

Privy Council Appeal No. 37 of 1948

Devji Hamir and Narshi Hamir, together trading under the
style or firm of The African Boot Company - - - *Appellants*

v.

Gilbert Scott Morley - - - - - *Respondent*

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH JANUARY, 1950

Present at the Hearing:

LORD SIMONDS
LORD OAKSEY
SIR LIONEL LEACH

[*Delivered by* LORD OAKSEY]

This is an appeal from a judgment of the Court of Appeal for East Africa affirming a judgment of the Supreme Court of Kenya.

The action out of which the appeal arises was brought by the respondent for the ejection of the appellants from premises in Nairobi which were admitted to be a dwelling house within the meaning of the Rent Restriction Ordinances of East Africa which it is common ground do not differ in effect from the English Rent Restriction Acts.

Their Lordships do not find it necessary to re-state the facts of the case since these have been examined in detail by both Courts in East Africa which have both come to the conclusion that the respondent, who had been the contractual tenant of the premises from the appellants, retained possession of them within the meaning of s. 17 (i) of the Consolidated Edition of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, that is to say that he retained possession of the premises as a home for himself and his family. This is a conclusion of fact and there are therefore concurrent findings of fact, but their Lordships have considered the matter independently and are of the same opinion as the Courts in East Africa.

It was not contended before their Lordships that the wrong test had been applied and the large number of English cases cited, from *Skinner v. Geary* [1931] 2 K.B. 546 to *Brown v. Brash and Ambrose* [1948] 2 K.B. 247, are in accordance with the principle that possession must be retained as a home, which was the test applied in the present case.

The fact that the respondent when he went to Dondora applied to the appellants for permission to sublet the premises and, when the appellants refused, applied to the Court for permission, is not inconsistent with an intention to return; nor is the fact that the respondent withdrew his application to the Court after the appellants had illegally placed their padlock on the premises so that the respondent could not re-enter.

There was uncontradicted evidence that the respondent intended to use the premises for his wife even if he did sublet with permission. It was not settled how long he was to stay at Dondora and he left in the premises the possessions enumerated on pages 56 and 58 of the Record.

Their Lordships find no reason to differ from the conclusions of the Courts in East Africa and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council

DEVJI HAMIR AND NARSHI HAMIR,
TOGETHER TRADING UNDER THE
STYLE OR FIRM OF THE AFRICAN
BOOT COMPANY

v.

GILBERT SCOTT MORLEY

DELIVERED BY LORD OAKSEY