

1985 January 26

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PETROS MATSAS

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF FINANCE,  
2. THE DIRECTOR OF CUSTOMS AND EXCISE,

*Respondents.*

(Case No. 362/83).

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*Customs and Excise Duties Law, 1978 (Law 18/1978)—Order 188/82 made thereunder—Duty free importation of vehicle—“Permanent settlement abroad” in the said Order—Notion of—It excludes residence abroad for purposes of studies.*

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*Words and Phrases—“Permanent settlement abroad”—“Ordinary residence”.*

The applicant, who from October, 1969 to June 1982 has been abroad mainly for purposes of studies applied to the respondents, by virtue of the Customs and Excise Duties Law, 1978 (Law 18 of 1978) and Order No. 188/82\*, made thereunder, for the duty free importation of a motor-car on the ground that after ten years permanent residence abroad he decided to settle permanently in Cyprus.

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The respondents turned down the application on the ground that applicant’s alleged permanent residence abroad

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\* Order No. 188/82 reads as follows:  
«Vehicles... imported by Cypriots who after permanent settlement abroad for a continuous period of at least ten years, return and settle permanently in the Republic provided that the importation is made within a reasonable time since their arrival according to the judgment of the director. The relief from import duty covers only one vehicle for every family.»

was found to include periods spent for studies. Hence this recourse.

5 *Held*, that the words "permanent settlement abroad" in the said Order 188/82 are common words and there is no context requiring that they should be given other than their natural meaning in accordance with their accepted usage; that they have the  
10 the notion of immigration for the purpose of working and they exclude travel abroad for the purpose of studies; and that, therefore, the sub judge decision was reasonably open to the respondents and was reached on a proper interpretation of the Law  
15 after a proper appreciation of the factual aspect of the case; accordingly the recourse must fail.

*Held, further*, that "permanent settlement" carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary  
20 residence.

*Application dismissed.*

Cases referred to:

*Rossides v. Republic* (1984) 3 C.L.R. 1482;

*Regina v. Barnet L.B.C. Ex p. Shah* (H.L.E.)  
[1983] 2 W.L.R. 16 at pp. 26, 27.

**Recourse.**

25 Recourse against the refusal of applicant's application for the duty free importation of a motor-car on the ground that having been a Cypriot, who after ten years of permanent residence abroad had decided to settle permanently in Cyprus.

*G. Papatheodorou*, for the applicant.

*M. Photiou*, for the respondents.

30 *Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and or decision of the respondents by which his application for the duty free importation of a motor-car,  
35 B.M.W. make, Reg. No. PM999, on the ground that having been a Cypriot, who after ten years of permanent residence

abroad had decided to settle permanently in Cyprus since 25th June, 1982, was refused, is null and void and with no legal effect.

The applicant was born on the 16th April, 1951, and graduated the Greek Gymnasium in the summer of 1967. He did his national service and was discharged from the National Guard in 1969.

In October of the same year he went to Greece. The profession stated on his passport then issued to him on the 18th September 1969, was student. It was valid for a year and it was being renewed yearly until 1975, when he was issued in London with a new passport, again his profession stated to be that of a student. His entry visa to the U.K. on his passport was for two months on condition that the holder did not enter employment paid or unpaid and did not engage in any business or profession. Subsequently his entry visa was issued and made valid up to the 12th April 1976, again with the stipulation that he would not be employed in paid or unpaid business or profession. Further visas were given to him by the British authorities on the same conditions.

Whilst in the U.K. he obtained a master's degree of Leeds University in 1979. During his stay in Greece, as it appears from the photocopies on his passports, contained in exhibit 1, he was visiting Cyprus, what appears to be during the summer and Christmas holidays.

On the 25th June 1982, the applicant imported his said motor-car under the Temporary Importation (Private Vehicles and Aircrafts) Regulations of 1968. On the 1st June 1983, the applicant applied to respondent 2, for the duty free importation of his said motor-car. In his application of that date, (Appendix 1) he gave the necessary particulars regarding the issue of his passports and stated that from the years 1969-1973, he was working in Greece as an Assistant Clearing Agent for a certain Orestis Tsapikides, a forwarding and clearing agent and as from the 5th January, 1974, to October 1981, he was employed as Market Researcher and later as Export Sales Manager by Stavotakis, Imports and Exports of London.

The respondent 2, considered the applicant's application and rejected same. He was informed accordingly by letter dated the 1st August 1983, (Appendix 3) which reads as follows:

5           "Sub.: Motor vehicle Reg. No. PM989  
              temporarily imported under Form  
              C./104 No. B64686 of 26.6.1982.

10           I refer to your letter and its enclosures, dated the  
              1st June, 1983, by which you request authority for  
              the duty-free importation under sub-heading 19 of  
              Item 01 of the Fourth Schedule to Law No. 18/78  
              of the above quoted motor vehicle, the temporary stay of  
15           which expires on the 24th August 1983, and would  
              inform you that the circumstances of your case have  
              been very carefully examined but, according to the  
              standing Customs legislation, it was not found possible  
              to accede to your request mainly because the 10  
              (ten) year's period of your alleged permanent resi-  
20           dence abroad immediately preceding the date of your  
              arrival to Cyprus with the intention to take up  
              permanent residence was found to include periods  
              spent for studies.

25           You are, therefore, requested to ensure that the  
              vehicle in question is, before the 24th August 1983,  
              (a) re-exported, (b) placed in a General Bonded Ware-  
              house pending final settlement or (c) diverted to  
              home use on payment of all customs duties and charges  
              payable thereon, as, in default, it will be liable to  
30           forfeiture and it will be so forfeited without any  
              further notice from this office.

35           Please contact the Customs Authorities of the  
              district of your choice for completing the necessary  
              Customs formalities producing to them the attached  
              copy of this letter together with Disposal Permit  
              necessary in case you decide to have the vehicle cleared  
              to duty under (c) above. Disposal Permit has been  
              given since 16.7.1983."

The respondent therefore claims that the said decision was lawfully taken under the provisions of the Customs

and Excise Duties Law, 1978 (Law No. 18 of 1978) and Order No. 188/82, published in Supplement three Part 1 to the Official Gazette of the Republic of the 11th June 1982, under Notification 1783. The said order in so far as relevant provides that:-

“Vehicles imported by Cypriots who after permanent settlement abroad for a continuous period of at least ten years, return and settle permanently in the Republic provided that the importation is made within a reasonable time since their arrival according to the judgment of the director. The relief from import duty covers only one vehicle for every family.”

It is clear from this order that a person seeking such a relief has to satisfy the Director, respondent 2, that he was permanently settled abroad for at least ten years and that he returned to settle permanently in the Republic.

It may be noted here that on the totality of the circumstances placed before him by the applicant himself the respondent Director of Customs and Excise decided that the applicant was not a “permanent resident abroad”, as he put it in Appendix III, obviously using the expression “permanent resident abroad”, as equivalent to and capable of the same meaning as the words “μόνιμος εγκατάσταση εις εξωτερικό” “permanent establishment abroad” contained in Order No. 188 of 1982.

In order to alleviate any misunderstanding as to this discrepancy in the expressions used, I might as well say now that the notion of “permanent residence” is to my mind less strict in Law as that of “permanent settlement”. Although it is desirable that in such circumstances the expressions used should be those to be found in the relevant statutory instruments, there appears from the material in the file as it will be shortly seen that the expressions used are intended to convey the notion of permanent establishment abroad.

In fact in the cyclostyled form used for applications for relief, an applicant is expected to state it, as the applicant in this case did, “being a repatriated Cypriot who immigrated from Cyprus in 1969 and lived abroad for a period of not less than ten continuous years”. Further down as

regards the profession regarding an applicant, it is stated in paragraph 2 thereof that "in the last ten years of my residence abroad I was in full time employment as follows", and then one is required to give the date of his return "with the intention of taking up permanent residence in Cyprus". These expressions in the said questionnaire bear out the point I made earlier.

It is clear that "permanent residence", "immigration" and "permanent settlement" are expressions used indiscriminately and as carrying the same notion of, to put it in another way, taking up permanent residence abroad which implies inter alia the notion of employment for the purpose of earning a living and as stated in the decision of the respondent Director "periods spent abroad for studies are not considered as permanent settlement abroad".

To my mind the words "permanent settlement abroad" are common words and there is no context requiring that they should be given other than their natural meaning in accordance with their accepted usage. It appears from the expression used in the cyclostyled form in the application that they have been understood and interpreted by the respondents as having the notion of immigration of a permanent residence abroad for the purpose of working and that they exclude the travel abroad for the purpose of studies.

As shown in the Shorter Oxford Dictionary the verb "to settle" has a variety of meanings, among which those relevant to our case are:-

"To cause to take up one's residence in a place; esp. to establish (a body of persons) as residents in a town or country; to plant (a colony). To fit or establish permanently (one's abode, residence, etc.). To assign to (a person) a legal domicile in a particular parish. To furnish (a place) with inhabitants or settlers."

"Settlement" is defined inter alia, as the act of settling as colonists or new-comers.

The corresponding Greek word "engathistame" (settle) is defined in the "Neo Orthografiko Ermineftiko Lexiko

Dimitrakou" as meaning "τοποθετούμαι, έχω τόπον μόνιμου διαμονής" (I am posted, I have place of permanent residence.)

The word "permanent" is defined in the same dictionary as "lasting or designed to last indefinitely without change; enduring, persistent" and "permanence" means the fact or quality of being permanent. 5

The Greek word "μόνιμος" (permanent), is defined in Demetrakou (supra) as "σταθερός, αμετάκλητος, επί κρατικών λειτουργιών, ο απολαύων της μονιμότητας" (steady, unchangeable as to civil servants, he who enjoys permanence), and in the Greek Dictionary of the Modern Greek Language «μόνιμος» (permanent). «Μόνιμος» (steady), is defined «ο σταθερός, αυτός που μένει πάντοτε στον ίδιο τόπο ή την ίδια κατάσταση, όχι προσωρινός έχει μόνιμη θέση στο Υπουργείο» (steady, he who stays always at the same place or the same state, not temporary, he has permanent post at the Ministry). 10 15

In statutory enactments as the one under consideration the safest course is to take the words used therein in their natural and ordinary meaning, unless the framework of the enactment or its legal context in which they are used require a different meaning which is not the present case. Great assistance as to the legal principles applicable for the determination of such expressions as "ordinary residence" and other cognate expressions, can be derived from the case of *Regina v. Barnett L.B.C. Ex. p. Shah (H.L.E.)* [1983] 2 W.L.R. p. 16, where the House of Lords dealt with the meaning and effect of the words "ordinary residence" to be found in the Education Act of 1962, and the Local Education Awards Regulations (1979) made thereunder. A differentiation, however, has to be made as the terms "ordinary residence", "residence", "habitual residence" cannot but have a different meaning than "permanent settlement" or even "permanent residence." 20 25 30 35

What is significant though is what Lord Scarman said at pp. 26 and 27:

"Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesi- 40

tatingly subscribe to the view that 'ordinary resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.

There is, of course, one important exception. If a man's presence in a particular place or country is unlawful, e.g. in breach of the immigration laws, he cannot rely on his unlawful residence as constituting ordinary residence (even though in a tax case the Crown may be able to do so): In *re Abdul Manan for the Home Department, ex. parte Margueritte* [1982] [1971] 1 W.L.R. 859, and *Reg. v. Secretary of State* 3 W.L.R. 753, C.A. There is, indeed, express provision to this effect in the Act of 1971, section 33(2). But even without this guidance I would conclude that it was wrong in principle that a man could rely on his own unlawful act to secure an advantage which could have been obtained if he had acted lawfully."

A fortiori this should apply to the case of a permanent settlement in a country. It would be wrong to consider that a person could rely on his own unlawful act to secure an advantage which could have been obtained only if he had acted lawfully.

To my mind permanent settlement carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence.

I need hardly add anything more except refer to the case of *Kyriakos G. Rossides of Nicosia v. The Republic* (judgment delivered on the 22nd December 1984, as yet unreported),\* in which Malachos J., upheld the decision of the respondent Director of Customs and Excise to the effect that the years a Cypriot spent as a student in England did not satisfy the requirement of permanent settlement abroad. I need not reproduce here the authorities referred

\* Now reported in (1984) 3 C.L.R. 1482.



to by him in that case which I find most helpful for the determination of the issues arising regarding the interpretation of the meaning and effect of the expression "permanent settlement".

In the result I have come to the conclusion that the sub  
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judice decision was reasonably open and was reached on  
a proper interpretation of the Law after a proper appreci-  
ation of the factual aspect of the case.

For all the above reasons the recourse is dismissed but  
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in the circumstances there will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*