Kenya GT2 C. 4

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.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1.
Solicitors for the Appellants.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 COPTHALL AVENUE,
LONDON WALL, E.C.2.
Solicitors for the Respondents.

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RECORD OF PROCEEDINGS

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No. 11 of 1953.

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BETWEEN

MEGHJI LAKHAMSHI & BROTHERS . . *Appellants*

AND

FURNITURE WORKSHOP . . . . *Respondents.*

RECORD OF PROCEEDINGS

In the Central Rent Control Board.

No. 1. Application for Order of Eviction, 2nd May 1950.

No. 1.

APPLICATION for Order of Eviction.

BEFORE THE CENTRAL RENT CONTROL BOARD.

THE INCREASE OF RENT (RESTRICTION) ORDINANCE, 1949.

Case No. 153 of 1950.

APPLICATION FOR ACTION BY THE BOARD.

Landlord	Meghji Lakhamshi & Brothers.
Tenant	Messrs. Furniture Workshop, Thika.
Plot No. and description of premises	Plot Nos. 45/46, Thika Township.

We, MEGHJI LAKHAMSHI & BROTHERS, care of Messrs. Trivedi & Travadi, Advocates, Government Road, P.O. Box 1048, Nairobi, being the Landlords of the above described premises, to which this Ordinance applies, hereby apply to the Board for an order under section 16 (1) (*k*) of the Ordinance that the Tenants be evicted to enable the Landlords to build shops on the area 20′ × 40′ occupied by the Tenants where they have erected a temporary shed and which adjoins the existing premises let to them.

In the Central Rent Control Board.

No. 1. Application for Order of Eviction, 2nd May 1950, *continued.*

The approved copy of plan is enclosed herewith and marked red thereon. The area required of the tenants would only cover first three shops.

And that the costs of this application be provided for.

Dated this 2nd day of May 1950.

(Signed)

for TRIVEDI & TRAVADI,
Advocates for the Applicant.

Address for service of—

Applicant —c/o Messrs. Trivedi & Travadi, P.O. Box 1048, Nairobi. 10

Respondent—c/o Thika Township, P.O. Thika.

No. 2. Defence, 15th May 1950.

No. 2.

DEFENCE.

1. The Tenants do not admit any of the allegations contained in the Plaint and put the Landlords to the strict proof of their intention to build shops on the area occupied by the Tenants.

2. In any event, the Defendants submit that it would not be reasonable to make any order of ejectment against them.

Wherefore the Tenants pray that this case be dismissed with an 20 order as regards costs in favour of the Tenants.

Dated this 15th day of May, 1950.

Filed by : (Signed)

for DAVE & PATEL,
Advocates for the Respondents,
Nairobi.

In the Central Rent Control Board.

No. 3. Proceedings, 17th August 1950.

No. 3.

PROCEEDINGS.

BEFORE THE RENT CONTROL BOARD (CENTRAL PROVINCE) NAIROBI.

THE INCREASE OF RENT (RESTRICTION) ORDINANCE, 1949.

Present : Sir CHARLES F. BELCHER (in Chair).
Mr. SALEH MOHAMED.
Mr. F. ECKERSLEY.

Case No. 153 of 1950.

MEGHJI LAKHAMSHI & BROS. . . Claimants (Landlords)

versus

FURNITURE WORKSHOP . . . Respondents (Tenants).

PLOT NO. 45/46, THIKA TOWNSHIP.

Trivedi for Landlord.

Jamadar for Defendant.

Claim under sec. 16 (1) (*k*)—rebuilding.

Pays 216/– p.m. for 2 shops 5 living rooms and an open space.

Trivedi calls :—

MEGHJI LAKHAMSHI sworn states. I have given him notice to build on part of the premises. 14th March sent telegram asking for vacant possession. Also October, Notice to quit 18.1.50. Have filed a case here for recovery of one month's rent. He is not regular in payment since 1941. Expired 1942. The open space adjoins the buildings and we want to build partly on it and partly on a vacant part of the leased premises. The M.O. visited. Said we could start building. 20′ × 43′ is what we want to build on, and they put a shed on it and the M.O. said they should remove it. He told us to come to Rent Control Board. He (Defendant) sought an injunction to stop us building, it was dismissed. We have built a bakery and a shop as part of the plan but on premises not in the letting. We have not built on the adjacent part yet because the shed is there. It would be in public interest to build. We could give them accommodation if they agree with us.

Cross-examined : No letters from M.O. Have not called him to give evidence now. On the 20 × 40 he has a store for timber and poles. 2 to 4 tons now there. Also some tables and chairs. There is possibly some part of it unoccupied. They could use other stores they have. I admit they may have things in those other stores. They have been

In the Central Rent Control Board.

No. 3. Proceedings, 17th August 1950, *continued.*

keeping timber on the 20 × 40 bit for four or five years, before that they used it as a workshop for making car and truck bodies. No consent. We told them in 1947 we wanted this place for rebuilding. There was no oral consent to the building of this shed. We did not object to it after it was built, but I did say the place would be needed later on and finally in 1947 we said take away the shed. No notice till we needed the ground. The 20 × 40 was measured when the 1941 agreement was made. I was then not the sole owner, we the owners were two brothers. My brothers not here to-day.

Re-examined: If I got that space I could let them have some other space near temporary. I never authorised the erection of this shed either orally or written.

To Court: Four posts and a cover, no walls. Roof. Open on three sides, fourth side is the shop. I did not object till 1947 because I did not need the place till then.

Decision: We do not call on the Respondent. We have no power to order a partial ejectment which is what Claimant asks for. He could take other steps under Section 5 to excise but has not done so. Application dismissed, 50/– costs.

(Signed) C. F. BELCHER.

No. 4. Order, 19th August 1950.

No. 4.

ORDER.

BEFORE THE CENTRAL RENT CONTROL BOARD.

THE INCREASE OF RENT (RESTRICTION) ORDINANCE, 1949.

Case No. 153 of 1950.

ORDER.

This is to certify that the Board at its meeting on the seventeenth day of August, 1950, ordered that the application be dismissed. Costs Shs. 50/–.

Dated this Nineteenth day of August, 1950.

By Order of the Board.

(Signed) C. F. BELCHER,
Secretary.

To Messrs. Trivedi & Travadi,
Nairobi.

Messrs. Dave & Patel,
Nairobi.

In the Supreme Court of Kenya.

No. 5. Memorandum of Appeal and Affidavit in support, 14th/15th September 1950.

No. 5.

MEMORANDUM OF APPEAL AND AFFIDAVIT IN SUPPORT.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

Civil Appeal No. 882 of 1950.

(Being an appeal from the decision or determination in the original case No. 153 of 1950 of the Rent Control Board, Nairobi.)

MEGHJI LAKHAMSHI & BROTHERS . . . Appellants
(Original Landlords/Claimants)

versus

FURNITURE WORKSHOP . . . . . Respondents
(Original Respondents/Tenants).

MEMORANDUM OF APPEAL.

Messrs. Meghji Lakhamshi & Brothers, the Appellants above-named original landlords/claimants in the Central Rent Control Board, Nairobi, Case No. 153 of 1950, hereby appeal to this Honourable Court from the determination by the Board dated the 17th day of August, 1950, and attach herewith a certified copy of the said determination together with an affidavit of facts and put forth the following principal among other grounds of objection to the said determination :—

1. The Rent Control Board erred in law in holding that it had no jurisdiction to make an order of ejectment in the circumstances of this case.

2. The Rent Control Board erred in awarding costs to the Respondents.

REASONS WHEREFORE your Appellants pray this Honourable Court to allow this appeal and to remit the case to the Board for further hearing and that the costs of this appeal be provided for.

Dated at Nairobi this 15th day of September, 1950.

(Signed)
for TRIVEDI & TRAVADI,
Advocates for the Appellants.

To Furniture Workshop, Respondents, Thika.

Accompanying Affidavit.

I, MEGHJI LAKHAMSHI, of Thika in the Colony of Kenya, Merchant, make oath and say as follows :—

1. That I am one of the Claimants of the Plot No. 45/46 situate in the township of Thika aforesaid and the facts deponed to in this affidavit are within my own knowledge and I am authorised by the claimants to make this affidavit.

In the Supreme Court of Kenya.

No. 5. Memorandum of Appeal and Affidavit in support, 14th/15th September 1950, *continued.*

2. That we filed a case asking that the tenant be evicted under Section 16 (1) (*k*) and I gave evidence on the date of hearing of this case on the 17th August, 1950 and I attach hereto the typed copies of proceedings in this matter.

3. I am aggrieved by the determination of the Board and I am advised that it was competent for the Board to make a just order in this case but the Board did not make the order holding that it had no jurisdiction.

Sworn at Nairobi this 14th day of September, 1950 } (Sgd.) MEGHJI LAKHAMSHI.

Before me :

(Sgd.) S. R. KAPILA,
Commissioner for Oaths.

Filed by :—Trivedi & Travadi,
Advocates,
Nairobi.

No. 6. Judge's Notes of Arguments, 18th July 1951.

No. 6.

JUDGE'S NOTES of Arguments.

18.7.1951. *Trivedi* for Appellant.

Khanna for Respondent.

Khanna : On a preliminary point. The grounds of appeal are not points of law.

Court : I think that an appeal lies on the grounds set out in the Appellants' grounds of appeal.

Trivedi : Tribunal was wrong in deciding that it had no jurisdiction to order partial eviction.

Khanna : Section 16 (1) (*k*) gives no power to Board to order eviction from part of the building. The words " or portion thereof " have not been inserted in the section. An application under Section 5 (1) (*g*) should have been made. Secondly no notice to quit has been proved, nor was it alleged in the pleadings.

Trivedi : Court was not concerned with whether notice to quit had been given or not. Pleadings before Tribunal are not formal pleadings.

Adjourned for judgment to 25.7.1951 at 10.30 a.m.

R. A. CAMPBELL,
Acting Judge.

In the Supreme Court of Kenya.

No. 7.
Judgment, 25th July 1951.

No. 7.

JUDGMENT.

This is an appeal by the landlords from the decision of the Rent Control Board for the Central Province that it had no jurisdiction to grant their application for ejectment.

The landlords were claiming only part of the tenant's premises as they wished to carry out some rebuilding. The decision of the Board is as follows :—

> " We do not call on the Respondent. We have no power to order a partial ejectment which is what claimant calls for. He could take other steps under Section 5 to excise but has not done so. Application dismissed. 50/- costs."

I can see no reason why the Board should have no power to order ejectment from part only of premises in possession of a tenant. The Board has power to order ejectment from " premises " and there is nothing to say that " premises " must mean all the premises leased. 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.

If it should be a greater hardship for a tenant to be ejected from part of his premises rather than the whole, this is a matter which can be argued before the Board at the hearing. A Board must be presumed to go into all the aspects of each case as it arises.

Mr. Khanna for the Respondents has argued that in any case the claim had to be dismissed as there is no averment in the pleadings that notice to quit had been given.

It may well be that had the case proceeded to its conclusion the Board might have found that absence of notice would have been fatal to the claim of the landlords. But the Board has made no finding in this regard and I cannot anticipate or hazard what its decision would have been.

Accordingly I remit the case to the Board for further hearing and order that the costs of this appeal be the Appellants.

R. A. CAMPBELL,

Ag. J.

In the Supreme Court of Kenya.

No. 8.
Order for Stay, 25th July 1951.

No. 8.

ORDER for Stay.

25.7.51.

Khanna : I ask for a stay pending an appeal to the Court of Appeal for E. Africa.

Trivedi : I oppose.

Court : A stay is granted for remitting case to Rent Control Board pending an appeal. If appeal lodged stay to continue till end of appeal. I see no reason to grant a stay in respect of costs.

R. A. CAMPBELL,
Acting Judge.

No. 9.
Decree, 10th September 1951.

No. 9.

DECREE.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

Civil Appeal No. 882 of 1950.

(Being an appeal from the decision or determination in the original case No. 153 of 1950 of the Rent Control Board, Nairobi.)

MEGHJI LAKHAMSHI AND BROTHERS . Appellants
(Original Landlords)

versus

FURNITURE WORKSHOP . . . . . Respondents.
(Original Tenants)

DECREE.

THIS APPEAL coming on the 25th day of July, 1951, for hearing before His Honour Mr. Acting Justice Campbell in the presence of Counsel for the Appellants and Counsel for the Respondents, IT WAS ORDERED on the said 25th day of July, 1951 :

(1) That the case be remitted to the Rent Control Board, Nairobi, for further hearing.

(2) That the Respondents do pay to the Appellants the sum of Shillings 1,659 and 34 cents. being the taxed costs of this appeal.

Given under my hand and the Seal of the Court this 10th day of September, 1951.

(Signed) R. A. CAMPBELL,
Judge.

No. 10.

MEMORANDUM OF APPEAL.

In the Court of Appeal for Eastern Africa.

No. 10. Memorandum of Appeal, 9th August 1951.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA SESSIONS HOLDEN AT NAIROBI.

Civil Appeal No. 46 of 1951.

(From original order in Civil Appeal No. 882 of 1950 of His Majesty's Supreme Court of Kenya at Nairobi)

FURNITURE WORKSHOP . . . . . Appellants
(Original Respondents)

versus

MEGHJI LAKHAMSHI & BROS. . . . Respondents.
(Original Appellants)

The Appellants above-named hereby appeal against the judgment delivered on the 25th day of July, 1951, in Civil Appeal No. 882 of 1950, by the Honourable Mr. Acting Justice R. A. Campbell, of the Supreme Court of Kenya, at Nairobi, and sets forth the following grounds of appeal among others to the judgment (a certified copy whereof accompanies this Memorandum) appealed from, namely :—

1. The initial pre-requisite, conferring any jurisdiction upon the Board, to entertain the application had not been established, in so far as :—

(A) As regards a portion of the vacant land a licence as opposed to a tenancy was sought to be alleged ;

(B) The Notice to quit relied upon had not been put in as an exhibit, or marked as such ;

(C) The Notice to quit relied upon had not been even informally produced to the Board, much less being marked as an exhibit ;

(D) The date of service of the Notice to quit relied upon had not been proved ;

(E) The beginning or end of a month of the tenancy had not been established so as to show that the notice to quit relied upon had in fact operated to determine the contractual tenancy.

2. The learned Acting Judge, should have held as above, without regarding himself, as " hazarding " a decision thereon, a respondent being at liberty (which the learned Acting Judge accepted) to maintain the result arrived at by the original tribunal, upon any point whether made a basis for the decision or not.

3. The learned acting judge misconstrued, misread and misapplied section 16 (1) (*k*) of the Increase of Rent (Restriction) Ordinance, 1949 (hereinafter referred to as " the Ordinance ").

In the Court of Appeal for Eastern Africa.

No. 10. Memorandum of Appeal, 9th August 1951, *continued.*

4. The word " premises " in the Ordinance upon a plain reading of Section 16 (1) (*k*), the learned Acting Judge failed to realise, means the " whole " and not " any part " thereof.

5. The learned Acting Judge failed to appreciate that a unit of premises, subject of a single letting, even apart from Section 16 (1) (*k*) could not be the subject of an application for a partial eviction, unless the landlord had already obtained possession of the remainder, and the learned Acting Judge erred in invoking the provisions of O. II r. 1 of the Civil Procedure (Revised) Rules, 1948, which had no application at all, or if they had, without there being a formal relinquishment (and, if one binding for all time could legally have been made), on the plaint or application for eviction.

6. There being no question of excision of " vacant land " simpliciter, to enable the putting up of " additional buildings " thereon, Section 5 (1) (*f*) the learned Acting Judge failed to appreciate had no application. Moreover, the learned Acting Judge overlooked that a case under Section 5 (1) (*f*) had not been pleaded ; no effective opportunity to answer the same had been afforded to the Appellants ; nor had any application been made to restrict the case to one under Section 5 (1) (*f*) by an appropriate amendment of the application for eviction ; and, the Board had rightly treated the case as framed as not one under that Section.

7. The learned Acting Judge failed to appreciate, that eviction from an unbuilt portion plus that from a part of the built portion, might cause complications, and render the portion left unfit for the purpose let, and as such that the legislature had deliberately omitted from the Ordinance, a power to make orders for partial evictions from portions of built up structures with a view to partial re-building and reconstruction.

Wherefore the Appellants pray that this appeal be allowed with costs here and below.

Dated at Nairobi this 9th day of August, 1951.

for D. N. & R. N. KHANNA,

(Signed) D. N. KHANNA,
Advocates for the Appellants.

To be served upon :—

Messrs. TRIVEDI & TRAVADI,
Advocates,
Nairobi.

No. 11.

PRESIDENT'S NOTES.

In the Court of Appeal for Eastern Africa.

No. 11. President's Notes, 18th March 1952.

CORAM: NIHILL, P.

WORLEY, V.P.

DE LESTANG, J.

Khanna for Appellant.

Trivedi for Respondent.

Khanna: Second appeal from decision of Rent Control Board. Original application at page 1.

Defence at page 2. Decision at page 4.

Landlord appealed to Supreme Court.

Judgment of Campbell J. attached to Memo. of Appeal.

Premises in Section 16 (1) (*k*) has a statutory meaning. " The premises " not " or any part thereof." See also definition of " dwelling house " and " business premises."

The entitling is the " letting."

Whatever is the subject of the letting is the premises as a *whole.*

Application should have been made under 5 (1) (*g*).

The Ordinance does not give tenants new rights in respect of their lettings. It only gives them protection if they fulfil their obligations.

No question of severance by consent.

A landlord must always first put into operation the ordinary law of landlord and tenant. Court notice to quit.

1924 1 K.B. 754. *Salter* versus *Lask.*

A special case outside the general rule.

53 T.L.R. 44. *Smith* versus *Inskepp.*

1951 1 A.E.L.R. 661.

Cumbes versus *Robinson.*

In this case there never was a two separate lettings by consent between the parties.

The notice to quit was never proved.

By Court: But this was a statutory tenant.

Khanna: I agree *my point* re notice was a bad one.

Trivedi: Point of jurisdiction not pleaded in defence.

We were never given a chance to amend.

In the Court of Appeal for Eastern Africa.

No. 11. President's Notes, 18th March 1952, *continued.*

The Board should have proceeded with the application as if it had been made under 5 (1) (*g*).

By Court: This is a new point.

There was a shed on the land we wanted.

If you have a right to recover the whole premises you have a right to recover a part.

Civil appeal 32 of 1951 at X p. 7.

Order 17 r. 5 and r. 6 Civil Procedure Rules.

There was no compliance in this case.

Rent Control Board when it takes enhancement confirm with requirements of a civil court.

1924 1 K.B. *Salter* versus *Lask.*

Khanna: Greater does *not* include the less. Never raised point in Supreme Court that Board should have exercised his discretion. Civil Appeal 52 of 1951 is distinguishable. Application was for whole of premises. Court said nothing in Order to prevent Board giving effect to an implicit agreement. Here it is a question of consideration. Rules of Supreme Court only applicable to Supreme and Subordinate Courts. Chairman not a Judge.

Court: Respondent should have asked for excision. Not eviction.

Stopped.

Judgment Reserved.

J. H. B. NIHILL, P.

No. 12. Judgment, 18th March 1952.

No. 12.

JUDGMENT.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

Civil Appeal No. 46 of 1951.

(From Original Decree in Civil Appeal No. 882 of 1950 of H.M. Supreme Court of Kenya at Nairobi.)

FURNITURE WORKSHOP . . . . . Appellants (Original Respondents)

versus

MEGHJI LAKHAMSHI & BROS. . . . . Respondents. (Original Appellants)

JUDGMENT.

WORLEY—Vice-President.

The Appellants are in occupation of premises at Thika of which the Respondents are the owners: it will be convenient to refer to the parties as the tenants and the landlords respectively. The tenants went into occupation under a contractual monthly tenancy for twelve months certain which expired on 30th April 1942. Since then they have continued

in possession as statutory tenants by virtue of the Rent Restriction legislation. The premises which are the subject of the letting consist of a building or buildings comprising two shops and five living rooms and appurtenant thereto, a piece of land approximately 20′ × 40′ which, at the time of first letting, was vacant. At some subsequent date the tenants erected on this space a structure consisting of four posts and a roof beneath which they store timber. According to the landlords' evidence, they did not give consent to the erection of this shed and in 1947 they told the tenants to remove it: the shed however is still there.

The landlords were minded to build on this space and applied to the Central Rent Control Board on 2nd May 1950 " for an order for possession under the Increase of Rent (Restriction) Ordinance (No. 22 of 1949)." The application was expressed to be—

> " for an order under section 16 (1) (*k*) of the Ordinance that the tenants be evicted to enable the landlords to build shops on the area 20′ × 40′ occupied by the tenants where they have erected a temporary shed and which adjoins the existing premises let to them."

The Board, having heard the landlords' evidence, dismissed the application with costs without calling on the tenants. The reasons recorded by the Chairman are :—

> " We have no power to order a partial ejectment which is what (the landlord) asks for. He could take other steps under section 5 to excise but has not done so."

Section 5 (1) provides as follows :—

> " The Central Board . . . 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 provisions of this Ordinance, the landlord could have recovered possession, where such a course is, in the opinion of the Central Board . . . desirable in the public interest."

It is a matter for surprise that the landlords' legal advisers did not in the first place have recourse to this provision which would seem to have been framed for the very purpose the landlords had in mind. It is equally surprising that they did not do so after the broad hint given by the Chairman of the Board.

Instead of so doing the landlords preferred an appeal to the Supreme Court alleging that the Board erred in law in holding that it had no jurisdiction to make an order of ejectment in the circumstances of the case. The learned Judge of the Supreme Court who heard the appeal appears not to have considered the question whether the application should have been brought under section 5 (1) (*g*) but merely said :—

> " I can see no reason why the Board should have no power to order ejectment from part only of the premises in possession of

In the Court of Appeal for Eastern Africa.

No. 12. Judgment, 18th March 1952, *continued.*

a tenant. The Board has power to order ejectment from ' premises ' and there is nothing to say that ' premises ' must mean all the premises leased."

He therefore allowed the appeal with costs and remitted the matter to the Board for further hearing. From that order the tenants have appealed to this Court.

On a strict interpretation of the law I think the learned Judge on first appeal took the correct view on the power of the Board to order ejectment from part only of the premises. There is very little authority on the point apart from the case of *Salter* v. *Lask*, which is reported, in the Divisional Court, in [1923] L.R. 2 K.B. 798 and, in the Court of Appeal, in [1924] L.R. 1 K.B. 754. In that case a landlord had re-entered into possession of part of the demised premises and applied in the County Court for recovery of the remainder but the county court judge decided in the tenant's favour on the ground that a landlord must sue for the whole of the demised premises or he could not recover anything.

On appeal by the landlord the Divisional Court overruled the County Court on this point. McCardie, J. (with whom Salter J. agreed) said at p. 801 of the report :—

> " This is a novel point. There is no authority to be found on the point, but I see 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. I can therefore see no reason why the Plaintiff should not bring an action to recover a part of the premises which he has demised. In saying that there is no authority on this point, I should just like to mention the power which the Court has to award a plaintiff a part only of what he claims as indicating the capacity of the tribunal to divide up a plaintiff's claim."

In the Court of Appeal, the judgment of the Divisional Court was affirmed on this point. Bankes, L.J. (with whom Scrutton, L.J., agreed) said at p. 759 :—

> " The Divisional Court took the view . . . that it was open to the plaintiff in an action of ejectment to recover part of the demised premises. I agree with that view. . . . No doubt there may be cases in which a landlord deliberately suing for possession of a portion only, when he might sue for the whole, of the demised premises, may find himself in difficulties if he afterwards sues to recover the remainder ; for example, if he should employ that device in order to circumvent an objection by the defendant to the jurisdiction of the county court or to invoke in his own favour the provisions of the Rent Restriction Act. But apart from these circumstances, and so far as concerns the general law, I prefer the view of the Divisional Court to that of the county court judge."

Atkin, L.J. (at p. 761) was more guarded when he said :—

> " I agree. I see no reason why a reversioner suing in ejectment when a tenancy has been determined by effluxion of time or notice to quit, and when he has resumed possession of part of the demised

premises, should not recover possession of the remainder. It is not necessary to determine how the case would stand if the tenant still remained in possession of the part not sought to be recovered."

I have cited these excerpts from the judgments *in extenso* because I understood Mr. Khanna to contend that *Salter* v. *Lask* is only authority for the proposition that if a landlord has recovered possession of a portion of the demised premises he may apply for possession of the remainder. In my view, however, this is putting too narrow a construction upon the majority of the judgments and certainly does not accord with the effect of the decision as cited in the leading textbooks: see, for example, Hill and Redmond on Landlord and Tenant, 10th Ed., p. 492.

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: if authority be needed for this proposition *Prince* v. *Evans* (1874), 29 L.T. 835, is sufficient. Apart from the rent restriction legislation, when a tenancy has been determined either by notice or by effluxion of time, the landlord is entitled to immediate possession of the whole of the premises, but there is no reason in law why he should not, if he so wishes and the tenant agrees, enter into possession of a portion while allowing the tenant to remain in occupation of the remainder. That is simply a matter of contract. If, however, the tenant is unwilling to give up occupation of the portion required by the landlord, the latter will naturally apply to the Court for possession of the whole. But the position is changed by the application of the rent restriction legislation, which imposes a fetter on the power of the Court or the Board, as the case may be, to make orders of ejectment. The landlord's freedom to enter into a new contract with his tenant is restricted; he must show a reason for requiring possession which falls within the permissible cases in which an ejectment order can be made, and, as I said in *Popatlal Padamshi* v. *Shah Meghji Hirji* (Civil Appeal No. 32 of 1952),

> " The intention of this legislation is to give tenants security of tenure and to ensure that they are not evicted except for good cause and I can see nothing contrary to that intention in a determination which decides that the landlord has made out a good case for recovering possession of a portion of the premises and allows the tenant to stay on as a statutory tenant in the remainder. Indeed, it seems to me that to hold otherwise would be to work hardship in many cases on either the landlord or the tenant."

I should perhaps add that a tribunal which entertains an application for possession of a portion of the demised premises must be careful to satisfy itself that the application is made bona fide and not with the intention of squeezing out the statutory tenant by successive stages and that it can be granted without hardship to the tenant.

But though I agree with the learned Judge on first appeal that the Board was mistaken as to its power to order a " partial ejectment " in an application properly brought under Section 16 (1), I do not think that this point is decisive of the present appeal.

In the Court of Appeal for Eastern Africa.

No. 12. Judgment, 18th March 1952, *continued.*

It is very evident that the Appellants' original application was misconceived and, indeed, Mr. Trivedi admitted that it should have been made under Section 5 (1) (*g*): the matter is not *res judicata* and the refusal of the Board to entertain the application under Section 16 (1) (*k*) has not debarred the landlords from making a fresh application under the proper section if they are so advised. Mr. Trivedi has argued, however, that the proceedings before the Board are informal and that the Board should have treated the application as coming under Section 5 (1) (*g*) or have afforded him an opportunity to amend. That was a matter of discretion for the Board and if they thought that in all the circumstances the best course was for the landlord to make a fresh application, that was in my view a reasonable exercise of their discretion and one with which an appellate Court ought not to interfere.

Moreover, I am not at all clear what effect the learned Judge intended his order to have. Did he intend that on the re-hearing the Board must exclude Section 5 (1) (*g*) from consideration and treat the application solely as coming under Section 16 (1) (*k*)? If so, I think, with respect, that he exceeded his powers, for it was competent for the Board to say that, even assuming this application could be entertained under Section 16 (1) (*k*), it would be more convenient to deal with it under Section 5 (1) (*g*). If the Judge did not so intend to limit the discretion of the Board, then nothing will be gained by a re-hearing of the original application as no one can doubt that either the Board or the tenants will require it to be amended so as to bring it within the scope of Section 5 (1) (*g*).

The real point in this matter is that the landlords' application did not come within the ambit of Section 16 (1) (*k*) at all: they were not asking for possession for the purpose of reconstructing or rebuilding. They were asking for excision of a portion of the premises in order to erect new buildings and, in my view, as I have already indicated, the Board was acting within its powers in refusing to consider the application under Section 16 (1) (*k*). Their decision is not invalidated merely because one of the reasons they gave in arriving at it is open to criticism.

I would therefore allow this appeal with costs and set aside the order of the Supreme Court with costs to the Appellant of the appeal to the Supreme Court.

In conclusion, I should refer to Mr. Trivedi's submission that the proceedings before the Board were a nullity because the evidence of the landlord, which, we were informed, was given in Gujerati, was not read over to him nor were the notes of it signed as required by Order 17, Rules 5 and 6. In support of this he cited an unreported decision of this Court in Civil Appeal No. 15 of 1925: *Bhagwandas Daviditta* v. *Sain Dass.* That was an appeal from the Supreme Court of Kenya sitting in civil jurisdiction. In that case the Judge in the Supreme Court had omitted to comply with the provisions of Section 182 of the Indian Code of Civil Procedure (Act No. XIV of 1882) which was then in force in Kenya and which required the evidence of a witness to be read over to him and to be signed by the Judge. This Court held that failure to comply with the section vitiated the proceedings and therefore allowed the appeal and ordered a new trial.

I confess to feeling some surprise at this decision in view of the provisions of Section 578 of the 1882 Code (now enacted as Section 70 of the Civil Procedure Ordinance (Chapter 5 of the Laws of Kenya 1948)), but it is not necessary to consider this point as, in my opinion, the decision has no relevance to the proceedings of the Board.

I do not overlook the pronouncement of this Court that the power of the Board to act on less than legal evidence, if it decides to take evidence, has disappeared. But this Court has never said and has never intended to say that the Board has to comply with the Civil Procedure (Revised) Rules, 1948. When the Board decides to take evidence it must do so upon oath or affirmation : it must observe the general principles governing the admissibility of evidence and the exclusion of hearsay : it must afford an opportunity to cross-examine and re-examine and to call rebutting evidence if a party so desires ; in short, it must observe the principles of what is conveniently but loosely called natural justice ; but it is not bound to observe all the mechanical requirements for recording the evidence which are imposed on a civil court by the Civil Procedure Rules.

N. A. WORLEY,
Vice-President.

Nairobi,

18th March, 1952.

NIHILL—President :

I agree with the judgment of the learned Vice-President and have nothing to add. The appeal is allowed with costs. The Appellant will have the costs of the appeal to the Supreme Court of Kenya whose order is set aside.

J. H. B. NIHILL,
President.

Nairobi,

18th March, 1952.

DE LESTANG—Judge :

I agree and have nothing to add.

M. C. NAGEON DE LESTANG,
Judge.

Nairobi,

18th March, 1952.

In the Court of Appeal for Eastern Africa.

No. 13. Decree, 18th March 1952.

No. 13.

DECREE.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.
Civil Appeal No. 46 of 1951.

(From Original Decree in Civil Appeal No. 882 of 1950 of H.M. Supreme Court of Kenya at Nairobi.)

FURNITURE WORKSHOP . . . . . Appellants
(Original Respondents)

V.

MEGHJI LAKHAMSHI & BROTHERS . . . Respondents
(Original Appellants).

THIS APPEAL coming on 18th day of March 1952 for hearing before Her Majesty's Court of Appeal for Eastern Africa in the presence of D. N. Khanna, Esquire, on the part of the Appellants and of H. D. Trivedi, Esquire, on the part of the Respondents IT IS ORDERED that this appeal be and is hereby allowed with costs and the order of the Supreme Court be and is hereby set aside with costs to the Appellant of the appeal to the Supreme Court.

C. G. WRENSCH,
Registrar,
H.M. Court of Appeal for East Africa.

Dated this 18th day of March 1952.

Issued on 16th day of October 1952.

No. 14. Notice of Motion for Leave to Appeal to the Privy Council with Affidavit in support, 16th May 1952.

No. 14.

NOTICE OF MOTION for Leave to Appeal to the Privy Council with Affidavit in support.

TAKE NOTICE that this Honourable Court will be moved at Nairobi on Thursday the 26th day of June 1952 at 10.30 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Counsel for the above-named Respondents upon the grounds set out in the affidavit of Meghji Lakhamshi hereto annexed and other grounds and reasons to be offered at the hearing FOR AN ORDER THAT the Respondents be granted leave to appeal to Her Majesty in Council from the judgment herein delivered on the 18th day of March, 1952 and from the decree of this Honourable Court to be issued pursuant thereto AND THAT all proper directions and orders for that purpose may be given as to this Honourable Court may seem just for—

(A) the preparation of the record and despatch thereof to England ;

(B) and for any further proceedings that may be ordered or directed by this Honourable Court ;

(C) any other purpose that this Honourable Court may direct ;
(D) the costs of this application.

In the Court of Appeal for Eastern Africa.

No. 14. Notice of Motion for Leave to Appeal to the Privy Council with Affidavit in support, 16th May 1952, *continued.*

Dated at Nairobi this 16th day of May 1952.

(Sgd.) D. F. SHAYLOR,
Ag. Registrar,
H.M. Court of Appeal for East Africa.

This Notice of Motion was taken out by :—

(Signed) H. N. TRIVEDI,
TRIVEDI & TRAVADI,
Advocates for the Respondents,
Nairobi.

To Messrs. D. N. & R. N. Khanna,
Advocates for the Appellants,
Nairobi.

Affidavit.

I MEGHJI LAKHAMSHI a partner of the firm of Meghji Lakhamshi & Bros., Merchants of Thika, the Respondents above-named make oath and state as under :—

1. That I am one of the partners of the Respondents' firm and I am authorised by my other partners to make this affidavit.

2. That I have instructed Messrs. Trivedi & Travadi, Advocates of Nairobi to apply for leave to appeal to the Privy Council in the above matter.

3. That the above appeal was brought to this Honourable Court from the judgment of The Honourable Mr. Justice Campbell in Supreme Court Civil Appeal No. 882 of 1950 which was an appeal from the judgment of the Central Rent Control Board Nairobi in its Case No. 153 of 1950.

4. That we applied to the Rent Control Board for the recovery of possession of a portion of land 20 feet by 40 feet and its present value and the value on the date of filing the case in the Rent Control Board on the 2nd day of May, 1950, was and is more than Shs. 15,000/–.

5. The value of the property rented to the Respondents is approximately Shs. 135,000/–.

6. I am advised by my advocates that I have a right to appeal to Privy Council and I am advised by Senior Queen's Counsel from London that I have good chances of success in Privy Council and I request this Honourable Court to grant me leave to appeal to Privy Council.

Sworn at Nairobi this 16th day of May 1952 } (Sgd.) MEGHJI LAKHAMSHI in Gujerati.

Before me,

(Signed) AJEET SINGH,
Commissioner for Oaths.

In the Court of Appeal for Eastern Africa.

No. 15. Affidavit in Reply, 25th June 1952.

No. 15.

AFFIDAVIT in Reply.

I, VELJI SAMAT, a partner of the firm of Furniture Workshop, Furniture Makers of Thika, hereby make oath and say as follows :—

1. That I am a partner in the Appellants' firm, the facts herein deponed to are within my own knowledge and I am duly authorised by my partners to make this affidavit.

2. What purports to be a true copy of the affidavit sworn herein by one Meghji on the 16th day of May, 1952, in support of the Respondents firm's application for leave to appeal to Privy Council, has been read over and explained to me.

3. I deny that the value of the portion of the land 20 feet by 40 feet sought to be recovered is more than Shs. 15,000/- and submit that the value of the said land cannot exceed Shs. 2,000/-.

4. I am advised and verily believe that accordingly no appeal lies as of right to the Privy Council and I submit that the Respondents' application for leave to appeal to Privy Council should be dismissed with costs.

Sworn at Nairobi this 25th day of June, 1952 } (Signed) VELJI SAMAT (in Gujerati)

Before me,

(Signed) BRIAN EDWARD KEENE FIGGIS,
A Commissioner for Oaths.

No. 16. Affidavit of Valuation, 26th June 1952.

No. 16.

AFFIDAVIT of Valuation.

I, C. B. MISTRY, Auctioneer and Approved Valuer of Government Road, Nairobi in the Colony of Kenya, make oath and state as under :—

1. That I am an approved Valuer.

2. That yesterday, that is to say on the 25th day of June, 1952, at the request of Meghji Lakhamshi, a partner in the firm of Messrs. Meghji Lakhamshi and Brothers, Merchants, Thika and inspected the premises—namely, Plot Nos. 45/46 at present occupied and used by Furniture Workshop, the Appellants above-named.

3. The value of piece of land 20 feet by 40 feet which is occupied by Messrs. Furniture Workshop is according to me about Shs. 16,000/- for the following reasons :—

(A) Government value for the purposes of Unimproved Site Value Tax in the year 1948–49 was Shs. 81,910 for these Plots, i.e., about Shillings 7/- a square foot, i.e., Shs. 5,600/- according to Municipal rates.

(B) The Plots are on the main Thika Township Road and are business-cum-residence Plots and are situated in good business locality and its market value is not less than Shs. 16,000/-, that is to say Shs. 20/- a square foot.

(C) In 1950 a vacant Plot on the same road but just near these Plots was sold by Government by tender for Shs. 51,000/- and its area was and is 50 feet by 37 feet which is now built and used as a Petrol Station.

Sworn at Nairobi this 26th day of June, 1952 } (Sgd.) C. B. MISTRI.

Before me,

(Sgd.) S. R. KAPILA,

Commissioner for Oaths.

No. 17.

ORDER granting Final Leave.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.

Civil Appeal No. 46 of 1951.

FURNITURE WORKSHOP . . . Appellants/Respondents

versus

MEGHJI LAKHAMSHI & BROS. . . Respondents/Applicants.

ORDER.

The conditions set out in the Conditional Order giving leave to appeal have been complied with (see Registrar's Certificate).

In the event of the Applicants not proceeding with the appeal the Respondents will have the cost of and incidental to the application for leave to appeal. Costs of this application to be costs in this appeal.

Final leave to appeal granted.

J. H. B. NIHILL, President.
N. A. WORLEY, Vice-President.
G. M. MAHON, Judge.

Nairobi,
19th January, 1953.

Exhibits.

EXHIBITS.

A. Tenancy Agreement, 2nd May 1941.

A.—TENANCY AGREEMENT.

2.5.1941.

To Wit, We THIKA FURNITURE WORKSHOP agree to take on monthly rent of Shs. 180/- from Messrs. Meghji Lakhamshi & Bros. on Plots 45 × 46 Factory Site for a period of 12 months from 1.5.1941 to 30.4.42 details whereof are as under :—

One Block of 5 rooms—Two Stores on the side of Main road towards Nairobi, and open space 20′ × 40′ towards road up to big gate.

(1) Pro Notes (12 in number are written (given)—11 for 11 months agreement and one (Pro Note) in lieu of one month's notice—which (Pro Notes) are to be paid regularly.

(2) The tenants have to pay for light and water charges.

(3) To keep clean in the interior of the building and in the open compound.

(4) To return the building in the same condition as is given.

(5) The Tenant is not responsible for any accident caused by Nature.

(6) Nothing inflammatory is to be kept in the building.

(7) It depends on the will of both parties to again come to an understanding after the expiry of this agreement.

(8) The above conditions are acceptable to both parties.

Tenants signature FURNITURE WORKSHOP THIKA
(Sgd.) KURJI BHIMJI

Landlord's signature MEGHJI LAKHAMSHI & BROS.
(Sgd.) MEGHJI LAKHAMSHI.

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.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1.
Solicitors for the Appellants.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 COPTHALL AVENUE,
LONDON WALL, E.C.2.
Solicitors for the Respondents.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL3772-56276