

UGANDA / JUDGMENT

Daya and Others (Criminal Appeal No. 18 of 1953; Criminal Appeal No. 19 of 1953; Criminal Appeal No. 20 of 1953) [1953] EACA 27 (1 January 1953)

[1953] EACA 27

COURT

East African Court of Appeal

BEFORE

Hearne CJ, Mayers J, Rudd J

CASE / FILE NUMBER

Criminal Appeal No. 18 of 1953 ; Criminal Appeal No. 19 of 1953 ; Criminal Appeal No. 20 of 1953

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APPELLATE CRIMINAL

Before HEARNE, C. J., RUDD and MAYERS, JJ.

RAJABALLI RAHEMTULLA DAYA AND OTHERS, Appellants

THE CITY COUNCIL OF NAIROBI, Respondent

Criminal Appeals Nos. 18, 19 and 20 of 1953

Criminal Law—Nairobi-Municipality (Building) By-Laws, 1948—By-law 351 (b)— "Owner" in by-law considered—Original owner allowing new building to be occupied without permit—Owner selling occupied building—Whether new owners liable for breach of by-law—Whether new owners liable for negligence and failing to inquire whether original had obtained a permit.

The three appellants were jointly charged in that, being the owners of a new building, situated in Nairobi, they had allowed the building to be occupied without having obtained a written permit of occupation issued by an authorized officer and so had contravened by-law No. 351 (b) of the Nairobi Municipality (Building) By-laws, 1948. A building inspector on 21st March, 1953, discovered that a new building had been occupied and that the requisite permit had not been issued. The owners were found to be the three appellants. The appellants stated in their defence that when they purchased the building, in January, 1952, they found it already occupied and that they "did not bother about" the need for a permit but had left the matter in the hands of their lawyers. The magistrate ruled that "negligence" of the sort alleged was no excuse and convicted

the three appellants of a contravention of the by-law. The appellants appealed.

Held (30-10-53).—(1) The word "owner" is used advisedly in by-law 351 (b). In construing the by-law the "owner" of a new building is the person, whether he erected the building or not, who as owner, is in a position to occupy it himself for the first time or to allow it to be occupied by his tenants for the first time. That person in the present case was a third party who had allowed the new building to be occupied by his tenants before it came into the ownership of the appellants.

(2) The liability of the appellants could not be made to depend, as the magistrate made it depend, upon negligence to put themselves upon proper inquiry as to whether or not a permit had been obtained by the original owner. Even if it could competently so be made, there was no provision in the by-law to make the appellants liable in these circumstances. Convictions quashed and sentences set aside.

Trivedi for appellants.

Mackie-Robertson for respondent.

JUDGMENT.—The appellants were convicted of an offence contra Nairobi Municipality (Building) By-law 351 (b).

Under by-law 340 "every person who proposes to erect a building... shall lodge with the Municipal Engineer an application for approval by the Council of his proposals and the plans relative thereto". Under by-law 344, if the Council approves the plans "they shall signify their approval thereof within 30 days from the receipt of the same". Under by-law 349 "a person shall cause to be erected any building except in accordance with plans submitted and approved by the Council".

The by-laws which have been cited refer to the person who proposes to erect a building or to cause it to be erected. In by-law 351 (a) we are confronted with the word "owner". No doubt it was used advisedly. A person who has erected a new building may sell it before it has been occupied: the person who buys it will be the person who can allow it to be occupied: and the "owner" of a new building is the person whether he erected the building or not, who as owner is in a position to occupy it himself for the first time or to allow it to be occupied by tenants for the first time. That person in the present case was, according to the evidence C. S. Patel who on the completion of the building allowed it to be occupied by tenants. As he did not obtain a permit of occupation he would appear to have contravened the provisions of by-law 351 (b).

Did the appellants also contravene the provisions of by-law 351 (b) when, having purchased the building after the previous owner had allowed it, as a new building, to be occupied without a permit of occupation, they allowed the occupation to continue without a permit of occupation? If "the person being the owner thereof (any new building)" in by-law 351 (b) has the same meaning as "owner" in by-law 351 (a), it is possible to argue that the provisions of section 351 (b) do not affect the appellants, for after the new building had been erected by C. S. Patel, C. S. Patel and not the appellants had allowed it to be occupied without a permit. But the law is not to be flouted and if the appellants knew at the time of purchase that the building they had purchased was

occupied, as it was, without permit of occupation, they may well be held liable. This is not such a case, and we do not decide the point. Where, however, as is this case, they did not know the building, as a new building, had been allowed to be occupied without a permit of occupation by C. S. Patel, against whom, as it appears, no steps had been taken by the City Council of Nairobi, their liability cannot be made to depend, as the magistrate has made it depend, upon negligence to put themselves on proper inquiry as to whether a permit of occupation had been obtained by C. S. Patel. Even if it could competently be made, no provision has in fact been made by any by-law to make the appellants liable in these circumstances.

The appeals are allowed and the convictions and sentences are set aside.

In view of the above grounds upon which we have arrived at our conclusion, it is unnecessary for us to express any opinion as to the exact meaning of the term "new building" in by-law 351 (a).

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