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UNIVERSITY OF

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INSTITUTE OF ADVANCED  
LEGAL STUDIES

No. 9 of 1947.

44177

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT OF PALESTINE, SITTING AS  
A COURT OF APPEAL, JERUSALEM.

BETWEEN—

NUZHA BINT EL-HAJ SULEIMAN ABU  
KHADRA *Appellant*

— AND —

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Haj IBRAHIM SALEH EL-HELOU,  
HASHEM ABU KHADRA, NAJATI ABU  
KHADRA and THE EXECUTION OFFICER,  
District Court, Jaffa - *Respondents*

CASE FOR RESPONDENTS

**CASE FOR THE RESPONDENT**

**Haj Ibrahim Saleh El-Helou.**

RECORD.

1. This is an appeal from a judgment of the Supreme Court of Palestine, sitting as Court of Appeal, delivered the 30th of January 1945, dismissing an appeal by the Appellant from a judgment of the District Court of Jaffa, sitting as a Land Court, in favour of this Respondent delivered on the 23rd of July 1944. p. 26

2. The Supreme Court of Palestine dismissed the Appellant's appeal solely on the preliminary point that the appeal was out of time and this Respondent will submit that even if the Appellant should succeed in his present appeal on this point, it would be necessary to refer the matter back to the Supreme Court of Palestine before any grounds going to the substance of the appeal should be entertained by His Majesty in Council. This Respondent would therefore ask that in so far as matters of substance are hereinafter referred to, such references should be considered as without prejudice to this submission. p. 21

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p. 1

p. 28

3. By a Statement of Claim dated the 16th of October 1943 this Respondent alleged that on the 15th of February 1940 the Appellant agreed to sell to him six out of seven shares in certain plots of land in consideration of the sum of L.P. 159.500 mils paid in cash at the time of contract and that the Respondent Hashem Abu Khadra (hereinafter called "the second Defendant") joined therein as guarantor, that this Respondent took possession of and worked the property and improved the land so that it became worth L.P. 500, that the Appellant colluded with the second Defendant and the Respondent Najati Eff. Hashem Abu Khadra (hereinafter called "the third Defendant") to deprive this Respondent of the property by the third Defendant obtaining a judgment against the Appellant and attaching the said property in pursuance thereof. 10

p. 30

p. 3

4. This Respondent therefore claimed an order cancelling the attachment, a declaration of ownership of this Respondent of the property and an order for the registration thereof in the name of this Respondent in the Land Registry relying on the equitable principal of specific performance.

p. 4

5. The matter was heard by His Honour Judge Aziz Bey Daoudi, who on the 16th of December 1943 ordered the following 20 issues to be tried :—

- (1) Is this case, having regard to its value, within the jurisdiction of the District Court of Jaffa sitting as a Land Court, or is the Magistrate Court the proper Court seized with jurisdiction?
- (2) Are the second and third Defendants proper parties in the case or not?
- (3) Is the Plaintiff entitled to claim specific performance in this case or not?

p. 6

6. The learned judge on the 28th of May 1944 determined that 30 the second Defendant was an unnecessary party and ordered his name to be struck out.

pp. 6-12

7. Evidence was given on the part of the Respondent in support of the allegations in the Statement of Claim.

p. 21

pp. 5-22

8. His Honour Judge Aziz Bey Daoudi delivered judgment on the 23rd of July 1944. On the first issue he decided that the Court had jurisdiction since regard should be had to the value of the land at the time of action brought and not to its value at the time of contract.

pp. 23, 24

9. On the second point he considered the evidence in detail 40 and found as a fact that the loan transaction, on which the proceedings for attachment were founded, was made by the Appellant and the third Defendant with the intention to make it impossible for this Respondent's contract to be performed. He therefore held that in the light of the circumstances of the case the attachment had no

effect on the rights of this Respondent. He also held that the liquidated damages mentioned in the contract were not an adequate remedy. He accordingly ordered specific performance of the contract and registration of the said property in the name of this Respondent and gave this Respondent the costs of the action.

10. The said judgment ends with the words "Judgment delivered on 23.7.44 in presence of Plaintiff in person and absence of the attorney for the Defendants, who did not appear but sent his clerk". p. 25

10 11. The Appellant gave notice of appeal to the Supreme Court of Palestine sitting as a Court of Appeal. Such notice was dated the 26th of August 1944. p. 25

12. Judgment was given by the Supreme Court of Palestine, the Chief Justice and Mr. Justice Frumkin on the 30th January 1945. The judgment deals only with the preliminary point. The judgment states that it was admitted that the appeal was not filed within thirty days from the date of delivery of judgment in accordance with Rule 321 of the Civil Procedure Rules 1938 but that it was contended on behalf of the Appellant that time does not run from the date of delivery of judgment because judgment was not delivered in the presence of the parties or their advocates in accordance with the said Rule. The Court having referred to the last sentence of the judgment, as above set out, inferred that the judge was satisfied that the clerk was authorised to represent the attorney for the purpose of hearing judgment. They accordingly held that the appeal was out of time and must be dismissed. p. 26

13. The Appellant applied for leave to appeal to His Majesty in Council and final leave was granted on the 6th of June 1945. p. 27

30 14. This Respondent humbly submits that the said judgment of the Supreme Court is right and should be affirmed for the following

### REASONS.

- (1) BECAUSE the Appellant's appeal to the Supreme Court of Palestine was out of time and therefore invalid.
- (2) BECAUSE (if the Lords of the Privy Council are now desirous of considering the substance of the Appellant's appeal) the Land Court had jurisdiction to hear the case and decided it rightly on its merits.
- 40 (3) BECAUSE the judgments of the Land Court and of the Supreme Court were right for the reasons given therein respectively and other good and sufficient reasons.

F. E. SKONE JAMES.

In the Privy Council.

**ON APPEAL**

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BETWEEN—

**NUZHA BINT EL-HAJ SULEIMAN**  
**ABU KHADRA** *Appellant*

— AND —

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**and Others** *Respondents*

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