

1987 October 26

(TRIANTAFYLIDIS P LORIS STYLIANIDES JJ)

PANAYIOTIS TELEMACHOU,

Appellant - Respondent.

v.

CHRYSA PAPARES,

Respondent-Applicant.

(Civil Appeal No. 7212).

Rent Control — The Rent Control Law 23/83 — The Rent Control Court — It is a Court of Law — Whether it can act on the basis of its own knowledge, information and opinion — Question determined in the negative — The relevant provision to the contrary as regards the English Rent Tribunals is not applicable in Cyprus — Matters in respect of which judicial notice can be taken — The inapplicability of the rules relating to the admissibility of evidence. 5

Constitutional Law — Constitution Art. 30 1 and Art 30 2.

The issue that arose for determination in this appeal from the judgment of the Rent Control Court sitting at Limassol whereby the appellant was ordered to deliver vacant possession of the subject premises to the respondent, on the ground that the premises are reasonably required for occupation by the son of the respondent, is whether the Rent Control Court is empowered to act, not only on the basis of the evidence adduced, but, also, on its own knowledge, information and opinion. 10 15

In this case the trial Court acted on such knowledge, information and opinion.

Held, allowing the appeal: (1) Article 30.1 prohibits the establishment of judicial committees exceptional Courts under any name whatsoever. Paragraph 2 secures the right of every person in the determination of his civil rights and obligations, inter alia, to a fair hearing by an independent impartial and competent Court established by law. 20

(2) The Rent Control Court is in the light of the relevant provisions of Law 23/83 in conjunction with Art. 30 of the Constitution a Court 25

5 of Law. It can only act on the basis of evidence adduced before it. It may only take judicial notice of various matters which are so notorious or clearly established that evidence of their existence is unnecessary. The only relaxation which is imported by Law 23/83, is as to the admissibility of the evidence.

Appeal allowed. No order as to costs. New trial ordered.

Cases referred to:

- 10 *Keramourgia «Alas» Ltd. v. Christoforou* (1975) 1 C.L.R. 38;
Pastellopoulos v. Republic (1985) 2 C.L.R. 165;
R. v. Brighton and Area Rent Tribunal Ex Parte MarineParade Estates Ltd. [1950] 1 All E.R. 946.

Appeal.

15 Appeal by respondent against the judgment of the Rent Control Court of Limassol dated the 21st March, 1986 (Appl. No E 112/85) whereby he was ordered to deliver vacant possession of a shop at No. 225 Ayios Andreas Street, Limassol on the ground that it was reasonably required for occupation by the son of the applicant.

Ph. Clerides, for the appellant.

20 *S. Papakyriacou*, for the respondent.

TRIANTAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal is directed against a Judgment of the Rent Control Court sitting at Limassol.

25 By the said Judgment the appellant-respondent was ordered to deliver vacant possession of the subject premises - a shop situated at No. 225, Ayios Andreas Street, Limassol - on the ground that it is reasonably required for occupation of the son of the respondent -applicant, in virtue of s. 11(1)(g) of the Rent Control Law, 1983
 30 (No. 23/83).

In the Judgment under appeal, at p. 65 of the record, it is stated that the Rent Control Court is empowered to act on its own knowledge, information and opinion besides the evidence
 35 adduced, as that Court is a specialized Court which keeps under s. 9 of the Law the Registers of ejectments and rents and on the basis

of English jurisprudence, whereby the Rent Tribunals are empowered to rely not only on the evidence, but on their own knowledge and opinion. The case *R. v. Rent Tribunals* [1950] 1 All E.R. 950, is cited in support of the above.

The Rent Control Court of Limassol, in reaching its findings and conclusions in the Judgment under appeal, used, not only the evidence adduced, but personal knowledge, information and opinion of its President. 5

A fundamental point is raised. Is the Rent Control Court established by s. 4 of Law 23/83 empowered to act on its own knowledge, information and opinion as the English Rent Tribunals? 10

The judicial power in the Republic is exercised by the Supreme Court of Justice and such inferior Courts as may, subject to the provisions of the Constitution, be provided by a Law made thereunder (Article 152.1). 15

Article 30.1 prohibits the establishment of judicial committees and exceptional Courts under any name whatsoever.

Paragraph 2 secures the right of every person in the determination of his civil rights and obligations, inter alia, to a fair hearing by an independent, impartial and competent Court established by law. 20

These constitutional commandments were considered by this Court in, inter alia, *Keramourgia «AIAS» Ltd. v. Yiannakis Christoforou* (1975) 1 C.L.R. 38 and *Pastellopoulos v. The Republic* (1985) 2 C.L.R. 165. 25

The Rent Control Law, Cap. 86, which provided for the establishment of a Board, was brought into conformity with the Constitution by the Rent (Control) (Amendment) Law, 1968, (No. 8/68) by the abolition of the Board and its replacement by «Court». 30

The Rent Control (Business Premises) Law, 1961, (No. 17/61) and the Rent Control Law, 1975, (No. 36/75) provided for the establishment of a Court.

The Rent Control Court of Limassol was set up by s. 4 of Law 23/83. Its jurisdiction and matters relating to its exercise are governed by the General Law of the Land except where there are specific provisions in the said legislation or the Rules made thereunder. 35

Section 5 of the Law in operation is a replica of s. 4(2) of the Rent Control Law, 1975, (No. 36/75) and is slightly differently worded from s. 4(2) of Law 17/61. It governs the admissibility of evidence, the calling and recalling of witnesses and related matters.

The relevant provisions of the Rent Control Rules, 1983 are that the proceedings before the Court are of summary nature with the object of speedy and effective administration of justice (Rule 3(f)); the order of calling a witness is as provided in the Civil Procedure Rules; the Court has power to put questions to the witnesses for carrying out of the necessary inquiry for the solution of the dispute; the Court, further, has a power, at any stage of the proceedings, to call or recall witnesses for the purpose of the inquiry - (Rule 4).

Having taken into consideration the material provisions of the Rent Control Law 23/83, in conjunction with the provisions of Article 30 of the Constitution, we are of the view that the Rent Control Court is a Court of Law and in the exercise of its jurisdiction has to hear and determine a case on the evidence before it. It can only give judgment affecting the civil rights - the rights of property of a litigant - on the evidence before it. It may only take judicial notice of various matters, which are so notorious or clearly established that evidence of their existence is unnecessary. The only relaxation which is imported by Law 23/83, is as to the admissibility of the evidence. The Rules relating to admissibility do not fetter the Rent Control Court.

In *R. v. Brighton and Area Rent Tribunal Ex Parte Marine Parade Estates (1936), Ltd.* [1950] 1 All E.R. 946, on which the Rent Control Court of Limassol relied, it was held that the Landlord and Tenant (Rent Control) Act, 1949, did not require that proceedings of a Rent Tribunal under the Act should necessarily involve a hearing like that of a Court, but the Act and the Regulations made thereunder contemplated that the Tribunal might act on its own knowledge and information, without evidence, unless such evidence submitted, and without a hearing except on notice from a party.

Lord Goddard in his Judgment characteristically said at p. 949:-

•No court can proceed to hear a case without having some evidence before it, nor can it give any judgment affecting a

person's rights to property unless that person not only is before the court, but also has an opportunity of cross-examining the other party. Parliament, however, has said that the ordinary procedure to which lawyers are accustomed shall not apply to these cases.»

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After citing the Landlord and Tenant (Rent Control) Regulations, 1949, made pursuant to powers conferred by the Act, he said at p. 950:-

«These proceedings have not been conducted in a way which would be tolerated in an ordinary court, but the ordinary courts do not have statutes which permit them to act on their own knowledge and without any evidence.»

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Neither the English Rent Act of 1949, nor the English Regulations are part of our Law.

The procedure to be followed by a Rent Control Court in Cyprus is, as we have stated, that of the ordinary Court of first instance with the relaxation as to the admissibility of evidence to which we have adverted and the admission of the reports of experts.

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The trial Court relied in the Judgment under appeal partly on its own knowledge and information. This is a clear misdirection of Law; its findings and consequently the whole Judgment is tainted. It cannot survive. We would, therefore, set aside the Judgment and order a retrial by another Bench.

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With regard to costs, having regard to the fact that no costs were adjudged by the trial Court, the principle that costs in the rent cases do not necessarily follow the event, and the way learned counsel for the respondent-applicant conducted his case before us, we make no order as to costs.

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Appeal allowed.
Retrial ordered.

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