

Between:

- 1. UNION GENERAL ARMENIEN DE BIENFAISANCE**
- 2. ARMENIAN GENERAL BENEVOLENT UNION (AGBU)**

Appellants

vs

MESROB MUTAFYAN

Respondent

Ruling of the Court of Appeal dated 21.12.2006

1. Following the filing of an Ex- Parte Application by the Respondent, the Nicosia District Court issued, on the 23.8.2005, an injunction against the Appellants preventing them from selling, charging, alienating or changing in any way the use of the immovable property referred to as the Melkonian property (hereinafter referred to as the property).
2. After the issuance of the above mentioned injunction, the Appellants filed their objections and, following a Hearing on the matter, on the 3.2.2006 the District Court confirmed the issuance of the injunction and the order was made absolute until the full and final determination of the main action.

3. With the filing of the main action against the Appellants, the Respondent is seeking the issuance of a declaration by the Court that the property is being held by the Appellants on trust and for the benefit of the Melkonian School and/or for the benefit of the Armenian community. The respondent is also seeking to have the property reregistered in his name as the trustee of all Armenians and an order issued against the Appellants preventing them from selling, charging, alienating or changing in any way the use of the immovable property and/or closing down the school.
4. The Respondent's application was supported by the Affidavit of Mrs. Elia Nicolaou (lawyer) in which she stated the facts and/or circumstances of the case.
5. Amongst other things, the Appellants argued within their objections that the property has been transferred in their name without any conditions with the document dated 28.12.1925, a copy of which was attached as an Exhibit to their objection. Furthermore the Appellants argued that all the rights of the Respondent were cancelled with the 1926 document and the Appellants are now legally entitled to sell and or place charges on the property and/or make any changes in its use without being in breach of any terms since they are now the absolute and unconditional owners of the property.
6. The Appellants' objections were rejected by the District Court and hence the injunction was made absolute until the full and final determination of the main action.
7. The present Appeal has been filed against the ruling of the District Court dated 3.2.2006 referred to above in paragraph 2.

8. 1st Ground of Appeal:

The first ground of Appeal is the District Court was wrong in not examining the strength of the Respondent's case against the Appellants.

The District Court noted in its ruling the conditions that must exist in order for the issuance of the order to be justified under Art. 32.

Mrs. Elia Nicolaou attached to her Affidavit a document dated 15.12.1926 marked as Exhibit 2. This document refers to a gift that was made by Mr. Garabed Melkonian regarding the property. Within this document, reference is made to other documents that are not presented as exhibits in this case. This documents also makes reference to the ownership status of the property, as well as its management and disposal rights by the said beneficiaries. It appears from this document (exhibit 2) that the Appellants became the beneficiaries of the property with a right of management and disposal of the property. This is apparent from the wording of this document in which the following is mentioned:

This being stated, the parties wishing to make the Union General Armenienne de Bienfaisance the unconditional owner of the donated and transferred properties, without any restriction of its right to dispose them, on condition of accepting as a personal obligation, unsecured by any lien whatsoever on the donated properties, the commitment to perform the charitable works designated above, have agreed and decided as follows:

Art I

The following are irrevocably and fully cancelled and set aside: all the clauses, reservations, conditions and allocations stipulated both in the notarially recorder deed of gift of July 25 1921, and in the notarially recorded deed of assignment and transfer of December 28, 1925 no 4395 both by Mr. Garabed Melkonian and by the Armenian Patriarchate of Constantinople, that carry a restriction for the said Patriarchate or for its beneficiary the Union General Armenienne de Bienfaisance of their right to dispose of the donated properties, or that make these properties inalienable.

On the other hand, the following remains in full force: the notarially recorded deed of amendment of January 5 1924 Sub. No. 37, by which Mr. Garabed Melkonian declared that he withdrew and cancelled all the reservations, conditions and obligations stipulated in the deed of gift mentioned above, leaving the donee absolutely free to do as it pleases with the donated properties, to support the right of control and proprietary oversight conditions, restrictions or obligations whatsoever in the management and application of the donated properties and to confirm all the other provisions of the deed of gift unconditional, in full ownership, irrevocably and without restrictions, conditions or obligations whatsoever.

Art III

Following the preceding, both Mr. Garabed Melkonian and the Armenian Patriarchate of Constantinople represented as above, declare that the gifts and transfers made to the Union General Armenienne de Bienfaisance are by way of full ownership, without any restriction on this right. They expressly declare that they leave the Union General Armenienne de Bienfaisance absolutely free to do as

it pleases with the properties that were given and transferred to it, by retaining the property, or by alienating it and freeing it ... completely from all oversight, control, conditions, restrictions, or obligations whatsoever, in the management or alienation of the said properties, and also from any allocation either of these properties, or of their proceeds in case of sale, or finally of their income for the purposes indicated in the deeds of July 25 1921 and December 28 1925, or for the payment of debts, bonuses or receipts as limited and specified in Art. V of this latter deed of December 28 1925, and which will be copied below in Art IV.

The properties in question thus form part of the assets of the Union General Armenienne de Bienfaisance, like any of this association's other assets, the Union having full use and free disposal of them.

9. It is obvious from the above articles that the new ownership status of the property and the right of its disposal is free from conditions and controls and is contrary to what the Respondent is alleging.

10. Art. IV of the same document makes reference to the personal obligations of the first Appellants, which, however, do not seem to be connected with any of the terms or conditions on their right to dispose the property. Furthermore, even though Mrs. Elia Nicolaou stated within her Affidavit that the Armenian Patriarch had accepted and/or signed the said document for the transfer of the property after an assurance was given that the Appellants would not allow the alienation and/or the disposal and/or the change of use of the property, still there does not seem to be any evidence to support her statement. Additionally, even Mrs. Nicolaou could not have had personal knowledge of this fact still it seems that the District Court took her statement into consideration and in our opinion the court should not have done so.

11. The Respondent submitted that the 2nd Appellants' Articles of Association contain art. VII.1* (Exhibit C) and in it a clause is contained which provides that their capital fund is inalienable. This clause is substantial and cannot be amended. The specific category of the capital fund includes, in accordance with the Articles of Association, donations and legacies received for this fund as well as those without any stated purpose received by the AGBU which the Central Board may decide to add to this fund.

12. Based in the above-mentioned clause, the Respondent submitted that the Appellants are prevented from alienating the property. At this stage we would like to state that we consider as a fact the Respondent's undisputed submission that part of the property has already been alienated but on the other hand there are no legal or real facts that could evidence the existence of a legal right for which the respondent is entitled to relief. We therefore feel that, based on this clause the injunction should not have been made absolute by the District Court.

13. And since there is no other valid ground on which to support the correctness of the District Court's ruling, we consider that there is no need to examine the other grounds of Appeal.

The Appeal succeeds. The first instance ruling is set aside. The costs of the first instance proceedings as well as the costs of this appeal are ruled against the Respondent.