

H. M V. Sheriff. S. L. M. M

191/1965

Present:Alles, J.

H. M. ISMAIL,Appellant, andS. L. M. M. SHERIFF,Respondent

S. C. 127/1964-C. R. Colombo, 86331

Landlord and tenant-Monthly tenancy-Notice to quit-Requirements of a valid notice.

A monthly tenant is entitled to a month's notice, and the time from which the month should be calculated would depend on the commencement of the tenancy. Even when the monthly tenancy commences on a date other than the first, the notice to be valid should be a monthly notice and should not include an additional broken period. For instance, if a tenancy commenced on the 15th of a month, a notice requiring a tenant to quit on any day other than the 14th of the subsequent month or the 14th of any month thereafter would be a bad notice.

In a monthly tenancy commencing on the first of the month, notice to quit was given on 11th May 1963 requiring the tenant to quit the premises in question on 1st July 1963.

Held, that the notice to quit was not valid, because the requisite month's notice did not terminate at the end of a current month of the tenancy.

APPEALfrom a judgment of the Court of Requests, Colombo.

C. Ranganathan, for the defendant-appellant.

S. Sharvananda, with M. T. M. Sivardeen,for the plaintiff-respondent.

Cur. adv. vult. 20

July 16, 1965. ALLES, J.-

I do not propose to disturb the finding of the learned Commissioner who has held in favour of the plaintiff that the premises in suit were reasonably required for occupation as a residence for the plaintiff's daughter. I think, however, that the learned Commissioner has come to an erroneous conclusion on the law with regard to the validity of the notice to quit. This was a monthly tenancy commencing on the first of the month ; the notice to quit was given on 11.5.63, requiring the tenant to quit the premises in question on the first day of July, 1963 and the notice informed the tenant that the tenancy was terminated on 1.7.63 and that he was required to give vacant possession of the premises on that day- (vide notice marked P2).

Counsel for the defendant at the trial raised the issue as to whether the notice given by the plaintiff was valid in law. It was Counsel's submission at the trial that the tenancy should have terminated at midnight on 30.6.63 and not on 1.7.63. The learned Commissioner following certain decisions of this Court has held that the notice was valid and given judgment in favour of the plaintiff. The validity of the notice has been canvassed before me, and, in my view, the submission of Counsel for the defendant-appellant that the notice is bad is entitled to succeed.

The contract of letting and hiring (locatio conductio) is governed by Roman-Dutch law. Wille in his book ' Landlord and Tenant in South Africa ' (5th Edn.) at p. 45 says :

" Leases of this nature are known as weekly, monthly, or yearly tenancies, respectively, or they may be styled periodic leases or tenancies..... The essence of a periodic tenancy is, under the common law, that it continues for successive periods until it is terminated by notice, given by either party."

Again he says,

" In the absence of agreement or custom as to the length of the notice, reasonable time in the case of a monthly tenancy is a

month, and the notice of termination must be given so as to expire at the end of a monthly period, for a monthly lease runs from month to month, and not for broken periods."

He proceeds on the same page to make this observation :-

" If the tenancy commences on the first day of a calendar month, the month's notice may be given at any time on the first day of a subsequent month and it is effective to terminate the lease at the end of that month."

These principles have been accepted by our Courts as far back as 1873 when Creasy, C. J. said in a case reported in Grenier's Reports (1873) Part II p. 23, at 24 :

" I think that the notice must be one commensurate with the terms for which the letting was, that is a month for a month ; and I also think that it must be a notice expiring at the expiration of a current month after the date of the notice."

Subsequent decisions of the Supreme Court have followed this view- *Fonseka v. Jayawickrema*[[1 (1892) 2 Ceylon Law Reports, 134 at 135.]]; *Warwick Major v, Fernando* [2 (1917) 4 G. W. B 221.]; *Loku Menike v. Charles Sinno* [[3 (1918) 5 C. W. R. 281.]] *Peirisv. Savundranayagam*[4(1951) 52 N. L. R. 406.] ; and *Abdul Hafeelv. Muttu Bathool*[5 (1957) 58 N. L. R. 409 at 410 and 411.] In *Warwick Major v. Fernando* (supra) de Sampayo, J. said:

"It is well settled that a monthly tenant is entitled to a month's notice, and the time from which the month should be calculated would depend on the commencement of the tenancy."

De Sampayo, J.'s view was approved of by Shaw, J. in *Loku Menike v. Charles Sinno* (supra). The learned Judge makes reference to the decisions in the South African Courts and to Wille's treatise on Landlord and Tenant and concludes by saying that in view of the law as it is administered under the Roman-Dutch common law in South Africa he must hold that the notice must be a monthly notice terminating at the end of a current month of the tenancy and that

therefore the notice given by the landlord to his tenant on the 18th of April to quit on the 18th of May was bad.

Abdul Hafeel v. Muttu Bathool was a decision of two Judges. In that case, Basnayake, C. J. held that-

" A lease for a period not exceeding one month commonly known as a monthly tenancy is renewed each month by tacit agreement. Such tacit renewal of leases is known to Roman-Dutch Law."

The learned Chief Justice further states:

" In a monthly tenancy the lease is tacitly renewed on the first day of each month by the lessor not indicating to the tenant before that day that he wants to terminate the lease and the lessee remaining in the house without notifying the lessor that he proposes to quit. The terms of renewal must be taken to be the same each month unless they are changed by mutual agreement So the law requires that reasonable notice should be given of non-renewal of tenancy even if the lease expires at the end of each month. Our practice that the landlord or the tenant may terminate the tenancy or in the language of our common law, the letting or the hiring, as the case may be, in the case of a monthly tenancy upon a month's notice terminating on the date on which the period of tenancy expires is based on this requirement of the Roman-Dutch Law."

He cites Voet Book XIX, Tit. 2, s. 10 (Gane's translation) and Van Leeuwen (Censura Forensis, Book IV, Ch. XXII, s. 14) in support of the above propositions. He then continues to say that ' in the case of monthly tenancy there is no difficulty in determining the period for which the lease is tacitly continued'.

What then is the nature of the notice in the instant case? The notice was issued on 11.5.63 requiring the tenant to quit on 1.7.63. The notice has been given before the due date from which it operates and the notice would run from 1.6.63 until midnight of 30.6.63 (vide Edward v. Dharma-sena [1 (1964) 66 N. L. R. 525.]). At midnight, a new tenancy on the same terms and conditions would have commenced which would expire at midnight on 31.7.63. According

to the notice in the present case, a new tenancy was created from midnight on 30.6.63 to midnight on 1.7.63 (a broken period), a tenancy which is not recognised by the Roman-Dutch Law. Even when the monthly tenancy commences on a date other than the first, the notice to be valid should be a monthly notice. For instance, if a tenancy commenced on the 10th of a month, a notice requiring a tenant to quit on any day other than the 14th of the subsequent month or the 14th of any month thereafter would be a bad notice.

The view that has been accepted by the learned Commissioner in this case regarding the validity of the notice finds support in a decision of Bonser, C. J. in *Weeraperumal v. Davood Mokamed* [2 (1898) 3 N. L. R. 340.] where the learned Chief Justice said:

" As I understand the law, no notice of any definite length of time is required. It must be a reasonable notice-reasonably sufficient in the opinion of the Judge to admit of a tenant having an opportunity of securing another house. A month's notice has been in several cases considered reasonable, and in this case the tenant had more than a month's notice."

Although the views of Bonser, C. J. were disapproved by de Sampayo, J. in *Warwick Major v. Fernando*, this view found favour with Jayewardene, A. J. in *Imperial Tea Co. Ltd. v. Aramady* [3 (1923) 23 N. L. R. 327 at 330.]. The learned Judge reviewed all the previous authorities and accepted the principle laid down in a Divisional Bench of the High Court of England (*Swift and Acton, JJ.*) in *Simmons v. Crossley* [4 (1922) 2 K. B. 95.]. There Swift, J. said :

" I think that to determine a monthly or weekly tenancy reasonable notice must be given, and that such notice, if in other respects reasonable, is not rendered unreasonable and invalid merely because it expires on some day other than the last day of the month or week calculated from the commencement of the tenancy."

While practical considerations may favour the views expressed by Bonser, C. J. in *Weeraperumal v. Davood Mohamed* and Jayewardene, A. J. in *The Imperial Tea Co. Ltd. v. Aramady*, the principles of the English law have no application to a contract of

tenancy, which is governed by the Roman-Dutch law. If, in this case, the doctrine of reasonableness is adopted as the standard, it will necessarily follow that the law would have to recognise a tenancy for a broken period and this would be in direct conflict with the principles of the common law. I therefore prefer to adopt the principles of the common law as recognised by de Sampayo, J. in *Warwick Major v. Fernando*, Shaw, J. in *Loku Menike v. Charles Sinno* and Basnayake, C. J. in *Abdul Hafeel v. Muttu Bathool*, which is based on sound common sense and ensures certainty and finality in the nature of the notice. In contradistinction the question whether a notice is reasonable or not is one that is bound to vary with the idiosyncrasies of the individual Judge.

I therefore hold that the notice given in this case is not in conformity with the law, and is not a valid notice. I am fortified in this view by the decision of Basnayake, C. J. in *Zahir v. David Silva*[1 (1959) 61 N. L. R. 357 at 359], where the learned Chief Justice said :

" It is settled law that in the absence of an agreement to the contrary the notice of termination of a tenancy must run concurrently with a term of the letting and hiring and must expire at the end of that term."

The appeal is therefore allowed with costs.

Appeal allowed.