

1986 December 8

[A. LOIZOU, DEMETRIADES &amp; PIKIS, JJ.]

N. P. LANITIS LTD.,

*Appellants,*

v.

MICHALAKIS PANAYIDES AND OTHERS,

*Respondents.**(Case Stated No. 241).*

*Rent Control—Recovery of possession, application for—Rule 7(e) of the Rent Control Rules, 1983—Non-compliance with its requirements—Does not per se render the proceedings void—Rule 11(b) analogous to Ord. 64 of the Civil Procedure Rules.*

5

*Civil Procedure—Distinction between void and irregular proceedings—The two broad classes of void proceedings—Irregular proceedings may be saved by appropriate amendment, unless the irregularity is such as to cause a derailment of the cause.*

10

The Rent Control Court held that non-compliance of Rule 7(e) of the Rent Control Rules, 1983, which requires an applicant to declare whether he is ready to pay compensation envisaged by section 12 of the Rent Control Law 23/93, renders the proceedings for recovery of possession of Rent Control premises void. As a result the applications of the appellants were dismissed. An application on their part to remedy the defect by amendment was likewise dismissed.

15

*Held*, allowing the appeal: (1) It is evident that the trial Court did not address itself to the provisions of Rule 11(b) of the Rent Control Rules providing that non-observance of the provisions of the Rules does not invalidate the proceedings, unless the Court so directs. This rule is analogous to Ord. 64 of the Civil Procedure Rules.

20

25

(2) A distinction is made between void and irregular proceedings. Void are those proceedings that fail to initiate the cause they purport to raise for Judicial consideration. Irregular are proceedings that validly raise the cause, but not in the manner ordained by procedural requirements. Unless the irregularity is such as to cause a derailment of the cause, the proceedings will be saved by an appropriate amendment. Broadly, there are two classes of void proceedings; the first are those instituted contrary to statutory or procedural requirements, stipulated as a prerequisite for their valid initiation, and the second those that offend fundamental precepts of natural justice.

(3) Failure to incorporate in an application for recovery of possession of rent controlled premises the declaration envisaged by Rule 7(e) does not per se invalidate the proceedings. The power of the Court under s. 12 of Law 23/83 to award compensation is not dependent on readiness by the applicant to pay any compensation that might be ordered. Rule 7(e) is designed to elicit facts relevant to the exercise of the powers under s. 12. As such it could be made without detriment to the tenant at any time before judgment.

*Appeal allowed with costs.*

*Spyropoulos v. Transvania* (1979) 1 C.L.R. 421;

25 *Evagorou v. Christodoulou and Another* (1982) 1 C.L.R. 771;

*HjiHambis v. Attorney-General* (1986) 1 C.L.R. 386;

*Re Pritchard* [1963] 1 All E. R. 873;

*Lyssandrou v. Schiza and Another* (1979) 1 C.L.R. 267;

30 *Hji Savva v. Mallotidou* (1979) 1 J.S.C. 34;

*Kouppa and Another v. Vassiliades* (1981) J.S.C. 120.

**Case stated.**

Case stated by the Chairman of the Rent Control Court of Limassol relative to his decision dated 31st March,

1986 in proceedings instituted by N. P. Lanitis Ltd. against Michalakis Panayides and Others under the provisions of the Rent Control Law, 1983 (Law No. 23/83) whereby applicants application for recovery of possession of a number of shops was dismissed.

5

*A. P. Anastasiades*, for the appellants.

*S. Sofroniou*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J.: The Judgment of the Court will be delivered by Pikis, J.

10

PIKIS J.: The case, though stated before us under s. 7 of the Rent Control Court, 1983(1) must in virtue of a recent amendment (s. 5(1) of Law 79/86) be reviewed by way of appeal. Consequently, the adjudicative powers of the Court are not confined to answering the questions stated but extend to every facet of the case as provided in s. 25 sub. s. 3, Courts of Justice Law (Law 14/60).

15

The case stated for our decision raises in substance one point that may be restated into the following ground of appeal: Whether observance of Rule 7(e) of the Rent Control Rules, 1983(2) is a condition for the valid initiation of proceedings for the recovery of possession under Law 23/83. Rule 7(e) requires the applicant to declare whether he is ready to pay the compensation envisaged by law upon recovery of possession. Section 12 of the law confers power on the Court to adjudge the payment of compensation upon recovery of possession of rent controlled premises. And the specimen form of application (Form 1) stipulates that the applicant should declare whether he is ready to pay any compensation the Court may adjudge him to pay.

20

25

30

By three separate applications the applicant sought recovery of possession of a corresponding number of shops for purposes of demolition and reconstruction. The appli-

(1) Law 23/83.

(2) Gazette 31st December, 1983, No. 1980, subsidiary legislation

cations were dismissed as misinitiated for failure on the part of the applicants to comply with Rule 7(e). An application on the part of the owners to remedy the defect by amending the application was likewise dismissed. In the  
 5 decision of the Court, failure to comply with the provisions of Rule 7(e) rendered the proceedings void.

The Court referred to two decisions of the District Court of Larnaca, namely, *Hjisavvas v. Mallotidou*<sup>(1)</sup> and *Kouppa and Another v. Vassiliades* <sup>(2)</sup> supporting that  
 10 (a) proceedings before the Rent Control are designed to provide a summary and expeditious procedure for disposing of matters regulated therein and should, for that reason, be kept blexible (case of *Hjisavvas*); and (b) In  
 15 interlocutory proceedings there must be strict adherence to the relevant procedural requirements. Strict adherence to the rules is warranted, as it was pointed out, by the extraordinary nature of the proceedings requiring the Court to adjudicate upon matters without full elucidation  
 20 of the issues and outside the context of full trial. (*Kouppas* case).

Neither of the above cases had a direct bearing on the questions that had been raised before the trial Court. The Court was not concerned in either of the two cases to pronounce on the implication of failure to comply with  
 25 procedural requirements on the validity of an application for recovery of possession.

It is evident from the Judgment of the Court and the content of the questions originally stated for our opinion, that the Court did not address itself to the provisions of  
 30 Rule 11(b) specifically providing that non-observance of the provisions of the Rules does not invalidate the proceedings unless the Court so directs. The rule is analogous to Order 64 of the Civil Procedure Rules and aims to establish that non-observance of formalities prescribed by  
 35 the Regulations does not, as a rule, invalidate the proceedings.

---

(1) (1979) 1 J.S.C. 34.

(2) (1981) 1 J.S.C. 120 (A decision decided by myself when I served as President of the District Court of Larnaca).

A distinction is made between void and irregular proceedings. Void are those proceedings that fail to initiate the cause they purport to raise for judicial consideration. In that situation the Court cannot take cognizance of the matter. Irregular are proceedings that validly raise the cause before the Court but not in the manner ordained by relevant procedural requirements. Unless the irregularity is such as to cause a derailment of the cause, the proceedings will be saved by an appropriate amendment. The distinction between void and irregular proceedings was repeatedly noticed by the Supreme Court. In *Spiropoulos v. Transavia*(<sup>1</sup>) it was held that non-observance of the Exchange Control Rules with regard to the endorsement of the writ of summons did not invalidate the proceedings but merely rendered them irregular remediable by an appropriate amendment. In *Evagorou v. Christodoulou and Another*(<sup>2</sup>), it was stressed that non-observance of the Rules of Civil Procedure is ordinarily treated as an irregularity amenable to correction by an appropriate amendment. It was added that the power to declare proceedings void is a drastic one and should rarely be resorted to.

The distinction between void and irregular proceedings was discussed more recently still in the case of *Hji Hambis v. Attorney-General*(<sup>3</sup>).

In all the above cases the classification of Upjohn L.J. in *Re Pritchard* of void and irregular proceedings was adhered and given effect to. Broadly, there are two classes of void proceedings; the first encompasses proceedings instituted contrary to statutory or procedural requirements stipulated as a prerequisite for their valid initiation, and the second, proceedings that offend fundamental precepts of natural justice.

The case of *Lyssandrou v. Schiza and Another* (<sup>4</sup>) furnishes an example of a void step in litigation. It was held that an amendment of pleadings effected after the expiration of the time limited by the Order of the Court is void and cannot be heeded owing to the express provisions of

(<sup>1</sup>) (1979) 1 C.L.R. 421.

(<sup>2</sup>) (1982) 1 C.L.R. 771.

(<sup>3</sup>) (1986) 1 C.L.R. 386.

(<sup>4</sup>) (1979) 1 C.L.R. 267.

Order 25 Rule 2 declaring such belated amendment "ipso facto void."

5 The failure or omission of the applicants to incorporate in their application the declaration envisaged by Rule 7(e) did not per se invalidate the proceedings. Nor was deviation from the Rules such as would ordinarily justify the Court to declare the proceedings void. The power of the Court to adjudge compensation under s. 12 of the Law was in no way dependent on declaration of readiness by the applicant to pay any compensation that might be ordered. Rule 7(e) is designed to elicit facts relevant to the exercise of the powers vested in the Court by s. 12. As such it could be made without detriment to the tenant at any time before Judgment. The omission left unaffected the substance of the application.

10 In our judgment, the Court misdirected itself about the effect of rule 7(e) on the validity of the proceedings. The misdirection led to the unjustified dismissal of the applications. Therefore, the appeal, in all three applications will be allowed with costs. Necessarily the Court must re-examine the application for amendment. There will be no order as to costs regarding costs incurred in the Court below associated with the dismissal of the applications and the application for amendment.

25

*Appeal allowed with costs.*