PC
GI2.G4

1/1954

No. 11 of 1953.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

BETWEEN

MEGHJI LAKHAMSHI & BROTHERS . . *Appellants*

AND

FURNITURE WORKSHOP . . . . *Respondents.*

CASE ON BEHALF OF THE APPELLANTS

RECORD.

1. This is an appeal from a Judgment and Decree of the Court of Appeal for Eastern Africa at Nairobi, dated the 18th March 1952, which allowed an appeal with costs and set aside a Judgment and Decree of the Supreme Court of Kenya, dated the 25th July 1951 and 10th September 1951 respectively, which remitted the case for further hearing by the Rent Control Board (subject to the grant on the 25th July 1951 of a stay pending an appeal), and which Board, by an Order dated the 19th August 1950, had dismissed an application for an Order of eviction. pp. 12, 18. pp. 7, 8. p. 8. p. 4.

2. The facts of the case can be stated thus:

By a Tenancy Agreement, dated the 2nd May 1941, the present Appellants, the landlords, and the present Respondents, the tenants, agreed to the letting of one block of five rooms—two stores on the side of the main road towards Nairobi, and an open space 20 feet by 40 feet towards the road up to the big gate, for a period of twelve months, from 1st May 1941 to 30th April 1942, at a monthly rent of Shs. 180 subject to certain conditions, including the will of both parties to again come to an understanding after the expiry of the Agreement. p. 22.

3. The Appellants, on the 2nd May 1950, applied to the Central Rent Control Board for an Order under The Increase of Rent (Restriction) Ordinance 1949, Section 16 (1) (*k*) to evict the Respondents to enable the landlords to build shops on the area 20 feet by 40 feet where the tenants had built a temporary shed. The Respondents, in their Defence, dated the 15th May 1950, put the Appellants to the strict proof of their intention to build and submitted that it would not be reasonable for an order of ejectment to be made, and asked that the application be dismissed with costs. p. 1. p. 2.

p. 3.

4. The Appellant, Meghji Lakhamshi, in his evidence before the Board on the 17th August 1950, stated that he had given Notice to build on part of the premises; that he had asked for vacant possession and had given Notice to quit; that the landlords wanted to build partly on an open space adjoining the open space occupied by the tenants and partly on the open space occupied by them; that the tenants had tried to stop the building by an injunction but had failed; that a bakery and shop as part of the plan had been built on the adjoining space but not on the open space occupied by the shed of the tenants; that it would be in the public interest to complete the building on the open spaces and the landlords were willing to give the tenants accommodation; that there was no oral consent to the building of the shed which was used for storing timber and poles; that it was in 1947 when the tenants were told that the vacant space was needed for rebuilding; and that the shed consisted of four posts, a covered roof with three open sides, the other side adjoining the shop, and was used for the storage of timber, etc.

Without calling upon the Respondents, the Board ordered that the application be dismissed. The Board held that it had no power to order a partial ejectment which was what the claimants asked for, and that the landlords could have taken proceedings under Section 5 of the Ordinance, but had not done so.

5. Section 16 (1) (*k*) of the Ordinance, under which the landlords made their application, reads as follows:—

> "16.—(1) No order for the recovery of possession of any "premises to which this Ordinance applies, or for the ejectment "of a tenant therefrom, shall be made, unless—
>
> "(*k*) the landlord requires possession of the premises to enable "the reconstruction or rebuilding thereof to be carried "out, in which case the Central Board, the Coast Board or "the Court, as the case may be, may include in any "ejectment order for such purpose an order requiring the "landlord to grant to the tenant a new tenancy of the "reconstructed or rebuilt premises or part thereof on such "terms as may be reasonably equivalent to the old "tenancy, and fixing a date for the completion of the new "building and for its occupation by the tenant and "imposing such reasonable conditions as the Board may "think necessary."

6. Section 5 (1) (*g*) of the Ordinance, which apparently the Board had in mind when referring to other steps under Section 5, reads as follows:—

> "5.—(1) The Central Board in its area and the Coast Board "in its area, shall have power to do all things which it is required "or empowered to do by or under the provisions of this Ordinance, "and in particular shall have power—
>
> "(*g*) for the purpose of enabling additional buildings to be "erected, to make orders permitting landlords to excise

" vacant land out of premises of which, but for the pro-
" visions of this Ordinance, the landlord could have
" recovered possession, where such a course is, in the
" opinion of the Central Board, or the Coast Board, as the
" case may be, desirable in the public interest."

7. The Respondents proferred an appeal to the Supreme Court of Kenya which by a Judgment dated the 25th July 1951 and a Decree dated the 10th September 1951 remitted the case to the Rent Control Board, Nairobi, for further hearing. On the 25th July 1951 the Court granted a stay for remitting the case to the Rent Control Board pending an appeal. p. 7. p. 8. p. 8.

The Supreme Court of Kenya held that it could see no reason why the Board should have no power to order ejectment from part only of premises in possession of a tenant; that the Board has power to order ejectment from " premises " and that there is nothing to say that " premises " must mean all the premises leased; that there is no rule of law that a plaintiff for example must sue for all the money a plaintiff owes him or must sue for specific performance of all the services which he claims that a defendant has undertaken to do; that if it should be a greater hardship for a tenant to be ejected from part of his premises rather than the whole, this was a matter which can be argued before the Board at the hearing; and that the Board must be presumed to go into all the aspects of each case as it arises.

A Decree in accordance with the Judgment was made on the 10th September 1951. p. 8.

8. There was an appeal to the Court of Appeal for Eastern Africa at Nairobi which, by a Judgment and Decree dated the 18th March 1952, allowed the Appeal with costs and ordered the Judgment and Decree of the Supreme Court of Kenya to be set aside with costs to the present Respondents of the appeal to the Supreme Court. pp. 12, 18.

The Court of Appeal for Eastern Africa held that instead of bringing the case under Section 5 (1) (*g*) of the Ordinance the landlords brought it under Section 16 (1) (*k*) before the Board and preferred an appeal to the Supreme Court under the latter section alleging that the Board had erred in law in holding that it had no jurisdiction to make the order of ejectment asked for; that the Supreme Court does not appear to have considered whether the case should have been brought under Section 5 (1) (*g*); that on a strict interpretation of the law the Supreme Court took the correct view on the power of the Board to order ejectment from part only of the premises; that there is very little authority on the point apart from the case of *Salter* v. *Lask* reported in the Divisional Court [1923] L.R. 2 K.B. 798 and in the Court of Appeal [1924] 1 K.B. 754; that in the said case both the Divisional Court and the Court of Appeal held that there was no reason whatever which should compel a landlord, against his will, to include in his action parts of premises which he does not require under a possible penalty of being defeated *in toto*; that on the authority of *Prince* v. *Evans* (1874) 29 L.T. 835 it is settled law that if a landlord wishes to determine a tenancy by a notice to quit the notice must be in respect of the whole of the demised premises; that, apart from the rent restriction legislation, p. 13, l. 38. p. 13, l. 41. p. 14, l. 7. p. 14, l. 9. p. 14, l. 21. p. 15, l. 12.

p. 15, l. 15. when a tenancy has been determined either by a notice or by effluxion of time, the landlord is entitled to immediate possession of the whole of the premises but can enter into possession of a portion while allowing the tenant to remain in occupation of the rest by contract; that if the tenant p. 15, l. 21. is unwilling to give up occupation of the part required by the landlord, the latter would naturally apply for possession of the whole; that the rent p. 15, l. 24. restriction legislation imposes a fetter on the power of the Court or Board p. 15, l. 27. to make orders of ejectment; that the landlord must show a reason for requiring possession which falls within the permissible cases in which an ejectment order can be made, including recovery of possession of a portion p. 15, l. 30. of the premises as was laid down in *Popatlal Padamshi* v. *Shah Meghji Hirji* (Civil Appeal No. 32 of 1952); that although in the present appeal p. 15, l. 45. the Court agreed with the Supreme Court that the Board was mistaken as to its power to order a " partial ejectment " in an application properly p. 16, l. 25. brought under Section 16 (1) (*k*) the point was not decisive; that the real point in the case is that the application of the landlords did not come within the ambit of Section 16 (1) (*k*) as they were not asking for possession for p. 16, l. 28. the purpose of reconstructing and rebuilding; that they were asking for excision of a portion of the premises in order to erect new buildings and the Board was acting within its powers in refusing to consider the application p. 16, l. 31. under Section 16 (1) (*k*); and that their decision is not invalidated merely because one of the reasons they gave is open to criticism.

9. An Order granting the Appellants Final Leave to Appeal to the Privy Council from the Decree of the Court of Appeal for Eastern Africa p. 21. was made on the 19th January 1953.

10. The Appellants humbly submit that this appeal should be allowed and that the Decree of the Court of Appeal for Eastern Africa dated the 18th March 1952 should be reversed and that the Decree of the Supreme Court of Kenya dated the 10th September 1951 should be restored for the following amongst other

REASONS

(1) BECAUSE the Rent Control Board had power to order a partial ejectment in an application properly brought under Section 16 (1) (*k*) of the Ordinance.

(2) BECAUSE the only issue between the parties before the Rent Control Board and the Supreme Court of Kenya was as to the jurisdiction of the Rent Control Board to order a partial ejectment in an application properly brought under Section 16 (1) (*k*) of the Ordinance.

(3) BECAUSE no issue arose between the parties as to whether, on the assumption that the Rent Control Board had jurisdiction to order a partial ejectment but that the Application on its merits did not come within the ambit of Section 16 (1) (*k*) of the Ordinance but came within the ambit of Section 5 (1) (*g*), the Rent Control Board should exercise its discretion to allow an amendment of the application brought before it.

(4) BECAUSE it was the Respondents own case that there was no question of excision of " vacant land " simpliciter, to enable the putting up of " additional buildings " within the provisions of Section 5 (1) (*g*) of the Ordinance.

(5) BECAUSE, in any event, the effect of the Decree of the Supreme Court of Kenya is to remit the case to the Rent Control Board for further hearing, and, accordingly, it is a matter of discretion for the Board to deal with the case under Section 5 by an appropriate amendment of the Appellants' application, if the Board thought fit.

S. P. KHAMBATTA.

T. B. W. RAMSAY.

T. L. WILSON & Co.,
6 Westminster Palace Gardens,
London, S.W.1,
Solicitors for the Appellants.

No. 11 of 1953.

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

BETWEEN

MEGHJI LAKHAMSHI & BROTHERS . . . *Appellants*

AND

FURNITURE WORKSHOP *Respondents.*

CASE ON BEHALF OF THE APPELLANTS.

T. L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1,
Solicitors for the Appellants.

The Solicitors' Law Stationery Society, Ltd., Law and Parliamentary Printers
Abbey House, S.W.1. WL3882-60854