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Tanganyika Judgment 12 1956

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19 FEB 1957
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 31 of 1954.

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

BETWEEN

MAHERALI HIRJI & CO. and POPAT JADAVJI ... *Appellants*

AND

SHAH RAMJI KANJI ... ... *Respondent.*

RECORD OF PROCEEDINGS

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45977

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

BETWEEN

MAHERALI HIRJI & CO. and POPAT JADAVJI ... *Appellants*

AND

SHAH RAMJI KANJI ... ... *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Landlord's Application.

In the Rent Control Board at Moshi.

No. 1. Landlord's Application, dated 27th June 1952.

IN THE RENT RESTRICTION BOARD OF MOSHI.
AT MOSHI.

Application No. 12, 1952.

Full name of applicant	Shah Ramji Kanji.
Race, Tribe, etc.	Indian.
Occupation	Merchant.
Place of Residence	Plot No. 2, Block 'G.' Section III.
State whether Tenant or Landlord or otherwise	Landlord.
Full name of Respondent	No. 1. Merali Hirji & Company.
Race, Tribe, etc.	Ismail Khoja Mohamedian.
Occupation	Merchants.
Place of Residence	Plot No. 10. Block 'H' Section III, Moshi. Popat Jadavji's partner of the Respondent's firm lives in the premises subject matter of this application.
State whether Tenant or Landlord or otherwise	Tenant.
Full name of Respondent No. 2	Popat Jadavji.

In the Rent Control Board at Moshi.

No. 1. Landlord's Application, dated 27th June 1952

Race, Tribe, etc.	Indian.
Occupation	Merchant.
Place of Residence	Plot No. 10, Block 'H,' Section III, Moshi.
State whether Tenant, Landlord or otherwise	Occupier of the part of the premises.
Full description of Premises concerned	Plot No. 10. 'H' Section III, Moshi, Commercial and Residential; front portion being a shop and rest living rooms.
Where situated	Mawenzi Road Moshi Township.
Were premises in existence at 3rd Sept., 1939	Yes.
(1) Whether let at that date	Yes.
(2) if so let :—	
(a) rental at which let	Shs. 190/- per month.
(b) to whom let	Applicant.
If the said premises are comprised in or comprised other premises a full description of such other premises, the names of the Landlord and the tenants of such other premises	Nil.
The Standard Rent of such other premises	Nil.
If the premises were erected or substantially reconstructed after the 3rd September, 1939 :—	
(1) the market cost of construction at the date of completion of such construction	Nil.
(2) Ground rent, if any	Nil.
Whether premises let furnished	No.
Determination, order, Approval, Consent or relief sought or complaint to be investigated	Ejectment of the Tenants, Respondent No. 1 and the occupier Respondent No. 2 from premises on Plot No. 10, Block 'H,' Section III, Moshi.
Plain and concise statement of facts on which the claim application or complaint is based	The Applicant required the possession of the premises to enable him to completely pull down the existing building consisting of shops and the ground floor and residential quarters on the first floor as per plan No. 16/51 approved by the Moshi Township Authority on 26.4.51.

The Respondents No. 1 on the 6th day of April, 1950, assured the executive Officer of the Township Authority that they would immediately erect their own premises on Plot No. 25, Block 'D,' Section III, Moshi, and on completion of the building the Applicant's premises would be vacated.

In the month of September, 1950, the Respondents through their Advocates M/S Reid and Edmonds, had agreed in writing to vacate the premises before the 31st day of July, 1951, on completion of their new building but the Respondents have failed to vacate the premises, although their new buildings were completed.

The Landlord is willing to grant to the tenant a new tenancy of a part of the new premises on such terms and conditions as the Board may fix.

(Sgd.) SHAH RAMJI KANJI.
?????

Signature of Applicant
Signature of Advocate (if any)
Board Fees, Shgs.
Date, 27th June, 1952.
Filed by ???
for R. N. DONALDSON,
Advocate,
Moshi.

No. 2.
Respondents' Answer.

IN THE MOSHI RENT RESTRICTION BOARD AT MOSHI.

Cause No. 12 of 1952.

SHAH RAMJI KANJI ... ... *Applicant*

Versus

1. MERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Respondents.*

The Respondents above named, in answer to the facts stated in the Application, state as follows :—

In the Rent Control Board at Moshi.

No. 2. Respondents' Answer, dated 1st August 1952—*continued.*

1. That they admit that the first Defendant as a firm and the second Defendant as one of the partners thereof are in possession of and occupy the premises on Plot No. 10, Block H, Section III of Moshi Township belonging to the Applicant.

2. That the facts stated in the Application save for the concise statement thereof on which the Application is founded are not denied and *quoad ultra* the Respondents state as follows—

(a) that the Application discloses no facts or grounds which were not adjudicated upon in Civil Appeal No. 1 of 1951. In His Majesty's High Court of Tanganyika in which judgment was pronounced on 25th May 1952 setting aside an order by this Board for possession to be given to the Applicant;

(b) that the Application contains no offer or allegation of availability of suitable alternative accommodation for either business or residential purposes and the Board is precluded from making any Order in the cause;

(c) that the Application discloses insufficient facts or grounds to justify any order being made thereon;

(d) that the undertaking referred to in paragraphs 2 and 3 of the concise statement of facts was given in reliance of approval given by the Township Authority in respect of a plan of proposed new premises on Plot No. 25, Block D, Section III of Moshi Township making provision for the transfer and use of two pumps for the sale of petrol, which constitutes the major portion of the business of the Respondents, but, on completion of the premises as approved, permission to instal and use the said pumps on such new premises was refused.

WHEREFORE the Respondents humbly apply that this Application be dismissed and costs awarded to the Respondents.

(1) for Merali Hirji & Co.,
(Sgd.) ? ? ? *Partner*
(2) (Sgd.) ? ? ?
Respondents.

Moshi, 1st August, 1952

Received a copy hereof.

(Sgd.) ? ? ?
Advocate for Applicant.

Filed by
Sgd. A. REID,
Advocate for Respondents.

No. 3.

Proceedings before Rent Board.

In the Rent Control Board at Moshi.

No. 3. Proceedings before Rent Board. 6th August 1952 and 10th September 1952.

IN THE RENT RESTRICTION BOARD OF MOSHI TOWNSHIP AT MOSHI.

Application No. 12 of 1952.

SHAH RAMJI KANJI ... ... *Applicant*

Versus

MERALI HIRJI & Co.
POPAT JADAVJI ... ... *Respondents.*

6.8.52.

DONALDSON for Applicant.
PATEL (for REID) for Respondent.

PATEL: Reid is engaged in the High Court in Dar-es-Salaam and I have received no instructions. I ask for an adjournment.

DONALDSON: I oppose the adjournment. No notice was given to me by Reid that he proposed to apply for an adjournment and I have come all the way from Tanga to appear for the Applicant. Furthermore, the Respondents are present in person.

ORDER: Reid must have been fully aware that he would be engaged in the High Court today and should have notified this Board and Applicant's advocates that he would move the Board for an adjournment. His failure to do so has put Applicant's advocate to considerable expense and inconvenience. Respondent declares that he cannot proceed with this case in the absence of his advocate. The Board is reluctant to deprive the Respondent of legal advice but considers that he should pay the costs incurred by the Applicant for this adjournment. Hearing is adjourned till the next meeting of the Board and payment of costs by the Respondent to the Applicant—Costs to be taxed by taxing master.

6.8.52.

10.9.52.

DONALDSON for Applicant.
REID for Respondents.

DONALDSON: I do not wish to call any evidence. The application is founded on 17 (1) (i) of the Ordinance, my client wishes to demolish the existing building and erect a new one thereon. I produce a plan of the

In the Rent Control Board at Moshi.

No. 3. Proceedings before Rent Board. 6th August 1952 and 10th September 1952— *continued.*

new building which has been duly approved by the Township Authority. (Plan inspected by Board.) Cites E.A. Court of Appeal judgment published in East African Standard on 9.8.52. I file (Ex. A.) a copy of a letter dated ? September 1950 from the Respondents' advocates agreeing to vacate the premises in question as soon as a new building they were erecting was completed. (Reid objects to admission of this letter but his objection is overruled.) That new building has since been completed.

REID : I propose to call a witness on behalf of the Respondents.

Respondents' Evidence.

No. 4.
Evidence of Popat Jadavji.

No. 4. Popat Jadavji.

Examination.

AFFIRMED : I am Respondent No. 2 and partner in the firm of Merali Hirji & Co., Respondent No. 1. Mrs. Merali Hirji is the only other partner in the Company. The business of the Company is the sale of petrol, oil and rations. We rely principally on the sale of petrol. Our net profit from the sale of petrol is about Shs. 2,000/– p.m. I have nothing to do with Plot No. 25. That Plot belongs to Mr. Mehr Alli Hirji who has erected a new building thereon and has agreed to lease it to the respondent company No. 1. After that building was completed Mr. Mehr Alli Hirji applied for permission to transfer our petrol pumps to the new building but permission was refused. I have been a tenant of our present premises for 12 years. The applicant became owner of the premises about 7 years ago. I have tried to obtain alternative accommodation for our petrol station but without success. I file copies of correspondence between me and Shell Coy. (Exh. B, C & D.)

CROSS-EXAMINED.

Cross-examination.

The profits we make from our business other than the sale of petrol is approximately Sh. 500/– p.m. I admit that I recently completed another building for business purposes on another plot which I have leased to Nazir Ali Walji. I could not get permission to transfer my petrol pumps to the building. My partner Mr. Merali Hirji has also built another building which has been let to somebody I don't know. My partner's husband at present occupies a building known as the Tanganyika Commercial Agency.

No. 5. Dennis Graham Hogg.

No. 5.
Evidence of Dennis Graham Hogg.

Examination.

SWORN : I am a Sole Executive officer of the Shell Coy., at Moshi. We supply petrol to the respondent Company. The respondent Company take an average of 13,800 gallons of petrol from us monthly.

CROSS-EXAMINED.

X Nil.

No. 6.

Evidence of Jack Sowerby.

In the Rent Control Board at Moshi.

Respondents' Evidence.

No. 6. Jack Sowerby.

Examination.

SWORN : I am the Executive Officer, Moshi. I know plot No. 25, Block D, Zone III. On 16/3/48 I passed sanction to a plan for the erection of a petrol station on this plot by Merali Hirji. He duly erected a building according to the plan but also built other buildings close by which had the effect of closing the road of access to the petrol station. The Township authority accordingly refused sanction to the transfer of the petrol pumps to the new building. Some sites in the Township have been earmarked for new petrol stations and there is no reason why the Respondents should not apply for and obtain one of the new sites. Applications for the sites are awaited though they have not yet been advertised. We like to know the demand before actually advertising sites. The Policy is to centralize petrol stations and roadside pumps are to be discouraged. We propose to abolish all roadside pumps including these of the Respondents.

Cross-examination

CROSS-EXAMINED.

By the erection of additional buildings Mr. Ali Hirji were themselves responsible for the refusal by the Township Authority to allow them to transfer their pumps to plot No. 25 mentioned above.

No. 7.

Evidence of Merali Hirji.

No. 7. Merali Hirji.

Examination.

AFFIRMED : I have no interest in the firm, Merali Hirji and Company. My wife is a partner in that Company. I am the owner of plot No. 25, Block " D," Zone III. In 1948 I obtained sanction to the erection of a petrol station on this plot. I intended to erect a petrol station on it. I was however prepared to lease this petrol station to Merali Hirji & Company. Permission to erect petrol pumps on this site was however eventually refused. I then erected other buildings on the same plot. I was not told that I could not be allowed to erect petrol pumps on this site if I build other buildings. The shops on the ground of this site have now been let.

I give Merali Hirji & Company credit on goods thereby financing the firm.

(Sgd.) H. D. RUSHTON.

10/9/53.

In the Rent Control Board at Moshi.

No. 8.
Order.

No. 8. Order, dated 19th September 1952.

IN THE RENT RESTRICTION BOARD OF MOSHI TOWNSHIP.
AT MOSHI.

Application No. 12 of 1952.

SHAH RAMJI KANJI *versus* MAHERALI HIRJI AND CO., and P. JADAVJI.

The applicant in this case seeks to obtain possession of premises situated on Plot No. 10, Block "H," Section III, Moshi Township, from the Respondents, his tenants therein, for the purpose of demolishing the existing building and re-erecting thereon new premises. Plans for the proposed new building to be erected on the site in question have been duly approved by the Township Authority and have been inspected by the Board.

The Respondents oppose the application on two main grounds :—

(A) that no alternative accommodation for their business or residential purposes is available ;

(B) that their eviction from the premises would deprive them of their principal source of livelihood and that an Order by the Board for delivery of vacant possession would consequently be unreasonable.

It is in the evidence of the second Respondent that the Respondents are dealers in petrol, oil and rations and carry on their business in these commodities in the premises in question outside of which they have two petrol pumps. They rely principally on the sale of petrol from which they derive a profit of Shs. 2,000/2,500 per month. The husband of one Mrs. Mehr Ali Hirji who, with Respondent No. 2, are the sole partners in the firm Mehr Ali Hirji & Co., Respondent No. 1, erected a building on another plot owned by him in the Township and agreed to lease it to the Respondents for use as a petrol station, but the Respondents have been unable to obtain sanction from the Township Authority to the transfer of their pumps to that new building. In short, according to the Respondents, no alternative accommodation for their petrol business is available to them in Moshi and they accordingly submit that no order for their eviction should be passed by the Board.

The Board has heard the evidence led by the Respondents and the arguments of learned counsel for both parties at some length. It is not contested by the Respondents that the purpose for which the applicant-landlord requires possession of the premises is for purpose of demolishing those premises and rebuilding. That being the case the matter is governed by Section 17 (1) (i) of the Ordinance and not, as learned counsel for the Respondents appears to consider, by Section 17 (1) (e) (ii). The latter section makes it incumbent on the Board, before passing an order for the eviction of tenants to satisfy itself that alternative accommodation, reasonably equivalent as regards rent and suitability, is available but this section

only applies when the premises are required by the landlord for his own use. In the present instance the landlord does not require the premises for his own use but for the purpose of rebuilding and the case therefore falls under Section 17 (1) (i) by which the existence of alternative accommodation is not a prerequisite to the passing of an order for eviction. The first ground on which the application is opposed must therefore, in the opinion of the Board, fail.

As regards the second ground it is the evidence of Mr. Sowerby, Executive Officer, Township Authority, who has been called as a witness by the Respondents themselves, that it is the policy of the Township Authority to abolish all roadside pumps and to establish centralized petrol stations on selected sites. Mr. Sowerby adds that there is no reason why the Respondents should not apply for and obtain one of the selected sites which have not yet been allocated. It is clear, therefore, that the eviction of the Respondents from the premises in suit will not operate to deprive them of their livelihood as, with the minimum of effort, they can establish their business elsewhere.

Learned Counsel for the Respondents urges that the demolition of the existing building is not a matter of urgency or even strictly necessary and that rebuilding by the Applicant will only be for his own ultimate financial benefit and that therefore it would be unreasonable to disturb the Respondents' long standing tenancy. This argument does not appeal to the Board. The world must, or so we hope, advance and it would indeed be a retrograde step to hinder replacement of inferior buildings by more up-to-date types simply in order not to disturb tenancies of however long standing. Moshi in its existing state is, at its best, a somewhat drab Township and its citizens, or should we say inhabitants, have a natural wish to see improvements and the Board should, far from discouraging rebuilding, do all in its power to encourage it.

In the result, this full meeting of the Board is unanimously of the opinion that the application should be allowed and we order that the Respondents shall deliver vacant possession of the premises to the Applicant within six months, that is by the 10th March, 1953, at the latest.

On delivery of vacant possession the Applicant shall demolish the existing building within three months and commence rebuilding within a period of six months thereafter.

The Applicant is entitled to the cost of the proceedings throughout.

(Sgd.) H. D. RUSHTON,
Chairman,
MOSHI TOWNSHIP RENT RESTRICTION BOARD.

I hereby certify that this is a true copy of the original.

(Sgd.) T. GRIFFITH-JONES,
District Officer.
19.9.52.

In Her Majesty's High Court of Tanganyika.

No. 9.

Memorandum of Appeal.

TANGANYIKA TERRITORY.

No. 9. Memorandum of Appeal, dated 1st October 1952.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
IN THE DISTRICT REGISTRY AT ARUSHA.

Miscellaneous Civil Appeal No. 2 of 1952.

(From decision of the Moshi Rent Restriction Board in Application No. 12 of 1952.)

1. MAHERALI HIRJI & Co. ... ... *Appellants*
2. POPAT JADAVJI ... ... *(Original Respondents).*

Versus

SHAH RAMJI KANJI ... ... *Respondent (Original Applicant).*

Maherali Hirji & Company and Popat Jadavji the Appellants above named humbly appeal to this Honourable Court against the decision given by the Moshi Rent Restriction Board on the Tenth day of September 1952, of which decision and the grounds therefore a copy is filed herewith, upon the following grounds :—

1. The Board erred in failing to ascertain whether the tenancies of the respective Appellants were statutory or contractual and, if the latter, under what circumstances the tenancies could be terminated.
2. The Board erred in failing to decide whether the premises occupied by the respective Appellants were business premises or dwelling house within the meaning of Section 2 of the Rent Restriction Ordinance 1951.
3. The Board erred in law in holding that a mere expression by a Landlord of an intention to demolish premises let and to rebuild on the site is sufficient to justify an order for eviction.
4. The Board erred in failing to take into consideration the question of availability of suitable alternative accommodation.
5. The Board erred in substantially basing its decision on speculation as to the possible result of an application for service station plots not yet advertised.
6. The Board failed to give any consideration to the position of the Second Appellant.
7. The Board failed to consider, as required by Section 17 (2) of the Ordinance, whether or not, in all the circumstances of the case it was reasonable to make the order applied for.

8. The Board should have held, on due consideration of all the circumstances, that it was not reasonable to make an order for possession.

In Her Majesty's High Court of Tanganyika.

No. 9. Memorandum of Appeal, dated 1st October 1952—*continued.*

WHEREFORE the Appellants humbly pray that this Honourable Court may be pleased to set aside the order of the Board and to award the Appellants the costs of this Appeal and of the proceedings before the Board,

or

for such further or other relief as to this Honourable Court may seem meet.

(Sgd.) A. REED;
Advocate for Appellants.

Filed by

A. REED,
Advocate for Appellants.

Filed this 1st October 1952.

M. RATTANSI,
L. Clerk.

No. 10.

Judgment.

No. 10. Judgment, dated 9th December 1952.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT ARUSHA.

IN THE DISTRICT REGISTRY AT ARUSHA.

Misc. Civil Appeal No. 2 of 1952.

(From the decision of the Moshi Rent Restriction Board in Application No. 12 of 1952.)

1. MAHERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Appellants (Original Respondents)*

v.

SHAH RAMJI KANJI ... ... *Respondent (Original Applicant).*

MAHON, J. This is an appeal from the Rent Restriction Board Moshi granting the Respondent possession of a building occupied by the Appellants as monthly tenants of the Respondents. On the face of it this appeal does not appear to raise any particular point of difficulty, but after

In Her Majesty's High Court of Tanganyika.

No. 10. Judgment, dated 9th December 1952— *continued.*

perusing the proceedings before the Board I am in considerable doubt as to whether it had jurisdiction to deal with the application at all, in as much as the landlord (Respondent) does not appear to have determined the contractual tenancy of the tenants (Appellants). As to the necessity of doing this I can do no better than quote from the judgment of Sinclair J. in *Premji Nathoo* v. *Jaffar Shivji* in Misc. Civil Appeal No. 24 of 1952, with which I respectfully agree :

" The first ground of appeal is that the Board erred in law in making " the order for possession of the premises without the landlord/respondent " having determined the contractual tenancy of the appellant. It is, " I think, clear that Rent Restriction Ordinance does not confer any new " right of action on the landlord but restricts existing rights. If apart " from the ordinance a landlord is unable to evict his tenant, the ordinance " does not enable to do so. Consequently, before the Board may make " an order for the recovery of possession, any contract between the parties " giving the tenant a right to retain possession must have been duly " terminated or been brought lawfully to an end. The landlord must show " not only that the contractual tenancy had determined but also that the " tenant is holding over from the contractual tenancy."

There is no allegation in the application to the Board that the tenancy had been determined by notice to quit or otherwise, although it is alleged and was established that in September, 1950, the Appellants agreed in writing to vacate the premises on completion of a new building being erected for them, but did this undertaking operate to terminate the tenancy ? So far as I can see this point has not been dealt with either by Counsel or the Board, who proceeded on the assumption that the lease had been terminated. The point, however, is of the utmost importance because if the undertaking did not so operate then the Board had no power to make an order for possession. The point is one on which I should like to hear counsel, but I do not think that the inevitable increase in costs justifies such a course.

After fully considering the matter I am of the opinion that the undertaking given by the Appellants did not operate to terminate the lease. Even had the Appellants given the Respondent notice to quit the Board would have had no power to make an order for possession in favour of the Respondent unless he had contracted to sell or let the premises or had taken any other steps as a result of which he would, in the opinion of the Board be seriously prejudiced if he could not obtain possession : *vide* Section 17 (1) (c) of the Ordinance, No. 16 of 1951. As I see it, therefore, the Respondent when before the Board was not in a position to show that he had taken steps to terminate the lease or that the Appellants had done so.

I therefore come reluctantly to the conclusion that the Board erred in law in making the order for possession I say reluctantly, because I have considerable sympathy for the landlord in this matter. As it is, I must

and do allow this appeal with costs. The landlord is, of course, at liberty to terminate the lease and make a fresh application to the Board.

Delivered in Court at Dar es Salaam this 9th day of December, 1952.

(Sgd.) G. M. MAHON,
Judge.

Read in presence of Satchu for Donaldson and Dastur for Reid.

(Sgd.) G. M. MAHON,
Judge.

Certified true copy.
(Sgd.)
for *District Registrar.*
13.7.53.

No. 10. Judgment, dated 9th December 1952—*continued.*

No. 11.
Decree.

No. 11. Decree, dated 9th December 1952.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM.

IN THE DISTRICT REGISTRY
AT ARUSHA. Miscellaneous Civil Appeal No. 2 of 1952.

1. MAHERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Appellants (Original Respondent)*

versus

SHAH RAMJI KANJI ... ... *Respondent (Original Applicant).*

This appeal coming on this day for hearing before the Honourable Mr. Justice Mahon in the presence of P. R. Dastur, Esquire, Advocate, for A. Reid, Esquire, Advocate for the Appellants and M. C. Satchu, Esquire, Advocate, for R. N. Donaldson, Esquire, Advocate for the Respondent.

It is hereby ordered and decreed that:

1. The appeal be, and is hereby, allowed with liberty to the Respondent (the landlord) to terminate the lease and make a fresh application to the Board; and
2. The Respondent do pay to the Appellants the sum of Shillings one thousand two hundred eleven and cents forty being the taxed costs of the appeal proceedings, but not including the costs of the proceedings before the Board.

Given under my hand and seal of the Court, this 9th day of December, 1952.

(Sgd.) H. R. F. BUTTERFIELD,
Registrar.

Issued: /7/53.

Certified true copy.
(Sgd.)
District Registrar,
Arusha.

In the Court of Appeal for Eastern Africa.

No. 12. Memorandum of Appeal, dated 15th September 1953.

No. 12.

Memorandum of Appeal.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.
AT DAR ES SALAAM.

Civil Appeal No. 94 of 1953.

(Appeal from the Judgment in Misc. Civil Appeal No. 2 of 1953, in H.M. High Court of Tanganyika).

SHAH RAMJI KANJI ... ... *Appellant (Original Respondent) Landlord.*

versus

1. MAHERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Respondents (Original Appellants) Tenants.*

Shah Ramji Kanji, the Appellant above-named being aggrieved by the Judgment in Miscellaneous Civil Appeal No. 2 of 1953, passed on the 9th December, 1952, at Dar es Salaam appeals from the said judgment and decree upon the following and other grounds, namely :—

1. That the learned Judge erred in directing himself to a point which had not been argued in the proceedings before the Rent Restriction Board.
2. The Learned Judge erred in failing to consider the effect of Section 24 of the Rent Restriction Ordinance.
3. The learned Judge erred in failing to appreciate that a notice to produce the notice to quit had been served upon the Respondents but the Respondents gave no reason for non-production of the same.
4. The learned Judge erred in failing to consider whether or not the agreement between Respondents and Appellant expressed in the letter of September, 1950, operated as an estoppel against the Respondents from pleading lack of notice.
5. The learned Judge erred in failing to consider whether the Respondents had by their letter of September, 1950, terminated the tenancy as from 31st July, 1951.
6. The learned Judge erred in allowing costs to the Respondents.
7. The learned Judge ought to have held :—
   (a) The Respondents had themselves terminated the tenancy as from 31st July, 1951, and no notice to quit was necessary.
   (b) That Section 24 of the Rent Restriction Ordinance rendered notice unnecessary.

(c) That the Respondents were estopped from pleading lack of notice.

(d) That there was no evidence in this case that notice had not been served.

(e) That the question of notice not having been raised in the proceedings before the Rent Restriction Board it was not available for argument on appeal.

(f) That there was nothing in the Rent Restriction Ordinance to show that notice to quit was prerequisite to confer jurisdiction upon the Rent Restriction Board.

(g) That the Respondents were not entitled to costs.

8. A certified copy of the judgment is annexed hereto and marked " A."

9. A certified copy of the decree is annexed hereto and marked " B."

10. Leave of Appeal was granted on 11th March, 1953. A certified copy of the Order is annexed hereto and marked " C."

WHEREFORE the Appellant humbly prays that this Honourable Court be pleased to set aside the judgment of the Learned Appellate Judge and to award the costs of the Appellant of this appeal and appeal before the High Court and the proceedings before the Board, and such other and further relief as to this Honourable Court may seem meet.

(1) That the judgment of the Learned Appellate Judge be reversed and the order of the Rent Restriction Board be restored.

(2) Costs of the appeal and in the Court below and before the Board.

(3) Such other and further relief as to the Honourable Court may appear just.

(Sgd.)
Advocate for the Appellant.

Filed by
DONALDSON AND WOOD,
Advocates,
Tanga.

In the Court of Appeal for Eastern Africa.

No. 13. Vice-President's Notes of Arguments, dated 18th December 1953.

No. 13.

Vice President's Notes of Arguments.

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

Civil Appeal No. 94 of 1953.

SHAH RAMJI KANJI (Appellant) *vs.* MAHERALI HIRJI & Co. and POPAT JADAVJI (Respondents).

18.XII.53. *Coram:* WORLEY, V. P.
BRIGGS, J. A.
LOWE, J.

DONALDSON for Appellant.

REID for Respondents.

DONALDSON:

Notice to quit was in fact given and I ask leave to produce it now. E. & E. D. Vol. 22 page 611 No. 7049—evidence on appeal or rehearing. In High Court, notice was served on Respondent to produce the letter of notice served on him in 1948. As question notice or no notice was never raised on first appeal, Respondent never called on to produce the notice. This is first time the absence of notice has ever been raised. Raised by Judge.

REID:

Before Board Appellant elected to lead no evidence at all. Respondent gave evidence but never asked to produce it. We pleaded application didn't disclose any facts, etc. He should have pleaded notice and proved it. If produced now, I am deprived of my right to object.

O.41 r. 27—parties not allowed to produce evidence on appeal. Judge took the point himself.

Civil Appeal 48/1950 (Aden case).

Landlord must prove affirmatively that tenancy was terminated. (But see *Civil Appeal No.* 32 *of* 1951.)

I say that I am not obliged to deny any fact which has not been asserted or proved.

DONALDSON:

The matter had been before the Board twice before. That's why I didn't lead evidence. Section 8 (1) (3). If notice is admitted, question arises whether it is a good notice. If it were it would have been founded on in the application. Erroneous to assume that in Tanganyika it is necessary. 11 *E.A.C.A.* 29. to prove notice to quit. Refers to Section 24 (1) Proviso: but abandon that. Refers to Section 17 (1) (c).

COURT :

Agreement to quit may be notice to quit.

We were prejudiced by agreement—refrained from proceeding before Board.

Submission to jurisdiction :

1915 L.R. 2 K.B. 580 *Harris* v. *Taylor.*

Respondents cannot go before the Board and then the Court—argue his case on every point—take advantage of judgment if in his favour and if it is against him, then take the objection to jurisdiction.

Especially, if it is only a point of " conditional jurisdiction."

REID :

Chairman made no note of addresses : I did address him on this question of contractual tenancy not shown to be terminated. Agreement between parties is not notice to quit.

11 *E.A.C.A.* 29, at pp. 30 and 31.

Judge decided this case in same way. In any case, notice to quit is not enough—there must be further step by landlord. See letter p. 20. I say that this letter is not a notice to quit. In any event, no order should be made—no evidence to support the allegation that the applicant was intending to build. Suggest Court should tell Board that they should record evidence.

I say that when Donaldson said he wasn't calling any evidence there was nothing before Board to show intention to rebuild.

DONALDSON :

P. 17. I produce a plan. Not practice for Board at Moshi generally to call evidence. Plans and correspondence produced. Addressed Board at length.

REID :

Board did not address themselves to Section 17 (2)—reasonableness.

DONALDSON :

Reasonableness : see page 3. Board's decision.

Brighton Rent Tribunal case. 1950 1 All E.R. 946.

22.12.53.

Bench as before.

Ratansi for Donaldson for Appellant.

Murray for Reid for Respondents.

Judgment read. Appeal allowed with costs here, in the Court below and before the Board.

(Sgd.) N. A. WORLEY,
Vice-President.

In the Court of Appeal for Eastern Africa.

No. 14.

Judgment.

No. 14. Judgment, dated 22nd December 1953.

Civil Appeal No. 94 of 1953.

SHAH RAMJI KANJI ... ... *Appellant*

versus

1. MAHERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Respondents.*

LOWE, J.

The Appellant is the landlord of certain premises at Plot No. 10, Block H, Section III Moshi, of which the Respondents are, for all practical purposes, the tenants. On or about the 27th of June, 1952, the Appellant made application to the Rent Restriction Board of Moshi asking for an Order of ejectment of the Respondents, the Appellant stating that he required the premises to enable him to demolish the existing building on the plot and to erect a new building consisting of shops on the ground floor and residential quarters on the first floor. This building was to be carried out in accordance with a plan, produced to the Board, numbered 16/51, and approved by the Moshi Township Authority on the 26th of April, 1951. On the face of it, the application appeared to be based mainly on an agreement in writing, being a letter dated— September 1950, from the Advocates for the Respondents, to vacate the premises before the 31st of July, 1951 on completion of their new building. The application stated that the Respondents had failed to vacate the premises although their new building had been completed.

The Respondent opposed the application at the hearing before the Board on the 10th of September, 1952, but the Board made an order that the Respondents deliver vacant possession of the premises to the Applicant, the present Appellant, within six months and that on delivery of vacant possession the Applicant was to demolish the existing building within three months and commence rebuilding within a period of six months thereafter. The Respondents appealed against that order to the High Court of Tanganyika and on the 9th of December, 1952, judgment was delivered in Dar-es-Salaam allowing the appeal with costs to the then Appellants, the Respondents in this Court. The Appellant has now appealed to this Court against the judgment of the High Court of Tanganyika. Amongst the grounds of appeal, the following appear to be of prime importance in this appeal :—

1. That the learned Judge erred in directing himself to a point which had not been argued in the proceedings before the Rent Restriction Board.

4. The learned Judge erred in failing to consider whether or not the agreement between the Respondents and the Appellant expressed in the letter of September, 1950, operated as an estoppel against the Respondents from pleading lack of notice.

5. The learned judge failed to consider whether the Respondents had by their letter of September, 1950, terminated the tenancy as from 31st July, 1951.

It will be convenient to deal with grounds 4 and 5 first. The letter of September, 1950, was before the Board, having been produced on behalf of the present Appellant; it was also before the learned Judge on first appeal; the letter which is addressed to the then advocate for the Appellant and signed by the Advocate for the Respondents, reads as follows :—

> " With reference to your application to the Rent Restriction " Board and our discussion yesterday, we write you on behalf of " Maherali Hirji to confirm that the building on Plot No. 25, " Block D. Section III Moshi is progressing and that a contract " has been entered into with Domur Construction Limited for the " completion of the building before the 31st July, 1951. Our " client has agreed to vacate the above building as soon as the " new building is complete."

That the learned Judge considered the question raised in grounds 4 and 5 of the Memorandum of Appeal is apparent from the judgment in which the following occurs :—

> " It is alleged and was established that in September, 1950, " the Appellants agreed in writing to vacate the premises on " completion of a new building being erected for them, but did " this undertaking operate to terminate the tenancy ? "

and later in his judgment,

> " After fully considering the matter I am of the opinion " that the undertaking given by the Appellants did not operate " to terminate the lease."

The learned Judge did not, however, record any of the reasons which led him to that conclusion.

Counsel for the Respondents referred this Court to the case of *John Bennett and another* v. *Grogan and another*, 11 E.A.C.A., 29 in support of his argument that the letter of September, 1950, did not operate as a notice to quit. It is true that in that case it was held " That an " agreement between the landlord and tenant that the tenant shall give " vacant possession by a certain date is not a notice to quit within the " meaning of s. 11 (1) (c) of the (Kenya) (Consolidated) Ordinance." That section corresponds to Section 17 (1) (c) of the Tanganyika Rent Restriction Ordinance, No. 16 of 1951. In all such cases the Court must, of course, look at the express or implied terms of the agreement itself and the circumstances in which it was made. In any event, the case of *Bennett*

In the Court of Appeal for Eastern Africa.

No. 14. Judgment, dated 22nd December 1953— *continued.*

v. *Grogan* was finally decided on the question as to whether or not the Supreme Court of Kenya had acted " reasonably " in making an order for possession. It will be noted that the Supreme Court of Kenya was the Court of first instance in that case, the matter not having been before any Rent Restriction Board.

In the course of his judgment in that case the then learned Chief Justice of Kenya cited with apparent approval the case of *de Vries* v. *Sparks*, 17 L.T.R. 441, which I find, if I might say so with respect, to have dealt very ably with the question as to whether or not an agreement to vacate can operate as a notice to quit. The facts in that case are very much in point in this case as is the learned judgment.

During the course of his judgment Salter J. at p. 442 referred with approval to a case of *Standingford* v. *Bruce*, 134 L.T.R. 282 (1926), 1 K.B. 466, in which Shearman J. said, " The words ' notice to quit' have a technical meaning." Salter J. later went on to say—

> " In the first place, I think it was not a notice to quit at all, " but merely an agreement made between the parties that the " common law tenancy then subsisting should determine at the " latest on the 25th September. I think that a notice to quit " and an agreement to surrender or determine a tenancy are " essentially different in their nature. An agreement depends on " the consent of the parties, whereas a notice to quit differs " altogether, in that it is a notice given by one party to the other " to exercise a right given under the contract, whether the other " party likes it or not."

In the penultimate paragraph of his judgment Salter J. referring to the " agreement to vacate " with which he was concerned said :—

> " Further, if the agreement is to be regarded as a notice to " quit, it is invalid for two reasons ; first because it was not " a notice that expired on a fixed date, the words being ' on or " before the 25th September" ; and secondly, because there was " no evidence to show that it expired on the day of the week on " which the tenancy commenced, as is requisite in the case of " a weekly tenancy."

The " Agreement to vacate " which is before this Court cannot be said to be a " notice to quit " for the same reasons except that the Respondents' tenancy appears to have been a monthly one. The letter merely says that a contract has been entered into for the completion of a new building " *before* the 31st of July, 1951 " and that the Respondents had agreed to vacate the premises of the Appellant " as soon as the new building is complete."

The Respondents had here a wide choice of dates on which they might have vacated, for, had the building been completed on, say, the 10th of July, 1951, or on the 31st of December of that year, the completion date would have been the date of vacation and thus the date of the determination of the tenancy. It is difficult indeed to imagine how a landlord, in such

No. 14. Judgment, dated 22nd December 1953— *continued.*

circumstances, could plan the future of his premises, whether they were to be demolished, sold or re-let. I find that the letter of September, 1950, did not constitute a notice to quit as required by Section 17 (1) (c) of the Rent Restriction Ordinance (No. 16 of 1951) of Tanganyika and that the contractual tenancy of the Respondents was not thereby terminated.

I now come to ground number one of the Memorandum of Appeal; " That the learned Judge erred in directing himself to a point which had " not been argued in the proceedings before the Rent Restriction Board." I would agree that in normal circumstances such an assertion might be correct but what is the High Court to do when it finds that Counsel on both sides have failed to raise or argue some element, the presence or absence of which goes to the root of one aspect of the Board's jurisdiction in such a matter as was before the Rent Restriction Board of Moshi in this case ? It has been held on many occasions by this Court that in such a case the Court, and whether it be this Court or the High Court of Tanganyika in its appellate jurisdiction makes no difference, is entitled to apply its mind to that essential issue of jurisdiction. In the instant case neither Counsel raised before the Board or the High Court the question of the Board's jurisdiction to make an order, neither does it appear from the records that Counsel for the Respondents, even by implication, disputed that his clients submitted to that jurisdiction. As I see it the jurisdiction of the Board can be said to be of a dual nature, in that it has a " fundamental jurisdiction " to entertain any lawful application in respect of certain premises which are within the area under its jurisdiction and to determine the question before it; it has also, however, a " conditional jurisdiction " to make certain orders only when a condition has been fulfilled. A relevant and typical example of the " conditional jurisdiction " of the Board arises in this case. The Board's power to act under Section 17 (1) (i) of the Ordinance and make an order for possession is conditioned on it being satisfied that the contractual tenancy in question has been determined and that the tenant is " holding over " ; in other words that the tenant has become a " statutory tenant." That, I think, is now well settled law.

This Court, then, must consider whether or not the Board, in making the order for possession in this case, acted against its " conditional jurisdiction " ; there is no doubt that it was within its " fundamental jurisdiction " in entertaining the petitioner's application. The Board is empowered by Section 8 (3) of the Ordinance to 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."

It is a practice with many Boards to take advantage of this necessary and sensible provision by acting on their own knowledge of certain facts, or on the knowledge of particular members. On occasions a Board might accept admissions, specific or implied, of either advocate appearing before it. I think it is clear that Boards are entitled so to act. Counsel for the Respondents appeared before the Board at the hearing of the application in this case; learned counsel for the Appellants, although informing the

In the Court of Appeal for Eastern Africa.

No. 14. Judgment, dated 22nd December 1953— *continued.*

Board that he did not wish to call any evidence, addressed the Board at some length and put in a plan of a new building which his clients proposed to have erected on the site of the premises occupied by the Respondents. He also informed the Board that his client wished to demolish the existing building. This was not challenged by counsel for the Respondents and the Board apparently took counsel's statement as "evidence" for their subsequent consideration.

I might mention here that learned counsel for the Appellants informed this Court that at least one application in connection with the premises occupied by the Respondents had been before the Board previously, though that former application was made under a different section of the Ordinance from that which founded the application in this case. This fact was not denied by counsel for the Respondents. We do not know what evidence the Board heard or recorded on the previous application as the records were not before this Court. The Board was entitled to take cognisance of relevant evidence in the previous hearing, had it so wished, and act on the knowledge of any relevant facts which had emerged; it probably did so. However, whatever the Board did in that connection, quite apparently it was satisfied that it had jurisdiction to make the order it did make. The question now arises as to whether or not that order was a valid order. The learned Judge in his judgment has made it clear, having decided, quite rightly I consider, that the letter of September, 1950, did not operate as a notice to quit, that in his view the contractual tenancy had not been terminated in any other way. With respect, I do not think he was entitled to assume that in view of the conduct of the parties and the action of the Board in determining the application and making the order for possession. The Board, by making the order, must have been satisfied that there had been a determination of the contractual tenancy and I do not think it can be said that, in reaching that conclusion, it considered only the letter of September, 1950. There is nothing in the Order of the Board to show that such was the case. In any event Counsel for the Respondents, by his conduct, acquiesced in the action of the Board. In this connection I have had the benefit of reading the judgment of the learned President of this Court in the case of *Colonial Boot Company* v. *Dinshaw Bryamjee & Sons*, Civil Appeal No. 1 of 1952. During the course of his judgment the learned President said

> "It is clear that the Advocates for both parties argued their "cases both before the Board and in the Court below on the "basis that the Appellants were statutory tenants who had no "protection other than that afforded them by the Rent "Restriction Ordinance. That being the case I can see little "difference on the facts between this case and the *Popatlal* case "(Civil Appeal 32 of 1951), where this Court refused to allow the "validity of the notice to quit to be re-agitated on appeal to this "Court when the party concerned had admitted its validity at an "earlier stage in the litigation. The only difference perhaps is "that whereas in *Popatlal's* case the admission was express, in "this case it is implied by the conduct of the parties."

It seems to me that the same principle applies to this case. If counsel for the Respondent elects to stand mute on a matter of " conditional jurisdiction " when presenting his client's case to the Board and again when he is arguing that case on first appeal, he is estopped from asserting at this late stage that the contractual tenancy still exists.

Learned counsel for the Appellant made application to this Court for permission to produce further evidence in the form of documents. It will have become apparent that I do not consider it necessary for this Court to consider making any order in that connection and for my part I would leave the matter undecided as I do not think that the admission or exclusion of such documents would now make any difference to this appeal.

I am satisfied that the Board considered whether or not it would be reasonable for it to make the order for possession as it was required to do by Section 17 (2) of the Ordinance and that it came to the conclusion that it was. I can see no reason to doubt the correctness of that finding of fact.

For the reasons I have given I would allow this appeal with costs to the Appellant in this Court, in the Court below and in the hearing before the Board. The effect of this would be to restore the order of the Board but in view of the time it will have taken the Appellant to regain possession of his premises it is necessary to make some variation in the Board's Order. I consider that in the circumstances it would be reasonable to require the Respondents to deliver vacant possession of the premises to the Appellant within three months from the date hereof, but in other respects the order to remain undisturbed. For my part I would so order.

(Sgd.) A. G. LOWE,
Judge.

Dar-es-Salaam,
22nd December, 1953.

WORLEY—Vice-President.

I also agree. The appeal is allowed and the order of the Board restored subject to the variation that it will take effect in three months from today. There will be an order for costs in the terms proposed in the judgment which has just been read by Lowe J.

(Sgd.) N. A. WORLEY,
Vice-President.

BRIGGS—Justice of Appeal.

I agree.

(Sgd.) F. A. BRIGGS,
Justice of Appeal.

Dar-es-Salaam,
22nd December, 1953.

In the Court of Appeal for Eastern Africa.

No. 15. Decree, dated 22nd December 1953.

No. 15.

Decree.

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

Civil Appeal No. 94 of 1953.

(From original Judgment and Decree in Miscellaneous Civil Appeal No. 2 of 1952 of H.M. High Court of Tanganyika in the District Registry at Dar-es-Salaam.)

SHAH RAMJI KANJI ... ... *Appellant (Original Respondent)*

versus

1. MAHERALI HIRJI & Co.
2. POPAT JADAVJI ... ... *Respondents (Original Appellants).*

This Appeal coming on 18th December 1953, for hearing before Her Majesty's Court of Appeal for Eastern Africa in the presence of Mr. R. N. Donaldson on the part of the Appellant and of Mr. A. Reid on the part of the Respondents It is ordered :

1. That the appeal be allowed with costs to the Appellant in this Court, in the Court below and in the hearing before the Rent Control Board.
2. That the Respondents do deliver vacant possession of the premises the subject of the Appeal to the Appellant within three months from the 22nd day of December 1953.
3. Subject to the foregoing variation the order of the Rent Control Board of Moshi at Moshi made in Application No. 12 of 1952 be restored.

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

Dated this 22nd December, 1953.

Issued this 2nd day of July, 1954.

No. 16.

Order granting Final Leave to Appeal to Her Majesty in Council.

In the Court of Appeal for Eastern Africa.

No. 16. Order granting final leave to appeal to Her Majesty in Council, dated 6th July 1954.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR-ES-SALAAM.

Civil Appeal No. 94 of 1953.

SHAH RAMJI KANJI ... ... *Appellant*

versus

MAHERALI HIRJI & COMPANY and POPAT JADAVJI... ... *Respondents.*

ORDER.

UPON the application presented to this Court on the 6th day of July 1954 by Counsel for the above-named Respondents for final leave to appeal to Her Majesty in Council from a Judgment of this Court dated the 22nd day of December 1953 herein AND UPON HEARING Counsel for the Respondents and the Appellant THIS COURT DOTH ORDER that the application for final leave to appeal to Her Majesty in Council be granted AND DOTH DIRECT that the record be despatched to England within fourteen days from the date hereof AND DOTH FURTHER ORDER that the Applicants pay the costs of this application in any event.

Dated at Nairobi this 6th day of July, 1954.

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

Exhibits.

LANDLORD'S EXHIBIT.

Landlord's Exhibit.

Exhibit A.—Letter, Reid & Edmonds to M. C. Patel.

Exhibit A. Letter, Reid & Edmonds to M. C. Patel. September, 1950.

Reid & Edmonds,
Advocates.

P.O. Box 59,
Moshi,

--th September, 1950.

M. C. Patel, Esq.,
Advocate,
Moshi.

Dear Sir,

Re Ramji Kanji *vs.* Maherali Hirji.

Plot No. 10, Block H, Sec. III, Moshi.

With reference to your application to the Rent Restriction Board and our discussion yesterday, we write you on behalf of Maherali Hirji to confirm that the building on Plot No. 25, Block D, Section III, Moshi, is progressing and that a contract has been entered into with Domus Construction Limited for the completion of the building before the 31st July, 1951. Our client has agreed to vacate the above building as soon as the new building is complete.

Yours faithfully,
(Sgd.) REID & EDMONDS.

Tenants' Exhibits.

TENANTS' EXHIBITS.

Exhibit B.—Letter, Shah Ramji Kanji to The Anglo Iranian Oil Co. Ltd.

Exhibit B. Letter, Shah Ramji Kanji to Anglo Iranian Oil Co. Ltd. 11th March 1952.

C. C. Maherali Hirji, Esq.,
Moshi.
Ramji Kanji.

P.O. Box No. 91,
Moshi.

March 11th, 1952.

REGISTERED.

The Representative,
Messrs. The Anglo Iranian Oil Co., Ltd.,
Moshi Depot.

Dear Sir,

Your Petrol Pump at my premises on

Plot No. 10, Block " H," Zone III, Moshi, Township.

I am still waiting for your reply to my letter of the 28th ultimo on the above subject, a copy of which is attached herewith.

Please treat this matter as MOST URGENT for reasons that the place is not insured. If anything happens as a result of delay on your side in removing the pump immediately I shall hold your Company responsible for all consequences.

Yours faithfully,
(Sgd.) SHAH RAMJI KANJI.

Copies to :—

1. The Anglo Iranian Oil Co., Ltd., Nairobi.
2. The Anglo Iranian Oil Co., Ltd., Tanga.

Exhibits.

Tenants' Exhibits.

Exhibit B. Letter, Shah Ramji Kanji to Anglo Iranian Oil Co. Ltd. 11th March 1952—*continued.*

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10 **Exhibit C.—Letter, Shah Ramji Kanji to The Anglo Iranian Oil Co. Ltd.**

Exhibit C. Letter, Shah Ramji Kanji to Anglo Iranian Oil Co. Ltd. 28th February 1952.

Ramji Kanji.

P.O. Box No. 91.
Moshi.

February 28th, 1952.

The Representative,
Messrs. The Anglo Iranian Oil Co., Ltd.,
Moshi Depot.

Dear Sir,

Premises on Plot No. 10, Block H, Zone III, Moshi Township.

I shall be glad if you will arrange to remove immediately your petrol 20 pump at the above premises on Mawanzi Road, Moshi, at present occupied by Messrs. Maherali Hirji & Co.

Your petrol pump was installed long time ago when the said building belonged to some other party. As it has since been bought by me I am not prepared to give my consent for the handling and sale of such inflammable liquid there as the place is not insured.

Thanking you with a request for prompt reply and quick action in the matter.

Yours faithfully,
(Sgd.) SHAH RAMJI KANJI.

Exhibits.

Tenants' Exhibits.

Exhibit D.—Letter, Shell Company of East Africa Ltd. to Shah Ramji Kanji.

Exhibit D. Letter, Shell Company of East Africa Ltd. to Shah Ramji Kanji. 14th March 1952.

P.O. Box No. 74,
Moshi.
Tanganyika.

M.109/52.

14th March, 1952.

Messrs. Shah Ramji Kanji,
P.O. Box 91,
Moshi.

Dear Sirs,

Premises on Plot No. 10.

Block " H " Zone III, Moshi Township.

We thank you for your letter dated 11th March, 1952, and in reply would advise you that the pump in question is, in fact, leased to Messrs. Maherali Hirji and Company. The responsibility of operating this pump lies entirely with the present occupiers of the above mentioned premises and in no way can this company be held responsible for anything that may or may not happen to these premises because of the presence of our pump and underground tank.

Further we would add that as far as we are aware Messrs. Maherali Hirji & Co. have permission from the Moshi Township Authority to retail Motor Spirit on this site. This retail business of theirs represents a fairly large proportion of the total sales of this concern.

We also understand that comparatively recently Messrs. Maherali Hirji & Co. have successfully contested an eviction order from these premises mainly on the grounds that no alternative site was available from which to conduct their present business. Therefore to remove this pump would in fact be depriving Messrs. Maherali Hirji & Co. of one of their main means of livelihood. In any case they are a good pumpholder as far as we are concerned, and we have no intention of taking this unit from them.

We trust we have made ourselves quite clear on this subject and would stress once again that we are not, and cannot be, responsible in any way for your premises.

Yours faithfully,

For the Shell Company of East Africa, Limited,

? ? ?

In the Privy Council.

No. 31 of 1954.

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

BETWEEN

MAHERALI HIRJI & CO.
and POPAT JADAVJI ... *Appellants*

AND

SHAH RAMJI KANJI ... *Respondent.*

RECORD OF PROCEEDINGS

ROWE & MAW,
Stafford House,
Norfolk Street,
Strand, W.C.2,
Solicitors for the Appellants.

MAPLES TEESDALE & CO.,
6 Fredericks Place,
Old Jewry, E.C.2,
Solicitors for the Respondent.

GEO. BARBER & SON LTD., Printers, Fucnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
(A65817)