

1986 June 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANIKKOS K. PAMBORIS AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DISTRICT OFFICER OR THE ACTING  
DISTRICT OFFICER AS CHAIRMAN OF THE  
IMPROVEMENT BOARD OF STROVOLOS,  
AND THE WATER BOARD OF NICOSIA,

*Respondents.*

*(Case No. 185/84).*

5           *The Streets and Buildings Regulation Law, Cap. 96—Ss. 3(1),*  
              *4(1) and 9(3)(a)—Division of land into building sites—*  
              *Application for—Land situated in Strovolos outside the*  
              *area of supply of water of the Water Board of Nicosia, but*  
10           *applicants indicated and requested supply of water for*  
              *the building sites from the water supply of Nicosia—The*  
              *Water Supply (Municipal and Other Areas) Law, Cap.*  
              *350, ss. 3, 12(2)(e) and 43—Duty of Improvement Board*  
              *of Strovolos under Article 29 of the Constitution either*  
              *to transmit the request to the competent Authority, i.e.*  
              *Water Board of Nicosia, or to inform the applicants to*  
              *address their request to the said Board—Failure to do*  
              *either—Sub judice decision, whereby applicants' said ap-*  
15           *plication for the division of their land was dismissed,*  
              *annulled.*

*Constitutional Law—Constitution, Articles 9, 13.1, 23.1,*  
              *23.3, 28 and 29—Articles 9 and 13.1—They have no*  
              *bearing in respect of division of land into building sites—*  
              *The Streets and Buildings Regulation Law, Cap. 96—*

*It should be read subject to Article 23—Rejection of application for division of land into building sites on the ground that no suitable source of water supply had been indicated—No “restriction” or “limitation” in the sense of Article 23—Article 28 safeguards against arbitrary differentiations, not reasonable distinctions—Article 29—Duties of a public authority which receives a request in respect of which it has no competence.* 5

On 8.9.83 the applicants submitted an application for the division of their land Plot 1780 at Strovolos into 102 separate sites. They indicated in their said application that the proposed water supply was a public one. The land in question is situated outside the area of supply of the Water Board of Nicosia. In reply to a letter dated 21.10.83 the applicants by letter dated 3.11.83 indicated as the proposed source of the water supply for the building sites the water supply of Nicosia and requested that their said application receive the same treatment as the division of a number of plots in the same area. It transpired that they were referring to part of their land which has been compulsorily acquired for the creation of a displaced persons' settlement and land used for the erection of a Gymnasium. 10 15 20

On 23.11.83 the Improvement Board of Strovolos without referring the matter to the Water Board of Nicosia decided to dismiss the said application as no suitable source of water supply had been indicated and the land in question was outside the area of the Water Board of Nicosia. 25

As a result applicants filed the present recourse complaining that the said decision infringes Articles 23.1, 23.3, 13.1 and 9 of the Constitution, that the treatment they received was discriminatory in violation of Article 28 of the Constitution and that the respondents failed to conduct a due inquiry. 30

*Held, annulling the sub-judice decision:* (1) The sub-judice decision is not contrary to the Articles of the Constitution hereinabove referred to. The provision of Article 9 is directory and has no bearing in this case. Freedom of movement and residence within the Republic, safeguarded by Article 13, has not even a remote connection 35

with the division of land for purposes of exploitation. No "restrictions or limitations" in the sense of Article 23 of the Constitution have been imposed in the present case. "Equal before the Law" in Article 28.1 and the  
5 term "discrimination" in Article 28.2 safeguards against arbitrary differentiations, but does not exclude reasonable distinctions that have to be made in view of the intrinsic nature of things. The distinction between the case of the  
10 applicants and the erection of a State school and a settlement to house refugees, who became homeless due to the Turkish invasion, is obvious and reasonable. The principle of equality has as its core justice and fairness. There is no element of injustice or unfairness to the applicants in this case.

15 (2) In virtue of s. 12(2) (e) of Cap. 350 a Water Board may supply water for any purpose to any area outside its area of supply, if by such supply the water in the area of supply is not likely to be diminished; and in virtue of  
20 s. 43 the Board may undertake duties outside its area. It may exercise any power or undertake any duty for and on behalf of the Government outside the area, declared to be the area of supply under s. 3, with the consent of the Council of Ministers, which, however, delegated its said power to the Ministers of Interior and Agriculture.

25 Applicant's letter of 3.11.83 is a request. It is clear that the applicants were relying on the public water supply of the Water Board of Nicosia. The Improvement Board of Strovolos had a duty under Article 29 of the  
30 Constitution to refer the request and the file to the competent organ, i.e. the Water Board of Nicosia or to inform the applicants to address their said request to the said Water Board. They failed in their such duty. They should not and could not answer the request themselves as they were not the competent public authority. There-  
35 fore, they exercised their discretionary powers in a defective manner and had acted contrary to law.

(3) The Water Board of Nicosia did not take any part in the sub judice decision. It was improperly joined as a party to this recourse. For this reason there would be

an order for £50 costs against the applicants and in favour of the said Water Board.

*Sub judice decision annulled.  
No order as to costs between  
applicants and the Improvement  
Board of Strovolos. £50 costs  
against applicants in favour of  
the Water Board of Nicosia.* 5

**Cases referred to:**

*The Holy See of Kitium v. The Municipal Council of  
Limassol*, 1 R.S.C.C. 15; 10

*Kirzis and Others v. The Republic* (1965) 3 C.L.R. 46;

*Mikrommatis v. The Republic*, 2 R.S.C.C. 125;

*Republic v. Arakian and Others* (1972) 3 C.L.R. 294;

*Papaxenophontos and Others v. The Republic* (1982) 3 15  
C.L.R. 1037;

*Kyriacou v. C.B.C* (1965) 3 C.L.R. 482;

*Vassiliades and Another v. District Officer of Larnaca*  
(1976) 3 C.L.R. 269;

*Arghyrou and Others v. The Republic* (1983) 3 C.L.R. 474. 20

**Recourse.**

Recourse against the refusal of the respondents to grant applicants a division permit of their property situate at Strovolos.

*Ph. Valiantis* for *L. Papaphilippou*, for the applicants. 25

*P. Lysandrou*, for the respondents.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. By means of this recourse the applicants seek a declaration that the decision communicated to them by letter dated 13.2.84 30

whereby their application for a division permit of Plot 1780, Sheet/Plan XXX/13.W.1, Strovolos, into building sites, was rejected, is null and void and of no effect whatsoever.

5 The applicants were the owners of land at Ayios Vassilis Quarter of Strovolos Improvement Board. Part of it was compulsorily acquired for the creation of a displaced persons' settlement. The remaining part is Plot 1780 covered by Reg. G. 1977, registered in undivided shares, 1/3rd in  
10 the name of Stavros Vassou Zakou and 2/3rds in the name of Panicos Kyriacou Pambori. Its extent is 63 donums, 3 evleks and 700 sq. ft.

The two co-owners—applicants in the present proceedings—on 8.9.83 submitted application for the division of  
15 the said land into 102 separate sites. They indicated in the application by a sign "V" that the proposed water supply was a public one. The land in question sought to be divided is outside the area of supply of the Water Board of Nicosia. This application, D.1463/83, was accompanied by  
20 a letter addressed to the District Officer dated 7.9.83. The appropriate authority under the Streets & Buildings Regulations was at the material time the Improvement Board of Strovolos. The District Officer was the Chairman of such Board.

25 The application was dealt at the first stage by Mr. Kaminarides of the office of the District Officer who noted that, having regard to a letter 127/83 dated 11.8.83 of the Director-General of the Ministry of the Interior, the views of the Director of the Water Board of Nicosia should  
30 be sought.

Two days later—on 15.10.83—the District Officer wrote on the margin of Kaminarides's minute "No" and in a separate minute thereunder he wrote "We talked. Act accordingly".

35 On 21.10.83 apparently pursuant to the above directions of the District Officer, who, as already said, is the Chairman of the Improvement Board, a letter was sent to the applicants whereby they were requested to indicate the

proposed source of water supply for the building sites. The applicants by letter dated 3.11.83 indicated the water supply of Nicosia and requested that their said application receive the same treatment as the division of a number of plots to which they referred in the said letter. It transpired during the hearing of this recourse that the said plots are the land acquired for the refugee settlement and the land used for the erection of a Gymnasium. 5

On 23.11.83 the Improvement Board met and considered the application for division. It dismissed the application as no suitable source of water supply had been indicated and the plot of the applicants is situate outside the area of the Water Board of Nicosia. This decision was communicated to the applicants on 13.2.84. 10

The applicants, feeling aggrieved of the refusal to grant them the division permit sought, filed the present recourse. The grounds of law on which it is based are that the sub judice decision infringes Articles 23.1, 23.3, 13.1 and 9 of the Constitution; that the treatment of the applicants was discriminatory in violation of Article 28 of the Constitution; and that the respondents did not conduct a due or any inquiry and took it for granted that land which is outside the area of the Water Board of Nicosia is not entitled to the supply of water by the Board. 15 20

No person shall divide any land into separate sites without a permit in that behalf first obtained from the appropriate authority. The respondent Improvement Board of Strovolos was the appropriate authority for the grant of a division permit under s. 3(1) of the Streets & Buildings Regulation Law, Cap. 96, as amended. 25 30

Section 4(1) provides that—"No permit shall be granted under section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions of this Law and the Regulations in force for the time being". 35

The appropriate authority whenever an application is made for a division permit under s. 3(1)(c) in respect of

any land situated outside an area of water supply, shall not grant a permit in respect of the land concerned, unless it is properly satisfied, after obtaining the advice of the Director of the Department of Water Development of the Ministry of Agriculture and Natural Resources, that the conveyance, installation and constant supply of suitable water which shall be sufficient, as well as the proper and satisfactory maintenance and operation of the installation and water supply, is assured—(Section 9(3) (a)).

10 The appropriate authority shall not grant any permit under section 3, unless it is satisfied that the applicant has complied with the provisions relating to the supply and provision of water contained in this or any other Law or in any Regulation in force for the time being.

15 The appropriate authority is under a duty to examine the application for division of the land. It has a discretion to refuse or grant a permit. It is bound to exercise such discretion in accordance with the statutory provisions. The sub judge decision was taken by the respondent Improvement Board of Strovolos in the exercise of its power and discretion under the Law.

The sub judge decision is not contrary to the Articles of the Constitution alleged by the applicants.

25 Article 9 provides that every person has the right to a decent existence and to social security. This provision is directory. Article 9 of the Constitution has no bearing in this case. It delineates a scheme for social action and joining the State to implement it.

30 Article 13 safeguards the freedom of movement and residence within the Republic and I see not even a remote connection of this right with the division of land for purposes of exploitation.

35 The requirements of the Streets & Buildings Regulations applicable in the present case do not amount to "restrictions or limitations" in the sense of Article 23 of the Constitution. It is well established in decided cases that the provisions of Cap. 96 must be read and applied subject to

the provisions of Article 23 of the Constitution. The effect of "restrictions or limitations" in the sense of paragraphs 2 and 3 of Article 23 of the Constitution imposed under the provisions of Cap. 96 and the rights of the citizen under paragraph 3 of Article 23 have been fully expounded in, inter alia, *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, and *Nikos Kirzis and Others v. Republic*, (1965) 3 C.L.R. 46, at p. 55. No "restrictions or limitations" in the sense of Article 23 of the Constitution have been imposed in the present case.

The principle of equality enunciated and safeguarded by Article 28 of the Constitution was judicially considered in, inter alia, *Mikrommatis v. Republic*, 2 R.S.C.C. 125; *The Ministry of Finance v. Nishan Arakian and Others*, (1972) 3 C.L.R. 294; *Papaxenophontos and Others v. Republic*, (1982) 3 C.L.R. 1037.

The factual foundation of the allegation for violation of the principle of equality in this case is that water supply was provided for certain plots outside the area of the Board of the water supply of Nicosia but not for the applicants' land intended for division. The former plots were used for a secondary education school—a Gymnasium—and a displaced persons' settlement. There is no allegation that during the dearth of water due to a drought of the recent years, the Water Board of Nicosia provided water supply outside its area for conversion of private land into building sites. "Equal before the Law" in paragraph 1 of Article 28 safeguards against arbitrary differentiation but does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term "discrimination" in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid. The distinction between the case of the applicants and the erection of a secondary State school and a settlement to house unfortunate refugees who became homeless due to the Turkish invasion is obvious and reasonable. The principle of equality has as its core justice and fairness; there is no element of injustice or unfairness if water supply was not provided to the applicants for the pursuit of the development of their land.



It is upon an applicant to satisfy the provisions of the Law for water supply before the grant of a division permit. The present applicants indicated as their source the supply of the Water Board of Nicosia. Their letter of 3.11.83 was in substance and effect a request for supply by the Water Board of Nicosia. The Water Board under s. 12(2)(e) of the Water Supply (Municipal and Other Areas) Law, Cap. 350, may supply water for any purpose to any area outside the area of supply, if by such supply the water in the area of supply is not likely to be diminished or affected.

Under s. 43 the Board of Nicosia may undertake duties outside its area. It may exercise any power or undertake any duty for and on behalf of the Government with respect to the provision of water supply in any area not being an area declared to be the area of supply under the provisions of s. 3. Such power, however, may be exercised only with the consent of the Council of Ministers and subject to such terms and conditions as they shall approve. The Council of Ministers has delegated its power under this section to the Ministers of Interior and Agriculture.

The letter of 3.11.83 is a request. The applicants were relying on the public water supply of the Water Board of Nicosia. This is clear from their application and from their letter of 3.11.83. The Improvement Board of Strovolos had a duty under Article 29 of the Constitution to refer the request and the file to the competent organ, the Water Board of Nicosia, with a view to deciding whether they would provide water to the applicants, and, had the Water Board, in exercise of its power and discretion, decided in the negative on good grounds, then this would have been the end of the matter. They failed, however, in their such duty. They should not and could not answer the request themselves as they were not the competent public authority.

In *Kyriacou v. C.B.C.* (1965) 3 C.L.R. 482, Triantafyllides, J., as he then was, said at pages 494-495:-

"It would be a paradox to hold that a competent public authority to which a written request or complaint has been addressed, on a matter outside its competence, is bound to reply as laid down in Article

29. The purpose of Article 29 is not to just promote correspondence between the citizens and public authorities but to ensure that requests or complaints by citizens are dealt with expeditiously by the appropriate authorities and that such authorities make known, giving also due reasons, to those concerned, whatever decisions they reach. It is obvious that a non-competent public authority to which a request or complaint has been addressed, and with which it cannot, therefore, deal, cannot be expected to give a duly reasoned reply in relation thereto as required under Article 29. Its duty is, however, to transmit such request or complaint to the competent authority, if any, or to inform the writer thereof which is the competent authority, if any. (See Svolos and Vlachos on the Greek Constitution, Volume II (1955) p. 173)".

The Improvement Board of Strovolos had the duty either to transmit the request to the Water Board of Nicosia or to inform the applicants that they should have addressed a request to the Water Board of Nicosia in that respect. They failed to do either and on 23.11.83 reached the sub judice decision. Therefore, they exercised their discretionary power in a defective manner and had acted contrary to law—(*Nicos Vassiliades and Another v. The District Officer of Larnaca*, (1976) 3 C.L.R. 269; *Arghyrou and Others v. The Republic*, (1983) 3 C.L.R. 474).

For all the above reasons this recourse succeeds and the sub judice decision taken by the Improvement Board of Nicosia will be annulled.

The Improvement Board of Nicosia has under the Municipal Corporations Law, 1985 (Law No. 111 of 1985) become a Municipality. As, however, this Court determines the validity of the sub judice decision, the change of the corporation does not affect these proceedings.

The applicants chose to make respondents the Republic of Cyprus. Very rightly they withdrew at an early stage the recourse against the Republic. The Water Board of Nicosia not only did not take any part in the sub judice

5 decision but there is no allegation even to that effect. It was wrongly joined and is entitled to its costs. As, however, the Improvement Board and the Water Board, were defended by the same counsel, I decided to make no order as to costs between the applicants and the Improvement Board of Strovolos but to award £50.- costs against the applicants in favour of the Water Board of Nicosia.

10 The sub judice decision is annulled. No order as to costs between the applicants and the Improvement Board of Strovolos. Applicants to pay £50.- towards the costs of the Water Board of Nicosia.

*Sub judice decision annulled.  
Order for costs as above.*