

UGANDA / JUDGMENT

Valji v Byramjee and Sons (Civil Appeal No. 7 of 1952) [1952] EACA 305 (1 January 1952)

[1952] EACA 305

COURT

East African Court of Appeal

BEFORE

Bourke J

CASE / FILE NUMBER

Civil Appeal No. 7 of 1952

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APPELLATE CIVIL

Before BOURKE, J.

MRS. R. N. VALJI, Appellant (Original Respondent)

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DINSHAW BYRAMJEE & SONS, Respondents (Original Applicants)

Civil Appeal No. 7 of 1952

(Appeal from the decision of the Central Rent Control Board, Nairobi)

Landlord and tenant-Rent Control Board-Conditional order-Notice to quit-No evidence of end of monthly tenancy—Validity.

A landlord applied to the Rent Control Board for possession of a dwellinghouse required for rebuilding under section 16 (1) \$(k)\$ of the Increase of Rent (Restriction) Ordinance, 1949. The Board held that the alternative accommodation offered was entirely unsuitable and that on the ground of hardships and reasonableness it would not be right to eject the respondent unless and until suitable accommodation is provided. The Board ordered vacant possession in the event of approved alternative accommodation on approved terms being first offered. Later the Board inspected premises and decided they were reasonably suitable and ordered the tenant to vacate and move into the new premises.

The landlords gave a notice to quit but were unable to show on what day the tenancy commenced and ended.

Held \$(26-5-52)\$.—(1) The Board had no power to make a conditional order and in view of the landlord's failure to offer suitable alternative accommodation, it had no alternative but to dismiss the application.

(2) In the absence of any material to show when the monthly tenancy ended no valid notice to quit had been given.

Appeal allowed (upheld by E. A. C. A. C. A. 87/1952).

Cases referred to: Kishen Singh v. Mehta and Others, C. A. No. 748 of 1951;
Benninga, Ltd v. Bijstra, (1946) K. B. 58; Dalip Singh v. Anderji Nathwani, 25 (1)
K. L. R. 81; Hirji Mulji v. Lalji Jani & Another, C. A. No. 391 of 1

\$D\$, N. Khanna for appellant.

Trivedi for respondent.

JUDGMENT.—This is an appeal from a determination by the Central Rent Control Board ordering the appellant to vacate a dwelling-house required by the respondent landlord for rebuilding under section 16 (1) \$(k)\$ of the Increase of Rent (Restriction) Ordinance, 1949.

Having heard the evidence and submissions of the advocates the Board gave the following decision on 21st January, \$1952:\$ —

"The Board is of opinion that the applicants have established they require the premises, and that it would be impossible to provide living accommodation for the respondent and his family in the projected new building.

But the Board is further of opinion that the alternative accommodation offered is entirely unsuitable and that having regard to the balance of hardship and reasonableness, it would not be right to eject the respondent unless and until suitable accommodation is provided.

Under section 5 \$(k)\$ the Board has a general power to impose conditions in any order it makes. Accordingly the Board orders that the landlords will get vacant possession, but only if and when alternative accommodation to be first approved by the Board and on terms to be approved by the Board, be first offered.

The parties will bear their own costs.

On 30th January the Board inspected two premises offered as alternative accommodation. The appellant's advocate was heard to say that neither premises. was reasonably equivalent but that if he had to choose the appellant would prefer the Pangani premises. The Board then gave the "decision" that follows: -

"The Board having considered all the relevant circumstances now come to the conclusion that the premises offered in Pangani are reasonably suitable and as good as the respondent could reasonably expect. He must move in by 15th February and the applicant will get vacant possession by that date, provided he secures the consent of the landlord of the Pangani premises. to respondent moving in. No rent will be payable to the applicant after the end of January. The respondent will move in to the new premises on the understanding he will pay the standard rent, to be assessed by the Board.

Mr. Khanna applies for a stay but the Board sees no reason to grant it. and refuses. If the Supreme Court decides to give a stay there is ample time to obtain it before 15th February."

It is a ground of appeal that the decision of the Board given on 21st January amounted in effect to a dismissal of the proceedings and the conditions as to the offering of alternative accommodation could not validly be imposed under section 5 (1) (k), under which it was purported to be made, or under the final words of section 16 (1) (k) which permit the imposing of "such reasonable conditions as the Board may think necessary". The Board by reason of the conclusions it reached was functus officio and could not by virtue of a so-called condition under the powers of the Ordinance reopen the matter to consider a fresh aspect of the circumstances then put before it and decide to order eviction. thus, in effect, reversing its previous decision amounting to this, that the landlord. had not made out a case entitling him to an order for recovery of possession.

It is argued for the respondent (a) that the condition imposed was a proper one within the provisions of the Ordinance and it had the salutary effect of saving the respondent from having to litigate the matter anew, and (b) that the appellant's advocate on 30th January did not object to a reopening of the proceedings to consider the reasonableness of the alternative accommodation then offered and accordingly was not now entitled to question the condition under which such later proceedings arose.

As to (b) I may say at once that I find no substance in the argument. The attitude of the appellant could not confer a jurisdiction in the matter upon the Board if such, as is contended, had already been exercised to the point of final adjudication. The appellant was faced with a determination by the Board and was caught up in the consequences; the fact that he chose to make the best of things surely does not preclude him from testing the decision on the ground now put forward.

Now, at the hearing on 21st January the Board arrived at the conclusion (a) that the respondent landlord required possession of the premises for rebuilding, (b) that it was not possible to require the granting of a new tenancy to the appellant of the rebuilt premises or part thereof, (c) that it was reasonable that suitable alternative accommodation should be offered to the appellant, and (d) such

accommodation was not shown to be available. On such findings it is submitted that in view of section 16 (2) the Board could not make an order for recovery of possession and a dismissal of the proceedings could be the only possible result. The Board, however, went on to order "that the landlords will get vacant possession" but only if and when alternative accommodation is offered of which the Board approves. In other words the Board has made the effectiveness of its order

contingent upon whether circumstances are laid before it in the future upon which it would consider it reasonable to evict the appellant. The question is whether the Board is empowered under the Ordinance to make the "condition" it did. I definitely do not think that it is. It is plain that the Board did not consider it reasonable that there should be an eviction order unless suitable alternative accommodation was provided. Such accommodation was not offered or shown to be available when the Board made its "conditional" order for eviction. The respondent failed to show that he was entitled in law to the order he sought in that he did not satisfy the Board at the hearing on the element of reasonableness under section 16 (2). The object and effect of the "condition" was to enable him to mend his hand and show at a future time that suitable alternative accommodation was then available. If the provisions as to the imposing of conditions permit the proof of necessary circumstances at a time subsequent to the hearing an extraordinary position would arise; Mr. Khanna suggests that logically it would be open to the Board to make an eviction order conditional in its operation upon the applicant establishing on some future occasion that at the material time the tenancy had been determined through the service and expiry of a notice to quit. It is not a case in which it has been shown at the hearing that suitable alternative accommodation will be available at some future date on which the order may be made to take effect, as would suffice in proceedings under section 16 (1) (e). The Board concluded that the alternative accommodation offered was entirely unsuitable; and there was nothing before it to show that suitable alternative accommodation would be or even might be available in the future. In effect the Board has said to the landlord: "You will have the order you seek though you are not now entitled to it on the proof adduced. If and when you supply the proof that is now lacking, to satisfy us that it would be reasonable to make such an order by offering suitable alternative accommodation, the order for eviction will then become operative". Clearly, to my mind, the Ordinance does not empower the Board to make such a "condition" as is contained in its determination of 21st January. At that stage, when the Board proceeded to its determination after hearing the evidence and the advocates for the parties, the Board did not consider that it would be reasonable, since no suitable alternative accommodation was shown to exist, to order the recovery of possession claimed. In view of section 16 (2) it had no alternative then but to dismiss the application. In *Kishen Singh v. Mehta and Others*, C. A. No. 748 of 1951, a similar determination came before this Court. De Lestang, J., was of opinion that the Board had no power to impose such a condition but in the peculiar circumstances of that case, in which the landlord was appellant, he did not see fit to interfere. In *Benninga, Ltd. v. Bijstra* (1946) K. B. D. 58, at 62, Mackinnon, L. J., said this: -

"The Rent Restriction Acts do not forbid the bringing of an action; they only prohibit the granting of certain relief to which the common law would entitle the plaintiff, unless certain conditions have been fulfilled. The question whether those conditions exist must be determined when the question whether the relief claimed may be granted has to be decided, namely, at the hearing of the action."

In the instant case the requirement that the Board should at the hearing consider it reasonable to make an order of eviction was not fulfilled.

In my judgment the appeal must succeed on this ground, but I propose to examine shortly the further ground of appeal set out in the memorandum as follows—the reference to exhibit I is to the notice to quit relied upon by the \$applicant:\$ —

"1. The beginning or the end of a month of the tenancy was never proved, it being admitted on behalf of the respondents that nothing was known to them of the original tenancy, and consequently it was not shown Exhibit I had in fact operated to determine the contractual tenancy so as to give the Board jurisdiction to make an eviction order."

By the appellant's reply to the application filed in the proceedings it was averred that the notice to quit, admittedly received, is invalid. The notice dated 26th July, 1951, was served on the same day and purports to terminate—"your contractual tenancy (if any) for such premises, at the end of the next complete month of your tenancy which may happen at the end of August, 1951, or on the 1st day of September, 1951, when you must quit and deliver up vacant possession of the said premises to us. \$\ldots\$."

The only evidence as to the nature of the tenancy appears from the testimony of J. D. Byramjee the managing director of the respondent firm. He deposed: "The respondent (appellant) is our monthly tenant... in the premises in suit... respondent has paid his rent regularly. He told me he had been there for a very long time. The notice to quit was served on 26-7-51. I don't know the original terms of respondent's tenancy".

It is not in contest that it is a monthly tenancy but there is nothing to show on what day of the month such periodic tenancy commences or that the date when the notice actually expired was in fact the end of the period of tenancy. There is no evidence to show when the rent was paid and no proof such as was held sufficient in *Dalip Singh v. Anderji Nathwani*, 25 (1) K. L. R. 81 (Supreme Court). In the absence of any material to show that the monthly tenancy ended on the 31st day of the month or 1st day of the next month it must be held that no valid notice to quit has been given, *Hirji Mulji v. Lalji Jani and Another*, C. A. No. 391 of 1951 (Supreme Court), It is accordingly said that the Board acted without jurisdiction. I think that is an unfortunate and inaccurate way of putting it. The position simply is that the present respondent failed to show, as a matter of evidence, that a valid notice to quit had been served. That being so the Board had no alternative but to dismiss the suit.

The appeal is allowed and the order of eviction is set aside. The appellant will have his costs here and below.

Editor's Note.-In Civil Appeal No. 87/1952 the Court of Appeal for Eastern Africa dismissed with costs an appeal against judgment. The Court held the Board had no power to attach to an order under section 16 (1) \$(k)\$ a condition precedent purported to be made under section 5 \$(k)\$ but *obiter* Nihill P. whether position changed by the addition of para. \$(p)\$ to section 5 effected by Ordinance 8/1953.

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