

UGANDA / JUDGMENT

Gulabchand v Virji and Others

(Civil Appeal No. 16 of 1953)

[1953] EACA 34 (1 January 1953)

[1953] EACA 34

COURT

East African Court of Appeal

BEFORE

Harley J

CASE / FILE NUMBER

Civil Appeal No. 16 of 1953

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APPELLATE CIVIL

Before HARLEY, Ag. J.

SHAH BHAICHAND GULABCHAND, Appellant (Head Tenant)

v.

NAGJI VIRJI AND SONS, Respondent (Landlords)

Civil Appeal No. 16 of 1953

Landlord and tenant—Increase of Rent (Restriction) Ordinance, 1949—Section 16 (1) (i)—Head tenant subletting to subtenant—Subtenant walking out—Landlord entering into occupation—Whether "parting with possession"—Whether subtenant still in occupation of premises—Whether head tenant entitled to order for possession against landlord.

Landlords let certain premises to a tenant who sublet. The subtenant addressed a letter to the landlord to the effect that he was vacating the premises at the end of the month and that the landlord might arrange to take possession. It was alleged that a copy of the letter was sent to the head tenant but the latter denied receipt. The subtenants left the premises in accordance with their letter and the landlord entered and took possession. The head tenant then applied to the Central Rent Control Board, inter alia, for an order for possession against the landlord. The Board found that "the subtenant just walked out, leaving the shop open and the landlord walked in". The Board held that the subtenant could not have parted with possession of the premises

unless to some other person and refused the order on the ground that the subtenant was at all material times in possession and that they had no jurisdiction to make the order against the landlord who was a mere trespasser. The head tenant appealed,

Held (18-12-53),—The subtenant's walking out and the landlord walking in did not amount to a parting with possession by the subtenant. Since the subtenant was at all material times in possession of the premises, there was no possible ground under section 16 (1) (i) of the Increase of Rent (Restriction) Ordinance, 1949, for granting to the head tenant an ... order for possession against the landlord in occupation.

Appeal dismissed.

Cases cited: *Stening v. Abrahams*, (1931) 1 Ch. 470; *Chaplin v. Smith*, (1926) 1 K. B. 198 (C. A.); *Jackson v. Simons*, (1923) 1 Ch. 373; *Abrahams v. Mac Fisheries Ltd.*, (1925) 2 K. B. 18.

D. N. Khanna for appellant

Kean for respondents.

[Editor's Note.—On the second appeal to the Court of Appeal for Eastern Africa the appeal was allowed on the ground that too narrow a view had been taken of the meaning and purpose of section 16 (1) (i) and of the meaning of "parting with possession". This phrase was not confined to "deliver possession to some other person" but embraced mere abandonment of the premises. The letter of the subtenant was an invitation to the landlord but the Board had erred, as had the Supreme Court, in holding that the Board had no jurisdiction to deal with the landlord. The Board was given the widest powers to deal with any person who might be in occupation of the premises after the tenant had, as here, improperly relinquished *de facto* possession; provided there was an actual intent, on part of the tenant either to transfer his right of occupation to some third party or to relinquish the right of occupation although not in favour of any specific third party. A third party, such as the landlord, who goes into occupation, in such a case, should not be and is not in any better position than the tenant who preceded him in occupation. He is subject to the Board's jurisdiction and can be ejected. The case could be distinguished from that of a mere trespasser over whom the Board had no jurisdiction.]

JUDGMENT.—Before the Rent Control Board a head tenant (present appellant) claimed possession of premises from his subtenant and also from his landlord (present respondent). Possession was sought under section 16 (1) (i) of Ordinance No. 22 of 1949, on the ground that the subtenant "had parted with possession to the landlord who was in occupation of the premises without any colour of right". The Rent Control Board considered on the evidence whether the subtenant had in fact parted with possession.

In my view, the words of the section "parted with the possession of the premises" have the same meaning as was given to them in the following cases: — *Stening v. Abrahams*, (1931) 1 Ch, 470;

Chaplin v. Smith, (1926) 1 K. B. 198;

Jackson v. Simons, \$(1923)\$ 1 Ch. 373;

Abrahams v. Mac Fisheries Ltd., (1925) 2 K. B. 18.

I think that the Rent Control Board took fundamentally the same view as to the meaning of parting with possession. They held that "the subtenant just walked out, leaving the shop open, and the landlord walked in". I do not think it safe to assume that more than this has been proved. The Rent Control Board therefore concluded, and in my view quite rightly, that the subtenant (i.e. the tenant \$\dot{q}\$uoad\$ the claimant) and in terms of section 16 (1) (i) had not parted with possession of the premises. They held the subtenant liable for rent up to the date of their decision and thereafter up "to actual date of giving vacant possession". I do not deem it essential in this present appeal to discuss whether the Board were right to give the head tenant an order for vacant possession
against the subtenant. The only question for decision in this Court is whether the Board were right or wrong to refuse to the head tenant (appellant) an order for possession against the landlord (respondent). The Memorandum of Appeal claims that the Board erred on five different grounds. In my view the Board did not err on any of these grounds. Since the subtenant was at all material times in possession of the premises, there was no possible ground for granting to the head tenant (appellant) an order for possession or for mesne profits against the landlord/occupant (respondent). This appeal is dismissed with costs. Khanna asks for order that costs be payable, pending appeal, not to respondent but into court.

Order.—That appellant pay taxed costs payable by him into court with leave to respondent to withdraw such moneys provided he gives security for costs to satisfaction of Registrar.

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Prepared on 13 October 2026 · Esheria