

1988 October 6

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOROS DEMETRIOU,

Applicant,

v.

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

Respondent.

(Case No. 814/86).

Customs and excise duties—Motor vehicles, duty free importation of, by Cypriots—Order 188/82 of the Council of Ministers—The three prerequisites of the relief—Permanent settlement abroad—The requisite intention—How established.

5 The applicant lived and worked in Libya from 13.10.75 to 20.10.85.
His family stayed with him from 28.2.1978 until 31.5.1984. In March
1978 he bought a house in Cyprus. In Libya he was living in accommoda-
tion provided by his employers. He lived in Libya in virtue of temporary,
permits renewed periodically. The Court found that on these facts it was
10 reasonably open to the respondent to conclude that the applicant never ac-
quired a residence abroad.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

15 *Michael v. The Republic* (1986) 3 C.L.R. 2067;

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

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

Theodoulou v. The Republic (1987) 3 C.L.R. 424;

Neocleous v. The Republic (1986) 3 C.L.R. 1435.

Recourse.

Recourse against the decision of the respondents refusing to exempt applicant from the payment of import duty of a motor car. 5

Chr. Triantafyllides, for the applicant.

D. Papadopoulou (Mrs), for the respondents.

Cur. adv. vult.

HADJITSANGARIS J. read the following judgment. By this recourse the applicant challenges the validity of the refusal of the Director of Customs and Excise to exempt him from the import duty of a motor car. 10

It is common ground that the applicant is a Cypriot national who between the 17.10.75 and the 20.10.85 lived and worked in Libya with the firm Ioannou and Paraskevaides (Overseas) Ltd. Before his departure to Libya he and his family were permanently residing in Cyprus. 15

Upon his return to Cyprus he submitted an application on the 22.10.85 to the respondent Director of Customs and Excise for exemption of payment of import duty of a motor car which he had imported to Cyprus. 20

During his stay in Libya the applicant's family consisting of his wife and children were with him from 28.2.78 until the 31.5.84. However his family stayed in Cyprus between 6.6.77 and 4.10.78 and between 13.6.81 and 30.7.82, allegedly for health reasons affecting his wife. 25

5 In March 1978 the applicant bought a house in Cyprus and the applicant in a questionnaire answered in respect of his application said that when his family stayed in Cyprus they were living at their house, though he later clarified this by referring to a period after their return.

During his stay in Libya the applicant and his family resided in accommodation provided by the company. His two children attended primary school for a few years at Tripoli.

10 The applicant as it appears from the visas in his passport stayed in Libya under temporary work permits which were renewed periodically. It should also be said that a certificate dated 1.6.87 was given to the applicant by the Libyan Embassy in Cyprus certifying that the applicant was permanently residing with his family in Libya during the above period.

15 After the applicant's application was examined by the respondents he received a reply dated 18.12.86 to the effect that his application could not be acceded to as his stay abroad was of a temporary nature and did not constitute permanent settlement as required by the provisions of Order 188/82 dated 11.6.82 made by the Council of Ministers under Section 11(2) of the Customs and Excise Law 1978, Law 18/78. Under the said order a Cypriot is entitled to exemption if the following requirements are fulfilled:

20 (a) Permanent settlement abroad for at least 10 continuous years.

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

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

30 Under the Case Law the settlement abroad must have the element of intention to settle and establish permanently. The evidence of the intention is very important, the intention of permanent settling may be gathered from the conduct and action

consistent with such settlement. See *Philippos Michael v. The Republic* (1986) 3 C.L.R. 2067.

The matter was examined at length in *Matsas v. The Republic* (1985) 3 C.L.R. 54 by A. Loizou J. (as he then was) who concluded at page 61:

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

In *Ioannou v. The Republic* (1986) 3 C.L.R. p. 1263 Pikis J. followed and applied the above principle in a similar case. As did Savvides J. in *Theodoulou v. The Republic* (1987) 3 C.L.R. p. 424 and referred further to the same approach adopted by Triantafyllides P. in *Neocleous v. The Republic* (1986) 3 C.L.R. 1435, and by Stylianides J. in *Michael v. The Republic* (1986) 3 C.L.R. 2067.

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In the present case the significant facts seem to me to be that the applicant was a Cypriot living in Cyprus who went to Libya to work there with a contracting firm of Cypriot origin under periodically renewed temporary residence and work permit. Though his children attended school there for some years they returned to Cyprus before his return to continued their education in Cyprus. In Libya he and his family never acquired a house for themselves but lived in accommodation provided by the company and the applicant bought a house in Cyprus in 1978 where his family spent their stay in Cyprus and where he came to settle after his return.

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In the light of all these surrounding circumstances I believe that it was reasonably open to the Director to conclude as he did that there was no permanent settlement abroad by the applicant within the meaning of the order of the relevant principles of the Case Law governing the interpretation of the term "permanent settlement".

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In the result the recourse is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*