

UGANDA / JUDGMENT

Kaur and Another v Vanmali

(Civil Appeal No. 64 of 1952 (2))

[1950] EACA 14 (1 January 1950)

[1950] EACA 14

COURT

East African Court of Appeal

BEFORE

Briggs, JA, Nihill P, Worley VP

CASE / FILE NUMBER

Civil Appeal No. 64 of 1952 (2)

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H. M. COURT OF APPEAL FOR EASTERN AFRICA

**Before Sir Barclay Nihill (President), Sir Newnham Worley (Vice-President) and
BRIGGS, Justice of Appeal**

**(1) CHARAN KAUR as Administratrix of the Estate of KARTAR SINGH, Deceased, (2)
HARCHARAN SINGH, Appellants (Original Defendants)**

MISTRY MAKANJI VANMALI, *Respondent (Original Plaintiff)*

Civil Appeal No. 64 of 1952 (2)

(Appeal from the decision of H. M. Supreme Court of Kenya, Rudd, J.)

Landlord and tenant-Rent Board-Jurisdiction-Claim founded on an unlawful contract—Kenya Increase \$ \quad \text{of } \quad \$ Rent (Restriction) Ordinance, 1949. sections 5 (1) (f) and 16 (1) (a) and (b)—Nairobi Municipality Building By-laws, 1948, By-laws 351 (b) and 353—Indian Contract Act, section 23.

The facts are set out in the report of Civil Appeal No. 64 of 1952 (1) (supra p. 5).

Held \$(5-2-54)\$.—(1) The effect of Nairobi Municipal By-law No. 351 (b) is to limit the power of disposal of unauthorized structures by making it an offence to permit such structures to be occupied and therefore no relationship of landlord and tenant could be created in respect of those structures which was not tainted with illegality *ab initio*.

- (2) To exercise jurisdiction the Board must be satisfied not only that the premises are within the scope of the Ordinance but that they have been let under a lawful contract of tenancy which has been determined.

Appeal allowed.

No cases.

Khanna for appellants.

Trivedi for respondent.

JUDGMENT.—This is an appeal against the judgment of the Supreme Court of Kenya which reversed a decision of the Central Rent Control Board. The respondent applied to that Board as the head-tenant of a plot in Racecourse Road, Nairobi, for an ejectment order against his sub-tenants under sections 5 (1) (f) and 16 (1) (a) and (b) of the Rent Restriction Ordinance, 1949. He also asked further for the payment to him of the rent in arrears. The Board viewed the premises and then heard evidence. From the evidence of the applicantrespondent himself it emerged quite clearly that certain structures on the plot which were in occupation by the sub-tenants had been put up in contravention of the Nairobi Municipality Building By-laws, 1948. No plans had even been submitted or approved or any authorization given for their erection. The applicant further admitted that he knew that it was unlawful to erect the structure without an approved plan. Under these circumstances the Board stopped the case and dismissed the application saying that they would not lend themselves to any attempt to recover rent due on premises unlawfully erected and occupied.

On appeal to the Supreme Court the order of the Board was set aside and the matter remitted back for hearing and determination, the learned Judge being of opinion that "the fact that a landowner erects structures on his land which are unauthorized and in breach of by-laws does not alter the fact that the land and structures are his property and disposable by him". He refers to Nairobi Municipal By-law 353, but does not make any reference to Municipal By-law 351 (b), either because it was not cited to him or because he failed to appreciate \$351\$

its full effect. The effect of that by-law is in fact to limit the power of disposal exercisable by the owner of unauthorized structures by making it an offence to permit such structures to be occupied. He therefore failed to appreciate that no relationship of landlord and tenant could be created in respect of these buildings or structures, which was not tainted with illegality *ab initio*.

He further expressed the opinion that the Board is required to exercise jurisdiction in respect of premises as they find them, so long as they are premises controlled by the Ordinance, and that the test of this is the actual nature of the premises and their actual user. With respect, this covers only one aspect of the jurisdiction of the Board, for not only must the Board be satisfied that the premises are premises within the scope of the Ordinance but also they must be satisfied that the premises have been let under a lawful contract of tenancy which has been determined.

The difficulty in the respondent's case was that he could not establish his claim either to possession or to the rent in arrears without proving a contract which, as we have said, was unlawful ab *initio*. We have been referred to a large number of cases on the subject of illegality to which we do not propose to refer, but it suffices to say that no authority can be cited for the view that a plaintiff can succeed where his cause of action necessarily involves proof of an unlawful contract (see section 23 of the Indian Contract Act). It may well be that in other proceedings in a Civil Court where the cause of action did not depend upon the contract he might have been successful, but we have no doubt that the Board was perfectly correct in its refusal to give effect to a contract, the object of which was unlawful.

We therefore allow this appeal with costs and set aside the order made in the judgment appealed from. The appellant also to have the costs of the proceedings before the Supreme Court.

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