IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 5 of 1956

Between:

ABDUL HAFIZ Appellant

AND

DAYABHAI Respondent

Fair Rents Ordinance—premises required for lessor's own occupation—requirements of a valid notice to quit.

The appellant sought to recover possession from the respondent, his tenant, of certain premises protected by the Fair Rents Ordinance. The appellant was non-suited in the lower court on the ground that his notice to quit, served upon the respondent, did not state that the premises were required by him for his own occupation as a dwelling house.

Held (*on appeal*).—So long as the notice to quit, which must be of at least 28 days, effectually terminates the tenancy, that is all that section 14 (1) (*e*) of the Fair Rents Ordinance requires; it is unnecessary for the notice to quit to state the purpose for which possession is required.

Appeal allowed. Case remitted to lower court for trial.

I. Logan for the appellant.

Mrs. A. Bernard for the respondent.

HAMMETT, J. [28th August, 1956]—

Judgment:

This is an appeal against the ruling of the Magistrate's Court of the First Class sitting at Suva dated 2nd May, 1956, given at the opening of the hearing of an action for the recovery of possession concerning the validity of the notice to quit.

The plaintiff-appellant claimed recovery of possession of two rooms in Toorak, Suva, occupied by the defendant-respondent as his tenant on a monthly tenancy which had been determined by a notice to quit dated 31st March, 1955, expiring on 30th September, 1955.

Learned counsel for the defendant-respondent at the opening of the hearing in the court below submitted that the notice to quit, of which receipt was admitted, was defective because of the concluding words thereof which read "as the said premises are required by the owners for their own occupation as shop".

The court below upheld this submission on the grounds that under the Fair Rents Ordinance 1954, section 14 (1) (*e*), the notice must state that the premises are required by a lessor for his own occupation as a dwelling house.

The material part of section 14 (1) (*e*) reads as follows:—

" No judgment for the recovery of possession of any dwelling house shall be made unless—

(*e*) the premises are bona fide required by the lessor for his own occupation as a dwelling house and the lessor gives at least twenty-eight days' notice to the lessee requiring him to quit and (except as otherwise provided in this section) the court is satisfied that reasonably adequate and suitable alternative accommodation is available at a rent not substantially in excess of the rent of the premises to which the judgment or order relates."

It will be seen that it is nowhere laid down in this section what the contents of a notice to quit shall be. In these circumstances all that is required to be done to comply with this section so far as the validity of the notice to quit is concerned is to ensure that the notice to quit which must be of at least 28 days is one that does effectually terminate the tenancy. This section does not make it necessary for the notice to quit to state the purpose for which possession is required. The addition of the words complained of in the case are therefore surplusage. Words of surplusage do not, in my opinion, effect the validity of an otherwise effective notice to quit.

It has been urged by learned counsel for the defendant-respondent that since the provisions of section 14 (1) (*e*) precludes the court from giving judgment for the recovery of possession of a dwelling house unless, *inter alia*, the lessor bona fide requires possession for his own occupation as a dwelling house, it is not possible for the court to give judgment for possession where the lessor requires them for his own occupation as a shop and says so on his own notice to quit. This is undoubtedly true. It is however quite a different matter to argue that by virtue of the provisions of the Fair Rents Ordinance the lessor is precluded from obtaining an order for possession, than to argue that the notice to quit which has been given is defective.

In my opinion the notice to quit in this case is not bad merely by virtue of the addition thereto of the words " as the said premises are required by the owners for their own occupation as shop " and I must therefore uphold the appeal.

I wish, however, to make it abundantly clear that in expressing the view that this notice to quit is not defective, for the reasons I have stated, I am not expressing any view on the issue which must now be heard and determined by the lower court, namely " Is the plaintiff-appellant entitled to recover possession of the premises ? "

The appeal is allowed. The decision of the lower court non-suiting the plaintiff-appellant and giving defendant-respondent judgment for £3 3s. 0d. costs is set aside. The case must be returned to the lower court for trial.