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UNIVERSITY OF LONDON  
V.C. 1.  
19 FEB 1957  
INSTITUTE OF ADVANCED  
L STUDIES  
No. 31 of 1954.

In the Privy Council.

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

459-5

BETWEEN

MAHERALI HIRJI & COMPANY and POPAT JADAVJI  
(Respondents) ... .. APPELLANTS

AND

SHAH RAMJI KANJI (Applicant) ... .. RESPONDENT.

CASE FOR THE RESPONDENT

1.—This is an appeal from the unanimous decision of the Court of Appeal for Eastern Africa dated the 22nd December, 1953, reversing a judgment of the High Court of Tanganyika (Mr. Justice Mahon) delivered in Court at Dar es Salaam on the 9th day of December, 1952, and restoring the Order of the Rent Restriction Board of Moshi Township dated the 19th September, 1952.

2.—By Application No. 12, 1952 to the Rent Restriction Board of Moshi the Respondent (then Applicant) sought an order for the ejection of the tenants, the first-named Appellants (then Respondent No. 1), and the occupier, the second-named Appellant (then Respondent No. 2) from premises on Plot No. 10, Block "H," Section III, Moshi. By their said Order the Board ordered the Appellants to deliver vacant possession of the premises to the Respondent within six months. They further ordered the Respondent to demolish the existing buildings within 3 months and commence rebuilding within 6 months thereafter. The Court of Appeal for Eastern Africa whilst restoring the said order varied the same by requiring the Appellants to deliver vacant possession of the premises to the Respondent within three months from the date of its judgment.

3.—The Respondent is the owner of the said premises, which are premises to which the Rent Restriction Ordinance of Tanganyika (No. 16 of 1951) applies.

RECORD

4.—By his said application the Respondent applied to the Rent Restriction Board of Moshi Township for an order for possession of the premises on the ground that he required possession to enable the rebuilding thereof to be carried out. If the Board considers it reasonable to make such an order for possession it has power so to do on that ground. (Paragraph (i) of subsection (1) of Section 17 of the Rent Restriction Ordinance 1951.)

p. 4, l. 9 5.—In previous proceedings between the same parties the Rent Restriction Board of Moshi Township had made an order for possession of the said premises. In Civil Appeal No. 1 of 1951 in His Majesty's High Court of Tanganyika the said order for possession was set aside in a judgment given on 25th May, 1952, and thereafter the Appellants remained in occupation of the said premises protected by the Tanganyika Rent Restriction Ordinance 1951. 10

p. 5, l. 35 6.—The Respondent's application was heard by the Board on the 10th September 1952, when Counsel for the Respondent called no witnesses to give oral evidence, but after stating the grounds of his application produced a plan of the proposed new building which the Respondent wished to have erected, which plan had been approved by the local authority, and p. 26 a letter dated September 1950 from the Appellant's advocate to the Respondent's advocate (Exhibit A). Counsel for the Appellants then called evidence in an attempt to show that alternative accommodation was p. 8 not available to the Appellants and that it would be unreasonable to make an order for possession, and opposed the application on the grounds set out in the Order of the Board. At no time was it suggested before the Board that the Board had no jurisdiction to make an order of possession on the ground that no evidence had been called to show that the Appellants were statutory tenants of the premises.

p. 6, l. 27 7.—The Appellant Popat Jadavji admitted in cross examination that the building referred to in Exhibit A had been completed. 30

8.—By Section 8 (3) of the Rent Restriction Ordinance the Board may, in its determination of any matter take into consideration any evidence which it considers relevant to the subject of the inquiry before it, notwithstanding that such evidence would not be admissible under the law relating to evidence. After considering the evidence called by the parties and such other evidence as the Board considered relevant, the Board rejected the Appellant's submissions and, considering it reasonable so to do, made the Order dated 19th September 1952 hereinbefore set forth.

9.—The Appellants appealed to the High Court of Tanganyika (Mr. Justice Mahon who allowed the appeal). The appeal was allowed for the 40 reasons :—

First : because the Board had no jurisdiction to deal with the application " as the landlord (Respondent) does not appear to have determined the contractual tenancy of the tenants (Appellants)." RECORD  
p. 12, l. 3

Second : because the letter of September 1950 (Exhibit A) did not operate to terminate the lease. p. 12, l. 32

10.—The Respondents appealed to the Court of Appeal for Eastern Africa, who allowed the appeal for the reasons given in the judgment of Mr. Justice Lowe. p. 18-23

10      11.—Section 24 (1) of the Rent Restriction Ordinance 1951 reads :  
 " A tenant who, under the provisions of this Ordinance, retains possession  
 " of any premises shall, so long as he retains possession, observe and be  
 " entitled to the benefit of all the terms and conditions of the original  
 " contract of tenancy so far as the same are consistent with the provisions  
 " of this Ordinance, and shall be entitled to give up possession of the  
 " premises only on giving such notice as would have been required under  
 " the original contract of tenancy, or, if no notice would have been so  
 " required, then, notwithstanding any provision to the contrary in any law  
 " in force in the Territory, on giving not less than one month's notice.  
 20      " Provided that, notwithstanding anything in the contract of tenancy,  
 " a landlord who obtains an order for the recovery of possession of any  
 " premises or for the ejection of a tenant retaining possession as aforesaid  
 " shall not be required to give any notice to quit to the tenant."

Section 6 (1) of the same Ordinance reads :—

" A Rent Restriction Board in relation to the area for which  
 " it is established shall have power to do all things which it is  
 " required or empowered to do by or under the provisions of this  
 " Ordinance, and without prejudice to the generality of the  
 " foregoing shall have power

30      " (a) to determine whether or not any premises whatsoever  
           " are premises to which this Ordinance applies ;  
           " (i) to make orders for the recovery of possession of premises  
           " and for the payment of arrears of rent."

12.—Relying upon the agreement referred to in the letter Exhibit A the Respondent altered his position to his detriment in two ways (1) by refraining from renewing his application to the Board for the eviction of the Appellants for nearly 2 years, from September 1950 until 27th June 1952, (2) by going to the expense of preparing building plans and through the formalities of getting them approved. The Appellants are accordingly  
 40 estopped from denying that their contractual tenancy has been determined.

13.—It is submitted that the Court of Appeal for Eastern Africa was right for the reasons given and for other reasons as hereinafter set forth.

14.—First : It the Appellants were contractual tenants of the premises in September 1950 the letter Exhibit A amounted to the acceptance of a new tenancy to end as soon as the new building therein referred to was completed, and that the acceptance of such new tenancy worked a surrender of the old one by operation of law.

Second : The Appellants' contractual tenancy was determined by agreement on the date when the Appellants new building was completed.

Third : The Appellants by their conduct were estopped from 10 disputing that their contractual rights to remain in the premises were terminated.

Fourth : By virtue of Sections 6 and 24 of the Rent Restriction Ordinance 1951 the Board had power to make an order for possession during the currency of the Appellants' contractual tenancy.

15.—It is submitted that this appeal should be dismissed for the following

#### REASONS

1. BECAUSE of the reasons given by the Court of Appeal for 20 Eastern Africa.
2. BECAUSE on the evidence before the Rent Restriction Board the Appellants were statutory tenants of the premises.
3. BECAUSE the Appellants are estopped from disputing that they were statutory tenants of the premises.
4. BECAUSE of the Rent Restriction Board had jurisdiction<sup>n</sup> to make the Order dated 19th September 1952.

BARRY ~~STEEN~~  
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APPELLANTS

AND

SHAH RAMJI KANJI (Applicant)  
RESPONDENT.

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CASE FOR THE RESPONDENT

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MAPLES TEESDALE & CO.,  
6, Frederick's Place,  
Old Jewry, E.C.2,  
*Respondent's Solicitors.*