

1989 August 11

(DEMETRIADES, J)

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION,

AND

IN THE MATTER OF AN APPLICATION BY FANI MICHAELIDOU AND  
ANTONAKIS MICHAELIDES, FOR AN ORDER OF PROHIBITION,

AND

IN THE MATTER OF APPLICATION NO. E55/84 BEFORE THE RENT  
CONTROL COURT, FILED BY GEORGE CHR. HAVANDJIA.

(Application No. 52/84).

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5 *Rent Control — Rent Control Court — Jurisdiction — Order for  
ejection issued by a District Court before enactment of Law 23/  
83 — Allegation that by a new agreement the landlords granted a  
new lease to the tenant — Application by latter before the Rent  
Control Court for a declaration that he is a statutory tenant — The  
Rent Control Court is, in view of section 4(1) of the Rent Control Law  
1983 (Law 23/83) the only Court that possesses jurisdiction to  
determine such a question.*

10 In 1960 a contract of lease was entered into between Frixos  
Michaelides, now deceased, on the one part, and the respondent, on  
the other part, by which a building site belonging to the first party was  
let to the second at £6.- per annum. On this property, of which the  
said deceased was the registered owner, the respondent built a  
15 wooden shed-described by the respondent as a house - in which he  
and his wife have been residing since.

20 Frixos Michaelides obtained in 1967 an order of ejection on the  
ground that the rent had not been paid. Frixos Michaelides died in  
1969. The first applicant is the administratrix of his estate. The second  
applicant is his son, in whose name the property was registered in  
1972.

In 1975 the applicants obtained a writ of possession. Since then  
the respondent repeatedly applied for stay of execution of the order  
of ejection or for annulment of the writ. When each of such  
application came up for hearing respondent withdrew it.

Finally and after the enactment of the Rent Control Law, 1983 the Respondent applied to the Rent Control Court for a declaration that he was a statutory tenant of the said property. The basis of this application is an allegation that by a new oral agreement the applicants agreed to lease the property to the respondent. 5

As a result the applicants (respondents before the Rent Control Court) filed this application for prohibition, on the ground that the Rent Control had no jurisdiction to deal with the matter.

Held, dismissing the application: The words of section (4)1 of Law 23/83 «for the purpose of determining ..... the disputes referred to them concerning any matter including every incidental or supplementary matter» cover the case of the respondent and, thus, the Court which has to decide the matter is the Rent Control Court. 10

*Application dismissed. No order as to costs.* 15

### **Application.**

Application for the issue of an order of prohibition restraining the Rent Control Court from hearing Application No. E. 55/84.

*E. Markidou (Mrs.), for the applicants.*

*Ch. Loizou, for the respondents.* 20

*Cur. adv. vult.*

DEMETRIADES J. read the following ruling. This is an application for the issue of an order of prohibition restraining the Rent Control Court from hearing Application No. E55/84 filed in that Court by George Havadjia, the respondent in these proceedings, and by which he claims: 25

«A. A judgment and/or declaration of the Court that the applicant (respondent in the present proceedings) is a statutory tenant of plot No. A532 471 PLOT BLOCK A of an extent of 1 evlek 2950 sq. ft. in Aylendjia. 30

B. A judgment and/or declaration of the Court that the respondents are not entitled to recovery of possession of the aforesaid building plot.

C. A judgment of the Court declaring the order for the recovery of possession issued in Action No. 4550/67 by the District Court of Nicosia on 16.2.81 as void and non executable. 35

D. Any other remedy which the Court may find just and reasonable in the circumstances.

E. Costs.»

5 The facts on which the applicants rely in support of these proceedings appear in an affidavit sworn by the second applicant dated the 3rd July, 1984, and they are in brief the following:

10 In 1960 a contract of lease was entered into between Frixos Michaelides, now deceased, on the one part, and the respondent, on the other part, by which a building site belonging to the first party was let to the second at £6.- per annum. On this property, of which the said deceased was the registered owner, the respondent built a wooden shed - described by the respondent as a house - in which he and his wife have been residing since.

15 The said Frixos Michaelides died in 1969 and letters of administration of his estate were granted to his wife who is the first applicant in these proceedings.

20 The property in question, which is described as plot 471 of Block A of Aylendjia, registration No. A532, was, in 1972, transferred and registered into the name of the second applicant who is the son of the deceased.

25 In 1967, as the agreed monthly rent was not paid, the deceased filed an action against the respondent and on the 29th December, 1967, he obtained an order by which the respondent was ordered to evacuate and deliver to the deceased the vacant possession of the property one month after service on him of a certified copy of the order of the Court. Copy of this order was served on the respondent on the 30th April, 1975, and on the 18th June, 1975, the first applicant filed in the District Court of Nicosia an application by which she prayed for the issue of a writ of possession under Order 43A. The said application was granted and a writ of possession was issued but after the respondent promised to evacuate the property within a reasonable time, the first applicant consented to a stay of execution.

35 The applicants took no further steps for the execution of the said order of ejection as respondent was always promising to evacuate the property.

According to the aforesaid affidavit of the second applicant, the respondent, since 1981, filed a number of applications for the stay of the execution and/or annulment of the writ of possession, but

none of these were heard by the Court as when each of these applications came up for hearing, he withdrew them. Sample of one of these applications is appended to the present application as exhibit D and is dated the 6th December, 1983.

On the 20th February, 1984, the respondent filed in the Rent Control Court an application by which he prayed, amongst others, for an interlocutory injunction staying the execution of the writ of possession issued by the District Court of Nicosia. This application was also withdrawn on the date it was set down for hearing. Copy of this application and the affidavit filed in support is appended to the motion of the applicants as exhibit 'A'.

It is the contention of the respondent, which is denied by the applicants, that after the suspension of the execution of the above writ, it was agreed between the parties, upon payment by the respondent of all monies due as rents, that the tenancy should continue from year to year on the same rent and that the respondent paid to the applicants, at different dates, the sum of £100.- towards future rents.

In March, 1981, the applicants, after filing an ex parte application in the District Court of Nicosia, obtained a new writ of possession. In July, 1981, the respondent applied to the District Court of Nicosia claiming the setting aside of the eviction order of 1967 and the annulment of the order for possession. This application was withdrawn in December, 1981, and a new one, similar to the first, was filed in March, 1982, which was again withdrawn in December, 1982.

In December 1983, after the enactment of Law 23/83, the respondent filed once again a new application (which is attached to the present proceedings as Appendix D') seeking the annulment and setting aside of the same order of 1967, on the grounds, as these are set out in the attached affidavit of the respondent, that he had become a statutory tenant and that the applicants were not entitled to an order of possession. This application was again withdrawn on the date it was fixed for hearing.

At the same time, that is at the time the above application was filed in the District Court, the applicant filed in the Rent Control Court an application which he later withdrew but on the 20th February, 1984, he filed Application No. E55/84, which is earlier in this judgment referred to.

In March 1984, the respondent again applied to the District Court of Nicosia, on an ex parte application, for a stay of the execution of the order for recovery of possession of the property in question and an order was made in his favour to this effect.

5 In answer to the Statement of Claim of the applicant in Application No. E55/84, the present applicants denied most of the allegations raised therein and raised the preliminary issue that the Rent Control Court lacks jurisdiction to hear the application on the ground that an order for the recovery of possession of the property  
10 in question was issued by the District Court of Nicosia in Action No. 4550/67. This answer was filed on the 18th April, 1984, and on the 3rd July, 1984, the applicants filed Application No. 40/84 for leave to apply for an order of prohibition, which was granted.

As a result, the present application was filed, which was  
15 opposed by the respondent. By this application the applicants seek a prohibition order restraining the hearing of Application No. E55/84 by the Rent Control Court sitting in Nicosia.

The question that poses for decision is whether, in the light of the allegations made by the respondent - applicant in Application  
20 No. E55/84 filed in the Rent Control Court - that Court has jurisdiction to try the issues raised before it.

Counsel for the applicants submitted that the Rent Control Court has no jurisdiction to grant any of the prayers sought by the respondent in his said application. On the other hand, counsel for  
25 the respondent submitted that as it is the respondent's allegation that a new tenancy was constituted between himself and the applicants, the respondent is a statutory tenant and that under section 4(1) of the Rent Control Law (Law 23/83), the Court that has exclusive jurisdiction to try the issues is the Rent Control  
30 Court.

Section 4(1) of Law 23/83 reads as follows:

«4.-(1) Καθιdrύονται Δικαστήρια Ελέγχου Ενοικιάσεων ο αριθμός των οποίων δεν θα υπερβαίνει τα τρία επί σκοπώ επιλύσεως, μεθ' όλης της λογικής  
35 ταχύτητας, των εις αυτά αναφερομένων διαφορών των αναφυσομένων επί οιοδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπίπτοντος ή συμπληρωματικού θέματος».

«4.(1) Rent Control Courts are being established whose number shall not exceed three for the purpose of determining with all reasonable speed, the disputes referred to them, concerning any matter raised in the course of the application of the present Law including every incidental or supplementary matter».)

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A statutory tenant is defined in section 2 of the Law as a tenant who, at the expiration or termination of the first tenancy, continues to occupy the premises and includes all statutory tenants prior to the date of the coming into operation of the law.

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Therefore, what a Court of Law will have to decide in the present case is whether, at the material time, that is on the date Application No. E55/84 was filed, the respondent was a statutory tenant.

Coming now to the question of which court has jurisdiction to decide this issue, I am of the view that the words of section 4(1), and in particular the words «for the purpose of determining ..... the disputes referred to them concerning any matter raised in the course of the application of the present Law including every incidental or supplementary matter» cover the case of the respondent and, thus, the Court which has to decide the matter is the Rent Control Court. It is further my view that the District Court, in the light of the provisions of section 4(1), has no jurisdiction to try disputes related to the occupation of premises by a tenant.

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In the result, this application fails and is dismissed but, in the circumstances, I make no order as to costs.

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*Application dismissed  
with no order as to costs.*