

1985 February 14

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

HYATT INTERNATIONAL CORPORATION, OF
DELAWARE, U.S.A.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, TROUGH
THE OFFICIAL RECEIVER AND REGISTRAR,

Respondent.

(Case No. 444/82).

Practice—Recourse for annulment—Prayer for relief—Court should not look upon the mode in which a relief is prayed but it must look upon the substance of the case and find out what in fact is the decision challenged by a recourse and determine the validity of such decision within the powers vested in it under Article 146.4 of the constitution.

Administrative Law—Administrative acts or decisions—Executive act—Confirmatory act—Application for registration of a business name—Not submitted in the form prescribed by section 52 of the Registration of Partnerships and Business Names Law, Cap. 116—Respondent's reply thereto cannot be treated as embodying a decision properly taken under the law—Only proper decision was the one taken after considering the application which was submitted in the form prescribed by above section 52—And which is not confirmatory of the previous decision.

Business names—Removal from the Register—Whether it can be effected on the request of a third person—Section 57 of the Registration of Partnerships and Business Names Law, Cap. 116—Registration of Business names—Discre-

tion of respondent Registrar—Principles on which it must be exercised—And principles on which Court interferes with the exercise of such discretion—No duty of candour and good faith is cast on a person intending to apply for registration of a business name to disclose to registered owners of a business name his intention of registering a business name. 5

By letter dated the 4th June, 1982, the applicants through their advocate applied to the respondent Registrar of Companies, for the registration of the business names "HYATT REGENCY" and "HYATT" in relation to hotels and/or hotel enterprises. By letter dated the 11th June, 1982 the respondent informed the applicants that the said application could not be accepted because there was already registered another business name similar to the ones applied for by the applicants. On the 23rd June 1982 the applicants wrote to the respondent requesting the removal from the register of business names, of the business name "HYATT HOTEL" which appeared as a business name registered in the name of Parson Bros. Ltd. of Larnaca, the interested party in these proceedings. 10 15 20

As a result of the latter letter, the respondent addressed a notice to the interested party in accordance with the provisions of section 57(3) of Cap. 116 to which the interested party replied on 19.7.1982 informing him that they had already taken steps to construct their hotel for which they were going to use as business name the name HYATT HOTEL which was already registered and that the approval of the Cyprus Tourism Organization for the issue of such permit had been obtained, enclosing at the same time copy of a letter of the Director of the Cyprus Tourism Organization to that effect. 25 30

On the 5th August, 1982, the respondent informed the applicants that he could not proceed with the removal applied for. On the 8th October 1982 applicants submitted two applications in the prescribed form and enclosed the prescribed fees for the registration of the business name "HYATT REGENCY" and "HYATT", respectively. By similar registered letters dated the 16th October, 1982, respondent refused such applications on 35 40

the ground that there already existed a similar registration. Hence this recourse whereby applicants applied for the following relief:

5 "1. A declaration by the Court that the refusal of the Registrar dated the 5th August, 1982, to remove from the Register the Business Name 'HYATT HOTEL' be declared null and void.

2. An order of the Court directing the Registrar to effect the above removal.

10 3. An order of the Court directing the Registrar to accept the registration of the Business Names 'HYATT REGENCY' and 'HYATT' in the name of the Applicant."

15 Counsel for the respondents and the interested party raised the following preliminary objections in the opposition:

- (a) That prayers under paragraphs 2 and 3 of the recourse could not be granted on the ground that they were not remedies contemplated by Article 146 of the Constitution.
- 20 (b) That the recourse in so far as prayer No. 3 was concerned which was directed against the refusal of the Registrar to accept the registration of the business names suggested by the applicants, was out of time and that the respondent's letters dated the 16th October, 1982, were simply of a confirmatory nature of respondent's decision dated the 11th June, 1982.
- 25

Held, (1) on the preliminary objections.

(1) That though it is correct that the powers of this Court under Article 146.4 of the Constitution are, to:

- 30 (a) confirm, either in whole or in part, such decision or act or omission; or
- (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or
- 35 (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has

been omitted should have been performed, in administrative recourses, the Court should not look upon the mode in which a relief is prayed but it must look upon the substance of the case and find out what in fact is the decision challenged by a recourse, and determine the validity of such decision within the powers vested in it under Article 146.4 of the Constitution; that it is clear in this case from the grounds of law set out in the opposition, and from the whole tenor of the argument of counsel for the applicants that what is challenged by this recourse is the validity of the decision of the respondent to refuse the removal from the register of the business name "HYATT HOTEL" which was registered in the name of the interested party and also his refusal to accept the registration of the business names applied for by the applicants; accordingly preliminary objection (a) must fail.

(2) That the registration of a business name can only be effected upon the submission of an application in the prescribed form (see section 52(1) of Cap. 116); that the letter which was sent by applicants on the 4th June, 1982 was not an application in the prescribed form as contemplated by section 52 of Cap. 116, but a mere letter sent by counsel for applicants addressed to the respondent, expressing their intention to have the business names in question registered in their names; that in view of the contents of such letter and the fact that same could not be considered as a proper application submitted in accordance with the law by the filling of the appropriate form on which the particulars contemplated by section 52(1) of Cap. 116 should appear, accompanied by the prescribed fees, respondent's reply of the 11th June, 1982, cannot be treated as embodying a decision properly taken under the law, but the maximum one can say is that it was informative as to an existing situation which made it difficult for the respondent to accept a registration of the business names as mentioned in the letter of the applicants; that since the only applications submitted in compliance with the law, were the ones filed on the 8th October, 1982 and it was on those applications that the Registrar had to consider the case, bearing in mind all material facts set out therein, as provided by law the decision of the Re-

gistrar contained in his letter dated the 16th October, 1982 is not confirmatory of a previous decision; that the only proper decisions that were taken in this case bearing in mind the provisions of the law, are the decisions dated 5 the 16th October, 1982, and these are the ones which have been challenged by the applicants; that bearing in mind the date of such decisions the recourse of the applicant is not out of time; accordingly preliminary objection (b) must fail.

10 *Held, (II) on the merits of the recourse:*

That there is no provision in the law authorising the Registrar to accede to a request by a third person to remove from the register a business name on the ground that such third person has an interest in that respect; that 15 the only thing that an interested person can do is to inform the Registrar and put before him facts to the effect that no business is carried on under the registered name in question and it is upon the Registrar to decide whether he will proceed to an enquiry as provided by section 57 of 20 Cap. 116; that in the present case the Registrar exercised his powers under section 57 and he sent a notice to the interested party provided by subsection (3), informing them that unless an answer was received to such notice within one month from the date when the notice was 25 sent the business name was to be removed from the register; that once, however, he received an answer within the prescribed time that the business was carried on supported by evidential material attached thereto, the Registrar had no right to remove from the register the 30 business name already registered in the name of the interested party; that the Registrar could not act beyond those powers and yield to the request of the applicants to have such name removed from his register; and that, therefore, the recourse in this respect must fail.

35 (2) That this Court will not interfere with the discretion of the respondent if due weight has been given to all material facts and it was not exercised in excess or abuse of power; that the burden to prove that in the present case respondent did not exercise his discretion judicially 40 or that he acted in excess or abuse of power rested on the

applicants and in the circumstances of the present case and in the light of the material before this Court applicants failed to discharge such burden; that the reason given by the respondent in refusing to register the business names applied for, that there existed already a similar business name for similar operations registered in the name of the interested party, is a sound one; and that, therefore, it was reasonably open to the Registrar to refuse the registration of the business names applied for and there is no reason justifying this Court to interfere with the exercise of his discretion; accordingly the recourse must fail.

Held, further, that the contention of counsel about a duty of candour and good faith cast on the interested party to disclose to applicants his intention of registering a business name is entirely unfounded; that the existence of such a duty in the U.S.A. has its root to legislative provisions under the United States Code of Federal Regulations; that no such duty is imposed by our legislation or regulations on any person intending to apply for the registration of a business name and therefore this is an extraneous matter which the Registrar could not take into consideration in the exercise of his discretion; and that, moreover, this recourse is not concerned with the registration of the business name by the interested party but with the refusal of the Registrar to remove such name from the register.

Application dismissed.

Cases referred to:

- Menelaos Demetriou v. Republic*, 1 R.S.C.C. 99 at p. 105; 30
Attorney-General v. Kouppi and Others, 1 R.S.C.C. 115 at p. 117;
Lambrou v. Republic (1969) 3 C.L.R. 497 at p. 499;
Merck v. Republic and Another (1972) 3 C.L.R. 548 at p. 564; 35
Metaforiki Eteria "Ayios Antonios" v. The Republic (1981) 3 C.L.R. 221 at p. 239.

Recourse.

Remourse against the refusal of the respondent to accept the registration of the business names "HYATT REGENCY" and "HYATT" in relation to hotels and
5 hotel enterprises.

X. Xenopoulos, for the applicants.

M. Photiou, for the respondent.

A. Poetis, for the interested party.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. Applicants are a corporate body registered in the U.S.A. and are the owners and operators of hotels on international basis.

By letter dated the 4th June, 1982, the applicants through their advocate applied to the Registrar of Companies, respondent in this recourse, for the registration of
15 the business names "HYATT REGENCY" and "HYATT" in relation to hotels and/or hotel enterprises.

By letter dated the 11th June, 1982 the respondent informed the applicants that the said application could not
20 be accepted because there was already registered another business name similar to the ones applied for by the applicants.

Applicants' counsel by a further letter dated the 15th June, 1982 asked the respondent to inform him which
25 were the similar business names already registered with him. As a result of information to that effect conveyed by respondent to counsel for applicants, the latter wrote to the respondent a letter dated the 23rd June, 1982, requesting the removal from the register of business names,
30 of the business name "HYATT HOTEL" which appeared as a business name registered in the name of Parson Bros. Ltd. of Larnaca, the interested party in these proceedings. The contents of such letter read as follows:

35 "Re: Hyatt Regency
Hyatt

In continuation of our correspondence in connec-

tion with the above subject. I have been instructed by my clients, who are seriously concerned with the investment of large sums in Cyprus for the construction of a hotel, to request you to inform me whether you have taken any steps as provided by section 57 of the Partnership and Business Names Law, Cap. 116 for the cancellation of registration No. E.E. 3723 in respect of the business name HYATT HOTEL, in view of the fact that the Company in the name of which such name was registered never traded in any way with hotel enterprises.”

As a result of the aforesaid letter, the respondent addressed a notice to the interested party in accordance with the provisions of section 57(3) of Cap. 116 to which the interested party replied on 19.7.1982 informing him that they had already taken steps to construct their hotel for which they were going to use as business name the name HYATT HOTEL which was already registered and that the approval of the Cyprus Tourism Organization for the issue of a permit had been obtained, enclosing at the same time copy of a letter of the Director of the Cyprus Tourism Organization to that effect.

On the 5th August, 1982 respondents addressed to the applicants the following letter:

“HYATT HOTEL

I refer to your letter of 23.6.82 in connection with the removal of the registration of the above business name. I wish to inform you that as a result of a letter sent by me to its owner a reply was sent to my office that the above business name continues to exist. Therefore, I cannot proceed with its removal.”

On the 8th October, 1982 applicants submitted two applications in the prescribed form and enclosing the prescribed fees for the registration of the business name “HYATT REGENCY” and “HYATT” respectively. By similar registered letters dated the 16th October, 1982, respondent refused such applications. The contents of each one of such letters read as follows:

“I return form E/E1 submitted to this office on

the 8th October, 1982 in connection with the registration of the above business name, and wish to inform you that I cannot accept such registration under the above name, as there already exists a similar registration.

Receipt No. A 575213 for the deposit of the sum of £10.000 mils is returned.

I am prepared to consider other names.”

Hence, the applicants filed the present recourse, whereby they apply for the following relief:

1. A Declaration by the Court that the refusal of the Registrar dated the 5th August, 1982, to remove from the Register the Business Name “HYATT HOTEL” be declared null and void.

2. An order of the Court directing the Registrar to effect the above removal.

3. An order of the Court directing the Registrar to accept the registration of the Business Names “HYATT REGENCY” and “HYATT” in the name of the Applicant.

The grounds of law set out in support of the application are:

1. The refusal by the Registrar to remove from the Register the Business Name “HYATT HOTEL”, in accordance with section 57 of the Partnership and Business Names Law, Cap. 116 is illegal and the reason that this Business Name is still existing cannot legally stand, as the firm in the name of which the said Business Name is registered is not and has never been carrying on the business for which it was registered; and alternatively the Registrar was wrong in allowing the registration of the above Business Name as the owners are not entitled to register in their name this business name.

2. Consequently the Registrar must effect the registration of the Business Names “HYATT REGENCY” and “HYATT” in the name of the Applicant.

By his opposition counsel for the respondent advanced the following grounds of law:

1. The recourse as far as prayer 3 is concerned is out of time as same was not filed within the time-limits provided for by para. 3 of Article 146 of the Constitution.

2. Respondents' letters dated 16.10.1982 are simply of a confirmatory nature of respondent's decision dated 11.6.1982.

3. Applicants have no legitimate interest in the sense of Article 146.2 of the Constitution to file a recourse and pray as per paragraphs 1 and 2 of their Application.

4. Without prejudice to the above objections, the respondent says that the sub judice decisions, i.e. the refusal to remove from the Register the business name "HYATT HOTEL" and the refusal to register the business names "HYATT REGENCY" and "HYATT" were properly and lawfully taken after all relevant facts and circumstances were taken into consideration and in accordance with the Partnerships Law, Cap. 116.

Counsel for interested party adopted the same grounds of law in support of his opposition.

By his written address counsel for applicants submitted that the interested party was not carrying on the business of Hotel Enterprises and that the carrying of such business was not within the objects of such Company which were the carrying of commercial and trading objects, and, therefore, the respondent was wrong in effecting such registration. He further contended that the interested party was well aware of applicants' worldwide name, reputation and good will and that the object of having such business name registered was to extort advantages and/or benefits from the applicants. The interested party, counsel added, had a duty of candour and good faith to disclose to applicant (and perhaps to the Registrar of Business Names) their intention of registering the business name prior to proceeding with any application to this effect; in support of this, he made reference to section 1.56 of United States 37 Code of Federal Registrations. He further argued that the preliminary objection raised by counsel for respondent and interested party that prayer under para. 3 of the application is time barred is legally unfounded. Respon-

dent's reply of the 16th October, 1982 is an executory act and the decision contained therein was taken after a new inquiry into the matter, had been conducted by the respondent. With regard to his prayer against the refusal
5 by the respondent to strike out the business name "HYATT HOTEL" registered in favour of the interested party, he submitted that applicants' recourse was filed in time as the sub judge decision in this respect was communicated to applicants on the 5th August, 1982. Counsel for appli-
10 cants concluded his address by submitting that in the circumstances of the present case the refusal of the respondent to remove from the register the business name "HYATT HOTEL" and register business names applied for by the applicants, is wrong and illegal.

15 By his written address, counsel for respondent contended that the recourse in respect of prayer under para. 3 is out of time as the decision of the respondent refusing to register the business names applied for, was communicated to applicants by letter dated 11.6.82, and that
20 any subsequent correspondence, and in particular respondent's letter of 15.10.82, is confirmatory of his previous decision. The decision of 11.6.82 was the only decision which could be challenged and the applicants failed to do so within the prescribed time limit of 75 days.
25 Furthermore, counsel added prayer under paragraph 3 cannot be entertained as in the absence of a prayer for a declaration that the sub judge decision is null and void applicants cannot apply for an order as per paragraph 3.

30 Counsel further contended that prayer under paragraphs (1) and (2) cannot be granted as the applicants have no legitimate interest to pray for such remedies since the respondent is not duty-bound by law to remove a name from the register on the application of a third party; nor a right to move the Registrar so to act is
35 vested by law to the applicants. Furthermore, the applicants are not affected directly, and an indirect effect is not enough under para. 2 of Article 146 of the Constitution to enable them to file a recourse.

40 Expounding on the merits of the case, counsel submitted that the respondent has exercised his discretion

correctly, judiciously and reasonably in refusing the registration of the names proposed by the applicants and that by refusing to strike out the name registered in favour of the interested party, he acted within the limits of his powers as set out in section 57 of Cap. 116. 5

Counsel for interested party by his written address adopted the contention of counsel for respondent that prayer under paragraph 3 is out of time. Subject to such contention, counsel submitted, the respondent in refusing the application, acted in discharge of the duty imposed upon him to refuse registration of a business name similar to one already registered. Regarding remedy under paragraph 1, it was counsel's submission that the respondent made a proper inquiry and on the strength thereof, he decided not to remove the name of the interested party from the register. With regard to prayer under paragraph 2, counsel contended that same is beyond the jurisdiction of this Court. 10 15

I shall deal first briefly with the objection of counsel for respondent and interested party that prayers under paragraphs 2 and 3 of the recourse cannot be granted on the ground that they are not remedies contemplated by Article 146 of the Constitution. 20

It is correct that the powers of this Court under Article 146.4 of the Constitution are, to: 25

- (a) confirm, either in whole or in part, such decision or act or omission; or
- (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or 30
- (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

In administrative recourses, however, the Court should not look upon the mode in which a relief is prayed but it must look upon the substance of the case and find out what in fact is the decision challenged by a recourse, and determine the validity of such decision within the powers 35

vested in it under Article 146.4 of the Constitution.

In *Menelaos Demetriou etc. (C.B.C. Staff Society) and The Republic* (1961) 1 R.S.C.C. 99 at p. 105, it was held:

5 "It is quite correct that this Court has repeatedly stated that it will not dismiss a case for merely technical defects and it will try as far as possible to do justice in a case on the substance thereof, avoiding thus duplicity of, and delay in proceedings."

10 (See also *The Attorney-General v. Kyriakos Kouppi & others* (1961) 1 R.S.C.C. 115, 117.

Rule 17 of the Supreme Constitutional Court Rules, 1962, provides that-

15 "If the justice of the case so requires the Court may give any Judgment or Decision, under any Article granting it competence, whether or not such Judgment or Decision has been sought in the proceedings before it."

20 (See in this respect, *Lambrou v. The Republic* (1969) 3 C.L.R. 497 at 499).

It is clear in this case from the grounds of law set out in the opposition, and from the whole tenor of the argument of counsel for the applicants that what is challenged by this recourse is the validity of the decision of the respondent to refuse the removal from the register of the business name "HYATT HOTEL" which was registered in the name of the interested party and also his refusal to accept the registration of the business names applied for by the applicants. This disposes the preliminary objection in this respect.

25 With regard to the preliminary objection raised that the recourse in so far as prayer No. 3 is concerned, which is directed against the refusal of the Registrar to accept the registration of the business names suggested by the applicants, is out of time and that the respondent's letters dated the 16th October, 1982, are simply of a confirmatory nature of respondent's decision dated the 11th June,

1982, I wish to observe the following: Under the provisions of section 52(1) of the Partnership Law, Cap. 116 the registration of a business name can only be effected subject to compliance with the provisions contained therein which expressly require that a statement in writing in the prescribed form signed by the individual or company should be sent by post or be delivered to the Registrar within one month of the date the business is commenced and the following particulars should appear on the such form:

- (a) the business name;
- (b) the general nature of the business;
- (c) the principal place of the business;
- (d) the present christian name or names and surname, any former christian name or names or surname, the nationality, the usual residence, and any other business occupation (if any) of the individual and the corporate name and registered or principal officer of the company;
- (e) the date of the commencement of the business.

The letter which was sent by applicants on the 4th June, 1982, is not an application in the prescribed form as contemplated by section 52 of Cap. 116, but a mere letter sent by counsel for applicants addressed to the respondent, expressing their intention to have the business names in question registered in their names. The contents of such letter, read as follows:

"I have been instructed by my clients Messrs 'HYATT INTERNATIONAL CORPORATION,' of Delaware, U.S.A., to register in Cyprus the business name 'HYATT REGENCY' and 'HYATT' as business name of hotel and/or of hotel enterprises.

For information purposes I wish to bring to your notice that my said clients have hotels under the above business name in more than 65 countries all over the world and they have preliminarily expressed interest for the construction of a hotel under the above business names in Cyprus as well.

The favourable influence on the economy of Cyprus from an enterprise of this kind and the investment in that respect is apparent."

5 In view of the contents of such letter and the fact that
submitted in accordance with the law by the filling of the
appropriate form on which the particulars contemplated
by section 52(1) of Cap. 116 should appear, accompanied
10 by the prescribed fees, respondent's reply of the 11th
June, 1982, cannot be treated as embodying a decision
properly taken under the law, but the maximum one can
say is that it was informative as to an existing situation
which made it difficult for the respondent to accept a
15 registration of the business names as mentioned in the
letter of the applicants. The appropriate forms described as
forms E.E.1 were obtained by counsel for applicants from
the office of the respondent and were submitted on behalf
of the applicants on the 8th October, 1982, together with
20 the prescribed fees. Therefore, the only applications sub-
mitted in compliance with the law, were the ones filed on
the 8th October, 1982 and it was on those applications
that the Registrar had to consider the case, bearing in
mind all material facts set out therein, as provided by
law. The allegation, therefore, of counsel for the respond-
25 ent and the interested party that the decision of the
Registrar contained in his letter dated the 16th October,
1982 is confirmatory of a previous decision, cannot be
sustained. The only proper decision that was taken in this
case bearing in mind the provisions of the law, are the de-
30 cisions dated the 16th October, 1982, and these are the
ones which have been challenged by the applicants. Bear-
ing in mind the date of such decision, the recourse of the
applicant is not out of time and, therefore, the preliminary
objection in this respect fails.

35 Having found as above, I come next to consider the
case on its merits and I shall deal first with the prayer of
the applicants directed against the refusal to strike out a
business name which was already registered in the name
of the interested party.

40 The business name "HYATT HOTEL" was registered
in the name of the interested party on the 10th April.

1979, according to the certificate issued in that respect by the respondent, copy of which is attached as exhibit 1 to the opposition. The applicants came to know about the registration of this business name on the 15th May, 1981, by a registered letter sent to them by the interested party, (copy of which is attached as exhibit 1 to the written address of counsel for applicants) the contents of which read as follows:

5

“Messrs. The Managing Director,
Hyatt Hotels Corporation,
Rosemont,
Illinois,
U.S.A.

10

Dear Sir,

One of our associate companies is the registered owner of the HYATT HOTEL Business Name, and will like to look into possibility of cooperating in the establishment of hotel unit in Cyprus.

15

If our proposal is of interest to you or you like to counter propose, please let us know so that we can take the matter further to a successful finale.

20

Thanking you,

Yours faithfully,
Parson Bros. Ltd.
P. G. Parson, Director.”

25

Though the applicants since May, 1981 came to know by means of the above letter, that the business name “HYATT HOTEL” was registered in the name of the interested party, a fact which according to the contention of their counsel prejudicially affected their interests, they did not appear to have been offended, as till June, 1982 when they applied to the respondent for the removal from the register of such business name, they had not taken any steps for the protection of their interests which were at stake.

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35

The powers of the Registrar of companies to remove a business name from his register are defined and limited

to the extent provided by section 57(1) of Cap. 116, which reads as follows:

5 "57. (1) If any firm, individual or corporation registered under this Law ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business, or of the individual, or if he is dead his personal representative, or the corporation, or any officer thereof, within one month after the business has ceased to be carried on, to send by post or deliver to the Registrar a statement in the prescribed form that the firm or individual or corporation has ceased to carry on business.

15 (2) On receiving such a statement as aforesaid the Registrar shall file and register the same and remove the firm or individual or corporation from the register.

20 (3) Where the Registrar has reasonable cause to believe that any firm or individual corporation registered under this Law is not carrying on business, he may send to the firm or individual or corporation by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual or corporation may be removed from the register.

25 (4) If the Registrar either receives an answer from the firm or individual or corporation to the effect that the firm or individual or corporation is not carrying on business or does not within one month after sending the notice receive an answer, he may remove the firm or individual or corporation from the register."

30 It is clear from the above provisions that before the Registrar removes a business name from his register he must either be informed by the individual or corporation in whose favour the name is registered by a notice sent by post or delivered to him, containing a statement in the prescribed form that the firm or individual has ceased to carry on business, or he has reasonable cause to believe that any firm or individual is not carrying on business

anymore. In the latter case he must send a notice by registered post addressed to the firm on individual concerned asking information in that respect and unless an answer is received to such notice within one month from the date thereof he can proceed to remove from the register the business name concerned. Under sub-section (4) of section 57, however, the Registrar can only do so if he receives an answer from the firm or the individual that such firm or individual ceased to carry on business, or no reply is received by him from the person concerned within the prescribed period of one month. 5 10

There is no provision in the law authorising the Registrar to accede to a request by a third person to remove from the register a business name on the ground that such third person has an interest in that respect. The only thing that an interested person can do is to inform the Registrar and put before him facts to the effect that no business is carried on under the registered name in question and it is upon the Registrar to decide whether he will proceed to an enquiry as provided by section 57. In the present case the Registrar exercised his powers under section 57 and he sent a notice to the interested party as provided by subsection (3), informing them that unless an answer was received to such notice within one month from the date when the notice was sent the business name was to be removed from the register. Once, however, he received an answer within the prescribed time that the business was carried on supported by evidential material attached thereto, the Registrar had no right to remove from the register the business name already registered in the name of the interested party. The Registrar could not act beyond those powers and yield to the request of the applicants to have such name removed from his register. Therefore, the recourse in this respect fails. 15 20 25 30

The next question which I have to examine is whether the refusal of the respondent to register the business names applied for by the applicants is justified in the circumstances of the present case. 35

It is well settled that where the exercise of discretion vests in a particular organ this Court will not interfere and substitute its own discretion to that of the particular 40

organ unless such discretion has been exercised improperly or it was based on a misconception of facts or exercised in abuse or excess of powers.

5 In the case *Merck v. The Republic and another* (1972) 3 C.L.R. 548, this Court in dismissing an application against the refusal of the Registrar of Trade Marks to register a trade mark had this to say (Per A. Loizou, J.) at page 564:

10 "To my mind, the Registrar in exercising his discretion, is not limited to any particular type of consideration. He must exercise it judicially on reasonable grounds which are capable of being clearly stated. He has to examine the possible confusions or difficulties which might arise in consequence of the registration of the trade mark or the possible impairment of the rights of other traders to do that which, apart from the registration, might be their ordinary mode of carrying on their business.

15 The point, therefore, that arises for consideration, is the extent to which this Court will interfere with the exercise of administrative discretion. This matter has been the subject of judicial pronouncement in a number of cases. (See, inter alia, *Iacovos Iacovides v. The Republic* (1966) 3 C.L.R. page 212, *Impalex Agencies Ltd. v. The Republic* (1970) 3 C.L.R. 361, and *Psaras v. The Ministry of Commerce and Industry* (1971) 3 C.L.R. 151). This Court will not interfere with such a discretion if due weight has been given to all material facts, and it was not exercised in excess or abuse of power."

20 The above principle was reiterated by me in *Metaphoriki Eteria "Ayios Antonios" v. The Republic* (1981) 3 C.L.R. 221 where at page 239, I said:

25 "It has been stated time and again that this Court is not entitled to substitute its own discretion for that of the appropriate organ but can only examine as to whether such discretion was properly and reasonably exercised in the circumstances of each case (vide *Christou v. The Republic* (1977) 3 C.L.R. 11, *Christodoulou and another v. C.Y.T.A.* (1978) 3 C.L.R. 61,

Tsangaris v. Republic (1975) 3 C.L.R. 518, *Georghakis v. Republic* (1977) 3 C.L.R. 1, *Evgeniou v. Republic* (1979) 3 C.L.R. 239, etc.)”

The burden to prove that in the present case respondent did not exercise his discretion judicially or that he acted in excess or abuse of power rested on the applicants and in the circumstances of the present case and in the light of the material before me, applicants failed to discharge such burden. The reason given by the respondent in refusing to register the business names applied for, that there existed already a similar business name for similar operations registered in the name of the interested party, is a sound one. 5 10

In the present case I have come to the conclusion that it was reasonably open to the Registrar to refuse the registration of the business names applied for and I see no reason justifying this Court to interfere with the exercise of his discretion. 15

Before concluding, I wish to point out that the contention of counsel about a duty of candour and good faith cast on the interested party to disclose to applicants his intention of registering a business name is entirely unfounded. The existence of such a duty in the U.S.A. has its root to legislative provisions under the United States Code of Federal Regulations. No such duty is imposed by our legislation or regulations on any person intending to apply for the registration of a business name and therefore this is an extraneous matter which the Registrar could not take into consideration in the exercise of his discretion. Moreover, this recourse is not concerned with the registration of the business name by the interested party but with the refusal of the Registrar to remove such name from the register. 20 25 30

In the result this recourse fails and is hereby dismissed. In the circumstances of this case I am of the opinion that I cannot deprive the interested party and the respondent of costs. Accordingly, I award £50.- against costs of the respondent and £50.- costs of the interested party. 35

Recourse dismissed.
Order for costs as above.