

1988 November 19

[MALACHTOS, DEMETRIADES, PIKIS, PAPADOPOULOS, HJITSANGARIS,
CHRYSOSTOMIS, JJ.]

SOPHIA N. KOU PATOU,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Revisional Jurisdiction Appeal No. 742).

*Taxation—Capital Gains Tax Law, 1980 (Law 52/80)—Dispute as to whether
disposition made before or after the enactment of said law—On the material
before it the Court reached the conclusion that it was made after its enact-
ment—Consequently, the profit was liable to the said tax.*

The outcome of this appeal turned on the question whether applicant's
(appellant's) land had been disposed prior or after the enactment of Law 52/
80. Part of the land in question was sold on 31.1.1980 prior to the enact-
ment of the said law, but such agreement was abrogated by a new agree-
ment made on 12.2.1982, i.e. after the enactment of such law. The new
agreement comprised the same land as that comprised in the agreement of
31.1.1980, but it, also, comprised an additional piece of land.

On the totality of the material before it the Court arrived at the conclusion
that the contract of 31.1.1980 was effectively abrogated and that the dispo-
sition was made on 12.2.1982. Consequently, the Court dismissed the ap-
peal.

*Appeal dismissed.
No order as to costs.*

Cases referred to:

Papaconstantinou and Another v. The Republic (1986) 3 C.L.R. 1672;

Panayiotou v. The Republic (1986) 3 C.L.R. 2311;

Apostolou and Others v. The Republic (1986) 3 C.L.R. 1838;

Hadjimitsis v. The Republic (1988) 3 C.L.R. 896.

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 29th August, 1987 (Revisi-
 onal Jurisdiction Case No. 1037/85)* whereby appellant's re-
 course against the imposition of the sum of £9,555.60 cent as
 capital gains tax was dismissed.

10 *X. Xenopoulos*, for the applicant.

Y. Lazarou, for the respondents.

Cur. adv. vult.

MALACHTOS J: The Judgment of the Court will be delivered
 by Papadopoulos, J.

15 PAPADOPOULOS J: This is an appeal against a Judgment of
 a Judge of this Court who dismissed an application by the appel-
 lant in a recourse by which the applicant in that recourse and the
 appellant in the present case, prayed for a declaration by the Court
 20 that a decision of the Minister of Finance was null and void and
 of no effect whatsoever. The decision was in respect of taxes im-
 posed on the applicant regarding a sale of land by virtue of the
 provisions of sections 4 and 13 of the Capital Gains Tax Law
 1980, Law 52/80. This tax amounted to £9,555.60 and was
 25 charged on the applicant in respect of gains accruing to her when
 she sold the piece of land at Kato Paphos.

The facts of the case are admitted by both sides and are briefly
 as follows:

* Reported in (1987) 3 C.L.R. 975.

The applicant was the registered owner of a piece of land of an extent of 15 donums and 3 evleks situate at Kato Paphos. On the 9th December, 1978, she agreed to sell part of the property, notably 7 donums, to Armonia Estates Ltd., for £91,000. On the 31st January, 1980 she agreed to sell another portion of the land, 5 donums and 2 evleks, to another purchaser, namely, Tsintides and Eliades. In consideration of this sale, it was agreed that she would take a house and twelve flats, ten of which are to be built on this land.

On the 12th February, 1982, a new agreement was executed between the vendor and the two purchasers i.e. Armonia Estates Ltd. and Tsintides and Eliades, whereby the whole of the field with the exception of that portion which was the subject matter of the agreement of 9th December, 1978, was disposed to Armonia Estates Ltd. Arithmetic leads us to the conclusion that what was disposed of on the 12th February, 1982, was a piece of land consisting of 5 donums and 2 evleks which was the land sold by the agreement of the 31st January, 1980, plus the remaining 3 donums and 1 evlek which up until then continued to be in the sole ownership of the appellant.

It is the submission of Mr. Xenopoulos for the applicant that, whatever gain was realized from these transactions it was derived from the agreement of the 31st January, 1980, because, as he submitted, the agreement of the 12th February, 1982 was a continuation, in a way, or a revival or an extension of the original agreement of the 31st January, 1980. The seller had made no profit at all with the sale of the 31st January, 1980. In fact, Mr. Xenopoulos suggested that this agreement of the 12/2/82 was in conformity with the provisions of the contract of the 31st January, 1980, whereby the seller was obliged to register the piece of land which was sold to the purchasers to anybody who would be indicated by the purchasers and that what the seller actually did with the agreement of the 12th February, 1982, was in furtherance to the terms and conditions of that original contract.

Mr. Lazarou opposed the submission of Mr. Xenopoulos and

insisted that the Director of Inland Revenue correctly and rightly imposed the tax, as whatever gain was realized it emanated from the contract of the 12th February, 1982 which is a self-executory and independent agreement that superseded earlier ones:

5 It must be mentioned that if it is found that any gains were derived from the original contract of the 31st January, 1980, they are not taxable as on that day the Capital Gains Tax Law 52/80 had not been passed. It was enacted a few months later. The relevant sections of the Law read as follows:

10 "4. Subject to the provisions of this Law and the exemptions contained therein, on any gains accruing from a disposal of property, there shall be levied and paid a tax at the rate of twenty per centum on such gains.

15 13. The Director may at any time, whether the declaration of a disposal of property has been delivered or not, assess the tax payable with regard to the disposal of property and sent to the disponent thereof a notice of such assessment."

20 The Law was interpreted and applied in a number of cases. (See *Papaconstantinou and Another v. Republic* (1986) 3 C.L.R. 1672, *Panayiotou v. Republic* (1986) 3 C.L.R. 2311, *Apostolou and Others v. Republic* (1986) 3 C.L.R. 1838, *Hadjimitsis v. Republic* (1988) 3 C.L.R. 896.

25 The vital question that this Court has to determine is the date of the disposition of the immovable property. Was the subject property disposed of in 1982? If so, the transaction is subject to the provisions of Law 52/80.

30 We have examined the submissions made by counsel for both sides. We have no difficulty in arriving at the conclusion that the disposal of the property of the appellant was made on the 12/2/82 and not on the 31/1/80. It is evident, in our view, that the contract of the 31/1/80 had been abrogated. All the parties concerned, appellant-seller and the other purchasers in the previous contracts,

i.e. Armonia Estates Ltd., Elias Eliades and Charalambos Tsinides, with their contract of the 12th February, 1982 have expressed clearly their wish to have the previous contracts cancelled relieving each other of the obligations incurred by the contract of 31st January, 1980. But even if the language that the parties used in their contract of the 12th February, 1982, had not been as clear as it is, we could not interpret these contracts as made in furtherance to the agreement of 31st January, 1980. It is a new contract with new parties, new terms and new subject matter. It had no connection with the contract of 31st January, 1980. The effect of the agreement of 1982 was to cancel the 1980 agreement thereby enabling the owner to sell his property to another party.

As to the submission of Mr. Xenopoulos that his client had made no gain at all from the contract of the 12th February, 1982, we can only say that our duty is to interpret the legal documents and the material before us and to give effect to them according to Law. The inevitable conclusion is that the property was sold in 1982; therefore, the transaction was subject to the provisions of Law 52/80. Thus it was reasonably open to the respondents to levy the taxation they imposed, in the case.

The appeal is dismissed. No order as to costs.

*Appeal is dismissed.
No order as to costs.*