

REPORTABLE

Case Number : 125 / 2000

***IN THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA***

In the matter between

MOHAMED
Appellant

ADNAAN

BATCHELOR

and

SHAIK
Respondent

HOOSAIN

GABIE

Composition of the Court :

**Vivier ADCJ, Olivier, Scott,
Mpati JJA and Conradie AJA**

Date of hearing :

9 November 2001

Date of delivery :

28 November 2001

SUMMARY

The meaning of the words ' ... such lessor reasonably requires the entire premises for his personal occupation or use ...' in s 28 (d) (i) of the Rent Control Act 80 of 1976, discussed.

J U D G M E N T

OLIVIER JA

[1] The respondent is the owner of a row of semi-detached dwellings at Salt River, Cape Town. He lives in no 89 and the appellant is the lessee of the adjacent dwelling, no 91. These two dwellings are separated only by a common wall. The premises at no 91 are 'controlled premises' for the purposes of the Rent Control Act, 80 of 1976 ('the Act'). The appellant was given three months' notice in writing by the respondent to vacate the premises, but refused to do so. He relies on s 28 of the Act. In terms of this section a court shall not issue an order for the ejectment of a lessee in the appellant's position unless

'(i) such lessor reasonably requires the entire premises for his personal occupation or use or that of his parent or child.'

The Act was repealed by the Rental Housing Act 50 of 1999 (date of commencement : 1 August 2000). Section 19 of the latter Act, however, preserves the said protection of statutory tenants for a period of three years commencing on 1 August 2000.

[2] The respondent instituted action in the Cape Town magistrate's court for ejectment of the appellant from no 91. The sole question at the trial was whether respondent reasonably required the entire premises for his personal occupation or that of his parent or child. The magistrate found in respondent's favour. So did the Cape High Court on appeal to it. The matter is before this Court with the required leave.

[3] The respondent, who is now 75 years of age, was formerly a businessman. He lives with his wife in no 89. They have no children. His brother-in-law's son has been living with them since

1992. They regard him as their own son. This relative, 28 years of age, married shortly before the commencement of the trial. They are part of his household.

[4] The dwelling at no 89 is identical to that at no 91 Cecil Road. They each consist of two rooms, a dining room, a kitchen, a bathroom and a passage. The two rooms and the dining room are all approximately four by three metres in size. It was common cause that the houses are small.

[5] The respondent testified that no 89 is no longer able to accommodate the reasonable needs of his household. It is much too small, and he finds the conditions irksome and congested. The respondent and his wife occupy one room as a bedroom; the "adopted" son and his wife the other. By necessity the respondent and his wife also have to use their bedroom as a storeroom; apart from two wardrobes and a small table, they also have to keep their groceries, a vacuum cleaner, a sewing machine, two kitchen tables and a number of boxes containing the respondent's papers, in it.

His declared intention is to bring about alterations so as to provide direct access from no 89 to no 91 thus combining the two into one dwelling for his personal occupation

[6] The respondent is a man of some means and owns a number of properties in Cape Town, but he prefers to stay in the area where he now lives. The mosque that he attends is nearby.

[7] The respondent and his wife regularly receive visitors from Johannesburg, Zimbabwe, and India. These visitors then have to sleep on the floor. During such visits, the dining room is too small to accommodate the respondent, his household and the visitors. There is also no place where he can offer his prayers in privacy and seclusion.

[8] In the premises presently occupied by the appellant the respondent requires one room as a store room for all his furniture and

boxes of papers which he cannot reasonably accommodate in his present dwelling. The second room he intends to use as a guest room for his visitors. He intends putting two settees in the third room, which he and his wife will then use as a lounge and as a private prayer room. In this way the respondent intends to use both numbers 89 and 91 as one dwelling for his personal occupation.

[9] The main argument on behalf of the appellant is that the respondent may well wish or desire to have occupation of no 91 Cecil Road, but that he does not **reasonably require** same for his personal occupation.

[10] The appellant made much of the fact that the respondent also provides accommodation for his brother-in-law's son and his wife. Had it not been for the son and his wife, the appellant argued, the respondent would not require better accommodation than he has at present.

[11] In interpreting the word '**requires**' in s 21 (1) (c) of the Rents Act 43 of 1950, the predecessor of the identical provision now under consideration, our courts have held that :

11.1 the test is an objective one (see *Padayachee v Mandhai* 1954 (2)

SA 19 (N) at 21 F - H; *Naidoo v Thomas* 1979 (2) SA 505 (N) at

508 A - F);

11.2 the word 'requires' as used in the section means 'needs' and not 'desires' :

'It is not the mere whim or wish of the lessor which must be taken into account but his actual needs or requirements. On the other hand one must not over-emphasise the word 'need' so as to give it the meaning of dire necessity. I do not think it is possible to give an exact meaning to the word; the enquiry is in each case a factual one and the needs or requirements of the lessor must be assessed in the light of his circumstances.'

(See Diemont J in *Dundas v Seeligsohn* 1960 (1) SA 249 (C) at

252 D - F. See also *Naidoo v Thomas, supra*, at 508 B - D.)

[12] The other part of the requirement, viz that the dwelling is '**reasonably**' required, has been interpreted to mean that

12.1 it must be required in accordance with reason.

'In my opinion the words refer to the doing of something which a reasonable man would wish to do; the dealing of a prudent man with his own property.'

(See Millin J in *Exchange Buildings (Pty) Ltd v Isaac and Others* 1950 (2) SA 252 (W) at 255; *Naidoo v Thomas, supra*, at 508 E - F; *Padayachee v Mandhai, supra*, at 21 E - F.)

12.2 the test to be applied is that of a reasonable man in the lessor's position. (See Didcott J in *Naidoo v Thomas, supra*, at 511 A - D.)

[13] To these guidelines, of which I approve, a further observation is perhaps in order, viz that the test of 'reasonably requires' is a relative one. It is premised on the requirements of a reasonable man in the lessor's position and there will very seldom be an exact similarity of requirements between different lessors. It is, therefore, impossible to postulate an *a priori* or immutable test of what 'reasonably requires' means. The standard will differ from lessor to lessor, from locality to locality, and from time to time. It is, therefore, a purely factual test in the end that takes cognisance of the lessor's station in life, his proven personal circumstances, the size and requirements of his household, and his reason for requiring better accommodation. Ultimately, one must make a balanced and justifiable value judgment.

[14] Approaching the matter on this basis, I am of the view that the respondent's requirements in the present case are reasonable. He

acquired the properties in question by his own industry. He is now in his twilight years and should be able to enjoy the fruits of his labour. There is no reason why he should be confined to an uncomfortable, cramped style of living, necessitating his visitors to sleep on the floor of the dining room or requiring him to use his bedroom as a storeroom. I can see nothing unreasonable in requiring a lounge, which he does not have at present, not only for the comfort of his wife and himself, and of his visitors, but also as a prayer room. With regard to the kitchen and bathroom it was not suggested that these rooms could be occupied by anyone else. Having regard to his rights as owner and the right of dignity accorded to him and his wife by our law, he was, in my view, entitled to the order granted in the magistrate's court and the court *a quo*.

[15] The appeal is dismissed with costs.

P J J OLIVIER JA

CONCURRING :

VIVIER ADCJ

SCOTT JA

MPATI JA

CONRADIE AJA