

(1988)

1988 June 25

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIAKOULLA SANDBERG,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF CUSTOMS DEPARTMENT,

(Respondent).

(Case No. 170/87).

Customs and excise—Duty free importation of motor cars by Cypriots—The Customs and Excise Duties Law 18/78, section 11 and Order 188/82 of the Council of Ministers—The three prerequisites of the relief—Analysis of the authorities.

Words and phrases: "Permanent settlement" in Order 188/82 of the Council of Ministers. 5

The applicant, who married abroad with a German subject- have been permanently settled abroad for a number of years. On 29.6.85 she came to Cyprus with her husband and stayed in Cyprus until 13.12.85. The applicant and her husband resided during that period with applicant's sister in the latter's flat. On 23.9.85 the applicant applied for a permit to operate an institute of foreign languages. She finally received the permit on 7.6.86. 10

The applicant left with her husband on 13.12.85 and returned with him on 4.2.86 for permanent resettlement in Cyprus. Her application for a duty free importation of a motorcar was turned down on the ground that the period of applicant's stay in Cyprus as aforesaid resulted in the non conclusion of the ten years' period of permanent settlement abroad, which is one of the prerequisites for the relief. Hence this recourse. 15

Held, annulling the sub - judge decision: On the facts of this case it was not reasonably open to the respondent to reject the application of the applicant, because the latter's stay in Cyprus during 1985 - was of a temporary nature. 20

Sub Judge decision annulled.

No order as to costs.

Cases referred to:

Razis v. The Republic (1979) 3 C.L.R. 127;

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

Maisas v. The Republic (1985) 3 C.L.R. 54;

5 *Mavronichis v. The Republic* (1985) 3 C.L.R. 2301;

Constantinides v. The Republic (1986) 3 C.L.R. 822;

Ioannou v. The Republic (1986) 3 C.L.R. 1263,

Recourse.

10 Recourse against the refusal of the respondent to allow applicant to import a duty free motor vehicle as a repatriated Cypriot.

Th. Ioannides, for the applicant.

D. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

15 KOURRIS 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 to refuse to her to import a motor vehicle free of duty, in accordance with the provisions of sub - heading 19 of Item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law (Law 18/78) is null and void and of
20 no legal whatsoever.

25 On 18.2.1986 the applicant submitted an application to the Customs and Excise Department seeking relief under sub - heading 19 of Item 0.1 of the Fourth Schedule of Law 18/78, on the ground that having been a Cypriot, who, after permanent settlement abroad for a continuous period of at least ten years, re-

turned to Cyprus in order to settle permanently.

The appropriate Authority, after examining all the material before it in relation to the applicant's application, decided that her case does not fall within the provisions of the Law and relevant regulations on the ground that her absence from Cyprus was not of a period of at least ten years and rejected the application of the applicant for the importation of her motor - car free of duty. 5

(See Appendix 4).

Hence the present recourse.

The matter is governed by the Excise Duties Law 18/78, s.11 and Order 188/82 published in the Third Supplement, Part II to the Official Gazette of the Republic of 11th June, 1982, under Not. 17/83. The said Order, in so far as relevant, reads as follows:- 10

"Vehicles.....imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 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. 15

The relief from import duty covers only one vehicle for every family." 20

The point in issue is whether the applicant settled abroad permanently for a continuous period of at least 10 years before she returned to settle permanently in Cyprus.

The notion of permanent settlement abroad has been explained, inter alia, in the cases of *Razis v. The Republic* (1979) 3 C.L.R. 127 at p. 135, *Rossides v. The Republic* (1984) 3 C.L.R. 1482 at p. 1486; *Matsas v. The Republic*, (1985) 3 C.L.R. 54 at pp. 58 - 62; *Mavronichis v. The Republic*, (1985) 3 C.L.R. 2301; *Constantinides v. The Republic*, (1986) 3 C.L.R. 822 and *Ioannou v.* 25 30

The Republic, (1986) 3 C.L.R. 1263.

I adopt, with due respect what Pikiş, J. , said in the *Ioannou* case (supra) at p. 1267 which reads as follows:-

5 "In my judgment the Order imposed three separate conditions for enjoyment of the benefit granted therein:

- (a) Permanent settlement abroad,
- (b) Continuous stay abroad for no less than 10 years, and
- (c) Repatriation i.e. re-settlement in Cyprus."

10 Having dealt with the legal aspect of the case, I now propose to state in brief the salient facts of the case which are as follows:-

15 The applicant went to Athens in September, 1973 for studies and in 1974 her mother joined her in Athens and in March, 1976 her father also joined her in Athens. As neither her parents nor the applicant herself had any means for their upkeep, the applicant had to seek employment and provide for all of them. The applicant started working in Greece first as a clerk in a company and later she was employed by an institute for foreign languages and she was teaching English.

20 On 26.7.1981 applicant got married to a German subject who was residing and working in Geneva, Switzerland and she moved to Switzerland.

25 On 26.10.1982 she went to Greece and took her final exams successfully and she got a diploma from the University of Athens for English literature and then returned to Switzerland where she continued residing and working in Geneva.

Applicant came to Cyprus with her husband on 29.6.1985 and she left for Switzerland with her husband on 13.12.1985. During their stay in Cyprus they resided in a flat at Larnaca with her sis-

ter who is married and who was also the owner of a flat. They kept their flat in Geneva and her husband was making efforts to find employment in Switzerland, because, in the meantime, he was dismissed from his job as redundant. Applicant also on 23.9.1985 applied to the Ministry of Education for a permit to operate an institute for foreign languages and she received a permit on 7.6.1986. 5

On 4.2.1986 applicant came to Cyprus with her husband for permanent re-settlement in Cyprus and she resided at the village of Pano Livadhia in the District of Larnaca. It should be noted that applicant was born and lived at Pano Livadhia before she departed for Greece in 1973. 10

The respondent rejected her application for import of her car free of duty because he considered that the applicant did not stay abroad continuously for at least 10 years because of her stay in Cyprus between 29.6.1985 till 13.12.1985. 15

Counsel for the applicant contended that applicant has satisfied the requirements of the law because her stay in Cyprus during 29.6.1985 and 13.12.1985 and was of a temporary nature. The purpose of applicant was to make inquiries whether she could find work and re-settle permanently in Cyprus. He said that this was apparent from the fact that they kept their flat in Geneva, that her husband was making inquiries to find a job in Switzerland, and the fact that they returned to Switzerland. 20

The question which poses for determination is whether in the light of the aforesaid cases and on the facts herein before set out, it was reasonably open for the Director of the Customs and Excise Department to reach the sub judice decision. 25

In my judgment the answer is in the negative, because the proper inference to be drawn from the facts is that the applicant and her husband came to Cyprus to settle permanently on 4.2.1986 and their stay in Cyprus from 29.6.1985 till 13.12.1985 was of a temporary nature for the purpose of ena- 30

bling applicant to make inquiries with a view to finding employment in Cyprus.

5 For all the above reasons, it was not reasonably open for the Director of the Customs and Excise Department to reach the decision which he did.

In the circumstances, the recourse succeeds and the sub judice decision is annulled but with no order for costs.

*Sub judice decision annulled.
No order as to costs.*