common ground for invalidating a bye-law. Only rarely will the Court resort to this measure and then only when the content of the subsidiary legislation is such that could not have been within the contemplation of the legislature in enacting the law wherefrom authority to

make bye-laws is derived. The subject is discussed in *Craies* on *Statute Law- 5th ed.*, p. 330 *et seq.* The jurisdiction to annul a bye-law on grounds of unreasonableness is an ancient one, as explained in *Slattery v. Neylor* [1888] 13 App. Cas. 446.

5 In invoking this jurisdiction, English Courts draw a distinction between municipal bye-laws and bye-laws of companies that carry on business for their own profit. In the latter case the jurisdiction is invoked more liberally. The cases of *Dearden v. Townsend* [1865] L.R. 1 Q.B. 10 and *Huffam v. N. Staffordshire Ry* [1894] 2 Q.B. 821, decided on the validity of regulations made under the *Railway Acts*, demonstrate that Courts may intervene where the bye-law transgresses the objects of the law.

10 So, in this case, we are of the opinion that, by invoking the powers vested in them by s.5(1)(e), the Council provided for the extinction of the right, contrary to the provisions of s.4 Cap. 74, whereas its powers were merely confined to the regulation of the manner of raising a claim and, matters relevant to the examination of such a claim. It was, in any event, unreasonable to make payments absolutely dependent on the

20 production of the ticket, ignoring realities of life and exceptional cases as the present one where apparently the holder unwittingly destroyed the ticket.

For all the above reasons, we would be disposed to reverse the judgment of the trial Court, set aside the decision of the

25 Accountant General and, direct re-examination of the claim for payment of the sum of £8,000.-.

LORIS, J.: I am in full agreement with the judgment of Pikis, J. and have nothing to add.

30 *Appeal dismissed with no order as to costs.*