

UGANDA / JUDGMENT

Bros v Bogha (Civil Appeal No. 11/1935.) [1935] EACA 98 (1 January 1935)

[1935] EACA 98**COURT**

East African Court of Appeal

BEFOREHall, C.J. (Uganda), Lucie-Smith Ag CJ (Kenya),
Sheridan CJ**CASE / FILE NUMBER**

Civil Appeal No. 11/1935.

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COURT OF APPEAL FOR EASTERN AFRICA.**Before SIR JOSEPH SHERIDAN, C. J. (Kenya); HALL, C. J. (Uganda) and LUCIE-SMITH, J. (Kenya).****HUSSEIN ESMAIL BROS., Appellants, (Original Applicants) ø.****GORDHAN BOGHA, Respondent (Original Respondent). Civil Appeal No. 11/1935.**Practice—Appeal—Decree in Suit—Order—Civil Procedure Ordinance (Uganda), section 2 (4)—
Civil Procedure Rules (Uganda), O.4, O.40-Registration of Titles Ordinance (Uganda), section 147.

The appellants and the respondent entered into an agreement for the sale to the respondent of the lease of certain lands comprised in the Leasehold Register, Vol. 125, fol. 24, and registered in the names of the appellants; it was agreed that the price should be payable two years after the date of the agreement and that in the meantime the respondent should pay to the appellants by monthly payments interest at the rate of 10 per cent per annum on the purchase money. The agreement provided that the respondent was to be let into immediate possession of the premises and was to receive the rents thereof, he paying ground rent, rates, taxes and all other charges, and that upon default of the payment by him of interest for three consecutive months the appellants might terminate the agreement without notice and resume and enter into possession of the premises.

On 9-3-1935 the appellants purported to cancel the agreement on the ground that interest for over three months was unpaid. On 20-3-1935 the respondent lodged in the Registry of Titles and had registered a caveat against the title of the appellants. Thereupon the appellants took out a summons under section 147 of the Registration of Titles Ordinance calling upon the respondent to show cause why the caveat should not be removed.

Upon the hearing of the Summons the Court dismissed the application on the ground that, upon the true construction of the agreement, the respondent was a tenant of the premises to the appellants, and that as they had not proved any demand and refusal of payment of interest by way of rent, the application was premature.

Held (26-7-35).—That the proceedings were not a Suit within the meaning of the Civil Procedure Ordinance, and that, as the Order was
not one from which an appeal lay as of right under O. 40, an appeal could not be brought without leave. Appeal dismissed.

Figgis, K. C., for the respondent, took the preliminary objection that, as this was an appeal from an Order, and not from a Decree in a Suit, no appeal lay without leave, which had not been obtained. (He referred to the Civil Procedure Ordinance (Uganda), sections 2 (4) (23), 66, 75, 76; Civil Procedure Rules, O. 40; Registration of Titles Ordinance (Uganda), sections 147, 195.)

Wilkinson for the appellants.

JUDGMENT.—Mr. Figgis for the respondent has taken a preliminary point that no appeal lies on the ground that the appeal purports to be from an Order and not from a Decree in a suit and that leave to appeal from the Order should have been first obtained from the Court making the Order. Counsel for the appellant has argued that the proceedings here are of the nature of a suit within the meaning of section 2 (3) of the Civil Procedure Ordinance. "Suit" is defined as "all proceedings commenced in any manner prescribed", "prescribed" as "prescribed by Rules" and "Rules" as "Rules and forms made by the Rules Committee to regulate the procedure of Courts". One has but to look at O. 4 of the Civil Procedure Rules regulating the institution of suits and the manner in which these proceedings were instituted under section 147 of the Registration of Titles Ordinance to arrive at the conclusion that the proceedings are not a suit within the meaning of the Ordinance. It has not been argued that the proceedings are an order which can be appealed from as of right under the Ordinance and O. 40 makes it clear that they are not. The appeal is dismissed, as it does not lie, with costs.

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