1979 December 28

[A. LOIZOU, DEMETRIADES, SAVVIDES, JJ.]

PETROS ORPHANIDES AND ANOTHER,
Appellants–Defendants,

v.

MUNICIPALITY OF LIMASSOL,
Respondent–Plaintiff

(*Civil Appeal No.* 5993).

Landlord and tenant—Statutory tenancy—Death of tenant—"Member of the tenant's family" in section 2 of the Rent Control Law, 1975 (36/75)*—Meaning—Daughter and son-in-law of tenant always using premises to the knowledge of the landlord as members of the tenant's family—And residing with tenant for "not less than six months immediately" before her death—They are "members of the tenant's family" within the meaning of the above section.*

Words and phrases—"Member of the tenant's family" in section 2 of the Rent Control Law, 1975 (36/75).

By virtue of a written contract of lease dated the 14th March, 1972, the respondent Municipality let to the mother-in-law of appellant 1 and mother of appellant 2 (" the mother ") a house at Limassol which has been occupied by her since 1957. In August 1959 appellant 2 got engaged to appellant 1 and thereupon he moved in and resided with his fiancée and his parents-in-law in the said house. They were married in February 1960 and acquired two children. In the meantime the father-in-law died but the mother, the appellants and their children continued living therein. The mother died on the 2nd July, 1973 but the appellants remained in occupation of the premises and paid the rent. The receipts for the rent were issued in the name of the late mother of whose death the respondent alleged that it did not know for some time; and when it came to know of her death, the receipts were issued for the payment of "damages for wrongful possession" of the house and not for the payment of rent and there followed proceedings for recovery of possession.

The trial Judge found that there being no implied contract between the respondent and the appellants after the death of the mother, or more particularly, after the respondent became aware of her death it was clear that unless the appellants could come within the meaning of the term "tenant"* in section 2 of the Rent Control Law, 1975 (36/75) they could not have become controlled tenants; and that the said Law did not cover this case because it was clear that after her marriage appellant 2 ceased to be a "member of the family" of the mother having formed her own family with appellant 1 and for the six months preceding the death of the mother she could not be said to have been a member of her family.

Upon appeal against an order for recovery of possession:

Held, (*after stating the approach as to the meaning of the term "member of the tenant's family"—vide pp.* 710-2 *post*) that the two appellants have always used the subject premises to the knowledge of the respondent Municipality since their engagement in 1959 as members of the family of the tenant at the time; that though this Court is not aware of the contents of the declaration, made in the original application of the parents of appellant 2 for the grant of a lease to them, as to who were the members of their family at the time, the long existing situation leads to the conclusion that the appellants and their children were, for all intents and purposes, treated and accepted by the respondent Municipality as members of the late mother's family who were residing with her; that, moreover, they fulfil the conditions of not less than six months' residence with the tenant immediately before the latter's death, thus bringing the present case within the definition of paragraph (c) of section 2 of Law 36/75; they are therefore, entitled to its protection; and that, accordingly, the appeal must be allowed (approach in *Standingford* v. *Probert* [1954] 2 All E.R. 861 and *Brock and Others* v. *Wollams* [1949]

* The term "tenant", so far as relevant reads:

"Tenant means the tenant of premises in respect of which a tenancy exists and includes .....

.....

(c) The widow of a tenant who was residing with him at the time of his death or where a tenant leaves no widow or is a woman, such member of the tenant's family as was residing with the tenant for not less than six months immediately before the death of the tenant".

1 All E.R. 715 as to the meaning of the expression "member of the tenant's family" *applied*).

Appeal allowed.

Cases referred to:

Standingford v. *Probert* [1949] 2 All E.R. 861 at p. 863;

Brock and Others v. *Wollams* [1949] 1 All E.R. 715 at p. 718.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 7th July 1979 (Action No. 154/79) whereby it was declared that the plaintiff, the Municipality of Limassol, was entitled to recover possession of a house situate at Limassol and it was ordered that the defendants deliver vacant possession of the house to the plaintiff within six months.

J. Agapiou, for the appellants.

J. Ph. Potamitis, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court. This is an appeal against the judgment and order of the District Court of Limassol by which a declaration was made that the respondent Municipality was entitled to recover possession of a house at Ayia Ecaterini Street No. 60, in Limassol, and an order was given that the appellants should deliver to the respondent Municipality vacant possession of same within six months thereof.

The facts of the case are as follows:

The premises in question consist of one bedroom, one kitchent one W.C., two verandahs and a yard. The responden, Municipality let to the late Anthousa Christou—mother-in-law of appellant 1 and mother of appellant 2—these premises under a written contract of lease dated the 14th March, 1972, from month to month as from the first day of that month.

This was not, however, a new tenancy but a continuation in a way of a pre-existing one as the parents of appellant 2 and herself, then 18 years of age, first occupied these premises in 1957. In August 1959 appellant 2 was engaged to appellant 1 and thereupon moved in and resided with his fiancée and his parents-in-law in the subject premises. They were married in

February 1960 and acquired two children. In the meantime the father-in-law died but the widow, the appellants and their children continued living therein. The late Anthousa died on the 2nd July, 1973, and the appellants remained in occupation of the premises and paid the rent. The receipts for rent were issued in the name of the late Anthousa of whose death the respondent Municipality alleged that it did not know for some time. When they became aware of her death, the receipts were issued for the payment of "damages for wrongful possession" of the premises in question and not for the payment of rent and they then instituted the present proceedings.

The version of the appellants was that the Municipality knew that they resided in the said premises from the very beginning and never objected to it.

The findings of the learned trial Judge on these points are that both appellants have been residing since their engagement in the said premises and that that was known to the respondent Municipality who regularly inspected the house. He accepted, however, the version of the witnesses for the respondent Municipality that they came to know of the death of Anthousa about five years after her death.

In the aforementioned contract of lease, the late Anthousa is described as the tenant, which term is, where the text permits such interpretation, stated to "include the heirs, executors, administrators, and his agents and any other person which is in actual possession of the premises with the consent of the tenant". Term 4(d) thereof provides that "the tenant agreed not to use or suffer the premises to be used ..... for any other purpose except only for the private residence of his and the members of his family as they have been declared and are mentioned by them in the relevant application for the lease of a house made to the Municipality of Limassol which is attached to the said contract and constitutes part of it with regard to this term excepting, of course, those members of the family of the tenant which were to be born after the signing of the said contract". This application for the lease of the premises in question was not produced in the present proceedings and we do not know who were declared then to be the members of the family of the late Anthousa.

The learned trial Judge found that the term of the contract

giving the definition of a tenant did not make the appellants tenants of the premises in the legal sense and that they could not, in any case, have any rights under the original contract. He found also that even if the term "tenant" should be considered as including the appellants they could not have acquired any rights under the contract as they were not parties to it. He further examined whether after the death of the late Anthousa the appellants by their conduct could be said to have entered into an implied contract of lease as for a person to become a controlled tenant he must have been originally a contractual tenant. He concluded, however, that from the conduct of the Municipality in issuing the receipts in the name of the late Anthousa and the institution of the proceedings as soon as they found out of her death, a new contract could not be implied and that any rights the appellants might have had to reside in the premises during the life time of Anthousa came to an end at the time of her death as the tenancy also came to an end. Then the learned trial Judge went on to say the following:-

> " There being no implied contract between the plaintiff and the defendants after her death or, more particularly, after the Municipality became aware of her death, it is clear that, unless the defendants can come within the provisions of Law 36/75, which provides that the term 'tenant' where the person who has obtained the lease of the premises is a woman includes any member of her family which resided with her for a period not less than six months before her death, they cannot have become controlled tenants. I find that the said law does not cover the present case. It is clear that after her marriage defendant 2 ceased to be a 'member of the family' of the deceased having formed her own family with defendant 1. Therefore, for the six months preceding the death of the tenant she cannot be said to have been a member of her family".

The definition of the term "tenant" in section 2 of the Rent Control Law 1975, (Law 36 of 1975), in so far as relevant to the present proceedings reads as follows:-

> "Tenant means the tenant of premises in respect of which a tenancy exists and includes .....
> .....

(c) The widow of a tenant who was residing with him at the time of his death or where a tenant leaves no widow or is a woman, such member of the tenant's family as was residing with the tenant for not less than six months immediately before the death of the tenant". 5

This definition is to be found also in the new repealed Rent (Control) Law, Cap. 86, with the difference that after the word "tenant" at the end the following words exist "as may be decided in default of agreement by the Court trying the case", which have been omitted from the new definition. The definition of "a 10 tenant" as found in Cap. 86 and the meaning of the term therein "the tenant and his family" was taken from section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933, which was judicially considered in a number of authorities referred to in *Standingford* v. *Probert* [1949] 2 All E.R., p. 861, where Cohen, 15 L.J., at p. 863, had this to say:-

" The first question to be considered, however, is whether he was right in excluding the two married sons and their wives from the description, 'the tenant and his family'. There is no reported decision on s. 3(3) as to the meaning 20 of those words, but the question of the meaning of 'family' has been considered in connection with s. 12(1)(g) of the Act of 1920 which is a definition section and states:

'..... the expression 'tenant' includes the widow of a tenant ..... who was residing with him at the time of 25 his death, or, where a tenant ..... leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county Court'.

In that connection it has been held that blood relations, 30 at any rate as distant as nephews and nieces, and adopted children are within the meaning of the section, provided, of course, they satisfy the conditions of residence. It is true that we are now considering a different section, but I think there are some observations which are made in the 35 course of the judgments which have dealt with s. 12(1)(g) which are of assistance to us in reaching a conclusion as to the meaning of the word 'family' in s. 3(3) of the Act of 1933.

The first case to which I would refer is *Price* v. *Gould* 40

[1930], 143 L.T. 333. That case was cited by Bucknill, L.J., in *Brock* v. *Wollams* [1949] 1 All E.R. 715, and the passage (p. 717) to which I wish to refer is sufficiently set out in that case. Bucknill, L.J., cites Wright, J., as saying (143 L.T. 334):

> " 'It has been said in a number of equity cases, relating principally to wills or to settlements under powers of appointment, that the word 'family' is a popular, loose and flexible expression, and not a technical term. It has been laid down that the primary meaning of the word 'family' is children, but that primary meaning is clearly susceptible of wider interpretation, because the cases decide that the exact scope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances. Thus, in *Snow* v. *Teed* [1870] L.R. 9 Eq. 622, it was held that the word 'family' could be extended beyond not merely children but even beyond the statutory next-of-kin'. Wright, J., went on to say (ibid.) that: 'I hold that in the section now under consideration (s. 12(1)(g)) the word 'family' includes brothers and sisters of the deceased living with her at the time of her death. I think that that meaning is required by the ordinary acceptation of the word in this connection, and that the legislature has used the word 'family' to introduce a flexible and wide term.' "

He then quoted a passage of his from the case of *Brock and Others* v. *Wollams* [1949] 1 All E.R. p. 718, where he concluded:

> "... I respectfully agree with what was said by Wright, J., in *Price v. Gould* in the passage which my Lord has already read. I think the question the learned county Court judge should have asked himself was: Would an ordinary man, addressing his mind to the question whether Mrs. Wollams was a member of the family or not, have answered 'Yes' or 'No'?".

And he went on then to say the following:-

> "I think that is a fair test to apply when considering the meaning of the words, 'the tenant and his family', in s. 3(3) for the purposes with which we are now concerned.

Obviously, having regard to the subject-matter, no member of the family who is not permanently residing—I will use that expression for the moment, though it is not entirely accurate —with the tenant would fall within the meaning of the word 'family', but, subject to fulfilling the conditions of residence, I think that the proper question to ask oneself is: If an ordinary man was told that the tenant had living with her relations of whom we know, would he or would he not say: 'Those are the members of her family'? If he would—and I think he would—I see no reason why they should not be treated as 'family' for the purposes of s. 3(3).

I said, 'permanently residing'. By that I do not mean, as counsel for the landlord asked us to say, that they intended to live there for the rest of their lives. I think a fair test would be this. Supposing anybody said to a married son: 'Having you made your home with your mother or are you just staying with her temporarily?', would he or would he not reply: 'I am making my home with her and I have no present intention of making any change'? If he would answer in that way, as I think the sons plainly would in this case, then it seems to me that the only proper course in the absence of other relevant circumstances is to treat them and their wives as members of the family".

The aforesaid approach as to the meaning of the expression "members of the tenant's family" applies with equal force to the same one to be found in the definition of "tenant" in paragraph (c) of section 2 of Law 36 of 1975 with which we are concerned. An examination of the particular facts and circumstances of the present case shows that the two appellants have always used the subject premises to the knowledge of the respondent Municipality since their engagement in 1959 as members of the family of the tenant at the time. We are not aware of the contents of the declaration made in the application by the father originally for the grant of a lease to him or by the late Anthousa referred to in term 4(d) of the contract of lease, as to who were the members of their family at the time, but the long existing situation already referred to, leads us to the conclusion that the appellants and their children were, for all intents and purposes, treated and accepted by the respondent Municipality as members of the late Anthousa's family who were residing

with her. Moreover, they fulfil the conditions of not less than six months' residence with the tenant immediately before the latter's death, thus bringing the present case within the definition of paragraph (c) of section 2 of the Law, hereinabove referred to and, therefore, the appellants are entitled to its protection.

For all the above reasons the appeal is allowed, and the judgment and order of the Court is set aside and discharged. In the circumstances, however, we make no order as to costs either in this Court or the Court below.

Appeal allowed. No order as to costs.