

1975
Nov. 25

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

ANDREAS ORPHANIDES,

ANDREAS
ORPHANIDES

Appellant,

v.

v.

IVI CH.
SHIAMBELA

IVI CH. SHIAMBELA,

Respondent.

(Case Stated No. 160).

Residential Premises (Temporary Provisions) Law, 1974 (Law 51 of 1974)—“Substantially affected” in the sense of section 5(1)(b) of the Law—Tenant—Public officer—All factors relevant to issue of “substantially affected” not considered by trial judge—No correct application of the law to the totality of all relevant facts—Loizides v. Ktimatiki Eteria Chr. Pantziaris Ltd. (reported in this Part at p. 333 ante) followed. 5

Cases referred to:

Loizides v. Ktimatiki Eteria Chr. Pantziaris Ltd. (reported in this Part at p. 333, ante). 10

Case stated.

Case stated by a District Judge of the District Court of Nicosia (Kourris, S.D.J.) relative to his decision of the 29th May, 1975, in proceedings under section 4 of the Residential Premises (Temporary Provisions) Law, 1974 (Law 51/74), instituted by Ivi Ch. Shiambela against Andreas Orphanides, whereby the latter was treated as having not been substantially effected as a result of the emergency. 20

G. Prountzos, for the appellant.

T. Eliades, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by: 25

TRIANTAFYLLIDES, P.: The present Case Stated arose out of a proceeding instituted, under section 4 of the

Residential Premises (Temporary Provisions) Law, 1974 (Law 51/74), by the respondent, as landlord, against the appellant who is her tenant.

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5 In Case Stated No. 159, *Loizides v. Ktimatiki Eteria*
Chr. Pantziaris Ltd.,* in which we have just given judg-
ment today, we have dealt with the interpretation and
application of section 5(1)(b) of the above Law and we
do not propose to repeat what we have already said in
that case; they should be taken as having been incor-
10 porated by reference in this judgment.

In the case now before us, once again the trial judge
has, wrongly in our view, compared the amount deducted
from the salary of the appellant, as a public officer,
under the Emoluments (Temporary Reduction) Law,
15 1974 (Law 54/74), with the *gross*, instead of with the
net, monthly emoluments of the appellant.

Also, the judge proceeded to take into account only
the fact that as a result of the Turkish invasion, the
20 appellant, who is a refugee from Famagusta, lost per-
sonal effects of his own, worth about C£50, and refused
to take into consideration, too, that the appellant's wife
and children lost, likewise, personal effects worth about
C£250; the judge adopted this course because, in his
25 view, the personal effects of the wife and of the children
were not property of the appellant.

We cannot agree with the learned trial judge in the
above respect; as we have pointed out in our judgment
in Case Stated No. 159 Law 51/74 should be applied
30 with an approach suited for achieving its object and
it would amount to ignoring the realities of the matter
before us if we were not to take into account that the
appellant, as the head of his family and the person
responsible for their expenses, has, indeed, suffered, in
effect, himself financial loss, because of the Turkish
35 invasion, through the loss of the personal effects of his
wife and his children.

Furthermore, the trial judge refused to take into
account the fact that the father of the appellant has
lost his job, as a result of the Turkish invasion, and

* Reported in this Part at p. 333 *ante*.

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that the appellant is contributing C£10 per month for his maintenance; in this respect, again, we cannot agree with the trial judge, because the said contribution by the appellant for the maintenance of his father is definitely a financial burden imposed on him as a result of the emergency created by the Turkish invasion and it ought to be taken into account as part of his overall financial position. 5

It is not for us to decide whether if all the factors, which the trial judge refused to take into account, had been considered by him as being relevant to the issue before him, the appellant ought to be treated as substantially affected in the sense of section 5(1)(b) of Law 51/74. It is for the judge to decide this on a correct application of the law to the totality of all the relevant facts. As in our view, for the reasons already stated, he has failed to do so, we allow this appeal by way of a Case Stated, with costs, and the case is remitted to the judge to be determined by him in the light of our opinion as expressed in this judgment. 10 15 20

Appeal allowed with costs.