

1981 December 7

[LORIS, STYLIANIDES, PIKIS, JJ.]

LYDIA PAPAGEORGHIOU,

Appellant-Applicant,

v.

MARCOS HJIPIERAS,

Respondent.

(Civil Appeal No. 6098).

Landlord and tenant—Statutory tenancy—Displaced tenant—Recovery of possession—Premises required by owner for own use—Section 7(1) of the Displaced Tenants’ Residence (Temporary Provisions) Law, 1978 (Law 56/78)—Principles of construction of rent control legislation introduced after the Turkish invasion—“Exceptional circumstances” in section 3(1) of the Suspension of Eviction Orders (Temporary Provisions) Law, 1977 (Law 31/77)—And “special circumstances” in section 7(1) supra—No “special circumstances” established by owner that might support her claim to oust a displaced tenant from the security granted by the said section 7(1). 5 10

Reasoned judgment—Need that judgments should be reasoned—Article 30.2 of the Constitution.

The respondent was the statutory tenant of a house at Limassol belonging to the appellant. The tenant has been in occupation with his family since September, 1974, shortly after their displacement from Prastio village, in the Famagusta District, as a result of the Turkish invasion. The owner applied for recovery of possession on the ground that she required the house in question for the purpose of residing therein. At the time of making the application the owner was a resident of the United Kingdom and was co-habiting with her daughter who was following higher studies there. She was separated from her husband and her intention was to resettle in Cyprus and reside in the house in question. She maintained that the premises will also be occupied by her aged mother, who was at the time 15 20 25

residing with her sister in Cyprus, as well as by her daughter, upon completion of her studies, and her fiance whose name she refused to disclose. Though alleging that she was impoverished her daughter has been following higher studies in the
 5 United Kingdom on a full time basis and at a considerable expense. She maintained that her relations in England bear the expenses for the Education of her daughter.

The trial Judge dismissed the owner's application having held that there were no special circumstances in the sense of section
 10 7(1) of the Displaced Tenants' Residence (Temporary Provisions) Law, 1978 (56/78) to sustain the claim for recovery of possession.

Upon appeal by the owner it was contended that, notwithstanding the proof of special circumstances, the trial Judge refused to uphold the application for recovery of possession.

15 *Held, (after dealing with the meaning of the words "exceptional" and "special" in sections 3(1) of Law 31/77 and section 7(1) of Law 56/78, respectively—vide p. 564 post) that the legislation introduced after the Turkish invasion must invariably be interpreted and applied with keen awareness of the mischief against which it was directed, and the need to alleviate the hardship that struck a vast section of the population, those displaced; that to leave them to their fate, would be inequitable and unjust as well as socially harmful; that it is in this spirit that the provisions of s. 7(1) of Law 56/78 must be interpreted and applied; that the owner in this case came nowhere near to establish "special circumstances" that might support her claim to oust a displaced tenant from the security granted by section 7(1) of Law 56/78; accordingly her appeal must fail.*

Appeal dismissed.

30 *Observations with regard to the need that judgments should be duly reasoned in the interest of justice and as provided by Article 30.2 of the Constitution.*

Cases referred to:

35 *Pioneer Candy Ltd., and Another v. Stelios Tryfon & Sons* (reported in this Part at p. 540 ante);
Ioannidou v. Dhikeos (1969) 1 C.L.R. 235;
Santi v. Christoforou (1979) 1 J.S.C. 229;
Clarks of Hove Ltd. v. Bakers' Union [1979] 1 All E.R. 172.

Appeal.

Appeal by the landlord against the judgment of the District Court of Limassol (Anastassiou, D.J.) dated the 17th March, 1980, (Rent Appl. No 275/79) whereby her application for the recovery of possession of a house situate at Limassol was dismissed. 5

A. Timothi (Mrs.), for the appellant.

N. Pelides, for the respondent.

Cur. adv. vult.

LORIS J.: The judgment of the Court will be delivered by Pikis, J. 10

PIKIS J.: The appellant is the owner, and the respondent, the statutory tenant, respectively, of the premises at No. 1, El Greco Street, Limassol, consisting of two bedrooms, a sitting-room, ancillary rooms and surrounding spaces. The tenant has been in occupation with his family since September, 1974, shortly after their displacement from Prastio village, Famagusta district, in the wake of the Turkish invasion. He is, therefore, entitled to the protection conferred by the Displaced Tenants' Residence (Temporary Provisions) Law, 56/78, a law designed to confer added security of tenure to displaced tenants for their residence. And this security is not to be disturbed except upon proof, in the first place, of special circumstances, the burden being on the owner. 15 20

It is the case for the appellant that, notwithstanding the proof of special circumstances before the trial Judge, he refused to uphold their application for recovery of possession. Anastassiou, D.J. held in a rather brief and summary judgment, that the appellant failed to overcome the hurdles set up by Law 56/78 in the way of dispossessing the displaced tenant from his residence, evidently finding there were no special circumstances to sustain the appellant's claim. Although the Judge did not spell out explicitly his reasons for so holding, his conclusions were inevitable in the light of the evidence before the Court. The claim of the appellant for recovery of possession was, from the outset, precarious; there was hardly an element of immediacy in her claim to possession of the premises. At the time of making the application the appellant was, with her daughter, with whom she appears to be co-habiting, a resident of the 25 30 35

United Kingdom, where her daughter follows higher studies. She is separated from her husband. Her intention, as adumbrated in the statement of claim, was to resettle in Cyprus and wished to recover possession of the house in the occupation of the respondent and his family, for the purpose of residing therein. In evidence, she maintained that she will not occupy the premises by herself and that her aged mother, presently residing with her sister in Cyprus, will move with her, as well as her daughter upon completion of her studies, and her fiance, whose name, however, she refused to disclose. Notwithstanding the allegation of appellant that she is impoverished, her daughter has been following higher studies in the United Kingdom on a full-time basis, and at considerable expense. She maintained that her relations in England bear the expense for the education of her daughter. These facts, even if accepted on their face value, would hardly entitle the appellant to recover possession under the provisions of s. 16(1)(G), because it is doubtful whether they disclose a present, immediate need of the premises. What is certain is that there is no element of speciality in the aforementioned facts that might support an owner's claim to oust a displaced tenant from the security granted by s. 7(1) of Law 56/78.

This gap was filled, so counsel for the appellant submitted before us, by the appellant proving that she is, herself, a refugee having allegedly been displaced from Petra village as a result of the Turkish invasion. The evidence on this aspect of the case was very thin and it would be difficult, if not impossible, for a Court of law to arrive at the conclusion that appellant was a displaced person. On balance, it appears that she was, both before and after the Turkish invasion, a resident of Nicosia where her daughter followed and completed her secondary school studies before they moved to the United Kingdom for appellant's daughter to follow higher studies. The trial Judge failed to make specific findings on the subject and confined himself to observing that Law 56/78 is intended to protect displaced tenants and not displaced owners.

REASONED JUDGMENT: The judgment is not so bare of reasoning as to justify this Court to set it aside as not duly reasoned. On a view of the judgment as a whole, it emerges that the Court found that there were no grounds to support the claim of the appellant for recovery of possession. This was, in our view,

a finding duly warranted by the evidence before the Court, if not an inescapable inference. Having said this, we must point out that the need to reason a judgment is not only dictated by Article 30.2 of the Constitution, but also it is essential in the interests of justice. Adequate judicial reasoning and its soundness upholds faith in the law and strengthens confidence in the judiciary. Recently, in Civil Appeal No. 6075*, we had occasion to refer to the ingredients of due reasoning. The evidence must be analysed in the light of the issues as defined by the pleadings, and the necessary findings must be made succinctly as a prelude to the judgment. Thereafter, there should be a clear judicial pronouncement, indicating the outcome of the case (see, *Theodora Ioannidou v. Charilaos Dhikeos* (1969) 1 C.L.R. 235). At the end of the day, one should be left in no doubt as to the course of judicial proceedings and the reasons for arriving at a given result.

SPECIAL REASONS: Section 7(1) is, subject to one difference, a reproduction of s.3 of the Suspension of Eviction Orders (Temporary Provisions) Law, 1977, 31/77; the only difference lay in the adjective employed to characterise the nature of the circumstances that may be regarded as sufficient for dispossessing a displaced tenant. In the first enactment the word "exceptional" is used, whereas in the latter, the word 'special'. They convey practically the same meaning in the context of s.7(1), each suggesting the existence of an element of extraordinariness in the claim of the owner for recovery of possession. In *Santi v. T. Christoforou* (1979) 1 J.S.C. 229 (Larnaca District Court), cited by counsel for the respondent, I had occasion to examine the compass of the relevant provisions of Law 31/77 and its practical effects. The ordinary desire of an owner to use or exploit her property to her best advantage does not constitute, as I found, an extraordinary consideration for it is a wish shared by the majority of property owners. The same is true with regard to s. 7(1) of the law presently in force. The decision in *Clarks of Hove, Ltd., v. Bakers' Union* [1979] 1 All E.R. 172, is suggestive of the meaning that should be ascribed to "special circumstances". It was held that the expression imports an uncommon, exceptional or extraordinary event or sequence of events, a definition that we find to be equally apt to convey

* Reported at p. 540 *ante*.

the meaning of "exceptional circumstances" in the context of s. 7(1). In so deciding, we also derive guidance from the general purposes of the law, an important piece of social legislation, intended to confer extraordinary security of tenure to displaced tenants, and for good cause.

The legislation introduced after the Turkish invasion must invariably be interpreted and applied with keen awareness of the mischief against which it was directed, and the need to alleviate the hardship that struck a vast section of the population, those displaced. To leave them to their fate, would be inequitable and unjust, as well as socially harmful. So the law stepped in to satisfy some of the basic needs of refugees, first, and, foremost, to satisfy the need for a roof over their head, instilling in them a sense of protection until the dawn of better days. It is in this spirit that the provisions of s. 7(1) must be interpreted and applied. It would be unwise to define exhaustively "special circumstances", a task that would involve considerable speculation considering that human circumstances and needs are apt to vary infinitely. We shall undertake no such task. We content ourselves with holding that the owner in this case came nowhere near to establishing "special circumstances". The protection of the law, given to displaced tenants, will not be lightly waived. On the contrary, Courts must give effect to it in accordance with the letter and spirit of the statute and the wider aims of the law, not to allow the events of 1974, devastating as they were, to engender further social discord.

In the result, the appeal is dismissed; there will be no order as to costs, bearing in mind that costs do not necessarily follow the event in proceedings under Rent Control laws.

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Appeal dismissed. No order as to costs.