Privy Council Appeal No. 31 *of* 1954

Maherali Hirji & Co. and another - - - - - - *Appellants*

v.

Shah Ramji Kanji - - - - - - - - - - *Respondent*

FROM

EASTERN AFRICA COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1956

Present at the Hearing:

LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* MR. L. M. D. DE SILVA]

This appeal arises out of proceedings before the Rent Restriction Board of Moshi, Tanganyika, in which the respondent sought under the Tanganyika Rent Restriction Ordinance to obtain against the appellants an order for the possession of certain premises situated at Moshi on the ground that he required possession for the purpose of demolishing the building standing on the said premises and erecting a new building thereon.

The Board made an order in favour of the respondent. On appeal the High Court of Tanganyika reversed the decision. On a further appeal the Court of Appeal for Eastern Africa set aside the decision of the High Court and restored the decision of the Board.

The only matters raised before the Rent Restriction Board, and decided by it, were certain defences pleaded by the appellants and available to them under the Rent Restriction Ordinance on the basis that they were statutory tenants. On these defences the Board decided against the appellants and made an order in favour of the respondent for recovery of possession. At the hearing before their Lordships these defences were not persisted in.

On appeal the High Court reversed the decision of the Board on the ground that the Board should not have made an order for the recovery of possession in favour of the respondent as the respondent had failed in the proceedings before the Board to aver and prove that the contractual tenancy between him and the appellants had been terminated.

In the course of its judgment the High Court correctly observed that the point referred to in the previous paragraph had "not been dealt with either by counsel or the Board who proceeded on the assumption" that the contractual tenancy had been terminated. There was some argument before their Lordships as to whether or not the point had been raised before the High Court by the appellants or considered by

it of its own motion. The learned Judge delivering the judgment of the High Court observed, "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", and their Lordships have no reason to doubt the correctness of a view expressed by the Court of Appeal, namely, that the point was not raised by the appellants either before the Board or before the High Court.

Upon appeal the Court of Appeal for Eastern Africa set aside the judgment of the High Court and restored the decision of the Board on two alternate grounds. The first of these was that "the Board must have been satisfied that there had been a determination of the contractual tenancy". The second was, in substance, that the defendant must be taken to have admitted that the contractual tenancy had been determined.

With regard to the first ground the Court of Appeal thought that the Board had "probably" taken cognisance of what happened in an earlier set of proceedings before it between the same parties relating to the same premises. These proceedings do not form a part of the record but had been relied on by the appellants to support a plea of *res judicata* (no longer pressed) in the answer filed by them to the respondent's application. They had culminated in a decision in favour of the appellants in Civil Appeal 1 of 1952.

It was argued that the view taken by the Court of Appeal should not be upheld as there was nothing in the record to show that the Board had examined the previous proceedings or in any way addressed its mind to the question of the determination of the contractual tenancy. There are indications in the Ordinance that the legislature recognises a certain degree of informality in the proceedings before the Board, for instance under sub-section (3) of section 8:—

> "In its determination of any matter a Board may 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."

And under sub-section 5 of the same section:—

> "In so far as no or no sufficient provision is made by regulations under s. 37 of this Ordinance, a Board may regulate its own procedure."

Their Lordships have not been referred to any regulations made under s. 37 for the conduct of business before a Board. But even if such regulations have been made, it is clear that the ordinary rules of procedure, obtaining in the Courts generally, are not applicable to proceedings before Rent Restriction Boards, and that Boards frequently regulate their own procedure. It is desirable that the record of proceedings before a Board should contain a sufficient note of what has taken place before it. The Court of Appeal in Eastern Africa would, however, be familiar with the procedure and practice that has hitherto obtained before local Rent Restriction Boards and their Lordships would be slow, upon an argument based on the state of the record of the proceedings before the Board, to disturb a finding at which the Court of Appeal has arrived. Their Lordships find it unnecessary to pursue this matter further in view of the opinion they have formed of the second and alternate ground upon which the judgment of the Court of Appeal rests.

The second ground upon which the Court of Appeal restored the decision of the Board was, in substance, that the appellants must be regarded as having, by their conduct, admitted that the contractual tenancy had been determined. With this view their Lordships agree.

There is nothing in the Ordinance which can be said in any way to prescribe or limit the method by which the termination of a contractual tenancy can be established and therefore, in their Lordships' opinion, there is no reason why a Rent Restriction Board should not proceed upon an admission that a contractual tenancy has been determined.

The statutory form prescribed for an application under the Ordinance contains no provision requiring a landlord applicant to state in terms whether or not the contractual tenancy between him and the tenant has been determined. The plaintiff made an application for possession on the ground that he " required the possession of the premises to enable him to completely pull down the existing building " as shown on a plan filed by him without stating in terms what must be considered to have been the clear assumption of the application, namely that the tenancy between him and the defendant was a statutory tenancy. In the " Answer " filed by him the defendant did not challenge the assumption referred to but proceeded to raise defences open under the Ordinance to a statutory tenant. In the proceedings before the Board the defendant allowed the assumption to prevail and the Board made an order on that basis. Throughout the previous proceedings (referred to above) between the same parties with regard to the same premises the defendant had permitted the same assumption to prevail. Had the assumption been successfully challenged in either of the proceedings before the Rent Restriction Board they would immediately have come to an end. In these circumstances the Court of Appeal held that the appellants must be regarded as having by their conduct admitted that the contractual tenancy had come to an end. In doing so it relied on a decision of its own (*Colonial Boot Company* v. *Dinshaw Byramjee & Sons*) (1952) 19 E.A.C.A. 125, in which it was held that the fact that a person was a statutory tenant could be established by a tacit admission " implied by the conduct of the parties ". Their Lordships are of the view that the conclusion arrived at by the Court of Appeal was correct. Their Lordships would further observe that the question whether a contractual tenancy has been determined is essentially a question of fact although questions of law may enter into it. Their Lordships are of opinion that the admission made by the appellants is one that they cannot disclaim.

Upon the view their Lordships have taken it is not necessary to decide a question which was argued before them at some length namely whether or not the High Court had a right, in its discretion, to raise and consider the point upon which it based its decision. Assuming that it acted correctly in considering the point, the decision upon it was wrong. It decided that a certain letter which formed part of the record did not operate as a notice to quit and, as pointed out by the Court of Appeal, assumed that the " contractual tenancy had not been terminated in any other way." It failed to consider the points upon which the Court of Appeal has rested its judgment. This failure might have been avoided if counsel had been heard.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the respondent the costs of this appeal.

(39641) Wt. 8064—69 100 4/56 D.L.

In the Privy Council

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v.

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DELIVERED BY MR. L. M. D. DE SILVA

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