PIYADASA *alias* JINADASA

v.

MOHAMED OSMAN

COURT OF APPEAL
TAMBIAH, J. AND B. E. DE SILVA, J.
C A 536/77(F) – D.C MATARA 4207/L
JULY 5, 1984

Landlord and tenant – Notice to quit on a specified date coupled with notice that if the tenant wants to stay on he must pay an increased rent – Validity.

The landlord gave notice to the defendant determining the tenancy with effect from 1.1.1975 but at the same time notifying him that if he wants to stay he must pay an increased rent from that date.

Held–

A notice to quit need not be in a particular form but it must not be ambiguous. It must determine the existing tenancy at a definite date.

A notice to the tenant to quit on a specified date but offering him a new tenancy from that date if he pays an increased rental is valid. Such a notice is not ambiguous and can leave the tenant in no doubt as to what he should do upon receiving it.

Cases referred to :

(1) *Sellahewa v. Ranaweera (1956) 59 NLR 66.*
(2) *Ntsobi v. Berlin Mission Society 1924 T.P.D. 378.*
(3) *Ahearn v. Bellman 40 LT (N.S.) 771.*
(4) *Gardner v. Ingram 1889 61 L.T. 729, 730.*
(5) *Bury v. Thompson [1895] 1 Q.B. 696*
(6) *Union Government v. Foxon 1925 NPD 47, 54.*

APPEAL from the District Court, Matara.

A. K. Premadasa with *T. B. Dillimuni* for appellant.

M. S. A. Hassen for respondent.

Cur. adv. vult.

September 10, 1984.

TAMBIAH, J.

This appeal raises the question of the validity of a notice to quit given by the attorney-at-law of the plaintiff-respondent who is the landlord to the defendant-appellant who is the plaintiff's tenant. The notice to quit is in the following terms :–

"I have been instructed by Mohamed Abubakar Mohamed Osman, of Dickwella to inform you as follows :

He had rented out the boutique room bearing No. 4 situated at Wellawatte, Dickwella belonging to his wife, on a monthly rental. At present you pay only Rs. 40 for the said boutique room. As this amount is not sufficient to the said boutique room, you have to pay the rent for the said boutique room at the rate of Rs. 100 per month from 1st January 1975.

If you are not ready to rent out the said boutique room according to the new rental from 1st January 1975, you shall restore the undisputed possession of the said boutique room on 1st January 1975 to the said Mr. Mohamed Osman. In the event of your failure to comply with same, legal action will be taken against you."

It is common ground that the premises are not governed by the Rent Act. It is the common law of landlord and tenant that will govern the question whether the notice to quit is good or bad.

The learned Magistrate relied on the case of *Sellahewa v. Ranaweera* (1) and has held that the notice was a valid notice to quit. The notice in this case was given by the landlord's attorney-at-law and was in the following terms :

"I am instructed by Mr. D. J. Ranaweera of Yatiyana to request you to pay a sum of Rs. 40 per month as rent from 1st March 1954, in respect of the premises bearing assessment No. 34 situated at Ambalantota rented out to you. In failure thereof I am further instructed to inform you to vacate the said premises on 1st March 1954."

The rental the tenant was paying was Rs. 20. Two questions arose for decision :

(1) whether the notice was bad in that it was not an unqualified notice ; and

(2) what amount is the plaintiff entitled to recover as arrears of rent.

As regards the 1st question, K. D. de Silva, J. said (p.67) :

"I am not prepared to hold that the notice to quit is invalid for the reason that it was to take effect only if the defendant was unwilling to pay the enhanced rent. This notice made it quite clear to the

defendant that he was to vacate the premises on March 1, 1954, if he was not prepared to comply with the demand for increased rent. The defendant having decided not to pay the enhanced rent is not entitled to complain that the notice is defective. No prejudice was caused to him because the notice to quit was to take effect only if he was unwilling to pay the rent demanded."

Mr. Premadasa submitted that this observation was obiter, that the main matter that arose for decision was whether a landlord can unilaterally increase the rental, and that K. D. de Silva, J. dealt with the question of the validity of the notice only incidentally. He also submitted that it was a judgment of a single judge, that no authorities were cited and this court should consider the question afresh. His contention was twofold :

(1) a notice to quit to be effective must be clear and unequivocal. A notice that leaves the tenant in doubt whether he was being told to leave by a certain date or merely being warned that unless he paid a higher rent the lease would be terminated at some future date, is not a good notice. He relied on the case of *Ntsobi v. Berlin Mission Society* (2) for this proposition.

(2) the old tenancy must be first terminated. It will thereafter be open to the landlord to offer a new tenancy to the tenant on an increased rental. It is the termination of the old tenancy that gives a cause of action to sue the tenant as a trespasser. He cited *Ahearn v. Bellman* (3) as an example.

I cannot agree with learned Counsel's submission that the view expressed by K. D. de Silva, J. was obiter or that the point was dealt with incidentally. The question of the validity of the notice to quit did arise for decision in appeal.

Sellahewa's case (supra) was decided on 20.12.1956, and the law that was laid down has been acted upon for almost 28 years. If the landlord's attorney in this case has merely acted in accordance with what has been considered to be law for so many years, it would be unjust to decide against the landlord, unless the law is clearly contrary to what has been laid down in *Sellahewa's* case. But, it seems to me that the decided cases are in support of the view taken by K. D. de Silva, J.

"Although no particular form need be followed, there must be plain unambiguous words claiming to determine the existing tenancy at a certain time." (*per* Lord Coleridge, C. J. in *Gardner v. Ingram* (4))

In *Ahearn's* case (supra) the notice to quit by the landlord was in the following terms :–

"I hereby give you notice to quit and deliver up possession of the shop, premises, and storeroom situate at and bearing No. 20 Moss-Street, Liverpool, and now held by you as tenant from me, on or before the 1st day of May next, 1978. And I hereby further give you notice that should you retain possession of the premises after the date before mentioned, the annual rental of the premises now held by you from me will be £160, payable quarterly in advance."

The Court of Appeal by a majority judgment held that the notice to quit was a good notice, and was not affected by the fact that it was accompanied by a further notice offering a new tenancy. Cotton, L. J. observed (p. 773) :

"It is said that the notice must be clear and explicit. This is true. . . . . But in the case before us we have a clear and certain notice to quit, determining the existing tenancy at a definite date. On the same piece of paper as this notice, in a further paragraph, there is a separate and distinct notice, not to modify the existing tenancy, but distinctly offering a new one, saying, in effect, "if you like to enter into a new treaty with me, you may retain possession on certain terms", and stating those terms. If this offer had been on a separate piece of paper, it clearly would not have vitiated the notice to quit ; nor does it here, for it is distinct and separate from the notice, and, though written on the same paper, does not affect it . . . . There is no case in the books deciding that a notice clear and unambiguous in itself would be void because in another part of the document which contains it is found a further notice offering a new tenancy."

The principle of this case has been applied to a case where the tenant gives notice to quit coupled with an offer to stay on, if the rent is reduced. Thus in *Bury v. Thompson* (5) the lessee under a lease for 21 years, determinable by 6 months' notice at the end of the first 7 or 14 years, wrote to the lessor and stated :

"I see that my first 7 years will be determined on December 25, 1894 . . . . I understand that the rent is £50, too high, and I shall not to be able to stay unless some reduction is made."

The Court of Appeal held that it was a good notice to determine the lease, as it clearly conveyed to the lessor an intimation that it was not the lessees's desire to stay on beyond the 7 years upon the terms of the existing lease, unless a reduction is made.

The position in South Africa is no different.

In *Ntsobi's* case (supra) the lessor's evidence as regards the terms of the notice to quit was as follows :

"On 27th August, 1921, the defendant paid his rent for the year 1920-1921. I then informed him that in future he had to pay £3 per annum plus £1 for every 16 head of cattle, and if he was not disposed to do so he was to quit the farm."

It was held that the notice was too obscure to operate as a notice to terminate the lease. Stratford, J. said (pp. 380, 381) :

"The notice to be effective must be clear and unequivocal . . . . it is certainly not clear whether he intended definitely to give notice to quit in any event, or meant that the lease should determine unless a higher rent was paid . . . . The tenant was left in doubt as to whether he was being told to quit the farm unconditionally or merely being warned or threatened. My view, therefore, is that the language used in the notice was so obscure that the tenant was not obliged to act upon it and treat it as a notice to quit"

and Tindall, J. said (p.381):

"If the notice in the above form can be construed as a notice to quit with an offer to grant a new tenancy at an increased rental, on what date did the landlord mean that the tenant should quit and from what date was the increased rental, to commence ? The notice in my opinion did not make these points clear to the lessee, and, therefore, cannot be said to be clear and certain in its terms."

Wille in his *"Landlord and Tenant in South Africa" (4th Edn. p.43)* after citing *Ntsobi's* case, continues–

"But a notice by the landlord to quit, coupled with notice that if the tenant stays on the rent will be increased, is, apparently, a good notice"

and cites *Union Govt. v. Foxon* (6).

The following principles can be discerned from the cases I have cited :–

1. A notice to quit, to be valid, though it need not be in any particular form, must clearly determine the existing tenancy at a definite date.

2. A notice to quit must not be ambiguous and must enable the tenant to whom it is given to act upon it. He must not be left in a state of doubt as to what he should do when he received it.

3. A notice to quit can be validly coupled with an offer of a new tenancy. If a definite notice to quit is given, it is not invalidated by the addition of words requiring an increase of rent, if the tenant stays on.

Let me apply these principles to the notice to quit in the present case. The notice is not ambiguous. The tenant was clearly told that as from 01.01.1975, if he wants to stay on, he must pay the increased rental of Rs. 100 ; otherwise, he will have to deliver possession of the premises to the landlord on 01.01.1975. The notice goes on to say that legal action will be taken against him if he fails to comply. In short, the tenant was told "as from 01.01.1975, pay Rs. 100 or quit and deliver possession on 01.01.1975." The notice was a definite determination of the old tenancy coupled with an offer of a new tenancy.

It is immaterial whether the termination of the tenancy comes first, followed by the offer of a new tenancy or it is the other way around. What difference does it make whether the tenant is told "pay the higher rental and stay on, or go, or, go or stay on and pay the higher rental"? A notice to quit need not be in any particular form.

I affirm the judgment of the learned trial Judge and dismiss the appeal with costs.

B. E. DE SILVA, J.– I agree.

Appeal dismissed with costs.