

1988 July 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

JENNIFER ANNE SOPHOCLIDES,

Applicant,

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF CUSTOMS AND EXCISE,

Respondents.

(Case No. 796/86).

5 *Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—Permanent settlement abroad for a continuous period of ten years—Coming to Cyprus and stay therein for 14 months for purpose of studies—Returning thereafter abroad, marrying to a Cypriot and returning to Cyprus for permanent settlement—In the circumstances the continuity of the permanent settlement abroad was not interrupted by such stay in Cyprus.*

10 *Customs and Excise—Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—Permanent settlement—Meaning—Review of authorities.*

The facts of this case sufficiently appear from the hereinabove notes. The Court annulled the refusal to allow the duty free importation of the car. Such refusal had been justified on the fact of applicant's stay in Cyprus during the said period of 14 months.

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

2 *Cases referred to:*
HadjiGeorgi v. Minister of Finance (1987) 3 C.L.R. 290;

Anastatis v. Minister of Finance (1987) 3 C.L.R. 200;

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

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

Michael v. the Republic (1986) 3 C.L.R. 2067.

Recourse.

5

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

K. Michaelides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

10

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by the present recourse challenges the decision of the respondent Director of the Department of Customs and Excise not to accede to applicant's application to import a motor-vehicle free of duty under the provisions of sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 which was communicated to the applicant by letter dated 8th October, 1986.

15

20

Applicant was born in Cyprus on 12th March, 1963. Her father is a Greek Cypriot born in Cyprus and her mother a British citizen. Applicant's father, a Civil Engineer by profession, joined the firm of Joannou & Paraskevaides Ltd. and in 1965 he was seconded by the latter company to Libya as Project Manager and there he stayed till 1967. As from 1967 applicant's father moved to England and ever since he took up, together with his family, permanent residence there. Applicant who was at all times with

25

her family resided permanently in England; she went to primary and secondary schools in England and later she attended a two years' course on ceramics at the Harrogate College of Art. Her special subject in the final year was ancient Cypriot pottery.

5 Applicant was coming to Cyprus for short visits after 1977 on holiday. In July, 1984, when applicant was again in Cyprus for holiday she arranged through the Director-General of the Ministry of Commerce and Industry to take a course at the Handicraft Centre on Cyprus pottery. She attended the course which started in
10 early September, 1984 and continued till late February, 1985. Having completed her course she prolonged her stay in Cyprus until after summer when she returned to her home in England. On the 12th July, 1986, applicant went through a civil marriage with a Cypriot and returned to Cyprus about the middle of July, 1986,
15 with the intention to settle permanently in Cyprus. She brought with her for her own use a Mercedes Saloon car, type 190E, which she placed in a general bonded warehouse on the 31st July, 1986. Applicant applied on the 30th July, 1986, to the Director of Customs and Excise of the Republic of Cyprus for permission to import duty free her aforesaid car being, according to
20 her application, qualified under the provisions of sub-heading 19, of item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978, on the ground that she returned to take permanent residence in Cyprus after a permanent settlement abroad for a continuous period of at least ten years.
25

The respondent by letter dated 8th October, 1986, declined her request and gave his reasons for so deciding. The contents of such letter read as follows:

30 "I refer to your application of 30.7.86 and regret to inform you that it was not found possible to accede to your request for a duty free car because your permanent settlement abroad was not continuous.

It has been established that you were residing in Cyprus from 11th July, 1984 to 4th September, 1985."

Applicant through her advocate requested a re-examination of the case alleging that there was a misconception of fact in the present case as the fact that the applicant temporarily came to Cyprus for studies did not in any way affect her permanent settlement in England or manifest any intention of returning to Cyprus for the purpose of staying here. 5

The respondent by letter dated 28th November, 1986, informed counsel for applicant that he could not reconsider the matter as it was not possible to change his decision already communicated to the applicant. 10

Counsel for respondent raised the preliminary objection that the sub judice decision is not an executory administrative act as the application for a duty - free car was not for a car already imported in the island but only an expression of intention to import a new car. This objection, however, was later withdrawn after counsel for the respondent was satisfied that the car had already been brought into the island and the application was in respect of that particular car. 15

The only issue which poses for consideration in the present case is whether the applicant was permanently settled abroad continuously for the period of the last ten years. This is the only ground on which the decision was based as appearing in the letter of the respondent to the applicant. 20

Counsel for applicant in arguing his case submitted that the applicant has proved that she satisfied the prerequisites of the Order i.e. permanent settlement abroad over a continuous period of the ten years and repatriation to Cyprus after the completion of ten years settlement abroad. It was his contention that the stay of the applicant during the period 11th July, 1984, to 4th September, 1985, was of a temporary nature for the purposes of pursuing further her studies and it did not in any way interfere with her permanent settlement in England as she never intended to settle to Cyprus permanently at the time. It is for this reason that during her stay in Cyprus she did not try to secure any work or take any 25 30

other steps from which an intention might be inferred that she returned to Cyprus to settle permanently.

The question of temporary interruption of permanent residence abroad was raised recently in *HadjiGeorgi v. The Minister of Finance through the Customs Department* (1987) 3 C.L.R. 280, but it was not decided as the recourse failed on the ground that the decision challenged was found to be of an informatory or advisory nature and as such not amenable to a recourse under Article 146.2. The matter was raised again in *Anastasis v. The Minister of Finance* (1987) 3 C.L.R. 200. The applicant in that case emigrated to the U. K. in 1956 where he settled and stayed until 30th June, 1984 when he returned to Cyprus with his wife with the intention to settle here permanently. His stay in England, however, was interrupted between 15th August, 1982 and 2nd June, 1983, during which period he resided in Cyprus. His application to import a duty - free car had been rejected by the Director of the Department of Customs and Excise on the ground that his permanent settlement abroad was not continuous since he resided in Cyprus from the 15th August, 1982 to the 2nd June, 1983. That recourse, however, was dismissed on the ground that it did not purport to challenge an executory administrative act as applicant did not import the car in Cyprus when he applied to the Director of Customs and Excise. In my judgment, however, in the above case, at p.205 I said the following:

Bearing in mind, however, all the circumstances of the case and on the basis of the material before me which, prima facie, discloses a good case for the applicant had it been a case of an application for relief in the case of a vehicle already imported, the appropriate authority may, in the exercise of its discretion, consider favourably an application on the part of the applicant in case he applies for relief in respect of a car actually imported by him.

It is an undisputed fact in the present case that the applicant had settled permanently in England with her parents, her home was in England where she had been residing since 1967; that the

object of staying in Cyprus during the period of 11th July, 1984 to 4th September, 1985, was for the purpose of attending special studies in Cyprus and she returned back home to England after the completion of her studies. She formed the intention of permanently settling in Cyprus after she got married and came to Cyprus in July, 1986, for such purpose.

5

The question of permanent settlement has been considered and the principles underlying were expounded by A. Loizou, J, as he then was, in *Matsas v. The Republic* (1985) 3 C.L.R. 54 where he concluded as follows at p. 61:

10

"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."

The above construction of the provisions of the order of the words "permanent settlement" was adopted in *Ioannou v. The Republic* (1986) 3 C.L.R. , 1263.

15

In *Michael v. The Republic* (1986) 3 C.L.R. 2067, after an extensive analysis of the matter, Stylianides, J. , said the following at p. 2075:

«'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."

20

25

30

5 Bearing in mind all the circumstances of the present case and having given due consideration to the matter I am of the opinion that the stay of the applicant in Cyprus from July, 1984 to September, 1985 was not such as to indicate an intention to abandon her permanent settlement in England or from which an inference may be drawn that the applicant gave up her settlement in England and repatriate to Cyprus with an intention to settle here permanently.

10 I have, therefore, come to the conclusion that on the material placed before the respondent it was not reasonably open to him to decide as he did and, therefore, the sub judice decision has to be and is hereby annulled but in the circumstances I make no order for costs.

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

15