

1987 October 24

[STYLIANIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS GEORGHIOU,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondents*

*(Case No 810/86)*

5 *Customs and Excise Duties — Motor vehicles, importation of by Cypriot — Exemption from import duty — Order 188/82 of the Council of Ministers — «Permanent establishment» abroad for a continuous period of «at least ten years» — Meaning of «permanent establishment» — Computation of the period of ten years — «Year» means a calendar year (365 or, in a leap year, 366 days) — The period cannot commence with part of a day — Departure from Cyprus on 15 1 76 — Residence abroad commenced on 16 1 76 — Period completed at midnight of 15 1 86*

*Words and Phrases — «Year» — The Interpretation Law, Cap 1*

10 On 15 1 76 the applicant, a Cypriot, departed for Saudi Arabia in furtherance of a contract of employment. Towards the end of 1976 his wife and child joined him in Saudi Arabia. The wife returned to Cyprus and gave birth to a second child in 1979. A third child was delivered in Saudi Arabia. In 15 1980 the applicant had a house erected in the Republic. Applicant's savings were remitted in the Republic.

20 The applicant returned to Cyprus on 14 1 1986. Shortly later he applied for the duty free importation of a motor car. The application, which was based on Order 188/82 of the Council of Ministers, was turned down on the following grounds, namely that applicant's stay in Saudi Arabia was a temporary nature, not constituting a «permanent settlement» and that his stay abroad was less than 10 years.

It must be noted that under the law of Saudi Arabia non moslems are not entitled to permanent residence.

Held, *dismissing the recourse* (1) «Permanent settlement abroad» which is one of the pre-requisites for the relief under Order 188/82, has been considered in a number of cases (*Michael v The Republic* (1986) 3 C L R 2067, *In re Gape Decd , Verey v Gape* [1952] 1 Ch 743, *Matsas v Republic* (1985) 3 C L R. 54, *Shakallis v Republic* (1985) 3 C L R 2570) The facts of this case point out that applicant's animus was to have his permanent residence in Cyprus and that his residence in Saudi Arabia was only for the purpose of his employment and no more. He did not «establish permanently» in Saudi Arabia 5

(2) The second question is whether applicant satisfies another pre-requisite for the relief, i.e. stay abroad for a «continuous period of at least ten years» «Year» according to the Interpretation Law, Cap 1, means calendar year Ordinarily «calendar year» means 365 days except in leap year 366 days and is composed of twelve months varying in length. Any period of time to be calculated as commencing or beginning with the certain date must include that date. In computing the period of ten years, we cannot commence with part of the day. Applicant's residence in Saudi Arabia commenced on the 16th of January, 1976 and, therefore, the ten year's period would have been completed at midnight of the 15th of January, 1986. It follows that applicant's residence in Saudi Arabia was less than ten years 10 15 20

*Recourse dismissed No  
order as to costs*

*Cases referred to*

- Michael v The Republic* (1986) 3 C L R 2067,  
*Re Cape Decd , Verey v Gape* [1952] 1 Ch 743, 25  
*Brokelmann v Barr* [1971] 3 All E R 29,  
*Matsas v Republic* (1985) 3 C L R 54,  
*Shakallis v Republic* (1985) 3 C L R 2570,  
*Sdebotham v Holland* [1891-94] All E R Rep 617,  
*Trow v Ind Coope (West Midlands), Ltd and Another* (1967) 2 All E R 30  
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**Recourse.**

Recourse against the rejection of applicant's request for the exemption from import duty of a motor car as a repatriated Cypriot 35

A. *Drakos*, for the applicant.

*S. Georgiades, Senior Counsel of the Republic, for the respondent.*

*Cur. adv. vult.*

5 STYLIANIDES J. read following judgment. By means of this recourse the applicant seeks the annulment of the decision of the respondent - Director of the Department of Customs and Excise - whereby his request for exemption from import duty of a motor car OPEL RECORD, No. 99(V)86, was rejected.

10 The applicant, a Cypriot, entered into contract of employment with the AL AFANDI ESTABLISHMENT CO. In performance of his said contract he departed from Cyprus on 15/1/1976. At the time he left his country he was married with a child. Towards the end of 1976 his wife and child joined him in Saudi Arabia. He worked in that country as a private employee. He visited his  
15 country during his annual holidays of about one month's duration. His wife came to Cyprus and gave birth to a second child in 1979 and a third child was delivered in Saudi Arabia. He remitted to his country his savings. In 1980 he had a house erected in the Republic where on 14/1/86 he returned. Shortly later he applied  
20 for exemption from import duty of a car which he imported in this country on 14/2/86. The application was considered and was rejected on the grounds that:

(a) His stay abroad was of temporary nature and did not constitute permanent settlement there, and

25 (b) His stay abroad was less than ten years, as he departed on 15/1/76 and returned on 14/1/86.

Hence this recourse.

30 The application for exemption from import duty was based on the Order of the Council of Ministers made under Section 11(2) of the Customs and Excise Duties Law 1978 (No. 18 of 1978-1981).

The first point that arises for determination is whether the applicant had settled permanently abroad.

The material part of the Order of the Council of Ministers reads:-

35 «... οι οποίοι κατόπιν μονίμου εγκαταστάσεως εις το εξωτερικόν διά συνεχή περίοδον τουλάχιστον δέκα ετών επανέρχονται και εγκαθίστανται μονίμως εν τη Δημοκρατία.»

(«... who after permanent establishment abroad for a continuous period of at least ten years return and settle permanently in the Republic»).

Cypriots are entitled to exemption if the following requirements are satisfied:-

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(a)(i) Permanent establishment abroad.

(ii) For a continuous period of at least ten years.

(b) Return for permanent establishment in the Republic, and

(c) Importation within reasonable time from the date of arrival in the discretion of the Director.

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The expression «permanent establishment» was judicially considered in a number of cases by this Court.

In *Philippos Michael v. The Republic of Cyprus* (1986) 3 C.L.R. 2067, I said the following:-

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«'Permanent establishment' is not synonymous to 'residence'. Residence alone is not sufficient. Permanent establishment indicates a quality of residence rather than its length. The duration of the residence, i.e. regular physical presence in a place, is only one of a number of relevant factors. An element of intention to reside and establish is required. Evidence of intention may be important where the period or periods of residence are such as to point to both directions. It is not possible for a person to be permanently settled in the Republic and in another country. The intention of permanently settling may be gathered from the conduct and action consistent with such settlement. Though permanent settlement cannot be assimilated to domicile, it is akin to it and pronouncements on domicile are very relevant and helpful.

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In *re Gape Decd., Verey v. Gape*, [1952] 1 Ch. 743, at 749, it was said:-

'As has been observed during the course of the argument, the intention permanently to reside in a particular country is one of the two essential characteristics of domicile. It has been emphasized as an essential condition or characteristic time and again in

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5 these Courts, and I find it impossible to suppose that the judges, in referring to that characteristic, were doing other than stating something which was to the lawyer both definite and precise. If a synonym be required, I would say that the condition of taking up permanent residence in England was another way of saying: making England your permanent home; that is to say, residing in England with the intention of continuing to reside there until you die. It is, in other words, another way of referring to the characteristic essential to domicile'.

And further down on the same page:-

15 'You cannot take up a permanent residence at any particular point of time, unless at the time you take up residence you intend that it should be permanent, that is, that you should go on living there for your natural days'.

And at pages 751 -2:-

20 'The expression 'take up' suggests volition and intention and even more so does the word 'permanent', for it postulates a decision to live in a place for the rest of one's life, as opposed to living there temporarily or for a fixed period of time and no longer'.

(See also Vol. 1 of Dicey & Morris 'The Conflict of Laws', (10th Ed.,) at pages 141-143: and *Brokelmann v. Barr*, [1971] 3 All E.R. 29).

25 In *Matsas v. Republic*, (1985) 3 C.L.R. 54, A. Loizou, J., said at p. 61, referring to this same Order:-

'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'.

30 In *Andreas Shakallis v. Republic*, (1985) 3 C.L.R. 2570, it was said:-

'Settle' has the meaning of voluntary and intentional action to settle'.

35 The non Moslems are not under the Legal Order obtaining in Saudi Arabia entitled to permanent residence.

The applicant is a Greek Cypriot. His staying in Saudi Arabia

was coexistent with his contract of employment. He remitted all his savings to the Republic of Cyprus and as early as 1980 he erected a dwelling house. The aforesaid point out that his animus was to have his permanent residence in Cyprus and that his residence in Saudi Arabia was only for the purpose of his employment and no more. He did not «establish permanently» in Saudi Arabia.

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Though the aforesaid would suffice for the dismissal of this recourse, as the first ground of rejection of his application was a valid one, nevertheless, I shall consider whether his stay was for a period of at least ten years.

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«Year» according to the Interpretation Law, Cap. 1, means calendar year. The Order requires a period of at least ten years; ten complete years, not less. Calendar year is the period from January 1st to December 31st, both days inclusive. Ordinarily «calendar year» means 365 days except in leap year 366 days and is composed of twelve months varying in length. Any period of time to be calculated as commencing or beginning with the certain date must include that date.

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The applicant left the Republic on 15/1/76. On 15/1/76 he was in the Republic. For part of the day he might have been in Saudi Arabia, if the airplane on which he travelled landed before midnight of 15/1/76 in that country. The computation of time in this statutory instrument is to be made having regard to the purpose of the order. In computing the year, and the purpose for which the computation is made is continuous permanent residence abroad for a period not less than ten years, we cannot commence with part of the day. His residence in Saudi Arabia commenced on the 16th of January, 1976 and, therefore, the ten years' period would have been completed at midnight of the 15th of January, 1986. (See *Sidebotham v. Holland* (1891-94) All E.R., REP. 617; *Trow v. Ind Coope (West Midlands), Ltd. and Another* (1967) 2 All E.R. 900.) He was back to this country on the 14th of January. Therefore, the tenth year was not completed. His residence in Saudi Arabia was less than ten years. The allegation of his counsel that he satisfied the ten years residence abroad is untenable.

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In view of the above the sub judge decision is not at all faulty.  
The recourse fails and is hereby dismissed.

Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

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