

1988 June 15

(A LOIZOU P SAVVIDES & KOURRIS JJ)

IRINI SOCRATOUS

*Appellant-Applicant,*

v

ANDREAS ECONOMOU,

*Respondent - Defendant*

*(Civil Appeal No 7385)*

*Appeal — Findings of fact — Interference by Appellate Court — Principles applicable*

*Rent Control — The Rent Control Law 23/83, section 11(1)(f) — Premises reasonably required by landlord for occupation*

The appellant (applicant) prayed under section 11(1)(f) of Law 23/83 for an order for the recovery of possession of her house The claim was dismissed The sole issue in this appeal was whether the trial court erred in concluding that the house was not reasonably required by the appellant for occupation This conclusion was reached because the trial court was not satisfied whether the appellant and her husband intended to live in Cyprus or in the United States of America

Held, allowing the appeal An appellate court will normally not interfere with findings of fact of a trial court unless such findings are manifestly wrong or not warranted by the evidence before it It was not warranted by the evidence before it that the appellant and her husband did not intend to live in Cyprus

*Appeal allowed Order for eviction issued Stay of execution for 4 months. No order as to costs*

*Cases referred to*

*Yiannopoulos v Theodoulou (1979) 1 C L R 215,*

*Andreou v. Christodoulou* (1978) 1 C.L.R. 192;

*Antoniades v. Panteli* (1978) 1 C.L.R. 58;

*Polycarpou v. Polycarpou* (1982) 1 C.L.R. 182;

*Papadopoulos v. Stavrou* (1982) 1 C.L.R. 321;

5 *Epiphaniou v. HjiGeorghiou* (1982) 1 C.L.R. 609;

*Kyriacou v. Mata* (1982) 1 C.L.R. 932.

### Appeal.

10 Appeal by applicant against the judgment of the Rent Control Court Nicosia dated the 29th April, 1987 (Appl. No. E. 50/86) whereby her application for an order of recovery of possession of a house situated at Ay. Dhometios was dismissed.

*S. Spyridakis*, for the appellant.

*G. Papatheodorou*, for the respondent.

*Cur adv. vult.*

15 A. LOIZOU, P.: The judgment of the Court will be delivered by Mr. Justice Kourris.

20 KOURRIS, J.: This is an appeal against the judgment of the Rent Tribunal of Nicosia by which it dismissed the applicants/appellants claim for an order for the recovery of possession of a house situated at No. 5 Souliou Street, Ayios Dhometios. under the provisions of s.11(1)(f) of the Rent Control Law 1983 (Law 23/83).

25 The appellant is the owner of a house situated at No. 5 Souliou Street, Ayios Dhometios, and the respondent is the statutory tenant of the said premises. On 24.2.1986, the appellant filed an application in the Rent Tribunal of Nicosia claiming possession of her house pursuant to the provisions of s.11(1)(f) of the Rent Control Law, 1983, but the Rent Tribunal, after hearing the case, dismissed the appellants claim for possession of the said premises.

30 It is pertinent at this stage to set out the provisions of s.11(1)(f) which reads as follows:

«(στ) εις περιπτώσιν καθ' ην η κατοικία απαιτείται λογικώς προς κατοχήν υπό του ιδιοκτήτου, της

ουζύγου του, του υιού του, της θυγατρός του, ή οιοσδήποτε εκ των εξαρτωμένων γονέων του, και το Δικαστήριο θεωρεί λογικήν την έκδοσιν τοιαύτης αποφάσεως ή τοιούτου διατάγματος:

Νοείται ότι ουδεμία απόφασις και ουδέν διάταγμα θα εκδίδονται δυνάμει της παραγράφου αυτής, εάν το Δικαστήριο πεισθή ότι, λαμβανομένων υπ' όψιν όλων των περιστάσεων της υποθέσεως, θα επροξενείτο μεγαλύτερα ταλαιπωρία διά της εκδόσεως του διατάγματος ή της αποφάσεως παρά διά της αρνήσεως εκδόσεως τούτου. 5 10

Διά τους σκοπούς της παραγράφου αυτής ο όρος 'περιστάσεις της υποθέσεως' περιλαμβάνει, μεταξύ άλλων, το κατά πόσον ο ενοικιαστής είναι εκτοπισθείς ή παθών, ως οι όροι ούτοι καθορίζονται εις το Μέρος V του παρόντος Νόμου, το κατά πόσον υπάρχει διαθέσιμον έτερον ανάλογον και με λογικόν ενοίκιον μέρος στεγάσεως διά τον ιδιοκτήτην ή τον ενοικιαστήν, και το κατά πόσον ο ιδιοκτήτης ηγόρασε το ακίνητον μετά την ημερομηνίαν καθ' ην ετέθη εν ισχύι ο παρών Νόμος προς τον σκοπόν αποκτήσεως κατοχής δυνάμει των διατάξεων της παρούσης παραγράφου.» 15 20

«(f). Where a dwelling house is reasonably required by the landlord, his spouse, his son, his daughter or any of his dependant parents, and the Court considers it reasonable to give such a judgment or make such an order. 25

Provided that no judgment or order shall be given or made under this paragraph, if the Court is satisfied that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it. 30

For the purposes of this paragraph the expression circumstances of the case shall include, inter alia, whether the tenant is displaced or stricken, as these terms are interpreted in Part V of this Law, whether other accomodation is available at a reasonable rent for the landlord or the tenant and whether the landlord purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under this paragraph». 35

The facts shortly are these: The appellant is a permanent public officer since 1969 in the post of Labour Officer in the Ministry of Labour and Social Insurance and her husband was employed by the Bank of Cyprus and he is now retired. The respondent, tenant  
5 of the house, is employed by the Organization of Agricultural Insurance and his wife is a public officer; they have three children.

In 1984, the appellant and her husband went to the United States of America. Her husband intended to work there and she obtained 2 years' leave of absence without pay to decide whether  
10 they would settle in the United States. But, after 13 months stay in the United States of America, her husband became ill and they came back to Cyprus to settle permanently. When they came back she resumed her work at the Ministry.

The trial Judge, after analysing the meaning and effect of  
15 s.11(1)(f) of the Law, dismissed appellant's claim on the ground that he was not satisfied that she reasonably required her house for her occupation because he was not satisfied whether the appellant and her husband intended to live in Cyprus or in the United States of America.

20 The trial Judge then proceeded to examine the other requirements of the relevant section of the Law, in case he was reversed on appeal.

On the issue of hardship, he was not satisfied that greater  
25 hardship would be caused to the tenant by granting the order than by refusing to grant same.

As regards the question whether it was reasonable that an order of eviction should be given, he answered it in the affirmative. Therefore, the sole issue before us is whether the trial Judge was correct when he concluded that he was not satisfied that the  
30 appellant reasonably required her house for occupation by her because he was not satisfied whether she intended to live in Cyprus or in the United States of America.

On this issue, the trial Judge referred to the case of  
35 *Yiannopoulos v. Theodoulou* (1979) 1 C.L.R. 215; *Andreou v. Christodoulou* (1978) 1 C.L.R. 192; *Antoniades v. Panteli*, (1978) 1 C.L.R. 58. He also referred to certain English cases and also to a passage from *Woodfall on Landlord and Tenant*, 27th edn.

Counsel for the appellant in arguing this appeal before us.

submitted that the conclusion of the trial Judge is against the evidence.

It is a well-established practice that an appellate Court will normally not interfere with findings of fact of a trial Court unless such findings are manifestly wrong or not warranted by the evidence before it. (See, inter alia, *Polycarpou v. Polycarpou* (1982) 1 C.L.R. 182; *Papadopoulos v. Stavrou* (1982) 1 C.L.R. 321; *Epiphaniou v. Hjiageorghiou* (1982) 1 C.L.R. 609; and *Kyriacou v. Mata*, (1982) 1 C.L.R. 932.)

Having regard to the evidence before the Rent Tribunal, the conclusion of the trial Judge that he was not satisfied whether the appellant intended to live in Cyprus or in the United States of America. is contrary to the evidence before it. It was not warranted by the evidence before it that the appellant and her husband did not intend to live in Cyprus. The appellant is a permanent public officer and she firmly stated, both in her evidence in chief and in her cross-examination that she intended to live permanently in Cyprus. The evidence of her husband is to the same effect.

In the light of the above, we are of the view that the conclusion reached by the Rent Tribunal is vulnerable and cannot be relied upon. Bearing in mind the legal principles enunciated hereinabove, in the circumstances of this case, we have arrived at the conclusion that the intention of the appellant and her husband is to reside permanently in Cyprus and in the circumstances we are satisfied that she reasonably requires her house for her occupation and we issue an order of eviction against the respondent who is the tenant of the said premises. We propose, however, to give time to the respondent to comply with the said order by finding other accommodation and we suspend the order of eviction for 4 months from today.

Appeal allowed, but with no order for costs.

*Appeal allowed with no order as to costs.*