REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 195 OF 1980

PIARA SINGH CHEEMA.....APPELLANT

VERSUS

C.RODRIGUES.....RESPONDENT

JUDGMENT

This is an appeal from the judgment of the Rent Restriction Tribunal in which they dismissed the landlord's suit seeking the eviction of the tenant on the ground that he requires the flat which she occupies on plot No LR 37/261/13, Acacia Avenue, Nairobi for his family's occupation. The premises in question is a building owned by the landlord which comprises six flats, viz two 2 bedroomed flats and four one roomed flats. The plaintiff landlord lives with his family in a 2 bedroomed flat on the 1st floor. The tenant who is a widow lives alone, also in a 2 bedroomed flat, on the ground floor. At the time of the hearing the plaintiff occupied the 1st floor flat with his wife, an unmarried daughter of 25 and an unmarried son of 20. He has two more sons in the UK, both unmarried. One is 23 who is an accountant and has a job in England. The other is 22 and is studying Chemical Engineering in England. The plaintiff's case was that both sons in the UK intended to return to Kenya, that he intended to build a staircase between his flat and the tenant's flat on the ground floor, forming a sort of maisonettes, that this will provide him and his family three extra bedrooms downstairs' and that once this is done the family will occupy the two flats as one residence for the whole of the family. The defendant has been the landlord's tenant of the ground floor flat since 1962 and there were several disputes between them previously which need not concern us. On the August 30, 1976 the landlords advocate gave notice to the defendant to vacate the :

"premises occupied by you on August 31, 1977 or on such other day on which your monthly tenancy shall expire next after a period of 12 months of the date of service of this notice upon you."

In the next paragraph the latter states:

"This notice is given to you under section 15 (1) (h) of the Rent Restriction Act as the premises are required by the landlord for his own use and occupation."

Although the letter specifically mentions section 15 (1) (h), this is clearly a typographical error for section 15 (1) (e). Indeed the whole case proceeded on section 15 (1) (e) and no point was ever taken by the defendant or her counsel that the notice of termination is bad because it is expressed to be under section 15 (1)(h). Despite this, the Tribunal took it upon itself to decide upon the validity of the notice and held that since the notice was the foundation of the case the defect is fundamental and rendered the notice invalid. With respect we do not agree. As we said, the notice gave 12 months notice of termination. It

could not have been given under section 15(1)(h) which requires only 3 months notice, nor did this landlord previously occupy the tenant's flat, another requirement under section 15(1)(h). Not only that, but the plaint makes it clear that the ground relied upon is section 15(1)(e) and as we said the whole case proceeded on that basis. The fact that the notice mentioned section 15(1)(h) did not prejudice anybody and it was in any event wrong for the Tribunal to take it upon itself to hold the notice invalid without affording an opportunity to counsel for the plaintiff to deal with the matter. Section 15(1) (e) provides as follows:

"15. (1) No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless:

"(e) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for his wife or minor children, or for any person *bona fide* residing or to reside with him, or for some person in his whole-time employment or in the whole-time employment of some tenant of his or for the occupation of the person who is entitled to the enjoyment of the dwelling-house under a will or settlement, and the landlord has given to the tenant not less than twelve months' notice to quit; and in that case the Tribunal shall include in any order for possession a requirement that the landlord shall not without its consent let the premises or any part thereof within eighteen months after the date on which possession is to be given;"

In the circumstances of this case the above section 15(1) (e) must be read with section 15 (3) which provides:

"15. (3) Nothing in paragraph (e) or paragraph (h) of subsection (1) shall permit a landlord to recover possession of a dwelling house if by such recovery he or his wife, or minor children or any person *bona fide* residing or to the reside with him would be in occupation of, or would acquire the right to occupy, more than one place of residence at the same time."

Although the Tribunal held the notice to be bad, they went on to consider the facts and the above sections in case they were held to be wrong in finding the notice invalid.

The Tribunal was clearly unimpressed with the plaintiff's plan of joining the two flats into a maisonette. They said:

"The plaintiff intends to join the 2 flats in a sort of maisonette if he gets vacant possession. Again no approved plan was produced to substantiate this claim. A reference was made to a plan whose approval has since lapsed. The Tribunal thus has no guidance on the extent of the accommodation available for the plaintiff's family and the change that may be made by the addition of the defendant's flat. There is only vague reference to 2 roomed flats and that the defendant's flat will add 3 more rooms to the accommodation. We have no clue about their dimensions and where the intended staircase will be placed and with what effect on the general outlay of the premises."

……..

"The Tribunal was left to accept the plaintiff's good intention to carry out the reconstruction and convert the existing two separate dwelling houses – his and the defendant's – into one. We find it difficult to rely on his good intention. He could have easily renewed the plan, if there was any, to show that he not only intended to convert the dwelling house but that he took an overt step in that direction."

"Mr Khanna argued that the plaintiff and his family will get more than one place of residence if possession is given which will militate against sub section (3) of section 15.

"Will the landlord obtain more than one place of residence if he acquires one more dwelling house in the same plot? No authority is quoted on the meaning of 'place of residence' in the sub section. We believe that the word 'place of residence" is synonymous with a dwelling house in the circumstances of this case because the two accommodations (plaintiff's and defendant's flats) are so distinct and separate in

character that they constitute two different places of residence.

"It would have been different if the two accommodations consisted of rooms in an old fashioned building whose single rooms are let as dwelling houses without separate toilet and cooking facilities and where those amenities are shared on communal basis. That was not the case in this suit. If the plaintiff had produced an approved plan of conversion and led evidence as to his financial ability to implement the plan the result may possibly (we use 'possibly' advisedly) have been different because we are satisfied that the plaintiff reasonably requires the premises for his family's occupation. We have enough evidence on that aspect and find it as a fact that the plaintiff has proved his present requirement for additional accommodation.*"*

On appeal to this court, Mr Pall puts his case this way. He says that the tribunal is clearly wrong in their interpretation of section 15(3). On the facts of this case, if the plaintiff acquired the ground floor flat, he will have three extra bedrooms for his family. The three bedrooms plus his present accommodation upstairs will not constitute two places of residence but one for the whole family. He says that the test of whether two entities constitute one place of residence or two is not the physical or structural composition of the two entities but the method of occupation. We agree with this submission and find support for it in Somervell LJ's judgment in *Langford Property Co Ltd v Goldrich* [1949] 1 AER 402 at p 404. We find that on the facts of this case, even without the joining of the 2 flats by a staircase, the plaintiff had proved that he intended to occupy the two present entities as one place of residence for the whole of his family and that the Tribunal erred in holding otherwise.

Mr Pall's next submission is that once the tribunal found as a fact – which they did – that the plaintiff "has proved his present requirement for additional accommodation", then they were saying that section 15(1)(e) had been satisfied and that the result of this is that his client should get possession. We would have agreed with this if the position had been that the plaintiff had proved his present requirement for additional accommodation. But with great respect to the Tribunal we do not think he has. At present he has 2 bedrooms – presumably one for him and his wife and the other for his son and daughter. Those two children have been adult for some time and the family (less the 2 sons in England) have obviously managed. The whole case of the plaintiff was that he requires additional accommodation for his 2 sons in the UK who would be returning to Kenya. The accountant son, it was said, would come to Kenya as soon as "we get additional accommodation", but there was no mention of the immediate return of the student of Chemical Engineering. Further, the plaintiff said that his eldest daughter 'will marry and go away".

The Tribunal agreed that the 'eldest daughter will get married and leave the house' but they said that 'the three sons will eventually get married and thus add 3 more members to the family ….. there will then be 8 members in the family." With great respect this is all speculation, and certainly looks to the future rather than the present. At the time of hearing we were at a stage when all three sons were unmarried and 2 of them were in the UK. We do not know if either of the sons in the UK would in fact return let alone get married. The correct position therefore is that at the time of hearing the "present' requirements were for 4 members of the family and not 8 as found by the Tribunal. We are therefore of the view that the Tribunal speculated as to future requirements of the plaintiff and did not properly deal with his present requirements. It may well be that the accountant son, or for that matter, the Chemical Engineer son will return to Kenya in the immediate future – we simply do not know. Again it may well be that the son or daughter have, or both of them, have got married since the hearing, or are planning to marry in the near future. We think that the matter should be tested again and the Tribunal should have an opportunity to reconsider section 15(1)(e) in the light of the requirements of the landlord prevailing then and in the light of this judgment.

We allow this appeal to this extent only; that the judgment of the Tribunal is set aside and the case is remitted to the Tribunal to rehear the matter to ascertain the landlord's requirement prevailing then. We will now hear counsel on the question of costs.

Dated and Delivered at Nairobi this 11th day of June 1982.

E.COTRAN **A.M.COCKAR**

JUDGE **JUDGE**