

1985 January 22

[SAVVIDES, STYLIANIDES, PIKIS JJ.]

ERRIKOS KANNIDES,

Appellant-Respondent,

v.

TASOULA A. AYIOMAMMITIS,

*Respondent-Applicant.**(Case Stated No. 202).*

Landlord and tenant—Statutory tenancy—Recovery of possession
 —Whether premises fall within the definition of “shop”
 or “dwelling house” in the Rent Control Law, 1983 (Law
 23/83)—Test applicable—Premises constructed as a dwell- 5
 ing house but let and used as business premises (a clinic)
 —An order for recovery of possession could not be made,
 under section 11(1)(f) of Law 23/83, on the ground that
 they were reasonably required for occupation by the
 owners—Section 11(1)(g) of the Law had to be applied.

The respondent was the owner of premises at Limassol, 10
 which were constructed by her on or about 1961. The
 ground floor consisted of shops and the first floor was
 constructed for use as a house. In 1970 the respondent let
 the 1st floor to the appellant, who was an E.N.T. spe-
 cialist, for the purpose of use as a clinic and ever since 15
 it has been in his possession and used as a clinic. The
 respondent instituted proceedings against the appellant for
 the recovery of the premises let to the appellant, on the
 ground that such premises were reasonably required for
 occupation as a dwelling house for himself, her husband 20
 and her two daughters who were studying abroad and
 were about to complete their studies and return to live
 with them in Cyprus.

The Rent Control Court, after hearing evidence adduced 25
 by the parties, found that the premises in question were
 reasonably required for occupation as a dwelling house

by the respondent and that in the circumstances the respondent would suffer greater hardship if the order was not made and in consequence made an eviction order directing the appellant to deliver vacant possession of the premises in question with a stay of execution of the order for 12 months and also awarded him as compensation the equivalent of 18 month's rent. In reaching such conclusion, the trial Court relied on the provisions of section 11(1)(f) of Law 23/83, that is, on the ground that the premises in question were a "house" within the definition of the law, and, therefore, the provisions of the said section were applicable.

Upon an appeal by the tenant, by way of case stated, the following question of law was stated by the President of the Rent Control Court for the opinion of, the Supreme Court.

"Whether an order for recovery of possession of premises can be made under the provisions of section 11(1)(f) of Law 23 of 1983 on the ground that they are reasonably required for occupation by the owners, where such premises were constructed as a dwelling house but were let and are used as business premises (a clinic) bearing in mind the definition of 'shop' and 'house', or whether section 11(1)(g) has to be applied which provides for the recovery of possession of premises required by the owner for the accommodation of his business and not as house accommodation".

Held, that in determining the nature of the premises in question and whether they were a "dwelling house" or a "shop" within the meaning of the Rent Control Law, 1983 the trial Court had to examine the purpose for which they were let and used and not their intrinsic character for which they were originally constructed; that since it was a common ground that the premises in question were let for use as a clinic, that is for business purposes within the definition of "shop" under section 2 of Law 23/83, and that in fact they had been so used ever since they could not be considered and treated as falling within the definition of a "dwelling house"; that, therefore, the trial Court wrongly applied section 11(1)(f) in making the eviction order on the ground that the

premises in question were a "dwelling house" reasonably required for occupation by the landlord, her spouse and children; that recovery of possession of the said premises could only be achieved under section 11(1)(g) provided that they were reasonably required for occupation for business purposes and provided also that the requirements of section 11(1)(g) were satisfied, which is not the case in these proceedings; accordingly, the application of the respondent should have been dismissed with costs and the eviction order refused; that, in the result, the appeal will succeed and the case will be remitted back to the trial Court with directions to give effect to the opinion of this Court and determine the appeal accordingly.

Appeal allowed.

Cases referred to:

Aziz v. Akarsou, 23 C.L.R. 32;

Lapithis v. Stavrou (1972) 1 C.L.R. 144;

Wolfe v. Hogan [1949] 1 All E.R. 570 at p. 575.

Case stated.

Case stated by the Chairman of the Rent Control Court of Limassol relative to his decision of the 14th April, 1984 in proceedings under section 11(1)(f) of the Rent Control Law, 1983 (Law No. 23 of 1983) instituted by Tasoulla A. Ayiomammitis against Errikos Kannides whereby an eviction order was made, subject to conditions, against the appellant.

P. Kouzoupis, for appellant.

G. Christodoulou, for respondent.

SAVVIDES J. gave the following judgment of the Court. This is an appeal by way of a Case Stated, against the decision of the Rent Control Court of Limassol in Application No. 95/83 by virtue of which an eviction order was made, subject to the conditions contained therein, directing the appellant to deliver to the respondent vacant possession of the premises at Gregori Afxentiou Street No. 25 in Limassol.

The question of law stated by the President of the Rent Control Court of Limassol, is as follows:

5 “Whether an order for recovery of possession of premises can be made under the provisions of section 11(1)(f) of Law 23 of 1983 on the ground that they are reasonably required for occupation by the owners, where such premises were constructed as a dwelling house but were let and are used as business premises (a clinic) bearing in mind the definition of ‘shop’ and 10 ‘house’, or whether section 11(1)(g) has to be applied which provides for the recovery of possession of premises required by the owner for the accommodation of his business and not as house accommodation”.

The facts of the case are briefly as follows:

15 The respondent is the owner of premises at Gregoris Afxentiou Street, Limassol, which were constructed by her on or about 1961. The ground floor consists of shops and the first floor was constructed for use as a house. In 1970 the respondent let the 1st floor to the appellant, who is 20 an E.N.T. specialist, for the purpose of use as a clinic and ever since it has been in his possession and use as a clinic. The respondent instituted proceedings against the appellant for the recovery of the premises let to the appellant, on the ground that such premises were reasonably required for occupation as a dwelling house for her- 25 self, her husband and her two daughters who were studying abroad and were about to complete their studies and return to live with them in Cyprus.

30 The Rent Control Court after hearing evidence adduced by the parties, found that the premises in question were reasonably required for occupation as a dwelling house by the respondent and that in the circumstances the respondent would suffer greater hardship if the order was not made and in consequence made an eviction order 35 directing the appellant to deliver vacant possession of the premises in question with a stay of execution of the order for 12 months and also awarding him as compensation the equivalent of 18 months’ rent. In reaching such conclusion, the trial Court relied on the provisions of 40 section 11(1)(f) of Law 23/83, that is, on the ground that the premises in question were a “house” within the

definition of the law, and, therefore, the provisions of the said section were applicable. The trial Court had this to say in its judgment:

“The Court will decide the case on the basis of section 11(1)(f) of Law 23/83 and will take into consideration the fact that the house is used as a clinic concerning the assessment of the element of hardship. The Court took into consideration that sub-section (g) of the same section refers to shops, it does not mention occupation for self-accommodation, but occupation for business purposes of the owner and apparently the legislator had in mind buildings which were constructed as shops and cannot, due to their nature, be used as dwelling houses”.

The appellant who considered himself as aggrieved by the said judgment, expressed his intention to appeal to the Supreme Court on a point of law and moved the trial Court to state a case on such legal point to the Supreme Court under the provisions of section 7 of the Rent Control Law, 1983 (Law 23/83). Hence, the present appeal by way of case stated.

Counsel for appellant argued before us that it is a common ground that the premises in question were let to the appellant for use as a clinic irrespective of the fact that they were originally constructed as a dwelling house and that in fact they have been used as a clinic since the time they were let to him, that is, 1970. He submitted that under the definition of “shop” and “house” in section 2 of the law the nature of the building is that of a shop, as defined by the Law, and, therefore, in cases of recovery of possession the provisions applicable are those under section 11(1)(g). It is not the intrinsic nature of buildings, counsel submitted, that determines their nature but it is the actual purpose for which the building is let and is being used.

Counsel for the respondent, on the other hand, submitted that the particular building was constructed as a house and this is the criterion which has to be applied and not the purpose for which it was let or the use for which the building is made.

The Rent Control Law, 1983 (Law 23/83) is a law enacted for the purpose of repealing, amending and codifying the previous Rent Control Laws. Under section 2 of such law, the definition of "dwelling house" (κατοικία) and "shop" (κατάστημα) is given as follows:

5 "κατάστημα" σημαίνει ακίνητον ενοικιαζόμενον δι' οιονδήποτε εργασίαν, επιτήδευμα ή οιονδήποτε έτερον επαγγελματικόν σκοπόν και χρησιμοποιούμενον ως τοιούτον

10 'κατοικία' σημαίνει οικοδομήν ή κατασκευήν ή μέρος αυτής ενοικιαζομένην και χρησιμοποιουμένην διά τον σκοπόν αυτόν"

15 ("shop" means any immovable let for any business, trade, or any other professional purpose and used as such.

'dwelling house' means a building or construction or part thereof let as a dwelling house and used for such purpose").

20 Recovery of possession of such premises can only be effected under the provisions of section 11 of the said law the material parts of which to the present case, read as follows:

25 "11.-(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, δια το οποίον ισχύει ο παρών Νόμος, ή δια την εκ τούτου εξίσωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων:

30 (στ) εις περίπτωσιν καθ' ην η κατοικία απαιτείται λογικώς προς κατοχήν υπό του ιδιοκτήτου, της συζύγου του, του υιού του, της θυγατρός του, ή οιονδήποτε εκ των εξαρτωμένων γονέων του, και το Δικαστήριον θεωρεί λογικήν την έκδοσιν τοιαύτης αποφάσεως ή τοιούτου διατάγματος:

35 Νοείται ότι ουδεμία απόφασις και ουδέν διάταγμα θα εκδίδωνται δυνάμει της παραγράφου αυτής, εάν το Δικαστήριον πεισθή ότι, λαμβανομένων υπ' όψιν όλων των περιστάσεων της υποθέσεως, θα επροξενείτο μεγαλύτερα ταλαιπωρία διά της εκδόσεως του

διατάγματος ή της αποφάσεως παρά δια της αρνήσεως εκδόσεως τούτου.

(Ζ) εις περίπτωσιν καθ' ήν το κατάστημα απαιτείται λογικώς προς κατοχήν υπό του ιδιοκτήτου, της συζύγου ή των τέκνων του και όπου οιοσδήποτε εξ αυτών δεν ηδυνήθη να εξασφαλίση ετέραν ανάλογον και με λογικόν ενοίκιον στέγην δια την επιχειρήσιν του ή δια σκοπούς επιχειρήσεως και το Δικαστήριον θεωρεί λογικήν την έκδοσιν τιαύτης αποφάσεως ή τοιούτου διατάγματος:

Νοείται ότι ουδεμία απόφασις και ουδέν διάταγμα θα εκδίδωνται δυνάμει της παραγράφου αυτής, εάν το Δικαστήριον πεισθή ότι, λαμβανομένων υπ' όψιν όλων των περιστάσεων της υποθέσεως, θα επροξενείτο μεγαλύτερα ταλαιπωρία δια της εκδόσεως του διατάγματος ή της αποφάσεως παρά δια της αρνήσεως εκδόσεως τούτου'

....."

(Section 11(1) No judgment or order for the recovery of possession of any dwelling house or shop, to which this law applies, or for the ejection of a statutory tenant therefrom shall be given or made, except in the following cases:

.....

(f) Where the dwelling house is reasonably required for occupation by the landlord, his spouse, son, daughter or any of his dependent parents, and the Court considers it reasonable to give such judgment or make such order.

Provided that no judgment or order shall be given or made under this paragraph unless the Court is satisfied that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it.

.....

.....

(g) Where the shop is reasonably required for occupation by the landlord, his spouse or children and where any of them has not been able to secure other alternative accommodation for his business or for business purposes at a reasonable rent and the court considers it reasonable to give such a judgment or make such order:

Provided that no judgment or order shall be given or made under this paragraph, if the Court is satisfied, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it).

It is an undisputed fact that the premises in question were let to the appellant for use as a clinic and they were so used at all material times. The test to be applied as to whether premises fall within the definition of "shop" or "dwelling house" has been considered by this Court in the cases of *Aziz v. Akarsou*, 23 C.L.R. 32 and *Lapithis v. Stavrou* (1972) 1 C.L.R. 144.

In the first case, it was held that:

"On the evidence the premises at No. 36 were business premises. They were let and used exclusively for business purposes, whereas the premises at No. 34 were let as a dwelling and principally or chiefly used as such. Therefore, applying the test of the object of the letting and that of the dominant user, the premises at No. 34 should be considered for the purposes of the Rent (Control) Law, 1954, as a dwelling house".

Reference is made in that case to the following dictum of Denning L.J. in *Wolfe v. Hogan* [1949] 1 All E.R. 570 at p. 575:

"In determining whether a house or part of a house is let as a 'dwelling' within the meaning of the Rent Acts, it is necessary to look at the purpose of the letting. If the lease contains an express provision as to the purpose of the letting, it is not necessary to look further, but if there is no express provision, it is open to the court to look at the circumstances of

the letting. If the house is constructed for use as a dwelling-house, it is reasonable to infer that the purpose was to let it as a dwelling, but if, on the other hand, it is constructed for use as a lock-up shop, the reasonable inference is that it was let for business purposes. If the position were neutral, it would be proper to look at the actual user. It is not a question of implied terms. It is a question of the purpose for which the premises were let".

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In *Lapithis v. Stavrou* (supra) this Court in considering whether the premises in question in that case were "business premises" within section 2 of the relevant law then in force (the Rent Control (Business Premises) Law, 1961 as amended by Law No. 39 of 1969), had this to say (per Hadjianastassiou, J., at pp. 149 and 152):

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"The question which is posed is whether the premises in question were let for any business, trade, etc., and used as such. Unfortunately, business or trade is not defined in this legislation, but we can derive assistance from other judicial pronouncements regarding the definition of those words. In our view, a person carries on a business or trade when he habitually does and contracts to do a thing capable of producing profit.

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.....

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..... in view of the terms of the lease or tenancy agreement which provide for or contemplate the use of the premises for some particular purpose, we are of the opinion, that the purpose is the essential factor and not the nature of the premises or actual use made of them. However, directing ourselves with those judicial pronouncements, and in the light of the surrounding circumstances of this case, particularly since the previous landlord and the appellant were aware that the premises in question were let and used for business purposes, we have reached the view that it was in the contemplation of the parties, according to the terms of the letting, of user of the premises for business purposes".

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5 The trial Court in the present case, in determining the nature of the premises in question and whether they were a "dwelling house" or a "shop" within the meaning of the Rent Control Law, 1983, had to examine the purpose for which they were let and used and not their intrinsic character for which they were originally constructed. It was a common ground that the premises in question were let for use as a clinic, that is for business purposes within the definition of "shop" under section 2 of Law 23/83, and that in fact they had been so used ever since and, therefore, they could not be considered and treated as falling within the definition of a "dwelling house". In our opinion the trial Court wrongly applied section 11(1)(f) in making the eviction order on the ground that the premises in question were a "dwelling house" reasonably required for occupation by the landlord, her spouse and children. Recovery of possession of the said premises could only be achieved under section 11(1)(g) provided that they were reasonably required for occupation for business purposes and provided also that the requirements of section 11(1)(g) were satisfied, which is not the case in these proceedings. Therefore, the application of the respondent should have been dismissed with costs and the eviction order refused.

25 In the result, this appeal succeeds and we remit the case back to the Rent Control Court of Limassol with directions to give effect to the opinion so expressed and determine the claim accordingly.

30 As regards costs, the order of costs made by the trial Court is hereby set aside and we award the appellant against the respondent the costs of the proceedings before the Rent Control Court of Limassol and the costs of this appeal.

35 *Appeal allowed. Case remitted back to trial Court.*