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Kenya

3, 1962

IN THE PRIVY COUNCIL

No. 48 of 1959

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N:

ATA UL HAQ Appellant
- and -
CITY COUNCIL OF NAIROBI .. Respondent

R E C O R D O F P R O C E E D I N G S
V O L U M E 1.
(PAGES 1 to 394)

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
29 MAR 1963
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IN THE PRIVY COUNCILNo. 48 of 1959

ON APPEAL
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AT NAIROBI

B E T W E E N :

ATA UL HAQ Appellant
- and -
CITY COUNCIL OF NAIROBI .. Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF KENYA</u>		
1.	Plaint of Ata Ul Haq	18th February 1956	1
2.	Defence of City Council of Nairobi	28th May 1956	5
3.	Plaint of City Council of Nairobi	14th November 1956	9
4.	Defence of Ata Ul Haq	31st January 1957	16
5.	Proceedings	4th April 1957	18
	<u>Evidence for Ata Ul Haq</u>		
6.	Ata Ul Haq	4th and 5th April 1957	27
7.	Application to amend Pleadings	8th April 1957	67
8.	Ata Ul Haq (continued)	1st May 1957	73
9.	Samuel McConnel	1st, 2nd and 3rd May 1957	92
10.	Ata Ul Haq (continued)	3rd, 6th and 7th May 1957	172
11.	Charles William Newlyn	1st and 2nd July 1957	245

I N D E X (continued)

No.	Description of Document	Date	Page
12.	Robert Valentine Adamson	2nd July 1957	303
13.	Thomas Henry Stone	2nd, 3rd and 4th July 1957	308
	<u>Evidence for City Council of Nairobi</u>		
14.	Ronald Frederick Mould	4th, 5th and 8th July 1957	395
15.	Alfred Esward Wevill	8th and 9th July 1957	469
16.	Norman Fallon	9th July 1957	519
	<u>Evidence for Ata Ul Haq</u>		
17.	Thomas Henry Stone (Recalled)	9th July 1957	522
	<u>Evidence for City Council of Nairobi</u>		
18.	Hugh Thorpe	9th July 1957	527
19.	Address for City Council of Nairobi	10th July 1957	529
20.	Address for Ata Ul Haq	10th July 1957	543
21.	Judgment	6th September 1957	552
22.	Decree	6th September 1957	601
23.	Proceedings, Stay of execution	2nd, 9th, 16th and 24th October 1957	602
	<u>IN THE COURT OF APPEAL FOR EASTERN AFRICA</u>		
24.	Memorandum and Grounds of Appeal	16th November 1957	603
25.	Judgment	10th December 1957	607
26.	Order	10th December 1958	674
27.	Order granting final leave to appeal to Privy Council	16th December 1959	677

I N D E X (continued)E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
1.	Contract, Ata Ul Haq and City Council of Nairobi	29th June 1954 (Separate document)	-
2.	Letter, City Engineer to Ata Ul Haq	6th December 1954	679
3.	Letter, City Engineer to Ata Ul Haq	4th November 1954	679
4.	Letter, City Engineer to Ata Ul Haq	18th December 1954	680
5.	Letter, Ata Ul Haq to City Engineer	14th January 1955	681
6.	Letter, Ata Ul Haq to City Engineer	14th January 1955	682
8.	Letter, Ata Ul Haq to City Engineer	29th June 1955	683
9.	Letter, Acting City Engineer to Ata Ul Haq	8th July 1955	684
10.	Particulars of Extras claimed by Ata Ul Haq	Undated	685
11.	Letter, City Engineer to Ata Ul Haq	22nd January 1955	686
12.	Letter, City Engineer to Ata Ul Haq	30th August 1954	688
13.	Letter, Ata Ul Haq to City Engineer	9th October 1954	688
14.	Letter, Clerk of Works to Ata Ul Haq	13th October 1954	689
15.	Letter, Ata Ul Haq to City Engineer	20th October 1954	689
16.	Letter, City Engineer to Ata Ul Haq	9th December 1954	690
17.	Letter, Ata Ul Haq to City Engineer	14th January 1955	691
18.	Variation Order, No. 3739	5th February 1955	692

I N D E X (continued)EXHIBITS (continued)

Exhibit Mark	Description of Document	Date	Page
19.	Variation Order, No. 3740	25th February 1955	693
20.	Variation Order, No. 3741	12th March 1955	694
21.	Letter, Ata Ul Haq to City Engineer	17th March 1955	695
22.	Letter, City Engineer to Ata Ul Haq	11th September 1954	696
23.	Letter, Clerk of Works to Ata Ul Haq	26th January 1955	697
24.	Letter, Clerk of Works to Ata Ul Haq	18th February 1955	699
25.	Letter, City Engineer to Ata Ul Haq	31st March 1955	699
26.	Letter, City Engineer to Ata Ul Haq	31st March 1955	700
27.	Letter, City Engineer to Ata Ul Haq	19th April 1955	701
28.	Letter, Acting City Engineer to Ata Ul Haq	11th May 1955	701
29.	Letter, Acting City Engineer to Ata Ul Haq	26th June 1955	702
30.	Report by Clerk of Works	9th June 1955	702
31.	Report by Clerk of Works	9th June 1955	703
32.	Report by Clerk of Works	24th June 1955	705
33.	Report by Clerk of Works	20th July 1955	706
34.	Report by Clerk of Works	25th July 1955	707
35.	Payment Certificates:		
	No. 1	23rd July 1954	707
	No. 2	20th August 1954	708
	No. 3	22nd September 1954	709
	No. 4	25th October 1954	710
	No. 5	23rd November 1954	711
	No. 6	30th December 1954	712
	No. 7	1st February 1955	713
	No. 8	16th February 1955	714

I N D E X (continued)EXHIBITS (continued)

Exhibit Mark	Description of Document	Date	Page
	Payment Certificates (contd.)		
	No. 9	23rd March 1955	715
	No.10	20th April 1955	716
	No.11	24th June 1955	717
	No.12	24th June 1955	718
	No.13	21st July 1955	719
36.	Inspection Report .	25th November 1954	720
37.	Letter, Ata Ul Haq to City Engineer	2nd August 1955	728
38.	Letter, Acting City Engineer to Ata Ul Haq	4th August 1955	729
39.	Letter, Ata Ul Haq to City Engineer	11th August 1955	729
40.	Letter, Acting City Engineer to Ata Ul Haq	18th August 1955	730
41.	Letter, Ata Ul Haq to City Engineer	11th July 1955	731
42.	Letter, Acting City Engineer to Ata Ul Haq	18th August 1955	732
43.	Letter, Acting City Engineer to Ata Ul Haq	19th August 1955	732
44.	Letter, Acting City Engineer to Ata Ul Haq	19th August 1955	733
45.	Letter, Ata Ul Haq to City Engineer	23rd August 1955	733
46.	Letter, City Engineer to Ata Ul Haq	6th September 1955	734
47.	Letter, Ata Ul Haq to City Engineer	10th September 1955	736
48.	Letter, City Engineer to Ata Ul Haq	14th October 1955	737
49.	Letter, Ata Ul Haq to City Engineer	15th October 1955	739
50.	Letter, City Engineer to Ata Ul Haq	21st October 1955	740

I N D E X (continued)EXHIBITS (continued)

Exhibit Mark	Description of Document	Date	Page
51.	Letter, Ata Ul Haq to City Engineer	22nd October 1955	741
52.	Letter, City Engineer to Ata Ul Haq	29th October 1955	741
53.	Letter, Sirley & Kean to City Engineer	14th November 1955	742
54.	Letter, City Engineer to Ata Ul Haq	Undated	743
55.	Letter, Sirley & Kean to City Engineer	28th November 1955	743
56.	Letter, Sirley & Kean to City Engineer	29th November 1955	744
57.	Letter, City Engineer to Sirley & Kean	5th December 1955	745
58.	Letter, Sirley & Kean to City Engineer	10th December 1955	745
59.	Letter, S. McConnel to City Engineer	5th December 1955	746
60.	Letter, City Engineer to S. McConnel	13th December 1955	747
61.	Report on work by Mr. A.E. Wevill	21st August 1956	748
64.	Report on extra works by Mr. C.W. Newlyn	Undated	764
65.	Letter, Chief Materials Engineer to Ata Ul Haq	18th January 1956	767
66.	Letter, Chief Materials Engineer to Ata Ul Haq	10th June 1957	767
67.	Letter, Architect African Housing to Water Engineer	5th July 1955	769
68.	Report by Architect, African Housing	24th June 1955	769
69.	Report by Clerk of Works	Undated	770
70.	Report to City Treasurer	Undated	770

I N D E X (continued)EXHIBITS (continued)

Exhibit Mark	Description of Document	Date	Page
71.	Report by Architect, African Housing	30th September 1955	770
72.	Report by Architect, African Housing	19th July 1956	771
73.	Letter, Chief Materials Engineer to Ata Ul Haq	11th July 1957	776
A.	Report by Chief Materials Engineer	Undated	779
B.	Two letters, Ata Ul Haq to City Engineer	27th August 1954	787
B.	Letter, City Engineer to Ata Ul Haq	24th March 1955	788
C.	Report by Chief Materials Engineer	11th August 1955	789
E.	Report by Architect, African Housing	7th February 1956	790
F.	Report by Architect, African Housing	16th February 1956	793
G.	Report by Architect, African Housing	25th July 1955	794
H.	Report by Architect, African Housing	10th August 1955	795
I.	Letter, A.E. Wevill and Son to City Engineer	1st November 1956	795
J.	Schedule of Maintenance Percentages	8th July 1957	799
K.	Schedule of Claims	14th November 1956	800
L.	Report by Mr. K.F. Stone	Undated	807

I N D E X (continued)EXHIBITS NOT TRANSMITTED

Exhibit Mark	Description of Document	Date
7.	Plan showing foundation depths	-
62.	Piece of hoop from iron	-
63.	Piece of damp course	-
D.	Report on foundation depths	21st June 1958

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE SUPREME COURT OF KENYA</u>	
Notice of Appeal	19th September 1957
<u>IN THE COURT OF APPEAL FOR EASTERN AFRICA</u>	
Judges Notes	23rd, 24th, 25th and 26th September 1957
Order granting Conditional Leave to Appeal to the Privy Council	12th February 1959

IN THE PRIVY COUNCIL

No. 48 of 1959

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N

ATA UL HAQ ... Appellant

- and -

CITY COUNCIL OF NAIROBI Respondent

RECORD OF PROCEEDINGS

VOLUME 1.

No. 1

PLAINT OF ATA UL HAQ

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.170 of 1956

B E T W E E N

ATA UL HAQ ... Plaintiff

- and -

NAIROBI CITY COUNCIL Defendant

P L A I N T

1. The Plaintiff is a building contractor residing and carrying on business at Nairobi in the Colony of Kenya and his address for service is care of Messrs. Robson & O'Donovan, Advocates, Lullington House, Nairobi.

2. The Defendant is a corporation constituted by

In the Supreme
Court of Kenya

No. 1

Plaint of Ata
Ul Haq,
18th February,
1956.

In the Supreme
Court of Kenya

No. 1

Plaint of Ata
Ul Haq,
18th February,
1956
- continued.

Royal Charter and its address for service is care of the Town Hall, Nairobi.

3. By a contract in writing dated the 29th day of June 1954, and entered into between the Plaintiff and the Defendant, the Plaintiff agreed on the terms therein appearing to erect certain African dwelling houses at Nairobi for the Defendant. The Plaintiff will produce the said contract at the hearing of this suit for the full terms and effect thereof.

10

4. It was an express term of the said contract that the Plaintiff would deposit with the Defendant the sum of Shs. 50,000/- as security for the due performance of the contract and in pursuance thereof the Plaintiff paid to the Defendant the said sum on the 17th day of June, 1954.

5. It was a further express term of the said contract that payment to the Plaintiff for work done thereunder would be made on certificates issued from time to time by the City Engineer at his discretion, that such interim payments would not exceed 90% of the value of the contract, and that when the work had been completed the Plaintiff would be entitled to a certificate for and payment of 95% of the value of the work so executed, and that the remaining 5% of the contract price would be paid on the termination of the maintenance period of six months from the date of completion of any dwelling block or ablution block being part of the said work.

20

6. It was a further express term of the said contract that all extras or additions to the said work as specified in the plans, drawings and specifications for which the plaintiff was entitled, should be paid for at a price to be fixed by the City Engineer employed by the Defendant, having regard to the prices set out in the said Specifications.

30

7. The Plaintiffs duly completed the said work according to the said contract and supplied extras and did additional work under the direction of the Defendant and its servant, the City Engineer, and the said City Engineer after inspection of the same, by divers interim certificates, certified a total sum of Shs. 1,504,502/- as due and owing to the Plaintiff from the Defendant.

40

8. The Defendant took over part of the said works upon completion thereof, but in breach of the said contract, notified the Plaintiff that the Defendant refused to take over the balance of the completed works, namely blocks 30, 37, 38, 38 A and B, and 39 referred to in the said contract.

In the Supreme
Court of Kenya

No. 1

Plaint of Ata
Ul Haq,
18th February,
1956
- continued.

10 9. The said City Engineer, on the instructions of the Defendant and as its servant and agent, has refused, in breach of the said contract, to issue a certificate for 95% of the value of the work completed by the Plaintiff, to which the Plaintiff is entitled.

20 10. The Defendant, in further breach of the contract, has notified the Plaintiff of certain alleged defects in the works, including such part thereof as had already been accepted and taken over by the Defendant, which it has threatened to have re-executed and the cost whereof it has threatened to deduct from the retention and other monies held by the Defendant for the Plaintiff.

30 11. The maintenance period of six months from the date of completion of the said works has expired, and the Plaintiff was at all times during the said period of maintenance ready and willing to carry out any works which might lawfully have been required thereunder, but the Defendant, notwithstanding demand, refuses to pay to the Plaintiff the balance of the contract price including retention moneys, amounting to Shs. 140,018/- or the deposit of security for due performance of contract amounting to Shs. 50,000/-, or any part thereof.

12. The Defendant by its servant the said City Engineer has in further breach of the contract failed to certify or pay for the extra work carried out by the Plaintiff under the authority of the said City Engineer, and the Plaintiff estimates that the sum due to him in respect thereof will amount to Shs. 89,641/- or thereabouts.

40 13. An account in respect of the sums stated in paragraphs 11 and 12 hereof is hereto annexed and marked "A".

The Plaintiff claims against the Defendant:-

- (i) Shs. 140,018/- in respect of the balance of the contract price including retention monies:

In the Supreme
Court of Kenya

No. 1

Plaint of Ata
Ul Haq,
18th February,
1956
- continued.

- (ii) Shs. 50,000/- in respect of the deposit for security;
- (iii) An order that all proper enquiries be made into the value of the extra work carried out by the Plaintiff as aforesaid and payment to the Plaintiff of the amount shown to be due to him in respect thereof;
- (iv) Costs;
- (v) Interest at Court rates;
- (vi) Other relief.

10

DATED at Nairobi, this Eighteenth day of February, 1956.

(Sgd.) J.P.G. HARRIS.
Robson & O'Donovan,
Advocates for the Plaintiff.

THIS IS ANNEXURE "A" MENTIONED IN PARAGRAPH 13 OF
THE PLAINT.

Contract Price	=	Shs. 1,709,520/-	
Total of Certificates Issued	=	<u>Shs. 1,504,502/-</u>	30
Balance	=	Shs. 205,018/-	
<u>Less</u> Plumbing and P.C. Items	=	<u>Shs. 65,000/-</u>	
		Shs. 140,018/-	
<u>Add</u> Deposit as Security	=	<u>Shs. 50,000/-</u>	
TOTAL DUE	=	<u>Shs. 190,018/-</u>	

No. 2

In the Supreme
Court of Kenya

DEFENCE OF CITY COUNCIL OF NAIROBI

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

No. 2

CIVIL CASE NO.170 of 1956

Defence of City
Council of
Nairobi,

ATA UL HAQ

Plaintiff

28th May, 1956.

versus

THE CITY COUNCIL OF NAIROBI

Defendant

D E F E N C E

- 10 1. The Defendant Corporation is not constituted by Royal Charter, but otherwise paragraphs, 1, 2 and 3 of the Plaint are admitted.
2. Paragraph 4 of the Plaint is admitted but the Defendant states that the said term further provided that the said deposit would be refunded when the final certificate is issued by the City Engineer, and the said final certificate has not yet been issued.
- 20 3. Paragraph 5 of the Plaint is not admitted.
The term referred to was as follows :-
- "Payments will be made on Certificates issued by the City Engineer at his discretion.
- Interim payments shall not exceed 90% of the value of the work properly executed.
- When the work has been satisfactorily completed and taken over by the Council, the Contractor shall be entitled to a Certificate for 95% of the value of the work so executed."
- 30 4. Paragraph 6 of the Plaint is not admitted.
The term referred to was as follows :-
- "In case the Engineer thinks proper at any time during the progress of the works to make any alteration in or additions to or omissions from the Works or any alteration in kind or quality of the materials to be used therein

In the Supreme
Court of Kenya

No. 2

Defence of City
Council of
Nairobi,

28th May, 1956
- continued.

and shall give notice thereof in writing to the Contractor the Contractor shall alter add to or omit as the case may require in accordance with such notice but the Contractor shall not do any work extra to or make any alteration or addition to or omission from the Works or any deviation from any of the provisions of this Contract without the previous consent in writing of the Engineer and the value of such extra alterations additions or omissions shall in all cases be determined by the Engineer having regards to the prices set out in the attached documents and where these are not applicable then at such fair and reasonable prices as the Engineer shall decide and the amount thereof shall be added to or deducted from the Contract Price as the case may be no claim for any extra shall be allowed unless it shall be carried out by or under the authority of the Engineer as herein mentioned".

5. The 'attached documents' referred to comprised:-

- (a) the General Conditions of the Contract;
- (b) the Plaintiff's tender;
- (c) the Specification;
- (d) a schedule of rates;
- (e) the contract drawings.

6. Paragraph 7 of the Plaintiff is denied save that the Defendant states that the said sum of Shillings 1,504,502/- is the total of all sums certified for payments to the Plaintiff under the said Contract and it has been paid in full.

7. Save that none of the said works have been completed according to Contract, which fact was not known to the Defendant at the material times owing to the defects being latent, the Defendant admits that it took over part of the said works and states that all amounts certified therefor have been paid.

8. The Defendant admits that it refused to take over the six blocks mentioned in paragraph 8 of the Plaintiff, but denies the alleged breach of contract, and states that its refusal was justified.

9. Save that the said City Engineer has not issued any certificate calling for any payment beyond the said sum already paid, paragraph 9 of the Plaint is denied.

In the Supreme
Court of Kenya

—
No. 2

10. The Defendant denies the alleged breach but otherwise paragraph 10 of the Plaint is admitted, and, in the alternative, the Defendant claims to deduct any moneys due to the Plaintiff (and none are admitted) from (a) the diminution in value of the works done pursuant to Clause 9 of the General Conditions of the said Contract and particularly sub-clause (iv) thereof, to wit :-

Defence of City
Council of
Nairobi,

28th May, 1956
- continued.

20 "9. (i) All materials and workmanship shall be the best of their respective kinds and shall be provided by the Contractor, except as may be otherwise particularly provided by the Specification or directed by the Engineer, and the Contractor shall, upon the request of the Engineer, furnish him with proof that the materials are such as are specified. The Engineer shall at all times have power to order the removal of any materials brought on the site which, in his opinion, are not in accordance with the specification or with his instructions, the substitution of proper materials and the removal and the proper re-execution of any work executed with materials or workmanship not in accordance with the Specification and Drawings or instructions, and the Contractor shall forthwith carry out such order at his own costs.

30 (ii) Any defect which may appear, either of material or of workmanship, during the period of maintenance provided by the Contract, shall be made good by the Contractor at his own expense, as and when directed.

40 (iii) If the Contractor shall fail to carry out any such order, as by the preceding sub-clauses provided within such reasonable time as may be specified in the order, the materials or work so affected may, at the option of the Engineer, be made good by him in such manner as he may think fit, in which cases the cost thereby incurred shall, upon the written certificate of the Engineer, be recoverable by the City Council as liquidated demand in money.

(iv) If any defect be such that, in the opinion

In the Supreme
Court of Kenya

No. 2

Defence of City
Council of
Nairobi,

28th May, 1956
- continued.

of the Engineer, it shall be impracticable or inconvenient to remedy the same he shall ascertain the diminution in the value of the works due to the existence of such defect and deduct the amount of such diminution from the sum remaining to be paid to the Contractor, or failing such remainder, it shall be recoverable as a liquidated demand in money".

(b) such amount as may be found due to the Defendant by way of damages pursuant to Clause 11 of the Specification of the said Contract, to wit :-

10

"The Contractor shall state, in the Form of Tender, a period within which he will complete perfectly and deliver up to the City Council, the groups of buildings and shall so deliver them. This period shall begin from the date stated in the City Engineer's order to commence work. If the time taken to complete the works, or the various parts of the works as set out, exceeds the time stated in the Form of Tender or such extended times as may be allowed under Clause 7(iii) of the General Conditions, the Contractor shall be charged a sum computed on the basis of Shs. 2/50 per day per unit, as liquidated and ascertained damages for such default, and not as a penalty, for every day of delay until the completion of the work. The Council may deduct the amount of any such damages from any monies in their hands due, or to become due to the Contractor".

20

30

11. In reply to paragraph 11 of the Plaintiff, the Defendant repeats its denial that the said works have been completed or that any of them have been completed according to Contract, despite the fact that the final completion date was the 13th June 1955. The Defendant admits its refusal to pay as alleged but denies the alleged breach or that any sum whatsoever is due by it to the Plaintiff and otherwise paragraph 11 of the Plaintiff is denied.

40

12. Save that the Defendant has not paid and the City Engineer has not as certified as desired by the Plaintiff, paragraph 12 of the Plaintiff is denied and the Defendant denies that the said sum or any part thereof is due by it to the Plaintiff and the Defendant denies paragraph 13 of the Plaintiff and the said account in so far as it is intended to show any sum whatsoever as being due and owing by the Defendant to the Plaintiff.

13. The Defendant states that the final certificate under the said contract has not been issued and this Suit is premature.

In the Supreme Court of Kenya

14. Alternatively, if (which is not admitted) the Suit is not premature it is barred by limitation under Section 129 of the Municipalities Ordinance (Cap.136).

No. 2

Defence of City Council of Nairobi,

WHEREFORE the Defendant prays that the Plaintiff's Suit be dismissed with costs.

28th May, 1956
- continued.

10 DATED at NAIROBI, this 28th day of May, 1956.
(Sgd.) C.F. SCHERBRUCKER.
KAPLAN & STRATTON,
ADVOCATES FOR THE DEFENDANT.

No. 3

No. 3

PLAINT OF CITY COUNCIL OF NAIROBI
IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1314 of 1956

Plaint of City Council of Nairobi,
14th November, 1956.

THE CITY COUNCIL OF NAIROBI Plaintiff
versus
ATA UL HAQ ... Defendant

20 P L A I N T

1. The Plaintiff is THE CITY COUNCIL OF NAIROBI, a body corporate constituted by Royal Charter and having the same powers as the Municipal Council of Nairobi had under The Municipalities Ordinance. The Plaintiff's address for service for the purpose of this Suit is care of MESSRS. KAPLAN & STRATTON, ADVOCATES, QUEENSWAY HOUSE, YORK STREET, NAIROBI.

30 2. The Defendant is ATA UL HAQ, a Building Contractor residing and carrying on business at Nairobi aforesaid.

3. By a Contract in writing dated the 29th day

In the Supreme Court of Kenya

No. 3

Plaint of City Council of Nairobi,

14th November, 1956

- continued.

of June, 1954, entered into between the Defendant and the Plaintiff, the Defendant agreed on the terms therein appearing to erect certain African dwelling houses (hereinafter called "the said works") at Nairobi for the Plaintiff. The Plaintiff will crave leave to refer to the said contract at the hearing of this Suit for the full terms and effect thereof.

4. The preamble of the said Contract narrates that "the Contractor (i.e., the Defendant) has tendered and the Council (i.e., the Plaintiff) has agreed with the Contractor for the execution of the said work in accordance with :-

10

- (i) General Conditions of Contract of the Council;
- (ii) Tender of the Contractor dated 10th May, 1954;
- (iii) Specification prepared by the Engineer;
- (iv) Schedule of Rates;
- (v) Drawings Numbered 3183/AH/2/14, 3185/AH/2/15, 3191/AH/2/15, 3192/AH/2/17, 3217/AH/2/21, 3217/AH/2/23 and 3826/AH/2/27.

20

all of which are in the said Contract thereafter and are collectively hereinafter referred to as "the attached documents".

5. (a) It is provided by Clause 3 of the said Contract that "The Contractor will observe and perform all the stipulations mentioned in the attached documents"

30

(b) It is provided by Clause 4 of the said Contract that "The attached documents and the terms and conditions therein set out shall except where the same are varied by or are inconsistent with these presents form and be deemed to be part of this Contract as if the same were repeated herein categorically and the Contractors shall observe and perform the terms and conditions set out in the attached documents".

6. In pursuance of the said Contract the Defendant duly entered upon the site and the construction and erection of the said works.

40

7. The Plaintiff has accepted and taken over from

the Defendant the said works (except for Blocks 30, 37, 38, 38A, 38B and 39) under the terms of the said Contract not knowing at the time of the latent defects therein particulars whereof are given under paragraph 11 below.

In the Supreme
Court of Kenya

No. 3

8. The Plaintiff has declined under the terms of the said Contract to take over from the Defendant Blocks 30, 37, 38, 38A, 38B and 39 of the said works as not conforming to the contract.

Plaint of City
Council of
Nairobi,

14th November,
1956

- continued.

10 9. Payment Certificates under the terms of the said Contract for a total sum of Shs. 1,612,540/- for payment to the Defendant have been issued and paid by the Plaintiff under deduction of Shs. 108,038/- retention moneys as provided by the said Contract, the Plaintiff not knowing, at the respective times of issue of the certificates or payment thereof, of the latent defects on the said works particulars whereof are given under paragraph 11 below.

20 10. The Plaintiff will maintain that the said sum of Shs. 1,504,502/- represents the total amount which would have been due to the Defendant in respect of the works completed by him had he completed the same according to the said Contract and the attached documents.

30 11. The Defendant has failed to execute the said works in accordance with the said Contract and the attached documents and has thereby committed breaches of the said Contract in respect whereof the Plaintiff has suffered and claims damages.

PARTICULARS

(i) Foundations.

40 Excavations not carried down to rock or murrum suitable for foundations, black cotton soil not all removed, bottoms of the trenches not levelled off, concrete mix of foundations not 1-3-6 cement, sand and aggregate as specified or not properly mixed or laid, concrete foundations do not conform to drawings with respect to width or projection beyond the face of the walling built thereon, stones used in foundations walling not of regular shape or square out and some soft stone used, cement mortar not 1-4 mix as specified or not properly mixed or laid, hoop iron reinforcement not laid as specified, buttresses do not conform to drawings; necessitating:

In the Supreme
Court of Kenya

No. 3

Plaint of City
Council of
Nairobi,

14th November,
1956

- continued.

Excavation of outer face of walls, concrete underpinning, raking out and repointing walls and back filling to trenches, the estimated costs whereof is Shs. 58,750/-.

(ii) Floors.

Excavation not carried down to rock or murrum, black cotton soil not all removed, filling material laying and ramming not according to or carried out according to specification, concrete floor and screed do not conform to drawings in thickness, concrete floor not up to 1-3-6 mix as specified or not properly mixed or laid, necessitating: 10

Hacking up existing concrete floors and cement screeds, taking out filling, cleaning out black cotton soil, re-filling and ramming according to specification, laying new concrete floors and floating new cement screed the estimated cost whereof is 20

Shs. 387,500/-

Shs. 446,250/-

(iii) Superstructure Walling.

Stones used not of regular shape or square cut and some soft and porous stone has been used, cement mortar not up to specified mix or not properly mixed or laid, hoop iron reinforcement not according to specification, damp course in single ply and not three ply material as specified and not set in bitumen on a screeded bed, internal faces of walling not dressed off to a fair face, external faces of walling not struck pointed as specified, door frames etc., not properly set or fixed, chamfered edges not formed at window openings, flues not properly parged, steps not set on hard core backfilling, boundary walls not bounded or tied as specified, necessitating: 30

Raking out joints and repointing externally, dressing off, repointing and bag washing internal faces, taking out and re-fixing door frames etc., cutting 40

Shs.446,250/-

In the Supreme
Court of Kenya

chamfer at sills, bonding boundary walls, redecorating internally the estimated cost whereof is and in respect of failure to comply with the damp course specification which cannot now be remedied the works are reduced in value by an estimated

Shs.280,750/-

No. 3

Plaint of City
Council of
Nairobi,

Shs. 800/-

14th November,
195610 (iv) Roofs and Joinery

- continued.

Roof timbers lap jointed and nailed with wire nails, timbers not framed, screwed or halved at joints and nails used not long enough to go right through for clenching on one face, joints are opening and timber is distorting, no wall plates provided as shown in drawings, valleys formed with 6" x 1" boards instead of 9" x 1" and have no fill-ets on upper edges, valleys lined with galvanised sheeting 15" in girth instead of 18", door and window frames not fixed with metal cramps, door hinges are not as specified and fixed with screws without any bolts, doors to the ablu-tion blocks are not hung to be self closing as specified, necessitating:

20

Reinforcing and re-spiking roof tim-bers, new hinges to and/or rehanging of doors and belting hinges etc., to bring up to specification standard the cost whereof is estimated at

30

36,565/-

and in respect of failure to comply with specification for valley board-ing and lining which cannot now be remedied the works are reduced in value by an estimated

700/-

(v) Drains

40

Drains not laid to adequate falls, excavation inadequate and no hardcore back fill put in or building up as required, cement mix not up to 1-3-6 as specified or not properly mixed or laid, necessitating:

Taking up and re-laying and replacing defective drains and providing support 2,500/-

Shs.767,565/-

In the Supreme
Court of Kenya

Shs.767,565/-

No. 3

Plaint of City
Council of
Nairobi,

14th November,
1956

- continued.

(vi) Repair work already carried out.

In Blocks 36, 37, 38, 38A, 38B and 39, joints, internally raked out, repointed and bagwiped, joints in external coloured panels above floor slab raked out and repointed including chimney stacks and weathering to joints external below floor slab raked out and repointed, lime-washing of walls and preservation of timber works, repairs to cracked floors, adjusting tiles, doors, frames, shutters, louvres, etc., all carried out by the Plaintiff by direct labour, the cost whereof in addition to above is estimated at

10
15,000/-

(vii) Loss of Rent.

To enable the works specified under (i) to (v) above to be carried out it will be necessary for housing to be vacated in blocks of 20 rooms at a time. Over the total number of 456 rooms let at Shs. 39/- per month the loss of rent to the Plaintiff is estimated at

20
17,784/-

(viii) Supervision.

Estimated fee for preparation of Specification for the carrying out of the works specified under (i) to (v) above

30
Shs.1,500/-

Overheads (salary and office accommodation and assistance) for one clerk of Works to supervise the carrying out of the works specified under (i) to (v) above for an estimated period of 17 months estimated at

25,000/- 26,500/-

Shs.826,849/- 40

12. By reason of the promises and the development of the latent defects in the said works due to the said breaches of contract by the Defendant it was

necessary for the Plaintiff to retain the services of a Quantity Surveyor to carry out a detailed survey and report on the said works, the cost whereof is Shs. 9,881/- made up as follows and which sum the Plaintiff claims from the Defendant by way of Special Damages :-

In the Supreme
Court of Kenya

No. 3

Plaint of City
Council of
Nairobi,

14th November,
1956

- continued.

	Mr. A.E. Wevill, Quantity Surveyor, Nairobi, Fee for Survey and Report.	Shs. 8,681.00
10	Public Works Department, Fee for tests on cement and concrete samples.	" 1,200.00
		<u>Shs. 9,881.00</u>

13. In respect that the remedial works proposed and estimated for under paragraph 11 above cannot bring the said works up to the standard prescribed by the Specification or to conformity with the said Contract and attached documents, excessively high maintenance costs will be incurred in respect whereof the Plaintiff claims damages in the sum of Shs. 46,220/- assessed on an estimated basis of one-eighth per centum.

14. The cause of action arose at Nairobi within the jurisdiction of this Honourable Court and the value of the subject matter of this Suit is Shillings 882,950/-

WHEREFORE the Plaintiff prays for Judgment against the Defendant, for:-

- 30 (a) Special Damages in the sum of Shs.826,849/- as in paragraph 11 above;
- (b) Damages in the sum of Shs. 9,881/- as in paragraph 12 above;
- (c) Damages in the sum of Shs.46,220/- as in paragraph 13 above.
- (d) Interest thereon at the rate of 8% p.a., from the date hereof until judgment and thereafter on the decretal amount at Court rates;
- (e) Costs of this Suit;
- 40 (f) Such further or alternative relief as to this Honourable Court may seem just.

DATED at NAIROBI, this 14th day of November, 1956.

(Sgd.) J. MACKIE ROBERTSON.
KAPLAN & STRATTON,
ADVOCATES FOR THE PLAINTIFF.

In the Supreme
Court of Kenya

No. 4

DEFENCE OF ATA UL HAQ

No. 4

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

Defence of Ata
Ul Haq,

CIVIL CASE NO.1314 of 1956

31st January,
1957.

B E T W E E N :-

THE CITY COUNCIL OF NAIROBI Plaintiff

- and -

ATA UL HAQ ... Defendant

D E F E N C E

1. Paragraphs 1 and 2 of the plaint are admitted. 10
2. The Defendant will refer to the written contract dated 29th June, 1954, referred to in paragraphs 3, 4 and 5 of the plaint upon production thereof for its full terms and effect which are not properly set out in the said paragraphs.
3. With reference to paragraph 6 of the plaint, the Defendant duly completed the said work according to the said contract.
4. With reference to paragraphs 7, 8, 10 and 11 of the plaint, the Plaintiff accepted all the said works including Blocks 30, 37, 38, 38A, 38B and 39, and went into possession thereof and the Plaintiff has since remained without interruption in such possession and has let all the said works to divers tenants and has continued to collect and is collecting rent from such tenants in respect of the said works; the Defendant further denies that there were any latent or other defects in the said works as alleged in the plaint or at all. 20
5. In the alternative, if there were any such defects, which is denied, the Plaintiff with full knowledge of the same has waived any claim in respect thereof. 30

PARTICULARS.

The Plaintiff by its servants or agents from time to time during the progress of the said works

inspected the same; the Plaintiff further by its said servants or agents from time to time during such inspections as aforesaid required the Defendant to carry out such repairs or alterations as the Plaintiff considered necessary to the said works and the Defendant duly completed such repairs and alterations; the Plaintiff thereafter by its said servants or agents approved of the said works and took possession of the same; the Plaintiff further by its City Engineer from time to time during the progress of the said works issued interim certificates certifying the total amount of Shs. 1,612,540/- as due and owing to the Defendant in respect thereof.

6. In the further alternative, the Plaintiff is estopped from denying that the said works were carried out in accordance with the contract.

PARTICULARS.

The Defendant repeats the particulars contained in paragraph 5 hereof and states further that by such conduct as is therein stated on the part of the Plaintiff its servants or agents the Defendant was induced to and did believe that the works carried out by the Defendant, with such repairs and alterations as aforesaid, had been duly approved; if any further objections to the said works had been taken during the progress of the said works or within a reasonable time thereafter before completion of the said works any further alterations or repairs could have been carried out by the Defendant much more easily and less expensively than would now be possible after completion of the said works.

7. The Defendant further claims that the Plaintiff, by refusing to pay for the balance of the completed works which were duly completed in accordance with the contract is in breach thereof.

8. With reference to paragraph 10 of the plaint in addition to the work specified in the contract, the Defendant supplied extras and did additional work under the direction of the Plaintiff and its City Engineer which the Plaintiff by its servants or agents has in further breach of the contract failed to certify or pay for.

9. With reference to paragraph 11 of the plaint the Defendant denies that he has committed any

In the Supreme
Court of Kenya

No. 4

Defence of Ata
Ul Haq,

31st January,
1957

- continued.

In the Supreme Court of Kenya

No. 4

Defence of Ata Ul Haq,

31st January, 1957

- continued.

breach of contract as therein alleged or at all or that the Plaintiff has suffered the alleged or any damage. If the Defendant committed any breach of contract as alleged or at all, which is not admitted, the Defendant denies that the damages claimed in paragraphs 11, 12 and 13 of the plaint or any part thereof were occasioned thereby.

WHEREFORE the Defendant prays that the Plaintiff's suit be dismissed with costs.

DATED at NAIROBI this 31st day of January, 1957.

10

(Sgd.) SAEED R. COCKAR
COCKAR & COCKAR
Advocates for the Defendant.

No. 5

Proceedings,
4th April, 1957.

No. 5

P R O C E E D I N G S

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 170 of 1956

ATA-UL-HAQ ... Plaintiff

versus

20

NAIROBI CITY COUNCIL Defendants

BEFORE

THE HONOURABLE MR. JUSTICE FORBES.

10.30 a.m. Thursday, 4th April, 1957.

O'DONOVAN and COCKAR for Plaintiff
SCHERMBRUCKER and MACKIE ROBERTSON for Defendants.

By consent Civil Case No. 1514 of 1956 is consolidated with Civil Case No. 170 of 1956, both cases to be heard together.

Court adjourns at 10.45 for the issues to be agreed between the parties.

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Court resumes at 11.15 a.m.

MR. O'DONOVAN:

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

10

May it please your Lordship. Counsel on both sides have agreed on eleven issues of which a type-written copy has been handed in, subject to the possibility of having to frame further issues at a later stage. It would be convenient if the words "plaintiff" and "defendant" referred to the plaintiff and defendant in the first suit throughout. The plaint in Civil Case 170/56 is as follows: (Reads).

(Mr. Schermbucker reads pleadings in Civil Case 1314/56)

The agreed issues are as follows: (Reads).

20

The plaintiff is a building contractor with a well-established business in Nairobi, where he has been trading as a contractor for some 15 years, and during these 15 years he has completed several housing schemes for Africans for the Nairobi City Council either alone or with his brother. The total amount of work which he has performed for the City Council amounts to almost ten million shillings in value.

30

In 1954 the Nairobi City Council called for tenders for Part B of Ofafa Estate, Nairobi, and the plaintiff tendered for Shs. 170,952/-. That tender was not the lowest; it was about 3 or 4 from the lowest, but it does work out at a price about 15/- per square foot. I shall quote authority to the effect that the contract price has some relevance in considering what quality is legally contracted for by the specification. I say now that the evidence will be that contract price of 15/- per sq. ft. is very low indeed. It is approximately half the cost of the normal African servants' quarters in most residences in this city, and a quantity surveyor whom I shall be calling will say that the City Council was at that time very anxious to provide a housing scheme for Africans on the most economical possible basis.

40

After the acceptance of the plaintiff's tender, he deposited Shs. 50,000/- by cheque, and he went to Ofafa Estate, where he met the Clerk of Works, Mr. Stone, who showed him the site and gave instructions about the corner pegs for the first two blocks which were to be completed. The contract

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
-- continued.

provides for the construction of 17 blocks of buildings: some are dwelling houses, rooms, ablution blocks, and so on.

In addition to Mr. Stone, the Clerk of Works, Mr. Tanner, an architect, assisted by Mr. Mold, another architect, controlled the operation on behalf of the City Council, and the plaintiff worked under the direction of one or other of them throughout the contract which took some 16 months to complete. Mr. Stone also had an assistant - there was a galaxy of supervisory officials present throughout on behalf of the City Council. In addition to the persons mentioned, Mr. Goodwin took over towards the end of the contract and Mr. Sanders and Mr. Roberts were at the time respectively the Deputy City Engineer and the Assistant City Engineer. The City Engineer, Mr. Bridger, also on occasions visited the site during the progress of the work.

10

The first step which had to be taken was of course the digging of the trenches for the foundations, and the evidence will be that no concrete was put into the foundations until the trenches had first been approved. Secondly, that the concrete itself, about which complaint is now raised, was periodically checked by Mr. Stone, who took samples for tests to be made. The quality of the materials which were used were of course obvious to the Clerk of Works and to the Architect and samples were submitted and were approved before use. With regard to the stone of which these buildings were constructed, Nairobi blue stone was used, which apparently is the best available local stone. As to the tiles, samples of these were submitted and they were approved by the City Council at the site where they were made: they were made by Kentiles, Ltd. on the Thika Road. There were in minor matters a number of small immaterial deviations from the specification, in regard to which evidence will be that all of them were approved from time to time by the officials of the City Council who were present at the site during the progress of the work.

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The first two blocks to be completed were Nos. 28 and 29; they were completed towards the end of 1954. The evidence will show that before being taken over, they were examined by the Architect and the Clerk of Works, who instructed the

10 plaintiff contractor that a number of modifications and repairs had to be effected. The evidence will be that these repairs were in fact effected, and thereafter after completion to the satisfaction of the City Council's officials, two letters of acceptance dated 11th December, 1954, were sent to the plaintiff informing him that these buildings had been accepted by the City Council. In respect of 9 further blocks, there are similar letters of acceptance after the same procedure had been followed, namely the work was inspected periodically, defects were pointed out to the contractor and he was instructed to remedy them to the satisfaction of the City Council. Letters of acceptance signed by the City Engineer were then sent to him.

20 With regard to the remaining six blocks, the case for the plaintiff will be that they were completed during the middle of 1955. At that time there appeared to be a certain amount of unhappy discord within the City Council Engineer's Department, and I think a clear inference of a clash of personalities, in particular Mr. Bridger, the City Engineer, who had acted throughout, retired and Mr. Saunders was appointed Acting City Engineer. Various criticisms of the work on the remaining six blocks were formulated on behalf of the City Council. The criticisms which were formulated were in fact remedied by the plaintiff, and on 30 9th June, Mr. Goodwin, who had then taken over as Clerk of Works, wrote a memorandum to the Architect and sent a copy to the plaintiff, to the effect that Blocks 38A, 38B, 39 and 40 had been inspected, repairs carried out and were now ready for handing over.

40 On 25th July he addressed a similar memorandum to the Architect with a copy to the plaintiff showing that Blocks 37 and 38 had been completed, repairs carried out and were now ready for handing over. Thereafter the plaintiff wrote and asked for the penultimate certificate in respect of 95% of the contract price, and in August, 1955, there came a bombshell: the City Council did not accept these blocks; it was alleged that the foundations were defective, the mortar was not of the requisite mixture called for by the specifications, and it ended a few months later with his expulsion from the site. Why it came as a bombshell was that the six blocks, as well as the remaining eleven, were all within a matter of days of being completed

In the Supreme Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

taken over by the City Council, who promptly rented them out to various tenants who are still there to this day.

On behalf of the plaintiff, I shall ask your Lordship to visit this Estate in order to see for yourself the quality of the work which was done by the Plaintiff. Your Lordship will see that all the buildings are occupied. The evidence is that they have been continuously occupied ever since they were completed. At the end of 1955, there was a court of inquiry which enquired amongst other things, into the question of the manner in which this particular contract was carried out, and the evidence will be that a certain amount of work was carried out by the City Council which was shown to the court of inquiry but that the City Council's interest in repairs to the Estate appear to have evaporated when the court of inquiry ceased to function and that nothing has been done since that time. The Architect will tell you how he saw the buildings being physically attacked with crow-bars and of the stone being actually damaged in the process prior to being filled up with mortar, and I think you will come to the conclusion that possibly the parts of the Estate which were left alone appear to be in a better state of construction: they are certainly less unsightly than those parts in which attempts have been made to remove the plaster, repaint the walls and so on.

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Very briefly, the case for the plaintiff is this: that he worked continuously under supervision; that he remedied during the progress of the work every defect which was brought to his notice; that he was in fact paid over 90% of the contract price, and that it was only when the work had been completed and occupied by the City Council that he was informed that they were not prepared to accept the work or to pay for the balance of the contract price. In fact, of the contract price, and if one deducts the amount of Shs.85,000/-, which is the percentage to be retained during the maintenance period, the only money remaining is Shs.54,000/-. The plaintiff will contend that having completed the work to the satisfaction of the City Council's officials at the time he in fact complied with his contract. That proposition will be put forward whatever the quality of the work in fact was, that apart from his liability to remedy defects which became apparent during the

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maintenance period, the City Council cannot now go behind the acts of its Clerk of Works and Architects who at the time approved of what was done. If, however, that contention were not to be accepted in this Court, the evidence which will be adduced is that the quality of his work which he provided is in fact superior to that called for by the specifications.

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

10 I think I should at this stage refer to the General Conditions of Contract - to the definition of Engineer in Clause 1. (Reads). The importance of that definition is that it is wide enough to include in the term "City Engineer" those officials of the City Council who in fact supervised the work of the plaintiff on the site at Ofafa Estate. Therefore, the approval or permission referred to in sub-clause 2 of the first clause will include, in my submission approval in writing of the Clerk of Works, Mr. Goodwin who with regard to the re-
20 maining six blocks took it upon himself to certify in writing that all the defects which were required to be repaired had been repaired and that the buildings were in a state where they could be handed over.

The next clause to which I shall refer is clause 2 (Reads). Those words are wide enough to include the verbal instructions which were in fact given during the progress of the work and which were accepted by the contractor, and which in my
30 submission will satisfactorily account for the immaterial respects in which the work was performed differed slightly from the specification. As an example of that, I should mention that one of the matters complained of is (Refers to second suit, page 5). The evidence will be that no other nails are available or have been available in the whole of East Africa for nailing roof timbers and the Clerk of Works could have seen and approved of those at the time they were used.

40 The next clause is clause 7, sub-clause 4 (Reads). The point I wish to make is that what is required is work to the satisfaction of the Engineer, so that if he or those who helped him were satisfied at the time, there was in fact compliance by the contractor with his contractual obligations irrespective of the quality of the work.

(Reads clause 9).

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

The argument I base that on is (Refers to Halsbury's Laws of England, Simonds Edition, Vol.3, p.457 - reads). The reference is Adcock's Trustee v. Bridge Rural District Council (1911), 75 J.P. 241. The same passage is quoted with approval in the 7th Edition of Hudson's Building Contracts, at page 239. (Reads).

Then I should refer to paragraph 9, sub-clause 2, which refers to the maintenance period and provides that ... (Reads) That can apply only to defects which genuinely appear during the period of maintenance. It will be too late during that stage to complain about the foundations if they had been put in at the time on the instructions and with the approval of the Clerk of Works and Architect. I refer too to Hudson, 7th Edition, p.240. (Reads). Here I would have two answers with regard to the blocks: the maintenance period had elapsed before any trouble started and nothing was pointed out to the contractor and he was not required to make anything good, or rather he made good whatever he was required to make good.

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With regard to the other defects, I submit first of all that they were not latent defects; they were plain defects. Secondly, they related to complaints about matters which had been specifically approved so that they do not fall within the category of defects genuinely discovered during the maintenance period.

My third answer is that in any event if the City Council took the wrong view of its rights when it required the contractor by letter to conform with demands relating to the foundations which he was not legally obliged to do, then they cannot rely on the maintenance clause because the plaintiff was at all material times willing to carry out any repairs which could legally have been required of him, and he was prevented from doing so by his expulsion from the site upon the wrong view by the City Council of their rights in the matter.

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I will also go rapidly through the remaining clauses. (Reads clause 16).

With regard to the specifications and the stipulations concerning the certificates, they are contained in clause 15 of the specification. It reads. (Reads)

Then the certificates relating to payment are not conclusive evidence. I will submit that they are some evidence, and I will urge as against the City Council that it is unlikely that they would have paid in the case of some of the work for 95% of the price and in the case of others for 90% over a period of some 15 months if they had any genuine complaint with regard to the quality of the work. The certificate which is conclusive is the certificate relating to payment, but in addition to that one has another class of document in this case, and that is a letter of acceptance which in my submission is a conclusive proof of the satisfaction of the City Engineer or his deputy.

10

Clause 18 provides for variations: the defendant denies that there are any extras. I think I shall be able to produce documentary proof of all the extras in support of the claim for Shs.89,000/-.

20

Clause 20 of the General Conditions provides (Reads).

Clause 23 provides very extensive powers about which I will only remark that they were never exercised. It reads. (Reads). My submission is that these powers were there to be exercised; it was too late to exercise them when the City Council purported to do so.

30

Lastly, I should refer to the Arbitration Clause which is clause 26. One issue is res judicata, that is, whether issues raised in the present suit fall within the scope of the Arbitration Clause in respect of which an application to stay the first of the two proceedings was dismissed.

Court adjourns at 12.45 p.m.

Court resumes at 2.15 p.m.

MR. O'DONOVAN (Continues):

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There is one other context in which I should refer to the Arbitration Clause. In certain building contracts, the arbitration clause by allowing an issue to be raised as to the correctness of certificates, might lead to the consequence that they are not conclusive in any way. There is nothing in the Arbitration Clause which would enable the City Council in my submission to

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

In the Supreme
Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

go behind their letter of acceptance as conclusive evidence of the satisfaction of the Engineer with the works, subject only to a liability in respect of repairs for defects appearing during the period of maintenance. Therefore, I rely not only on the case of Adcock, but on the letters of acceptance themselves, particularly in this case where the work has to be completed to the satisfaction of the Engineer. In that respect I refer to the case of Dunaberg Railway Co. v. Hopkins & Co. Ltd. (1877), 36 L.T. p.735. I refer to the special case stated in the first column on page 735. (Reads). And to the judgment of Mr. Justice Grove on page 737, second column, in which this passage occurs also. (Reads). The payment certificate is by contract not conclusive evidence, but the letter of acceptance which is only issued after the works have been completed to his satisfaction is conclusive. (Reads clause 19 on page 3 of the Specifications). Although that deals specifically with the subject matter of responsibility for loss or damage, nevertheless it shows that the buildings have to be completed to his satisfaction before acceptance is notified to the contractor.

10

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In these circumstances, the same result follows, that the letter of acceptance is conclusive as is set out in the case Bateman vs. Thompson contained in Hudson, 3rd Edition, Vol.2, at p.25. I refer to the passage in the judgment of the court Coleridge, C.J., at the bottom of p.30 (Reads). That case is, amongst others, cited by Hudson, 7th Edition, at p.265 (Reads).

30

Mr. Mold, who took over from Mr. Tanner, said that he was not concerned at the time to investigate Mr. Tanner's work, as he assumed that he knew what he was doing. That was in mitigation of his own conduct; it is an assumption which has correct legal basis and that the rights and liabilities of the parties are in fact determined by what Mr. Tanner did and did not do, and in fact what Mr. Mold did also, because he stated that he was satisfied with 9 out of the 11 blocks that were accepted and it was due to his report that the letter of acceptance was in fact given.

40

Lastly, if we can establish that the work was done to the satisfaction of the Engineer - and we can produce Mr. Goodwin's written report on that

matter - then there is no discretion left in the City Council or the Engineer but he is obliged to give a certificate in relation to 95% of the cost of the works. The fact that he failed to do so, if he failed wrongly to do so and the City Council adopted his wrong attitude in the matter, would not debar the plaintiff from recovery, on the principle that no party can take advantage of a condition of failure to perform a condition which is a consequence of his own default. There is a short passage in Keeting on Building Contracts (1953) p.65. (Reads).

10

That is an outline of the plaintiff's case. My first witness is the plaintiff himself, Mr. Ata-ul-Haq.

In the Supreme Court of Kenya

No. 5

Proceedings,
4th April, 1957
- continued.

EVIDENCE for ATA UL HAQ.

No. 6

Plaintiff's Evidence

EVIDENCE OF ATA-UL-HAQ

No. 6

P.1 - ATA-UL-HAQ, sworn

Ata-Ul-Haq.

20

Examined by Mr. O'DONOVAN:

Examination.

Q. You are the plaintiff in this case? A. Yes.

Q. I believe you are a building contractor?

A. Yes.

Q. How long have you been carrying on your contracting business? A. For the last 15 years.

Q. Where? A. In Nairobi.

Q. During that time have you completed several housing schemes for Africans for the City Council?

A. Yes.

30

Q. What would be the approximate total value of the work which you have done for the City Council?

A. 6½ million shillings.

Q. And in addition to that, have you done private contracting work for owners other than the City Council in Nairobi? A. Yes.

Q. Until the present dispute arose with the City Council, has any difficulty or dispute arisen with

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

regard to any of your contracts for African hous-
ing? A. No.

Q. Was it in 1954 that the Nairobi City Council
called for tenders for Ofafa Estate, Part B?
A. Yes.

Q. Have you been during your contracting business
with your brother Mr. Abdul Haq? A. Yes.

Q. Did you tender for this contract? A. Yes.

JUDGE: You personally tendered for it? A. Yes.

Q. Was the figure Shs.1,709,520/-? A. Yes. 10

Q. Was your tender the lowest? A. It was 3rd or
4th from the lowest.

Q. And it was accepted? A. Yes.

Q. At what price per sq. ft. does that work out?
A. About 16/- per sq. ft.

Q. Do the specifications for this work indicate a
cheap kind of construction, or the contrary?
A. The work can be of 60/- per ft. and 16/- per
ft., so this one was the cheaper one.

Q. I don't think you have understood the question. Does 20
the specification for which you quoted - 16/- per
sq. ft. - indicate a very expensive or a cheap
kind of building? A. A cheap type of building.

Q. Are you well acquainted with contract prices
for buildings in Nairobi? A. Yes.

Q. What, at the time of the contract - 1954 - was
the average kind of price which an owner would pay
for African Servants quarters attached to his own
residence in Nairobi? A. It would depend upon
the Plans; in some the rate is high, in others it 30
is low.

Q. What is the average price you would expect to
pay? A. 24/- to 25/- per ft.

Q. When your tender was accepted, did you sign the
contract? A. Yes.

Q. And specifications? A. Yes.

Q. And is Exhibit 1 a copy of your contract?

A. Yes.

In the Supreme
Court of Kenya

Q. You also signed the drawings? A. When I paid Shs.15,000/- as security, I was given all these documents.

Plaintiff's
Evidence

Q. Is that a copy of the contract, specifications and the drawings? (Shown to witness). A. Yes.

No. 6

Q. The contract provides for a deposit of Shs. 50,000 to be paid by you - Did you pay that deposit? A. Yes.

Ata-Ul-Haq.
Examination
- continued.

10

Q. That was security for the proper performance by you of your contract? A. Yes.

Q. Did you then proceed to Ofafa Estate? A. Yes.

Q. Do you remember the month in which you first went there? A. Yes, I went there in June, 1954.

Q. Did you meet anybody there? A. I went there to see the site; when I went to see the site I did not meet anybody at that time.

20

Q. Did you later meet anybody at the site - any official? A. Later on I met Mr. Stone.

JUDGE: At the site? A. Yes.

Q. What was his function? A. I met Mr. Stone there. He showed me the place where to start the plots.

Q. Was he the Clerk of Works at that time representing the City Council? A. Yes.

Q. At this site? A. Yes.

Q. Was he in charge of your works? A. Yes.

30

Q. In which month was it that you met him at Ofafa Estate? A. In July 1954.

Q. And how many blocks of buildings were you to construct? A. In all 17 blocks.

Q. When did you commence work? A. July, 1954.

Q. You commenced by making the excavations for the foundation? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

Q. How frequently was Mr. Stone at the site where you were working? A. Nearly all the time, but sometimes he was not there.

Q. Did he have an assistant? A. Yes.

Q. Who was the assistant? A. An African.

Q. How deep down did you dig the foundations? Did you or did you not remove all the black cotton soil? A. We dug the foundations from 2½ to 3 ft. to a place where we got stones.

Q. You dug as far as the stones. Did you remove all the black cotton soil from the excavations for the foundations? A. Yes. 10

Q. Do you remember with which blocks you started? A. I think 28 and 29 - both.

Q. Did Mr. Stone see the excavations after you had completed digging? A. Yes, that is to be shown always.

Q. Did he give you any instructions about waiting before you put the concrete in the foundations or not? A. When we had finished digging the foundations he told me to wait some time. We waited for 2 or 3 hours; then the architect came and he told me, You can put down concrete. 20

JUDGE: Who told you? A. Mr. Stone.

Q. Who is the architect? A. Mr. Fanner, who was the architect at that time.

Q. Did he carefully inspect the trenches before Mr. Stone authorised you to put in the concrete foundations? A. Yes, Mr. Stone and the architect both saw the foundations. 30

Q. You say you started with two blocks, but in all you dug the foundations of 17 blocks of buildings? A. We dug the foundations of all the blocks at once.

Q. Can you recollect when it was that you dug the foundations of the last block? A. I do not remember the month exactly, but I know it was dug in 1955.

Q. Did Mr. Stone examine every single one of the

foundations which you dug? A. Yes, we were not allowed to put down concrete before showing to Mr. Stone.

In the Supreme Court of Kenya

Q. So he examined all 17? A. Yes.

Plaintiff's Evidence

Q. Did the architect approve of them all?
A. The architect was not there throughout.

No. 6

Q. Did Mr. Stone approve of them all? A. Yes. Mr. Stone was there, but the architect used to come only for an hour or two hours.

Ata-Ul-Haq.
Examination
- continued.

10 Q. Did Mr. Tanner, the architect, examine every single trench you dug or not? A.

Q. In how many cases out of the 17 did the architect in fact come and look at it? A. I think he had seen all the 17; he used to come twice or thrice in a week.

Q. How long would the architect spend examining your work on each of these visits? A. From $1\frac{1}{2}$ to 3 hours.

20 Q. Two or three times a week? A. Three or four times a week.

Q. Did you ever start putting in a concrete foundation without first having got Mr. Stone's authority? A. No.

Q. Were the bottoms of the trenches levelled off? A. Yes, we always levelled it.

Q. I think the contract provides for steps at the bottom of the foundation where you have to dig deeper? A. Yes.

30 Q. It is also in the contract that if you are required to dig less than 4 courses of masonry or more than 4 that would be the subject of a variation order? A. In my contract there were only 4 courses, and if there was more digging to be done they should have paid me extra, but they have not paid.

40 Q. That is provided by Clause 23 of the Specification. Would it follow from that that there was no financial advantage to be derived by you from digging shallower trenches than necessary? A. There is one clause in the Specification that if we dig

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

three courses they will deduct for one course, and if we dig for five courses they will pay for one course.

Q. Was there any advantage to be gained by you by not digging the proper number of courses?

A. There is no advantage to me if we do not dig four courses.

JUDGE: Is there any advantage to you if you did not dig six courses? A. There is no advantage to us because we have been paid for filling, for digging and everything.

10

If you do any extra work in digging you get paid for it? A. Yes, there is a clause in the Specification.

Q. Did you, about the middle of 1955, settle with Mr. Goodwin the question of how deep your foundations had been dug? A. I wrote a letter to the City Engineer and the City Engineer wrote a letter back.

Q. Did you or did you not in the middle of 1955 settle with Mr. Goodwin, the then clerk of works, the question of how many courses had been dug for the foundations? A. Yes.

20

Q. And between what limits did it vary? What was the deepest number of courses you dug? A. 4 to 7 courses.

Q. Do the buildings show any signs of having sunk or settled? A. No, not at all.

Q. Even to-day? A. No.

Q. If you build on black cotton seed soil what happens to the building? A. There will be big cracks in the building.

30

Q. Are there any such cracks in your building? A. No.

Q. When you came to put in the concrete mixture in the trenches for the foundations, were you supervised by the clerk of works? A. Yes.

Q. Did you use a concrete mixing machine. A. Yes.

Q. What is the capacity of this concrete mixer? A. 4 to 4½ cubic ft.

40

Q. Did Mr. Stone supervise your actual making up of the concrete mixture? A. Yes.

In the Supreme
Court of Kenya

Q. What mixture did you make - how is it expressed in figures? A. One cement, three sand, six concrete.

Plaintiff's
Evidence

Q. How long would the foundation of one block take to put in? A. 2, 3 or 4 days.

No. 6

Q. How many layers were there under the floor level? A. One,

Ata-Ul-Haq.

Examination

- continued.

10 Q. Did you say that one layer would take between two to four days to complete for one block?
A. Yes.

Q. After you had laid the foundation concrete, would you have to leave it to dry? A. Yes.

Q. Did you get any instructions from Mr. Stone before you went on with the foundation wall?
A. When the concrete was dry, we would then ask his permission, and if permission was given then we would start.

20 Q. Was the architect, Mr. Tanner, consulted? Did he inspect the works before you were authorised to start building the foundation wall? A. When we came to the floor level, Mr. Stone asked us to wait because he wanted to consult Mr. Tanner.

Q. That is when you reached the ground level?
A. Yes.

Q. Before you started putting in the foundation wall? A. We had already started the foundation wall.

30 Q. You mean that when you had completed the structure up to the level of the ground you had to wait for the architect? A. Yes.

Q. Did that happen in some or all of the cases of the 17 blocks? A. We were doing the same in all the blocks.

JUDGE: Did you have to wait for Mr. Tanner to see them in the case of each block? A. This is only the question of the first block, but in other cases he used to consult him before,

40 Q. You say you had to wait for Mr. Tanner to come

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

and look at what you had built before you went on?
A. We had to wait because Mr. Stone wanted to ask
Mr. Tanner what level is to be kept - 9" or 1 ft.

Q. That happened with the first block that you
built? A. Yes.

Q. Did you also have to wait with the remaining
blocks for Mr. Tanner to come and look at it?

A. There were some blocks where Mr. Stone could
not decide himself; then we had to wait for Mr.
Tanner.

10

Q. In other blocks he did not wait for him: he
decided himself? A. Yes.

Q. Is the plinth the same thing as the floor level?
A. Yes.

Q. After you had built the building up to the
plinth level, would you then fill in the interior
of the building formed by those trenches? A. Yes.

Q. And what would you use to fill up the underneath
of the floors? A. Hard core.

Q. Did you excavate the whole area of the block or
only the line around the perimeter? A. We used
to excavate the whole area.

20

JUDGE: Before you put the foundations in or after?
A. We used to put the foundations in after showing
that area to the clerk of works when we had already
excavated that.

That is the whole floor area? A. Yes.

Q. Did you leave any black cotton soil underneath
the floor area? A. No.

Q. Did you tell my Lord what you used with which
to fill up the floor area? A. Hard core.

30

Q. Did Mr. Stone supervise your filling up the
floor area with hard core? A. Yes.

Q. Did he disapprove of any of the materials -
stones - which you used for the hard core filling?
A. In the Specification is written hard core, so
we filled with hard core only.

Q. Did he disapprove of the material you used?
A. No.

Q. Did the architect see the hard core filling?
A. Yes.

40

Q. After the filling was complete, what was the next stage in the building? A. After filling it and hammering it and when it had been rolled, then Mr. Stone told me that he wanted to show it to Mr. Tanner.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Q. Then what happened? Did Mr. Tanner come?
A. Yes.

Q. Did he see what you had done? A. Yes.

Ata-Ul-Haq.

Q. Did he approve of it? A. Yes.

Examination
- continued.

10 Q. And with what phase of the work did you then proceed? A. Then he gave us permission to put the concrete on the floor.

Q. Were any tests made of the work which you did on the floors? A. We used a measurement - a cube - which they sent for testing. It is an iron box.

Q. Did Mr. Stone take samples of the floor filling?
A. When we used to put the concrete down he used to take samples.

20 Q. What did he do with the samples? A. He used to send them to the P.W.D. for testing.

Q. This cube which he took, did it consist of the concrete slab which you had put down for the floor?
A. Yes.

JUDGE: How big is the cube? A. It varies - sometimes 6" x 6", sometimes 9" x 9".

Q. Did Mr. Stone inform you of the result of these tests and if so what was the result? A. When I asked him he told me everything is all right.

30 Q. Did Mr. Stone take a sample in this way of the concrete slab of each of the floors from every block? A. He used to test 3 or 4 days in the case of every block, sometimes when the concrete was being taken to the place, sometimes where the concrete was being mixed.

Q. And was that test made in the case of every block? A. Yes.

Q. Did he take samples of the mortar which you used? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

Q. Would you know when he was going to take these samples, or would he do them as surprise checks?
A. He used to take samples when he liked; we never came to know.

Q. You did not know in advance?
A. We did not know in advance.

Q. After you laid the concrete floors, the next step was the erection of the walls?
A. We used to start after obtaining the permission of the architect or Mr. Stone.

10

Q. What was the next step after putting in the floor?
A. When we used to erect the walls.

Q. Your specifications provided for a damp course?
A. We used to start erecting the walls after putting the damp course.

Q. The Specification in fact provides that you should lay an approved 3 ply bituminous felt damp proof course set in hot bitumen above the finished floor slab. Did you put in a 3-ply damp proof course?
A. Yes.

20

Q. Was it a 3 ply one?
A. Yes.

Q. Did Mr. Stone see the damp course which you put in?
A. Yes.

Q. Did he approve of it?
A. Yes.

Q. Did you set it in bitumen?
A. Yes.

Q. Where did you obtain this damp proof course?
A. We bought it from various firms at various times, mostly from Gailey & Roberts.

Q. How many kinds of damp proof course were available?
A. There are 3 kinds: 1 ply, 2 ply and 3 ply.

30

Q. How many ply was the damp proof course which you in fact provided in these buildings?
A. When 3 ply damp proof course was not available, after obtaining permission of Mr. Stone and the architect, we would put 2 ply damp proof course.

Q. Do you remember in which month you ceased to have 3 ply damp course available?
A. I do not remember.

Q. You say the clerk of works and the architect approved of the substitution in some cases of the 2 ply course? A. When we informed them that we were not getting 3 ply damp proof course, they gave us permission to buy 2 ply damp proof course and we bought it.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

JUDGE: Did the architect approve? A. Yes.

Q. Is there any kind of damp proof put in - any single ply damp proof course? A. No.

Ata-Ul-Haq.

Examination

- continued.

10 Q. Is there easily visible the difference between 3 ply and 2 ply course? A. Yes, one who can understand that can find out.

Q. Would it be possible for you to have put in the wrong kind of damp proof course without the knowledge of Mr. Stone? A. No, not at all.

Q. Did you work at week-ends, for instance on Sunday mornings? A. Yes, we used to work on Sunday mornings. Mr. Stone, the clerk of works used to come even on Sundays.

20 5th April, 1957
10.30 a.m.

Witness continues evidence on same oath.

Examination-in-Chief by MR. O'DONOVAN (Cont'd)

JUDGE: Remind the witness that he is on his former oath.

MR. O'DONOVAN: The last question I put to you was about work on Sundays and I think you answered that when you did so the Clerk of Works also came to the site to supervise? A. Yes.

30 Q. The material which you used for the purpose of building the walls, I think it is provided by the specification should be first class local stone quarried with all corners square and regular and samples of the stone and dressing have to be submitted, for approval, to the City Engineer. That is so, is it not? A. Yes.

Q. Did you, in fact, obtain the best procurable local quarried stone? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

Q. Did you submit samples of it? A. Yes.

Q. Showing how it had been dressed at the quarry.
A. Yes.

Q. You sent samples to the Clerk of Works, Mr.
Stone? A. Yes.

Q. Was that prior to your building the walls with
this material? A. Yes.

Q. Even the foundation walls? A. Yes, we sup-
plied them with a sample before that.

Q. Was the sample approved? A. Yes. 10

Q. Were the stones which you subsequently used in
accordance with that approved sample? A. Yes.

Q. Was the erection of the walls done under the
supervision of the Clerk of Works and the architect?
A. Yes.

Q. Did you reinforce the walls with hoop iron?
A. Yes.

Q. Is there any part of the blocks where you have
missed out this reinforcement? A. According to
me it should not be so. 20

Q. Did the Clerk of Works see the type of iron
reinforcement which you were using when you put it
in? A. Yes.

Q. Are you prepared, if required to do so, to
demonstrate at the site that this reinforcement
has been put in everywhere? A. Yes.

Q. Amongst other things the complaint is made
against you that you used only $\frac{1}{2}$ " hoop iron in-
stead of $\frac{3}{4}$ ", what have you to say to that com-
plaint? A. Yes, I have used $\frac{3}{4}$ " hoop iron. It
can be seen there. 30

Q. Are you prepared to demonstrate that to the
Court if required and to do so at the site?
A. Yes.

Q. Was this reinforcement inspected at the time by
the Clerk of Works and approved by him? I have
asked this before but I repeat it? A. Yes.

Q. Do you recollect whether there was at any stage
any argument between the Clerk of Works and the

architect as to the quality of any of the stone that you had used? I am sorry, My Lord, I have put the question incorrectly. Do you recollect any argument at all between the architect and the Clerk of Works about the quality of the stone you had used anywhere? A. No.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

10 Q. Were any tests made by the Clerk of Works of the mortar which you had used in constructing the walls? A. I don't know about that. They didn't test that, they only took a sample.

Q. Were samples taken of the mortar which was used for the walls? A. He used to come and just have a look at that.

JUDGE: He did not take samples? A. He might have taken samples, but he did not take them in my presence.

MR. O'DONOVAN: Did he examine it? Did you see him examining it from time to time. A. Yes.

20 Q. Were you at any time ever required to remove any defective part of the wall and rebuild it? A. Yes.

Q. Who required you to do so? A. Clerk of Works.

Q. Did you carry out those orders whenever he gave them? A. Yes.

Q. How often did that occur during the 16 months that you were there? A. I think twice or thrice.

30 Q. I would like to go back just one moment to the question of floors. The specifications provide, do they not, for a concrete slab, a very thin concrete slab on top of a layer of hard core? A. Yes.

Q. Is that a good or a poor specification? A. It should be actually 4" but there it is 3".

Q. What steps did you take, what did you do in order to obtain a surface on the top of the hard core on which to put the concrete slab? A. It was hammered.

Q. Did the hammering cause a certain amount of disintegration of the material that you had used? A. On hammering it becomes laid.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

Q. Did it break up part of the hard core? I am instructed that the question was not properly put. I will put another question.

Q. The result of the hammering was to make a smoother surface on which to place the concrete slab? A. Yes, it was hammered to settle it.

Q. Will you correct me if I have misunderstood it. Was that surface obtained by part of the hard core being slightly broken when you hammered it?

A. Yes, when it is hammered it breaks. 10

Q. Did you do that under the supervision of the Clerk of Works? A. Yes.

Q. After you had built the wall I am sorry . . . You had built it as far as the wall first, is that correct? And then put a lintel on top of that?

A. After building the wall up to the lintel.

Q. The lintels are to provide for the doors and windows? A. Yes.

Q. Then you proceed with the building of the wall up to the wall plate? A. After putting the lintel we put the hoop-iron reinforcement, then we showed it to the Clerk of Works. Not hoop-iron but rod. 20

Q. Is this the reinforcement of the lintel itself that you are talking about? A. Yes.

Q. Was an inspection of the lintels, including reinforcement of the lintels made by the Clerk of Works? A. Yes.

Q. Were they approved? A. Yes.

Q. What was the next stage of the work after the wall plate was reached? 30

JUDGE: Have we reached the wall plate?

MR. O'DONOVAN: I am sorry, My Lord. Would you describe the next process of the work after putting in the lintels. A. After that the work reached to the wall plate.

Q. Then what was the next phase? A. After that is the work of the roof.

Q. Where did you purchase your timber for the roof? A. I bought the timber from Timsales. 40

Q. Timsales? That is a Nairobi company? A. Yes.

Q. Which is the leading ----- who are the leading suppliers of timber in Kenya? A. Timsales is the leading.

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 6

Ata-Ul-Haq.

Examination - continued.

Q. Was any examination made of this timber before you used it? A. It was inspected by Architect and the Clerk of Works.

Q. Was it approved? A. Yes.

10 Q. Did you complete the framework for the roof - you claim to have done that in accordance with your contract? A. Yes.

Q. Was that done under supervision? A. Yes.

Q. I think the specification provides for locally made tiles. A. Yes.

Q. Where did you obtain your tiles? A. I bought the tiles from Kentiles.

Q. Is that a local company? A. Yes.

Q. Is there any other firm in this Colony which makes tiles? A. There might be but I don't know.

20 Q. You don't know of any other? Was any selection of the tiles made for the purpose of this contract? A. I have used No. 1 tiles.

Q. But did anyone choose the tiles you were to use? A. First I used to supply the samples to the City Council

JUDGE: Was any selection of the tiles made - were they chosen? Did anybody pick out the tiles?

INTERPRETER: He is asking at the Kentile or where the work was being done?

MR. O'DONOVAN: Anywhere. A. No, I have used No.1.

30 Q. Did anybody go to Kentiles and choose, pick out? A. Mr. Mould went once with me to Kentiles because there was a shortage of tiles.

Q. Did he select any tiles there? A. They were already selected and

Q. Did Mr. Mould

JUDGE: Were the tiles that were supplied to you inspected by anybody on your behalf before they

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

were sent to you? A. The Kentile Company did put No. 1 tile on one side and No.2 on other side.

JUDGE: You accepted the No. 1 tiles as being No.1 tiles? A. Yes.

MR. O'DONOVAN: Did Mr. Mould approve of them at Kentiles? A. Yes.

Q. Was he the architect who took over Mr. Tanner's functions? A. Yes.

Q. Did he at the outset assist Mr. Tanner and subsequently took over from him? A. Yes. 10

Q. After the tiles had actually been placed on the roofs of these blocks, were you at any time made to remove any and replace them with others? A. Yes.

Q. Were directions to that effect given to you during the progress of the work? A. Yes.

Q. Did you do what you were told to? A. Yes.

Q. Who ordered you to take tiles off the roof and put others on? A. Clerk of Works and Mr.Mould.

Q. On how many occasions did that occur during the work? A. They were checking every block. 20

JUDGE: How often were you required to replace tiles? A. In one block we used to change once only according to their instructions.

MR. O'DONOVAN: Do you mean by that answer that each block was inspected and that you might then be required to remove some of the tiles and put back others? A. Yes.

Q. How many times did that occur? Did it happen with every block, only one, or more than one? A. Yes, every block when they used to inspect. 30

Q. Did you replace tiles in every block? A. Yes.

Q. Before completion? A. Yes, before they took it.

JUDGE: May I interrupt? Do you mean that you completed putting tiles on the roof and it was then inspected - a particular block? A. Yes.

JUDGE: And after that inspection faulty tiles were pointed out to you and you were required to replace them? A. Yes. 40

MR. O'DONOVAN: How many tiles did you have to replace on an average? A. Sometimes 20, sometimes 30, sometimes 50, sometimes they used to ask us to straighten it.

Q. You mean to refix it? A. Because sometimes they were a little inclined to one side and they used to tell us to straighten it.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

Q. What is the comparative quality of Kentiles....

No. 6

JUDGE: I don't quite follow how you straighten.

A. I think it means change the position.

JUDGE: Does it mean relaying the tiles on the roof?

Ata-Ul-Haq.
Examination.
- continued.

10 MR. O'DONOVAN: What do you mean by straightening a tile? A. Suppose we have fixed 9 tiles and one is inclined a little to one side then we just used to

Q. Are these local tiles as good as imported ones? A. They are not as good as imported ones.

Q. Is it possible to avoid a slightly wavy effect with the local tiles? A. Yes, only sometimes there are some waves so that is why we had to change them.

20 Q. I won't pursue that. What was the next stage after the roof was made? A. Then we screeded from the inside and then polished it with the bag.

JUDGE: What does screeding mean? I thought that referred to the floor? A. It is the upper layer on the roof concrete, then they have a layer of cement.

30 MR. O'DONOVAN: What did you do to the inside walls after you had put the roof on? A. It was not screeded, My Lord, the stones which were just going up a little we had to do a bit of cutting and then washed it. Then we had to rub with a bag.

Q. Is this what you did. You removed by cutting or chipping away some of the irregularities of the stone on the inside walls? A. Yes.

Q. How did you remove these irregularities - what instrument did you use? A. With a hammer and chisel.

Q. After that, what did you do? A. Then after putting the cement we brushed it with the bag.

40 Q. You put a layer of cement on and then rubbed with a bag? A. Only we put the cement where there were irregularities and then rubbed the bag.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

JUDGE: You filled in holes with the cement, did you? A. Yes, in cases. There is sometimes some difference so we put some cement and then rubbed it.

MR. O'DONOVAN: Did anybody direct you about where to cut away irregularities on the stone in the inside walls? A. The Clerk of Works.

Q. Did anybody else? A. First I was told by Clerk of Works.

Q. Is your answer to my question 'No' - did anybody other than the Clerk of Works? A. Architect also. 10

Q. Were particular stones pointed out to you or not? A. Yes, they showed some stones. Some were coming out, and then we put the cement and then rubbed it with the bag.

Q. Was the final result approved by the Clerk of Works? A. Yes.

Q. Then what was the next phase of the work? You put the roof on. You finished the inside walls. What did you do then? A. Then we started putting cement on the floor. 20

Q. Is that a finishing coat? A. Yes.

Q. I think these blocks, or the residential ones, have chimneys? Is that right? A. Yes.

Q. At what stage were the chimneys erected? A. When the block was being built the chimney was erected at the same time.

Q. Then what is the final stage of the work? Is it the fixing of the windows or doors? A. The last stage is the pointing. 30

Q. What stage did you put in the windows and doors? A. After plastering the floor.

Q. Was that also done under supervision? A. Yes.

Q. When you had completed a block what was the next thing which occurred? A. First, the Clerk of Works inspected room by room.

Q. Do you use the plural deliberately or is it a slip in the interpretation? Clerk of Works or Clerks of Works? A. Clerk of Works. 40

Q. He would inspect the block, room by room?
A. Yes.

In the Supreme
Court of Kenya

Q. He gave you any directions about any faults that he found? A. Yes, where there was some work left he told us.

Plaintiff's
Evidence

Q. Did you do it? A. Yes.

No. 6

Q. Did anybody else come and inspect? A. Then he called the architect.

Ata-Ul-Haq.

Examination
- continued.

Q. Did the architect come with anybody else?

10 A. When he came for the first time he was alone.

Q. And what would occur on the architect's arrival?

A. Clerk of Works and architect checked room by room again.

Q. Were you again given instructions to carry out odd repairs? A. Yes.

Q. Did you do so? A. Yes.

Q. When that was completed, was the work then approved by the Clerk of Works? A. They then called the Superintendent of Building, Mr. Ross White and Mr. Shiel.

20

Q. Who are these gentlemen? A. They are the persons of City Council.

Q. And what would occur on their arrival?

A. Then all of them had a look again room by room.

Q. This is the third time? A. Yes.

Q. Did you accompany them. A. Yes.

Q. Always? A. Yes.

Q. And after that what happened? A. Then there were small improvements which were to be done. They told me and I did it. He says what I mean is small improvements - spots of paint.

30

Q. Is that an example of what you mean, you removed bits of paint? A. Yes, sometimes a drop of paint on the wall or on the floor - something like that.

Q. And then what would occur? A. Then I finished and Clerk of Works again inspected that.

Q. And then? A. Then they took it over.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

Q. And I think in 11 cases out of 17 blocks you received an official letter from the City Engineer saying that your work had been accepted. A. Yes.

Q. Was the procedure you have outlined in all this detail strictly adhered to in the case of all 17 blocks? A. Yes.

Q. Was Mr. Stone the Clerk of Works lenient with you or strict or how would you describe his attitude? A. He was strict.

Q. Did Mr. Stone ever make a complaint about you to the City Engineer? A. Yes. 10

JUDGE: I have put a note in that the procedure was strictly adhered to except as regards the last 6 blocks.

MR. O'DONOVAN: Was there one or more than one occasion? A. I think he complained twice or thrice.

Q. And what occasioned the complaint? A. The first complaint was made when I was late in removing the paint from the floor in the first blocks, because it was raining so I did not want to take mud inside. 20

Q. How late were you in complying with his directions? A. Two or three days.

Q. Apart from the part of the walls which you were required to rebuild from time to time were there any other parts of the works which you were made to demolish by Mr. Stone? A. Yes, sometimes when the stones were not straight then he asked us to remove them or straighten them. 30

JUDGE: That is in the walls?

MR. O'DONOVAN: Did you have to remove any of the reinforcement or lintels? A. No.

JUDGE: Were you not required to remove any of the lintels? A. No.

MR. O'DONOVAN: The only work you had to re-do was in connection with the walls. Is that correct? And the roof? A. Yes.

Q. Did you carry out any repairs to the floors? A. Yes, and we did some repair on the floors after their inspection and on their instructions. 40

Q. I think the date of commencement of your contract is 28th June, 1954? A. Yes.

Q. And the original date of completion was 18th April, 1955. A. Yes.

In the Supreme Court of Kenya

Q. And the completion date was extended in accordance with the provisions of your contract until some time in June? Will you tell My Lord what the date was - was it 13th June, 1955? A. Yes, I think the letter is there.

Plaintiff's Evidence

No. 6

Q. You say, I think, that you completed the first two blocks in December, 1954? A. Yes.

Ata-Ul-Haq.
Examination
- continued.

10 Q. Did you receive a letter from the City Engineer, Mr. Bridger, dated 6th December, 1954, which I shall read: "Stage 1, Part B ... The defects ... in fact been done". (Exhibit 2). Is that the letter? A. This is the letter which I have referred to because I was late because it was raining.

Q. It would appear from this letter that there was an inspection of the first two blocks on 2nd December, is that correct? A. Yes.

20 Q. I take it that a list was given to you of the defects which you had to put right even before 2nd December? A. Yes.

Q. Have you kept that list of defects? A. I don't think I have got at present that list.

30 Q. Did you keep any of these lists? Was there any reason for you to keep these lists after you had complied with them? A. When we used to hand over the blocks after doing certain improvements which we were asked to do, then there was no necessity of keeping that list.

Q. Did you, in fact, do everything which you were required to do by the list referred to in this Exhibit? A. Yes.

Q. Actually with regard to the first two blocks, I think perhaps this is not in dispute. You completed part of the building in advance of the rest. Do you remember that? A. Yes.

Q. Four rooms and one ablution unit were completed in November. A. Yes, they were urgently needed.

40 Q. They were urgently needed by whom? A. They wanted to give those to the missionaries.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

A. And was your work on these four rooms, including one ablution unit, accepted by this letter signed by the City Engineer dated 4th November which says: "I have to inform under the above contract" (Exhibit 3)? A. Yes.

Q. And was the balance of the work of the first two blocks accepted by this letter which you now produce dated 18th December, signed by the City Engineer, Mr. Bridger? (Exhibit 4) A. Yes.

Q. That reads: "I have to inform they can be taken over". In fact, had you had any previous complaints prior to that letter about the standard of the joinery - I am sorry, about the quality of the timber used for the joinery? A. No.

10

Q. And were you at any time thereafter in fact required to replace this timber in these two blocks? A. Yes. In a case when the door was weak they used to mark it and we used to replace it.

Q. Did you do that in the case of the first two blocks? A. Yes.

20

Q. Did you replace everything that you were required to do? A. What they told me to replace I replaced it.

Q. Did you reply to that letter - that is the letter of acceptance?

JUDGE: Don't put that question, please?

MR. O'DONOVAN: Did you write to the City Engineer on 17th January? A. Yes.

Q. The letter of which this is a copy - I am sorry, My Lord, it is the 14th not the 17th. I tender by consent a copy in which you say: "I am very to make good or replace". A. Yes.

30

Q. In fact - a general question on the quality of the timber you used - was it worse than, as good, or better than required by the specification? A. That timber was shown to the architect and to the Clerk of Works. This timber was fitting to the work.

Q. Did some of the specification require Podo timber to be used? A. Yes, we have used.

40

Q. On the facia boards what timber is required by the specification? A. Podo.

Q. And what timber did you use? A. I used cedar.

In the Supreme
Court of Kenya

Q. Which is the superior timber? A. Cedar is superior than podo.

Plaintiff's
Evidence

Q. Was that substitution made with the approval of the Clerk of Works? A. Yes, with the approval of Clerk of Works and architect.

No. 6

10 Q. Perhaps I had better deal at this stage with the question of the foundations. In all cases, did you in general dig the trenches to the depth required by the Clerk of Works? A. Yes.

Ata-Ul-Haq.
Examination
- continued.

Q. I think you said that the depth varied between 4-7 courses of masonry? A. Yes.

Q. Did you on 14th January write any letter to the City Engineer on the subject of the depth of the foundations? A. Yes.

Q. Reading as follows: "Since the commencement ... at an early date". Is that a copy of the letter? (Exhibit 6) A. Yes.

20 JUDGE: Is that put in by consent? A. Yes, My Lord.

MR. O'DONOVAN: I think it was in fact not until June, 1955 that you received any document from the City Council and its officials in regard to its foundations? A. No.

Q. Do you mean that it was not until June? A. Yes.

Q. And in that month did you receive a plan from Mr. Goodwin? A. Yes, there is one plan which I received from Mr. Goodwin. I don't remember the date.

30 Q. Showing the depths of the trenches which you had dug? A. Yes.

Q. Had Mr. Stone left the works at the end of May? A. Yes.

Q. And did Mr. Goodwin take over as Clerk of Works at the beginning of June, 1955? A. Yes.

Q. Is this the plan that you received? It is dated 28th June, 1955 and initialled. A. Yes, this was given by Mr. Goodwin. (Exhibit 7).

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

Q. Whose initials appear on the bottom right hand corner? A. Mr. Goodwin's initials.

Q. And this shows the foundations as varying in depth from 3-7 courses of masonry? A. Yes.

Q. Did you agree that part of this plan shown in red? The legend is: "3 courses in depth". Did you agree with that? A. No.

Q. Do you accept that plan as accurate apart from the red portions? A. Yes, I accept that it is correct.

10

Q. Did you write stating your objection to the City Engineer by letter, dated I think the following day? A. Yes.

JUDGE: Letter dated what? A. 29th June, My Lord.

MR. O'DONOVAN: Is this a copy of the letter which you wrote? A. Yes, it is the same.

Q. I tender this by consent (Exhibit 8). It reads: "I receive from African Housing". As a result of that did you dig more holes to verify the accuracy of Mr. Goodwin's plan? A. Yes.

20

Q. Did you dig them in the places where he told you to? A. Yes.

Q. And were the depths of the foundations then re-examined? A. Yes.

Q. Did you prove that you were right or he was right with regard to the red portion of the plan? A. I was on the right one.

Q. And how deep had you made the trenches in those parts of the works where this plan shows three courses? A. Four courses.

30

Q. As a result of that did anybody make any alteration to that plan? A. Yes.

Q. Who did? A. Mr. Goodwin.

Q. There on that plan some marks in pencil, arrows, and I think a 4 and a circle. Who made these alterations? A. Mr. Goodwin.

Q. Could you show the alterations to My Lord (Exhibit 7 shown to Judge).

Q. Did you receive a reply to your letter dated 8th July? A. Yes (Exhibit 9).

In the Supreme Court of Kenya

Q. It says, My Lord, on this one subject: "I have no to prove your point". Did you dig three holes per block to prove your point? A. Yes, where he pointed out to me.

Plaintiff's Evidence

No. 6

Q. "The cost of African Housing Architect". Were they inspected by the African Housing Architect? A. Yes, he also saw them.

Ata-Ul-Haq.

Examination
- continued.

10 Q. At that stage was that Mr. Mould? A. Yes.

Q. Have you received any variation order up to the date of the extension of this stage with regard to the extra depth of the foundations? A. No, I did not receive any variation order.

Q. Up to the date it was filed you received no credit for the extra depth? A. I was not given anything.

20 Q. Have you calculated what you are entitled to in respect of the extra depth of these foundations?
A. I have calculated according to this plan.

Q. You based the price on the specifications?
A. Yes.

Q. The figures you claim - the amounts you claim - are they the first three items on the list of particulars which you have given in support of your claim for extras? A. Yes.

Q. Are these in fact the particulars of the extras which you claim totalling Shs. 89,641.60? A. Yes. (Exhibit 10).

30 Q. The three items relating to this particular claim. My Lord, is first of all stone masonry in the foundations, 16,969 sq. ft. @ Sh.1.50 per sq. ft. the total of which is Sh.25,453.

Extra excavation of black cotton soil, 27,345 cu. ft., the cost of which is Sh.-/20 per cu.ft. making a total of Sh.5,469.

Extra filling under floor. 27,345 cu.ft. @ -/25 per cu.ft., making a total of 6,836/-.

40 JUDGE: Are all these particulars contained in the specification? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

MR. O'DONOVAN: And are these calculations of cubic feet based on that plan from Mr. Stone's figures, as amended? A. Yes.

Q. I am sorry, My Lord, I should have noticed a letter. It is out of sequence. Did you receive a letter from the City Engineer dated 22nd January, saying in paragraph 5: "Thirdly as soon as this is done". A. Yes.

Q. Will you identify this letter (Exhibit 11)?
A. Yes.

10

Q. The next item of extras - I must complete this topic of extras - is that relating to steps.

JUDGE: It might be convenient to number these items of extras. I make it 17 items, I have numbered them. A. Yes, My Lord.

MR. O'DONOVAN: The next item, My Lord, is Item 7. Do you claim Shs.1,352/- extra in respect of steps in the roof? 4 steps at Shs.338/- each?
A. Yes.

Q. Did you receive from the City Engineer a letter dated 30th August, 1954 on this subject in which he says: "I would be Variation Order"?
A. Yes, (Exhibit 12).

20

Q. Did you submit a tender dated 9th October, of which this is a copy? A. Yes (Exhibit 13).

Q. There is no objection, My Lord, to the copies. I beg to submit the tender for nine steps for which the charge is Shs.238/- each step. The reply to that was received on 13th October from Mr. Stone: "The architect informs is made up" (Exhibit 14). Is that in Mr. Stone's handwriting? A. Yes.

30

Q. Are you acquainted with it? A. I think this is written by Mr. Stone because he handed over this letter to me.

Q. Did you then write a letter dated 20th October, in which you gave totals amounting to Shs.338/-? Is this a copy of it? A. Yes (Exhibit 15).

JUDGE: No objection? A. No, My Lord.

MR. O'DONOVAN: And that included a profit of 30/- out of Shs.338/-? A. Yes.

40

Q. There is a note at the bottom reading: "I regret to regarded as correct". Did you receive a reply to that dated 9th December?
A. Yes.

Q. Did you receive a reply to that dated 9th December? A. Yes.

Q. Is this the reply sent by Mr. Bridger, City Engineer? A. Yes. (Exhibit 16).

10 Q. This reads: "As already pointed will examine them". Did you reply on 14th January, saying that: "I regret that should be sent to me" (Exhibit 17)? A. Yes.

Q. The correspondence of my client is not complete. I understand from my learned Friend, Mr. Mackie Robertson, that the City Council's file is not complete either. Did you

20 MR. MACKIE ROBERTSON: I think we ought to say that these files were all used at the time there was a Court of Inquiry, and the reason they are not complete is probably because of that.

MR. O'DONOVAN: Did you write a letter to the City Engineer on 18th March, of which this is a copy, acknowledging his letter of 16th March, and returning his variation order the price was not acceptable (Exhibit 18)? A. Yes.

30 MR. SCHENBRUCKER: My Lord, by way of being of assistance, we haven't got this letter, and the Variation Order we have got refers to ladders and not steps. I cannot submit a copy unless we have time to check it.

MR. O'DONOVAN: Subject to proof of delivery, if I might leave that for the moment. There was a notice to produce, and I am instructed that there may be a receipt for the original of this letter in the Plaintiff's delivery book.

MR. SCHENBRUCKER: We have got the Variation Order referred to in it.

JUDGE: That is being left at one side for the moment? A. Yes, My Lord.

40 MR. O'DONOVAN: Did you in fact carry out the work referred to in the correspondence you have just produced? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.

Examination
- continued.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

JUDGE: Is that work on the steps? A. It is called a step down in the roof.

MR. O'DONOVAN: Is it there for anybody to see now?
A. Yes.

Q. And how many of these step downs did you complete? A. 4 I think.

Q. You claim 338/- in respect of each? A. Yes.

Q. In your tender you calculated that you would make 30/- profit on that price? A. Yes.

Q. What profit did you in fact make on constructing these steps? A. The percentage which I put is there on the list. 10

Q. Did you make the 30/- profit on that or would you make that if you were allowed 338/-? A. Yes.

Q. Did your outgoings - was the cost of construction the figure which you stated in your letter, or less or more? A. What is correct according to that time.

Q. That works out at a profit of about 10% on cost? A. Yes. 20

Q. Is that a reasonable profit for a builder in the building trade on an item of this sort?
A. Yes.

Q. Would you explain how it came about that you constructed these without the price being first settled? A. It was constructed on the order of the Clerk of Works and on the order of the City Engineer - not the City Engineer, the architect.

Q. Who - Mr. Tanner or Mr. Mould? A. Mr. Tanner.

Q. If I could go back. You also claim (this is item 4) Shs.26,696/- in respect of providing and fixing flashing to two flue stacks? A. Yes. 30

Q. How many flue stacks in all were there?
A. I don't remember exactly, but I think 184 - they are on the list.

Q. Your list says 188, is that correct? A. Yes.

Q. Did you receive a Variation Order in respect of these extras dated 5th January, and is this it? Sent to you under cover of a letter dated 7th January (Exhibit 18)? A. Yes.

JUDGE: Would you explain? Are they two-stack flues? A. Yes.

In the Supreme Court of Kenya

MR. O'DONOVAN: Your particulars are wrong, it is not two flue stacks, it is two stacks each containing two flues. There are some double stacks and some single stacks, is that it? A. Yes, at some places there are only one chimney and at others there are two together.

Plaintiff's Evidence

No. 6

Ata-Ul-Haq.

10 Q. And did you construct 188 of the double stacks with two flues? A. Yes.

Examination
- continued.

Q. Under the Variation Order No. 3739 sent to you by Mr. Saunders for the City Engineer under cover of his letter of 7th January (Exhibit 18)? A. Yes.

Q. Did you carry out that work? A. Yes.

Q. Was it approved? A. Yes.

Q. Did you also construct a number of single flue stacks? A. Yes.

20 5th April, 1957
2.20 p.m.

Witness continues evidence on same oath.

Examination-in-Chief by MR. O'DONOVAN (Contd.)

Q. You were dealing at the adjournment with the construction of flue stacks and you produced Variation Order No. 3739? A. Yes.

Q. I think that Variation Order, the same Variation Order also provides for single flue stacks? A. Yes.

30 Q. And fixes a price for the work required there at Shs.75/- each? A. Yes.

Q. You claim in respect of 24 single stacks under that Variation Order? A. Yes.

Q. Was that work carried out to the approval of the Clerk of Works? A. Yes.

Q. That, My Lord, is Item 6 on the list of extras.

JUDGE: Whose approval did you say? A. Clerk of Works.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

MR. O'DONOVAN: And did you receive any Variation Order No. 3740 dated 25th February, forwarded to you under cover of a letter from Mr. Bridger dated 3th March? (Exhibit 19) A. Yes.

Q. This provides for work to single flue stacks at Sh.120/- each? A. Yes.

Q. Did you claim in respect of the work to 32 stacks? A. Yes.

JUDGE: Single stacks? A. Yes.

MR. O'DONOVAN: Did you do that work to the Clerk of Works approval? A. Yes.

10

Q. The 8th item is in respect of 6" precast concrete drain 827 running feet at Sh.5/- per running foot. Would you explain how your claim in that respect arises? A. Yes.

Q. How does that arise? A. The price is written in the specifications. It is a drain.

Q. Is that an item under the heading of "Schedule of Rate" on the third page of the specification? A. Yes.

20

Q. Is it, in fact, Item 9? A. Yes.

Q. Were you required actually to put in 1,200 square ft. concrete drains? A. Yes.

Q. Included in the contract price? A. Yes.

Q. Do you claim the 827 running feet as --- that, My Lord item 67 on the last page, No.12 of the specification. I put it to you that instead of 1,200 sq. ft. it is 1,200 running feet? A. Yes.

Q. Did you in fact construct the extra 827 ft. for which you claim? A. Yes.

30

Q. Was it seen by Mr. Goodwin? A. Yes, he measured it.

Q. Did he give you any note about it? A. Yes, I think so.

Q. The next item you claim is Shs.415/- for removing the boundary wall blocks, Blocks Nos.26 and 27 (Item 9)? A. Yes.

Q. How does that arise? A. That was a boundary wall and the dimension was given wrong, so he asked us to shift that somewhere inside.

In the Supreme Court of Kenya

Q. Who gave you these instructions? A. Mr. Stone.

Plaintiff's Evidence

Q. Who gave you the original wrong measurements which required the work to be redone? A. Mr. Stone gave the sketch on which the dimensions were given.

No. 6

Ata-Ul-Haq.

Examination
- continued.

10 Q. Do I understand you right - they were not the correct dimensions? Have you got the chit?
A. Mr. Stone gave me the chit, but I think it is there in the office. Perhaps it is there or it is not there, I cannot say about that.

Q. At any rate, you received no Variation Order for this item? A. No.

Q. Your next claim is for a murrum path, item 10?
A. I constructed it.

Q. How did you come to do that? A. They gave me an order so I constructed it.

20 Q. Who ordered you? A. Mr. Mould and Mr. Stone.

Q. When did they do that? A. In 1954, when they gave those four blocks to the missionaries.

Q. Did you say 4 blocks. A. 4 rooms.

Q. How many loads of murrum did you supply?
A. I think 3 loads.

Q. What do you mean by a load - is it a lorry load? A. Lorry load.

30 Q. What is the cost of murrum? A. I don't remember exactly, but we spread the murrum and rolled it and then had a lump sum for that.

Q. What amount of profit have you included in the figure of Shs. 366/-? A. 10%

Q. The next item which you claim for is Item 11 - Shs. 800/- for the digging of inspection holes. For the purpose of proving your point about the foundations? A. Yes.

Q. How did you get the figure of Shs. 800/-?

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

A. Some holes were put inside, some outside. The expenditure includes labour, the cost of the concrete and the cement.

Q. But what concrete would you require, I don't understand, when you dig an inspection hole?

A. We had already put the concrete and cement and plaster before that. The first 20 holes which we dug.

Q. I am sorry, we are at cross purposes. I am referring to the inspection holes which you dug in June, 1955. 10

JUDGE: He did say some were dug inside and some outside. A. Yes, My Lord.

MR. O'DONOVAN. How many times did you dig holes?
A. Twice.

Q. When was the first occasion? A. I don't remember the date exactly, but the inspection holes were dug first.

Q. What was the object of digging the first lot of holes? A. Because they wanted to see whether the rock is there under the foundation or not. 20

Q. On which occasion did you dig holes inside the building and outside? A. Those 20 holes were dug before that, 10 inside and 10 outside.

Q. So you dug inside and outside on the first occasion, is that it? A. Yes.

Q. And you dug another lot of holes in June, 1955, did you? A. Yes.

Q. For the purpose of proving who was right about the depth of the foundations? A. Yes. 30

Q. How many holes did you dig on the second occasion? A. I don't remember exactly, but I think there were from 70 to 80.

Q. And how did you base your claim for Sh. 800/--?
A. We have reached this figure after calculating the number of days the Africans put in.

Q. With what percentage of profit? A. 10%

JUDGE: Is it normal to make a profit on inspection holes? A. My Lord, I suppose it is a margin over cost to cover overheads, I don't know. I think the 40

letter referred to the cost only. I should have to call evidence about what is reasonable cost.

In the Supreme Court of Kenya

MR. O'DONOVAN. Your next item is in respect of three children's latrines at Sh.40/- each. Is that covered by Variation Order No. 3741, dated 12th March under cover of a letter dated 16th March. And is this the Order and the covering letter (Exhibit 21)? A. Yes.

Plaintiff's Evidence

No. 6

10 Q. I think that is the one which you returned the Variation Order saying that the price was not acceptable. Did you construct these latrines? A. Yes.

Ata-Ul-Haq.
Examination
- continued.

Q. Were they approved? A. Yes.

Q. And you claim Sh.120/-? A. Yes.

Q. Claim No. 13 refers to extra shelves in the kitchen. Will you explain to His Lordship how that arose? A. We have put the shelves and I told him the price would be Sh.6/- for each.

20 Q. To whom did you quote that price? A. Mr. Mould. Clerk of Works was also there.

Q. Which Clerk of Works - Mr. Stone or Mr. Goodwin? A. I think Mr. Stone was there.

Q. Are these in addition to the shelves shown in the plan? A. One shelf is in addition to those shown in the plan.

JUDGE: I don't follow that.

MR. O'DONOVAN: How many shelves were shown in the plan? A. One.

30 Q. And how many did you instal in each kitchen? A. Two.

Q. How many extra shelves for the whole 17 blocks does that come to? A. I don't remember the figure exactly. I think it is written there.

Q. Do you remember approximately? A. I don't remember exactly. We have fixed the shelves there, they can be seen.

Q. Would you look at your plans and see how many kitchens there are? I will give you a copy. A. On the plan only one is shown in one kitchen.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

JUDGE: The question was "How many kitchens?"
A. Each room has got one kitchen.

JUDGE: Can you say how many kitchens there were
altogether? A. I think there are more than 400.

MR. O'DONOVAN: I should like to call other evi-
dence, I think, My Lord. You claim item 14 in
respect of a latrine head plate 4" x 2". 649
running ft. @ Shs.1/50 per running foot? A. Yes.

Q. Is that the same thing as a top plate? A. Yes.

Q. Where did you construct these head plates. 10
What are these head plates? I have not understood.
In each ablution block there is a row of doors, is
there not? A. Yes.

Q. Did you do any extra work with regard to these
doors? A. The plate which we have fixed up is
extra.

Q. And what did you call that plate? A. Wall
plate.

Q. Let us talk about wall plates.

JUDGE: I don't quite follow what this is yet. 20

MR. O'DONOVAN: Is that a plate on the top of
each door? A. Yes, it is on the doors of each
latrine.

Q. Is it provided for in the specification?
A. No.

Q. Who asked you to put it in? A. Clerk of
Works and architect.

Q. Would you refer to them by name? Was it Mr.
Goodwin or Mr. Stone? A. Mr. Stone & Mr. Tanner.

Q. What is this plate made of? A. It is a wood- 30
en wall plate 4" x 2".

Q. Is it in respect of that item that you claim
Shs.972/-? A. Yes.

Q. Did you next claim in respect of 4" plastering?
A. Yes.

Q. Do you know what we are talking about now, so
that there is no misunderstanding? A. Yes.

Q. Where was this 4" plastering, where does it occur? A. It is round every block on the concrete which we have put.

In the Supreme
Court of Kenya

Q. What do you mean by the concrete, could you be more specific? A. The concrete slope which he put round every block can be seen. We have put that around that.

Plaintiff's
Evidence

No. 6

JUDGE: Inside or outside? A. Outside.

Ata-Ul-Haq.

10 MR. O'DONOVAN: Did anybody instruct you to do that. A. Yes.

Examination
- continued.

Q. Who was that? A. Mr. Tanner.

Q. Is it provided for by the specification? A. No.

Q. Did Mr. Stone have anything to do with it. Did he supervise it? A. Mr. Stone was not there at that time. He might have told the contractor to do it.

Q. Would he have seen it done after it had been done? A. Yes.

20 Q. With regard to Item No. 16. Your last item is in respect of extra for $1\frac{1}{2}$ " x 1" podo batten, including labour. 13,608 running feet. What is this podo batten? A. That batten has been fixed over the fascia.

Q. Is it provided for in the specification? A. No.

Q. On whose instructions, if any, did you put it in? A. On architect's instructions.

30 Q. Which architect? A. Mr. Tanner and Mr. Stone, Clerk of Works.

Q. Can that extra work be seen and measured now? A. Yes.

Q. Did you refer to it in a letter dated 17th March to the City Engineer - a letter of which this is a copy (Exhibit 21). Is this your copy? A. Yes.

JUDGE: Is this put in by consent? A. Yes.

MR. O'DONOVAN: It refers to a letter dated 11th September, 1954 from the City Engineer in which he

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

says: "...you are not by me in good faith".
Is that in reply to this letter from Mr. Bridger,
in which he says: "I am not detailed draw-
ings"? A. Yes.

Q. I tender this as an exhibit, My Lord (Exhibit
22)

Q. Was Mr. Bridger correct in saying that the
number of battens put in is the same as shown in
the drawings? A. No.

Q. In general, have you charged either in accord- 10
ance with the rates in your contract for the extra
work or reasonable charges? A. Most of them are
according to the specification.

Q. And where the specifications do not provide a
rate, have you charged a reasonable rate?
A. Yes, that is reasonable.

Q. I think in some cases it was agreed before you
did the work? A. Yes.

Q. And were these extras carried out to the satis- 20
faction of the Clerk of Works? A. Yes.

Q. Did you receive this letter from Mr. Stone dated
26th January, relating to Blocks 28/29, which
says: "At an inspection ... at your expense"?
There is an addendum. A. Yes, these doors were
damaged by the rain, and I replaced them.

Q. Did you carry out all these repairs? A. Yes.
(Exhibit 23)

Q. Were the repairs accepted by the Clerk of Works?
A. Yes.

Q. Did you receive any letter from him dated 18th 30
February, regarding repairs to the gable wall,
Ablution Block, No. 28, requiring you to rectify
damage to the gable? A. Yes, I have understood
it now.

Q. Is that the letter (Exhibit 24)? A. Yes.
This was damaged by somebody else's lorry.

Q. Did you do that work? A. Yes.

Q. Did you complete another 9 blocks during 1955?
A. Yes.

Q. And the procedure which was described this 40
morning with regard to the room by room inspec-
tions. Was that followed with regard to the other
nine blocks? A. Yes, exactly in the same way.

Q. And did you receive in due course letters of acceptance in respect of these nine blocks?

A. Yes.

In the Supreme
Court of Kenya

Q. Two dated 31st March? A. Yes.

Plaintiff's
Evidence

Q. Are these they? Blocks 25 and 27? A. Yes.
(Exhibits 25)

No. 6

Q. And for Block 26? A. Yes (Exhibit 26)

Ata-Ul-Haq.

Q. A letter of 19th April relating to Block 35?

A. Yes (Exhibit 27).

Examination
- continued.

10 Q. One dated 11th May relating to Block No. 36?

A. Yes (Exhibit 28).

Q. A letter dated 28th June, relating to the acceptance of Blocks 31, 32, 33, and 34? A. Yes.
(Exhibit 29).

JUDGE: What are the numbers of rooms in these blocks? A. They vary considerably. I think the plan shows the layout and numbers of rooms.

20 JUDGE: Some say 10 or 12 and some have 44 rooms to a block? A. Yes, my Lord. There are some very considerable variations.

MR. O'DONOVAN: Who was the architect concerned when these further 9 blocks were accepted?

A. Mr. Mould.

Q. I now come to the six blocks which were last completed. Is there any difference in quality in the materials and workmanship between the first two blocks which Mr. Tanner passed, and the nine which Mr. Tanner passed? A. No. There is no difference.

30 Q. And is there any such difference between any of these blocks in the last six? A. No.

Q. Did you on the 9th June receive a letter from Mr. Goodwin enclosing a copy of his report of the same date to the architect? A. Yes. (Exhibit 30)

Q. My Lord, the report itself reads as follows: "The result of taken into account". Prior to that report of 9th June, had you carried out alterations to these remaining blocks? A. Yes.

40 JUDGE: Carried out alterations to the remaining blocks? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

MR. O'DONOVAN: Do you remember when Mr. Mould, the architect, went to Kampala? A. I don't remember the date exactly but he did go to Kampala.

Q. Very well, I will deal with that subject in a minute in more detail. On the same day as this report was made, the 9th June, did Mr. Goodwin give you this copy of his memorandum to the architect to the effect that Blocks 38A, B and 39 had been inspected and repairs carried out and are now ready for handing over. He adds in pencil "and Block 30"?

10

JUDGE: Mr. Stone? A. No, Mr. Goodwin.

MR. O'DONOVAN: Had you, in fact, on 9th June carried out all the repairs in respect of these blocks which you had been instructed to do?
A. Yes (Exhibit 31).

Q. Had these repairs been approved by Mr. Goodwin?
A. Yes.

Q. And, in fact, do you know how long after the 9th June the particular blocks mentioned in that memorandum were occupied? A. I don't remember exactly, but I think a month after that.

20

Q. Did the City Council building inspectors come round and examine it? A. The building inspector and the architect all saw the blocks.

Q. On 24th June, did you get a copy of this memorandum from Mr. Goodwin to the architect. This is a list of all floor defects found when Blocks 30, 38A, B and 39 were inspected prior to being taken over. It mentions there were no cracks or holes in Block 30. It goes on to say that the contractor has been given instructions to cut out these bad patches and cracks but not to start filling in until they have been inspected. He has always been given general instructions. A. He has not understood this properly so he wants this to be read over to him. (Interpreter translates to witness) They were repaired.

30

Q. All these defects were made good? A. Yes. (Exhibit 32).

40

Q. Did you take up the floor at the places where they had indicated on the list? A. Yes.

Q. You see the instruction contained therein that you were not to fill them up until they had been

inspected? You notice that, don't you? When did you fill these holes up? In which month? A. I don't remember exactly but the repair was started immediately when the list was given.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Q. I am talking now particularly of the floor defects. A. Clerk of Works was always there. That has been done with his permission.

Q. Where was Mr. Mould when you in fact replaced the portions of the floor which you had taken up? A. He was here. In those days he used to come daily at the site.

Ata-Ul-Haq.
Examination
- continued.

Q. That memorandum refers to an inspection which had occurred the previous day? A. Yes.

Q. Do you remember who were the officials who made the inspection? A. Mr. Mould, Mr. Goodwin and Mr. Ross-White.

Q. Did you receive another list of defects from the Clerk of Works, this time with regard to Block 38, dated 20th July? A. Yes.

20 Q. Is that the list which you received? A. Yes (Exhibit 33)

Q. Did you complete these repairs? A. Yes.

Q. Were they inspected? A. Yes.

Q. Were they approved? A. Yes.

30 Q. Did you thereafter receive from Mr. Goodwin a copy of the memorandum dated 25th July to the effect that Blocks 37 & 38 had been completed, repairs carried out, and they were now ready for handing over, and is this it? A. After checking that we had repaired the blocks, he gave this memorandum. (Exhibit 34).

Q. Are any of these defects on this long list very serious? A. No.

Q. Do you know when these last two Blocks were occupied? A. I don't remember exactly, but I think after a month and a half or some days more.

Q. Have all the works you constructed been occupied continuously since that day up to the present day? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 6

Ata-Ul-Haq.
Examination
- continued.

Q. Is there any unoccupied portion? A. All are occupied.

Q. I think you had during the course of the work received payments on payment certificates signed by Mr. Bridger, for the City Engineer, or by Mr. Saunders. A. Yes.

JUDGE: Signed by Mr. Bridger? A. Yes, My Lord, and in some cases Mr. Roberts. With your Lordship's permission I will put in all the payment slips.

10

JUDGE: How many are there? A. 13 My Lord.

MR. O'DONOVAN: Would you look at each of these certificates. They are numbered successively 1-13 and dated 26th July, 1954 to 21st July, 1955. None of these certificates contains any credit to you for any extras. Is that right? A. There is no credit for extras (Exhibit 35).

Q. These certificates speak for themselves, My Lord, but just for clarity

JUDGE: Just a moment Yes?

20

MR. O'DONOVAN: Would you look at certificate No. 13. It is dated 21st July, 1955. Does that show that 5% of the retention on Shs.1,064,320/- was realised to you? A. Yes. I have not understood this clearly.

Q. I am sorry, My Lord, I had endeavoured foolishly to clarify a point by asking a question of the witness. Perhaps I could explain the point now.

JUDGE: The document speaks for itself, doesn't it?

MR. O'DONOVAN: This indicated the complete acceptance of the work in respect of 11 out of the 17 blocks, because out of the 10% retention the withheld half of it is now freed and with regard to the remaining 10% ... I am sorry, My Lord, I wasted time putting it to the witness. Did you hear anything further after this memorandum was received from Mr. Goodwin in the next few weeks, or did you have to write and find out? A. I think I wrote a letter but I did not receive anything.

40

Q. I don't know whether your Lordship considers that this might be a good time to adjourn. My Examination-in-Chief is almost completed. I think another half-hour or so would see it through.

JUDGE: Yes, I think we might adjourn.

No. 7

APPLICATION TO AMEND PLEADINGSIn the Supreme
Court of KenyaPlaintiff's
Evidence

No. 7

Application to
amend Pleadings,
8th April, 1957.

10 MR. SCHERMBRUCKER: My learned friend and I regret-
fully find it necessary to make application for
leave to amend the pleadings at this stage and be-
fore I go any further, I would like to say I have
not had an opportunity of giving any notice to the
other side until we came to Court this morning. I
would not object to any notice or adjournment, but
your Lordship will notice that the defence and
counter action turn on the latent defect, latent
mistakes. We are now faced with the position that
we are already sufficiently informed on the Plain-
tiff's evidence, as far as it has gone, that the
work was done perfectly, according to specification.
We will lead evidence on our side to say that not
only was that not the case; it was not only a
question of some slight mistake. It was, as al-
ready pleaded in clause 11 of the Plaint in Civil
20 Case 170 of 1956, very material. As we see the
position, there is no room left now for mistakes.
We have neither

COURT: Just a moment.

30 MR. SCHERMBRUCKER: The defects, according to the
evidence which will be led in support of those de-
tails, are very material, so that we find ourselves
faced with the position that it is not by any
chance a mere matter of mistake, which perhaps was
accepted by our Clerk of Works, in circumstances
which would support a plea on the other side of the
waiver.

40 If the Plaintiff's evidence is correct, it seems
quite clear that we have no case at all, but if
the defence evidence is accepted, then it seems
that the issue goes much further than mistake and
we feel obliged to apply for leave to amend para-
graph 7 of the defence to the original action. If
I may, for convenience, give Your Lordship a copy
of the proposed amendment (handed to Court) which
would alter Clause 7 of the defence to read as
follows:-

"Save that none of the now consolidated with
this act".

And while I am on that, it would involve a small
consequential amendment of the Plaint in the cross
action at paragraph 11 which reads:

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 7

Application to amend Pleadings, 8th April, 1957 continued.

"The Defendant has failed to execute the said works in accordance with the said contract....

I would ask to include the words: "In defraud of the Plaintiff", after contract, where that word last appears in the paragraph. This is the cross action and the rest will remain the same.

I should perhaps say at this stage that we have not had available to the defence either the Clerk of Works Mr. Stone or Mr. Goodwin, who have both left the employ of the Defendants. I understand that Mr. Stone and possibly Mr. Goodwin will be called for the Plaintiffs in this case and that perhaps explains why this amendment comes at this stage. Your Lordship will appreciate that if I were faced with the case that the work may not have been perfectly done - but it was accepted by our Clerk of Works - it would have been a very different position. But as it shows that there was a perfect job done and on the other side, that there was a very bad job done

10

20

COURT: The issue still is that the work was well done and there is also evidence that it was accepted by the City Council officials.

MR. SCHERMBRUCKER: That is true; he has given evidence that it was accepted at each stage and in such circumstances, there cannot be any room for mistake. In which case, I have no case at all. But on expert evidence, it will be shown that the work was nothing like that. It was not that "I may have done it badly, but anyhow, it was taken over by your man", but that "I did do it perfectly and you cannot disprove it". It was done, and therefore, we feel obliged to lay this issue.

30

Our Authority is Order 6 Rule 18 with which your Lordship will be familiar:

"The Court may, at any stage between the parties".

"Rule 30 Applications under Rule 17, 18 and 21 of this order shall be by summons in chambers". That is the normal procedure. It has been on many occasions in this Court, the last one being Barclays Bank D.C.O. v. D.G. Hughes, Supreme Court Civil Case 233/55. I do not think it has had time to be reported yet. The decision given by Judge Harley, where a similar application to this was

40

granted on terms. The terms involved an adjournment and all costs thrown away. I do not wish to press any advantage over this and I can say that I have not been able to give the other side notice until this morning when we came into Court and I am quite prepared, if Your Lordship entertains this application and if my friend would rather have it in formal form, to do it in that way. I realise it is a serious amendment. There is one case I would like to refer to on it and that is Bradford Third Equitable Benefit Building Society v. Borders Reported Vol.2 1941 All England Reports, page 205. The head note of the case in the House of Lords:

"The Builders of houses on a building estate ... in the amendment of the pleadings made in the amended pleading".

I would say that we are now at the stage when terms could be such that no handicap results from such application.

20 "Evidence ... person". That is not really relevant to this application.

Then at page 218 the Judgment of Lord Wright, line 6 opposite the marginal note G to three lines past the marginal note D on page 219:

"I venture to think clear his character by personal oral evidence".

30 Although the hearing is on, we are still at the stage where the Plaintiff is giving Evidence in Chief and I would submit that there need be no disadvantage to him if this application is granted on such terms as his Counsel may consider necessary to enable them to deal with it.

40 MR. O'DONOVAN: May it please your Lordship. In my submission, an amendment of this nature should not be applied for informally without notice. I feel that I am not really in a position, when the proposed amendment was handed to me a few minutes ago, adequately to put forward objections which I am instructed to take on behalf of the Plaintiff. I would ask, My Lord, therefore, for directions that formal application be made, supported by Affidavit. My Lord, if it could be filed today, I am prepared to waive any further notice and to argue the matter tomorrow morning. I submit it should be particularly necessary to explain in

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 7

Application to amend Pleadings,

8th April, 1957
- continued.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 7

Application to
amend Pleadings,

8th April, 1957

- continued.

such an Affidavit, the reason why the proposed amendment is only sought to be made after two days' hearing. Particularly is that so, when I notice from the particulars that the fraud alleged is misrepresentation to the Defendant's Clerk of Works, either Mr. Stone or Mr. Goodwin and I am somewhat surprised by my friend saying that the defence have not been able to get in touch with either of those gentlemen.

So My Lord, a serious allegation of fraud, in which those two gentlemen are victims, is being put forward, apparently without having obtained instructions from them.

10

COURT: I have not seen this case of Barclays Bank D.C.O. v. D.G. Hughes. Is that authority for amendment being allowed?

MR. MACKIE-ROBERTSON: I was in that case on the morning fixed for the hearing. Counsel for defence came to Court and applied for leave to amend the pleadings. I opposed the application, but Judge Harley saw fit to allow it, although it necessitated an adjournment. It became necessary for me to bring a witness from South Africa. It was a very material amendment because, on the pleadings as they stood, the defence would not have been able, under the Indian Evidence Act to

20

In that case, although the amendment was one of fraud, similar to this and in many ways more material than this, it was allowed and all costs thrown away, but it is the same nature and it came at a very late stage.

30

MR. O'DONOVAN: Each case must be judged on its own peculiar circumstances and I am not challenging the correctness of the case cited. The general law is at page 197; page 458:

"The universal practice, except in the most exceptional circumstances, is not to allow an amendment for the purpose of adding fraud".

I must take it that the case cited by my friend is a case where the circumstances were most exceptional.

40

Here, My Lord, the application is sought to introduce an amendment of fraud, in which I understand the defence are not, even at this stage, in possession of instructions which would justify

10 this allegation. If I understand the argument correctly, it is put in because the defence feel they are in the position that if they do not allege fraud, the Clerk of Works would seek defence and counterclaim. At least, I submit there should be some adequate explanation of the most exceptional circumstances to render the application necessary at this stage. The only argument advanced is this. We have not seen the witness on which this defence might be raised. Otherwise, it would appear clear that we have failed on the issue of waiver. That is all there is in the application and I submit it should not be entertained.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 7

Application to
amend Pleadings,
8th April, 1957
- continued.

20 COURT: At the present moment, I should be inclined to allow the application on terms, but clearly you have not had time to consider the argument. If you want time and want to put your arguments, I would be prepared to adjourn this until tomorrow morning. At the present moment, I would be inclined to grant an application.

MR. O'DONOVAN: Would Your Lordship be prepared to direct that the application be formally made by Affidavit?

COURT: Yes.

MR. SCHEERMBRUCKER: We can do that if we have the opportunity, as Your Lordship has suggested, of going on tomorrow morning.

COURT: Yes, this is with the idea of it being argued tomorrow morning.

30 MR. MACKIE-ROBERTSON: And the case?

MR. O'DONOVAN: I would ask for an immediate Order for today's costs in any event.

COURT: The point is that at the present moment, I would be inclined to grant the application on terms.

40 MR. O'DONOVAN: In my submission, why I particularly ask that the application should be supported by Affidavit is that the Court is entitled to be informed, on oath, of the instructions on which the application is based; that is to say, to be assured, if I may use a colloquialism, it is not 'a shot in the dark'.

COURT: That perhaps will be a matter for to-morrow morning.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 7

Application to
amend Pleadings,
8th April, 1957
- continued.

MR. SCHERMBRUCKER: Would Your Lordship deal with this matter in Chambers to-morrow, or in Court at 10.30 a.m.?

COURT: I think in Chambers.

MR. SCHERMBRUCKER: Motions and Applications Rule 7.

COURT: I feel in this case, it is more a matter of argument than a matter of fact.

MR. O'DONOVAN: Well, My Lord, it could be left entirely for the defedants to put in an application form as they see fit. If it is not put in the form of an Affidavit, I would notify Your Lordship to hold that there would be no evidence on oath of any evidence of exceptional circumstances.

10

COURT: You do not want formal service of the Summons Mr. O'Donovan?

MR. O'DONOVAN: No. In view of the consequent waste of one day, I do not know if Your Lordship would be prepared to visit the site of the works this afternoon. I should like Your Lordship, on behalf of the Plaintiff, to see the buildings constructed.

20

COURT: Yes it might be a convenient opportunity. The only difficulty is that I have the impression, from evidence given, that it would be better if I visited the site later, when I would have some idea what to look for.

MR. O'DONOVAN: A possible procedure would be for the various experts to point things out to Your Lordship, subject of course, to their giving evidence about it in the Witness Box.

30

I can see that it is not the most appropriate stage of the proceedings and if Your Lordship does desire that it should be later, I do not press my application in any way.

MR. SCHERMBRUCKER: My friend mentioned this to me and I was in agreement, but if Your Lordship thinks it would be better at a later stage, I am in agreement with that.

COURT: I think it would be better at a later stage.

40

COURT: Very well, argument on this application to amend at 9.30 a.m. to-morrow morning in Chambers.

No. 8

EVIDENCE OF ATA-UL-HAQIn the Supreme
Court of Kenya1st May, 1957.
10.30 a.m.Plaintiff's
Evidence

MR. O'DONOVAN: May it please your Lordship, Mr. Akram now appears as well for the Plaintiff. I will recall the plaintiff.

No. 8

Ata-Ul-Haq.

JUDGE: You had not actually completed your Examination-in-Chief? A. No, My Lord.

Examination
Continued.

10 JUDGE: I think perhaps he had better be re-sworn.
(Plaintiff re-sworn).

MR. O'DONOVAN: Mr. Ata Ul Haq, when you were asked previously about a list which was handed to you from time to time by the Clerk of Works, I think you replied that you were not able to produce any such list? A. Yes.

20 Q. Have you now found amongst your papers one such list relating to an inspection on 25th November, 1954 of Part B, and is this it? A. This is the list.

JUDGE: That will be Exhibit 36, may I see it?

MR. O'DONOVAN: It set out the repairs which you were required to effect room by room? A. Yes.

Q. Would you now refer to Exhibit 30, which is a memorandum dated 9th June, 1955 from the Clerk of Works, Mr. Goodwin, to the architect. That is a memorandum of what Mr. Goodwin noticed when he checked up on your contract in that month? A. Yes.

30 Q. Would you look at the items on page 2, numbered 13-17 which are described in this memorandum as omissions. The first one, No.13, relates to valley boards. The size of the boards were 6" x 1" instead of 9" x 1" as specified? A. Yes.

Q. How did that discrepancy occur? A. This discrepancy was made clear beforehand because one member of the valley was described as 4" x 2" but we fitted 6" x 2".

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. I do not understand your explanation, but were valley boards of this particular size, 6" x 1" installed at the time to the knowledge of the Clerk of Works? A. Yes it was done with the knowledge of the Clerk of Works as well as of the architect.

Q. Did you speak about the valley rafters in your previous reply? A. Yes, we fitted everything after discussing them fully and we did it with their consent.

Q. Was any change made in what you described as the valley members which necessitated changing the size of the valley boards? A. Yes, this change which had to be made due to the change in the size of the first member which I have described was done with the consent of these people and on their instructions, because the member of the first size 4" x 2" was of a weak nature.

10

Q. Did the specification require all the valley rafters to be 4" x 2" in size? A. Yes.

Q. To what size was that changed? A. Yes, we replaced that by one member of size 6" x 2".

20

Q. And was it in consequence of that change or not that the valley board was also changed? A. Yes, as they had asked for the first change we had to do the corresponding change, and that was also done on their instructions.

Q. The next item, No. 14, to which Mr. Goodwin refers in the memorandum, relates to the valley tiling which he says was not rubbed down fair to the edges? A. Yes, we cut the valley edging, or rather used the valley edges which were cut but not rubbed.

30

Q. Why did you not rub them down? A. Generally as in this trade it is common, we use the cut tiles, not the rubbed tiles for this purpose.

Q. Were the cut tiles which you in fact installed approved at the time? A. Yes.

Q. The next item, No.15, is as follows: "Ablution doors, braces and rails, 4" wide not 5" as specified".

40

JUDGE: Is this still Exhibit 30. A. Yes.

MR. O'DONOVAN: That is a correct comment, is it? A. That is a correct observation.

Q. How did that come about? A. Yes, that is my mistake. I did not provide the correct size of 5", but that happened due to the doors which were made of that size, or rather which were made corresponding to that size.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

10 Q. Is there any significance in value between 4" braces and rails and 5" braces and rails? A. Yes, there is no significant difference in the price, My Lord, due to the change of the size. I estimate that at the most there would be a loss of 50 cents per door due to this change.

Q. On how many doors? A. I do not remember the exact number of doors.

Q. Approximately? A. My estimate is that the number was about 100. I am not definite about this number, it may be less or more.

Q. Were these 4" braces and rails in fact accepted or not? A. Yes, these were accepted.

20 Q. Does this comment only apply to the ablution doors? A. This comment applies only to the ablution doors.

Q. Item 16 in Mr. Goodwin's memorandum is to the effect that you used screws for the strap hinges instead of one bolt as specified? A. Yes.

Q. Why? A. I had shown him the working of the screw first and after of their approval of that trial we fixed screws.

30 JUDGE: Shown who? A. We had fitted one window and one door with screws and showed it to the Clerk of Works and the architect, and then on their instructions we had used the screws, though it is my mistake that I did not use bolts.

MR. O'DONOVAN: What were the names of the architect and the Clerk of Works to whom you refer?
A. Mr. Stone and Mr. Tanner.

Q. What is the usual practice in the building trade? Is it to use bolts or to use screws for this purpose? A. Usually in this trade people get things done by screws not by bolts.

40 Q. Is there any real difference in the price?
A. Yes, there must be some difference. A little difference.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. What difference? A. In the whole of the work which we did with screws instead of bolts, I estimate the difference of price would be between 800/- and 900/-.

MR. SCHEERBRUCKER: My Lord, I don't want to interject unnecessarily, but I don't know how much further this is going on. In this case there was a specification for the contract, and I don't think in these circumstances the usual practice comes into it.

10

JUDGE: No, the usual practice doesn't come into it, but if it was approved, that is another matter.

MR. O'DONOVAN: Lastly, Mr. Goodwin pointed out that the chimneys were not all parged? A. Some were parged and some were not.

Q. Would you explain what the word parged means?

A. Parged means that the chimneys are plastered from inside. The inner surface of the chimneys are to be plastered.

Q. At what stage in the construction of the chimney are they plastered? A. The chimney is parged or plastered from inside as it goes up - as the erection goes up.

20

Q. Is it possible to carry out this work after the chimney has been constructed? A. No, it is not possible.

Q. How did it occur that some were not parged? A. This occurred due to the negligence of workers as there were a large number of workers there - I think somebody who was to see if it had been done or not failed to see.

30

Q. What, in your estimate, is the value of the work which was not done to the chimneys? A. At this stage it is very difficult for me to give an estimate of the value of the work left undone because I do not know how much work has been left undone.

Q. Are you referring to chimneys? A. I am talking about chimneys only.

Q. How much would it cost to parge one chimney, do you think? A. In my estimate the cost of doing one chimney should be 10/- to 15/- if it is being done as the erection goes up.

40

Q. You gave evidence on the last occasion about the damp course, do you remember? A. Yes.

In the Supreme
Court of Kenya

Q. I think your evidence was that you had put in 3-ply damp course everywhere except when you could not obtain 3-ply and you then put in 2-ply damp course. Do you remember saying that? A. Yes, I said so.

Plaintiff's
Evidence

No. 8

10 Q. Have you since the adjournment again examined the work? A. Yes, I was giving evidence on oath and I did go to the place of works the very following day.

Ata-Ul-Haq.

Examination
- continued.

Q. Do you wish to qualify your last answer in any way? A. Yes, I wish to qualify and I wish to say that at certain places 1-ply damp course has also been put.

Q. How much of the damp course consists of single ply? A. I think I used 7 or 8 rolls of single ply damp course. This is my estimate. This estimate can be less or more.

20 Q. How many rolls of damp coursing altogether? A. Approximately in all 70-80 rolls of damp course.

Q. Would you have used anything except the 3-ply damp course had it been available. A. Had there been 3-ply rolls available I would have used only that, but as there is not very much difference in the price of 3-ply.

30 Q. At the time when you carried out this contract, had the emergency any effect on your difficulties in obtaining supplies and labour? A. Yes, very many.

Q. What do you mean by very many? A. We had to encounter a lot of difficulties.

Q. In your experience as a building contractor do extensive works of this nature ever become - are works of this nature ever completed without variations from the specifications? A. No, very many variations have to be made in such an extensive work.

40 Q. It is alleged against you that the corners of the walls are not all bonded as required by the specification. What have you to say to that? A. No, these corners have been built according to the specification.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. As regards the boundary walls, have you done less work than the specification, or exactly the same, or more. A. The boundary walls have not been built according to the specification. We have done more work than we were supposed to do according to the specification.

Q. On whose instructions did you do the extra work? A. On the instructions of both Clerk of Works and architect.

Q. Will you explain of what this extra work consists? A. Yes, I can tell you if I can see the plan (Exhibit 1) (Drawing number 3286/AH/2/27). On the plan the boundary walls are shown in a straight line, but actually I was asked to build it in three sides of a square. -

10

Q. I will deal now with the roof timbers. Did you make any sample of the wooden part of the roofing before erecting the roof on any block. Was any model of a roof truss made? A. Yes.

Q. Was that made before you erected any roof trusses or after? A. Yes, we had shown sample before we had made any roof trusses on any flat.

20

Q. Where was this sample roof truss constructed? By that I mean was it constructed on any building, on the ground, or what. A. On the ground we had shown that sample.

Q. To whom was the roof truss shown? A. Clerk of Works and architect, Mr. Stone and Mr. Tanner.

Q. Did that specimen remain there throughout the progress of the works? A. We made other trusses according to the size and shape of the one sample which I had already shown.

30

Q. Do you mean by that that you used the sample as a model from which to copy all the roof trusses which you made? A. We used truss over truss and we used the lower trusses of the same size and same shape which we had shown the sample.

Q. You made a sample truss which was approved? That is clear is it? A. We made one sample, My Lord, and all other trusses which were to be used were cut and sawn and made to the same shape and same size by keeping to that one sample.

40

Q. You kept the sample to copy throughout the work? A. Yes we kept that sample till the completion of the work.

In the Supreme
Court of Kenya

Q. Was it copied exactly? A. Yes, we exactly copied it, the size and shape and made the other trusses.

Plaintiff's
Evidence

No. 8

Q. Was it still there after the work was finished? A. Perhaps, if the African servants and other boys have not used it for fuel, I feel it must be still there.

Ata-Ul-Haq.

Examination
- continued.

Q. This sample which you made, was it nailed with wire nails? A. Yes.

Q. I would like to clarify the subject of the trial holes ...

JUDGE: Before you go on to that - I think you did ask the question, but I have not got a clear reply to it. Has the sample been approved? A. Yes, My Lord, that was approved.

Q. Who by? A. Mr. Stone and Mr. Tanner.

20 MR. O'DONOVAN: Am I correct in thinking that you dug trial holes on two occasions? A. Yes.

Q. On the first occasion how many trial holes did you dig? A. I think we dug 20 trial holes.

Q. On whose instructions did you do that? A. Messrs. Saunders and Roberts went there as visitors.

30 Q. But they gave you the instructions? A. They asked the Clerk of Works, or rather instructed the Clerk of Works who further instructed me and he pointed out where the holes were to be dug.

Q. Was Mr. Tanner there when the instructions were given to you. A. Yes.

Q. These holes -- were they dug near the foundations? A. Yes, these were dug inside as well as outside the walls and very near to these.

40 Q. What was the object of digging these 20 holes? A. Firstly I never knew what was the object of digging these holes, but later on, they did not tell me, I instinctively guessed that these were dug for seeing whether we had laid the foundations on the rock or whether we had removed the cotton soil or not.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. These you later filled up, did you? A. After they had inspected these holes then we filled them in.

Q. Did anybody instruct you to fill them up.
A. Nobody instructed me, but I asked from Clerk of Works if I could fill them in.

Q. He gave you permission? A. Yes.

Q. Who was that? A. Mr. Goodwin.

Q. The suggestion is made that you took the opportunity of putting in superior cement or mortar where these trial holes were dug after you had opened up the trial holes? A. That is totally a lie, My Lord. 10

Q. In fact, would it be a feasible building operation? A. As far as my knowledge and experience goes it is not feasible. It is impossible.

Q. On the second occasion you dug a number of trial holes to check the accuracy of Mr. Goodwin's complaint about the foundation depths? A. Yes.

Q. How many trial holes did you dig on the second occasion? A. I don't remember the exact number of holes, My Lord, that were dug on the second occasion, but there were very many in number. I think that 3-4 holes were dug in every block. 20

Q. That makes a total of how many? A. Roughly I would estimate the number of holes at 70. It may be more or less.

Q. I think you already said that as a result of that, Mr. Goodwin altered his plan? A. Yes, he changed the plan. 30

Q. In your favour? A. Yes, in our favour.

Q. I am sorry, I might have asked out of context, but if I might revert to the subject of chimneys, and put one question to you. Are there any lintel slabs constructed under any of the chimneys?
A. I think some alterations were made in that also, I think we did extra work.

Q. Have you charged for that? A. No, we did not charge.

Q. What was the extra work? A. I think in the specification only the lintel was mentioned, but we laid lintel as well as another slab on it.

In the Supreme
Court of Kenya

Q. I am afraid, My Lord, I shall have to deal with a series of rather disjointed matters. Do you recollect an occasion when you were asked by Mr. Mould to sign a number of samples of mortar which had been taken from your building site? A. I have once visited the premises and I was asked to sign on the paper envelopes containing mortar.

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. By whom, who asked you? A. I think Mr. Mould was there and he had called me to the premises there. I did not finish the previous answer. I refused to sign on these envelopes as I did not know from where or from what source they had filled these envelopes.

Q. When did this occur? Do you remember the month? Was it after you had completed the works or not? A. I feel perhaps it happened after the completion of works.

Q. Is it usual in the building trade to take samples of work in the absence of the contractor or his representative? A. If the sample is to be taken it should be taken when the work is in progress, but if the work has been completed and there is no representative of the contractor, then he cannot - nobody can take samples.

Q. Were you present when the samples which were put in the envelopes were taken? A. No, I did not know from what place they were taken.

Q. Do you accept as accurate an analysis made of the contents of the envelopes? A. No, not at all.

Q. Are you prepared to have samples of the mortar taken in your presence now and analysed? A. Yes, My Lord, if the samples are taken in my presence. I can give them samples from these works myself.

Q. Were you in fact present on the occasion of a visit of members of a Commission of Inquiry into the work? A. Yes, I did go there with my advocate.

Q. Do you recollect on that occasion Mr. Mould extracting what he described as a particularly poor specimen of the mortar you had used? A. I do remember.

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In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.
Examination
- continued.

Q. Did you insist on that being analysed? A. I insisted on its analysis. I asked that man to get it analysed.

Q. I am calling the analyst later, My Lord. Was the result better than the specification or not?

A. It was better than the consistency that was specified in the specification.

Q. Do you remember - I am referring now to Blocks 30, 37 and 38 - was it in respect of these blocks that Mr. Mould has complained that you laid the screed during his absence over the concrete floor? 10

A. Once, My Lord, Mr. Saunders and Mr. Roberts went along with Mr. Tanner on a visit to this place of works. I do not know what transpired between Mr. Mould and these three gentlemen but as a result of their talk, Mr. Saunders asked me to get a few pick-axes. There and then, with the help of these pick-axes he tested the floor by hitting at some places. After he had done this inspection he told me that he was satisfied. 20

Q. Who is 'he'? A. Mr. Saunders and Mr. Roberts both told me that the floor was all right and I could continue.

Q. What did they actually test - what part of the floor did they test? A. They tested the concrete, My Lord, by hitting some portions out.

Q. And what further work did they authorise you to carry on? A. Besides that, to dig holes.

Q. No! I am talking of the floors. Did you have to put a screed over the concrete? Did they authorise you to put the screed over the concrete floor which they had tested with pick-axes? 30
A. Yes.

Q. Were these floors in blocks 30, 37 and 38?
A. Yes.

Q. How many floors were tested with these pick-axes? A. I don't remember but in very many rooms they had tested the concrete floor with pick-axes.

Q. Was Mr. Mould there when this happened? A. No. 40

Q. I think it is in the correspondence - Mr. Mould criticised you for having laid a screed on certain floors during his absence? A. No, we could not have put the screed down in his absence. But he

was, I think, absent for a day or part of a day. He had gone to Kampala and come back the following day.

In the Supreme
Court of Kenya

Q. Did you start laying the screed before he returned? A. Yes, because he had asked me to do that.

Plaintiff's
Evidence

No. 8

Q. Who had asked you? A. Those people who had gone there to test the floors. They had authorised me to put the screed on the floor.

Ata-Ul-Haq.

Examination
- continued.

10 Q. It is further alleged against you that you worked overtime or after hours and on Sundays, and that you took advantage of those periods when you were not being supervised to cheat. My question to you is this. Would it be possible if you wanted to be dishonest to complete any part of the construction of any block in one day? A. No.

20 Q. For example, how long would it take you to dig the trenches of the foundations of the smallest block? A. It depends on the labour, My Lord, and the strength of labour. If you have good strength of labour you can dig a trench in 2-3 days.

Q. Were you short of labour? A. Yes.

Q. How long would it take you to put the foundations in of the smallest block? A. Do you mean to say laying the concrete foundations?

Q. Yes. A. I want to be clear whether you wish to ask me only about laying of concrete or working the foundations up to plinth.

30 Q. Putting in foundations up to plinth for a 10-roomed block, how long would that take? A. It takes more than two weeks, My Lord, because some time has to be given for the drying of that concrete which is put underneath.

Q. Would any concealment of inferior work be possible by your working on Sundays or working late during week days? A. On week days we did not

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

work after 4 p.m. My Lord, On Sundays we worked only half a day.

Q. And where was Mr. Stone on Sundays? A. He used to visit the place of work and you can ask him.

Q. There are complaints about the filling of the floors of these houses. How long did it take you to put in a filling in a block? A. Are you asking from me about the small sized block?

Q. The smallest size. A. It takes 3-4 days. 10

Q. After you had completed the work and Mr. Goodwin had sent you a copy of the memorandum saying that they were ready to be taken over, were they in fact occupied by African tenants of the City Council? A. At what time are you referring?

Q. I am referring to the last blocks, that is those that you completed in June, 1955? A. Yes, the tenants are in occupation of those rooms.

Q. How long after Mr. Goodwin notified you that they were ready to be taken over were they occupied? A. I don't remember the date, but I think in reply to his notification we had written a letter to the Council 20

Q. Was it a matter of weeks or what? A. I cannot say about the time.

Q. Did you, on 2nd August, 1955 write to the City Engineer asking for the final certificate for these remaining blocks, and is this a copy of your letter? A. Yes, this is the letter.

JUDGE: No objection to this letter? A. No, My Lord. 30

MR. O'DONOVAN: Did you receive a reply dated 4th August signed by Mr. Mould saying that in order to

assess the quality of the work the Council's representative would inspect the site the next day? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

JUDGE: Exhibit 38?
A. Yes, My Lord.

Ata-Ul-Haq.

MR. O'DONOVAN: Was there an inspection following that letter on 5th August? A. It is presumed so My Lord.

Examination
- continued.

JUDGE: Read the letter (Exhibit 38 translated).

10 MR. O'DONOVAN: Do you recollect whether there was an inspection? A. I think My Lord, I did go, but I was not talked to by anybody.

Q. Do you know whether it might have been at that inspection that the samples of mortar in the envelopes were produced to you to sign? A. I don't remember perfectly well. It might be. It is possible.

20 Q. Did you then write on 11th August, 1955 a letter, I produce a copy by consent, My Lord, pointing out that all the works had been approved and insisting on a final certificate? A. Yes.

Q. Did you receive a reply, dated 18th August, stating that blocks had not been accepted by the Council (Exhibit 40) and saying that the letter you had received from the Clerk of Works was described as an "advice note". A. Yes, I have understood this letter.

30 Q. Had you also written on the subject of the date of acceptance of blocks 31, 32, 33, 34, complaining that the date of acceptance, stated by the City Council, was wrong?
A. Yes. (Exhibit 41).

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. Is this a copy of your letter on that subject, dated 11th July? I tender this by consent.
A. Yes, that is correct. We had written a letter.

Q. Is this the reply dated 18th August, 1955 (Exhibit 42)? A. Yes, that is correct.

Q. Did you receive two letters dated 19th August (Exhibit 43 translated to Plaintiff). A. Yes.

Q. And the second letter of 19th August, 1955 from the Acting City Engineer? (Exhibit 44 translated to Plaintiff) A. Yes. 10

Q. Is this a copy of your reply dated 23rd August, 1955? (Exhibit 45 translated to Plaintiff).
A. Yes.

Q. Is the reply to that letter this one dated 6th September from the City Engineer? (Exhibit 46 translated to the Plaintiff). Arising out of that letter did you attend a meeting at the Town Hall with the African Housing Architect? A. Yes, I think I have gone there.

Q. Is that the meeting referred to in that letter? 20
A. Yes.

Q. Did you cover up any work to avoid inspection?
A. No.

Q. Did you reply by letter, of which this is a copy, dated 10th September? (Exhibit 47 translated to Plaintiff) A. Yes.

Q. Did you receive a reply dated 14th October, 1955, from the City Engineer? (Exhibit 48 translated to Plaintiff). Referring to the paragraph that you or your son were present when the samples were taken, will you tell His Lordship whether there is any truth in the statement in this letter? 30
A. I think it was on the occasion when I went there and I had seen that the bags had already been filled, and I refused to sign them.

Q. Is there any truth in the statement that you were present when the samples were taken? A. No.

Q. Is there any truth in the statement that your son was present? A. No, these were not taken in my son's presence. 40

Q. You had a son working there? A. Yes.

Q. What is his name? A. Arshad-ul-Haq.

In the Supreme
Court of Kenya

Q. The trial holes. Before I deal with this letter, I should clarify the point by asking you one question about the second lot of trial holes which you dug. That is to say, the 70 odd, to determine the depths of the foundations. How long did these 70 holes remain open? A. Many days before the inspection these holes were dug and they remained open for many days after the inspection.

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

10 Q. Who inspected them. A. Mr. Goodwin.

Examination
- continued.

Q. Did anybody else inspect them? A. I suppose the architect may have seen them with Mr. Goodwin, but I do not know.

Q. You did not see anybody but Mr. Goodwin at the inspection? A. The architect used to come there and I assume that he must have been shown the open holes, but he did not inspect them in my presence.

20 Q. Who filled in those 70 holes? A. Presumably I must have filled those holes. I suppose these remained open for a considerable time. After that I must have filled them.

Q. What do you mean by a considerable time?
A. I think the holes remained open for about 15-16 days.

Q. Mr. Mould inspected the first lot of trial holes which you dug? A. Yes.

Q. In your presence? A. Yes, Mr. Mould and Mr. Banner, both.

30 Q. Did they examine the mortar which was exposed of the first 20? A. Yes, they had tested it with the hitting of a knife and they had tried to test it with a crowbar.

Q. You are referring to the 20 trial holes I take it? A. Yes.

Q. I think that you already said that you filled in the twenty yourself? A. I had filled these 20 holes.

40 Q. Were the 70 holes which you dug to test the depth of the foundations enlarged by anybody after you had dug them? A. I do not know about this.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 8

Ata-Ul-Haq.

Examination
- continued.

Q. Did you see any enlargements being made?
A. No, I did not see myself these holes enlarged. I filled them in and they were the same shape as when they were dug.

Q. When you filled them, they were the same shape as when you dug them? A. Yes.

Q. Referring to the first lot of holes, when Mr. Mould and Mr. Tanner tested the mortar with an iron rod and a knife, did they express any approval or disapproval of the mortar? A. At the previous occasion of 20 holes when the two gentlemen tested with this crowbar and this knife the mortar, they did not express their opinion to me but they were talking to each other and I could make out something. If two persons are talking to each other I can make something of it and I made out that they were satisfied.

Q. Do you know a little English? A. I do not know English, but I can understand a little bit.

Resumed 2.15 p.m.

ATA-UL-HAQ: on former oath, states:

Examination-in-Chief by Mr. O'DONOVAN: (continued)

Q. Would you look at the last exhibit put in, No.48 I refer to page 2, to the statement there, to this effect "on enlarging holes of this quality found"? A. It is not true.

Q. Before you received that letter, had anybody ever made that particular accusation against you?
A. No such accusation was passed against me before.

Q. We come to the final paragraph of that letter, which asks whether you are willing or not to undertake the work necessary to put the contract in order. I have two questions to put to you. First, were you prepared during the maintenance period which was referred to, to do such work of maintenance as you could properly be required to do under the contract? A. We were ready at all times.

Q. Were you prepared to pull down work and rebuild it, which had already been approved? A. No.

Q. I have your answer to the last letter, to which I refer you, which is dated 15th October, and this is a copy (Handed to Witness - quotes).

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(Letter of 15th October put in as Ex. 49,
by consent)

In the Supreme
Court of Kenya

Q. Is this the reply dated 21st October, giving
you following results of analysis by the Public
Works Department (Quotes)? A. Yes.

Plaintiff's
Evidence

(Letter of 21st October put in as Ex. 50
by consent).

No. 8

MR. O'DONOVAN:

Ata-Ul-Haq.

10 Your Lordship will notice there are about 12
samples referred to there.

Examination
- continued.

Q. Did you write and ask for an elaborate report
on all the samples in the letter dated 22nd October,
1955. A. Yes.

(Letter of 22nd October put in as Ex. 51
by consent).

Q. Is this the reply received dated 29th October,
in which the City Engineer fails to see the reason
for your letter? A. Yes.

20 (Letter of 29th October put in as Ex. 52,
by consent).

Q. Did you then place the matter in the hands of
your advocate at that time, Messrs. Sirley & Kean?
A. Yes.

Q. Your Advocate wrote on the 14th November?
A. Yes.

Q. Asking for an appointment to discuss the matters
with Mr. McConnell, consulting engineer? A. Yes.

MR. O'DONOVAN:

30 My Lord, I tender by consent copy of that
letter dated 14th November.

(Put in as Exhibit 53)

The reply, My Lord, is dated 18th November,
from the City Engineer, to the effect that if you
break down negotiations it is his intention to com-
plete the contract.

(Put in as Exhibit 54 by consent).

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 8

Ata-Ul-Haq.

Examination - continued.

Q. There is a further letter from Sirley & Kean, dated 28th November, which I will put in, to the effect that the plaintiff does not agree to the repudiation of this contract and states he will deal with any repairs at the end of the maintenance period? A. Yes.

(Put in as Exhibit 55, by consent)

Q. There is a further letter, of which I have put in a copy, from Messrs. Sirley & Kean, dated 29th November, which is to the effect "our client now original contract"? A. Yes.

10

(Put in as Exhibit 56, by consent)

Q. And a letter from the City Council dated 5th December, reiterating the Council has no intention of taking over the remaining abutment blocks as they stand or issuing penultimate certificate? A. Yes.

(Put in as Exhibit 57, by consent)

Q. And, lastly, letter from Sirley & Kean, of which I put in a copy, dated 10th December, 1955, addressed to the City Engineer, saying, inter alia, "We are instructed damage caused". A. Yes.

20

Q. Do you remember at what time the Court of Inquiry - Commission of Inquiry into the affairs of the Municipal Council sat in Nairobi? Was it from December, 1955, onwards? A. Yes, I think so. It was from December 1955 onwards.

Q. Now, was a certain amount of masonry - mortar of the walls - re-done by the City Council at the end of 1955? A. When I visited I found that African employees were scraping or doing something on the walls with crowbars.

30

JUDGE: Q. When was this? A. At the time when the Commission of Inquiry went there to visit the premises.

Q. Did you see a certain number of the walls had been refaced or work had been done on them by the City Council at the time of this Inquiry? A. I can even show to-day that the City Council had done 3 or 4 gable ends.

40

MR. O'DONOVAN: My Lord, I would qualify this point.

Q. Did the City Council put on any mortar - any fresh mortar? Did they repoint your stone work on gable ends? A. Yes.

In the Supreme Court of Kenya

Q. Was it necessary for them to do that? A. In my opinion no.

Plaintiff's Evidence

Q. Has it improved the building? A. In my opinion, no.

No. 8

Q. Was that work duly displayed to the members of the Commission of Inquiry? A. The City Council Authorities showed that to the members of the Commission.

Ata-Ul-Haq.

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Examination - continued.

Q. The work they had done? A. No, on the date they visited only the African boys were doing something with the crowbars.

Q. Were the members of the Inquiry shown the work that had been done? A. Yes. The Authorities of the City Council were shown the work which they had done, to the members of the Commission.

20

Q. And after Commission of Inquiry departed, had any further repair whatsoever been done? A. So far as my knowledge goes, no.

Q. Did you make any representation whatever to the Architect or to the Clerk of Works about the quality of the work you had done? A. No.

Q. When the work was passed by the Clerk of Works and the Architect and other officials, upon what did they rely? Did they rely on what you told them or on what they saw? A. They used to come there and inspect the work.

30

(On application of Mr. O'Donovan and with the consent of Mr. Schermbrucker, cross-examination of Plaintiff is deferred to enable evidence of Mr. McConnel to be interposed).

In the Supreme
Court of Kenya

No. 9

EVIDENCE OF SAMUEL McCONNEL.

Plaintiff's
Evidence

P.W. 2 - SAMUEL McCONNEL: Sworn:

No. 9

Examination-in-Chief: MR. O'DONOVAN:

Samuel McConnel.

Q. You are an Engineer and Consultant, Mr. McConnel?
A. That is so.

Examination.

Q. What are your qualifications? A. BSC (Engr.)
London, 1st Class (Hons) - Assoc. Member of the
Inst. Civil Engineers since 1916 - full Member of
the Inst. of Civil Engineers since 1935.

10

Q. And how many years have you practised as a
Consulting Engineer. A. 12 years.

Q. And particularly of Engineering Works in East
Africa? A. I have had 32 years experience of
Engineering Works here.

JUDGE: Q. In Kenya? A. Yes.

Q. Now, were you, about November 1955, consulted
on behalf of the Plaintiff, Ata Ul Haq? A. I
was.

Q. That is with regard to the work at Ofafa Estate?
A. That is so.

20

Q. Did you arrange with the City Engineer for a
representative of the City Council to examine the
buildings in your company? A. I did.

Q. During the course of your examination of the
buildings towards the end of 1955, during the
course of your examination of the buildings, did
you notice certain work being done on blocks 30,
37 and 38? A. I did.

Q. What did you observe? A. They had dug trench-
es round the walls, below floor level and were
attempting to rake up the joints and repoint them
and doing the same thing above floor level. Some
of the floors had been opened up and were being
replaced.

30

Q. And how was the mortar being removed from the
joints? A. In some cases it was being removed
by a crow-bar.

Q. Is that a desirable method of removing mortar?
 A. Extremely undesirable.

In the Supreme
 Court of Kenya

Q. Did you observe the effect of this method of
 operation? A. Yes, I did.

Plaintiff's
 Evidence

Q. What was it? A. It was damaging the stone
 masonry.

No. 9

Q. Did you write a letter on the subject to the
 City Engineer? A. I did.

Samuel McConnel.

Q. Is that it (Handed to witness? A. Yes.

Examination
 - continued.

10 (Put in by consent as Exhibit 59).

Q. Would you read it to My Lord? A. Yes. (Quotes
 Ex.59)

Q. I have not seen a reply. Has there been a
 reply? A. I do not recollect one.

MR. O'DONOVAN: My Lord, My learned Friend was good
 enough to give me a copy.

Q. Do you remember receiving that reply? A. Yes,
 I do recollect receiving that reply.

20 Q. It is dated 13th December? A. Yes. The 13th
 December.

(Put in by consent as Exhibit 60)

Q. Quotes) "1. That the Council's labour is using
 crow-bars at one end". A. These are small
 crow-bars.

Q. Dealing with the other point, what have you to
 say that stone being damaged was gross exaggera-
 tion? A. It certainly was being damaged and was
 seen by others.

30 Q. And there was no evidence found by the person
 who wrote that letter of damaged timber. Was tim-
 ber damaged? A. I saw places where timber had
 been nicked in by steel tools.

Q. Which timbers in particular? A. Alongside
 doors.

Q. How have you, in fact subsequently returned to
 the works to examine them? A. On many occasions.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Q. What amount of time have you spent in examining works of the Plaintiff? A. I should say at least 20 hours.

Q. Have you examined them in sufficient detail to establish to your satisfaction what the quality of the work was? A. Yes, I think I have.

Q. And the justification of the complaints raised? A. Yes.

Q. Have you studied the work in comparison with the contract, plans, drawings and specifications? A. Yes I made a very careful examination of all these documents. 10

Q. First of all could you say what class of work is envisaged by the contract itself? A. It is extremely low. It is one in which price is apparently the only consideration.

Q. What, at that time, was the normal cost of erecting African quarters in the average householders premises in Nairobi? A. I should say about 25/- to 30/-. 20

Q. Would the specifications for the average African quarters of Nairobi residents be superior, or inferior, or the same? A. Very much superior to the contract price.

Q. Now, I will put a general question, Mr. McConnel. Was Ata Ul Haq's work of the quality required by the specifications, worse or better? A. It was of the quality required by the specifications.

Q. Is it normal for a work of this magnitude to have Bills of Quantity? A. Yes, very much so. 30

Q. Were there any such Bills of Quantity prepared in this case? A. No.

Q. Have you any previous experience of works of this magnitude ever being contemplated without Bills of Quantity? A. I never have.

Q. Has the absence of such Bills of Quantity anything to do with cutting of cost? A. Yes, because they would have cost 2% or 2½% of the price of the work.

Q. What of the specifications and drawings themselves. Were they adequate do you think? A. I think they were extremely poor. 40

Q. Would you elaborate the last answer? A. I should describe them as very amateurish. They showed an absence of detailed knowledge of building construction, such as you would expect from a qualified engineer.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

Q. You have examined available documents? A. I have.

No. 9

10 Q. And have you anything to say about the extent of the complaint made about the quality of the work up to the time when it was finished? A. I consider it grossly exaggerated.

Samuel McConnel.

Examination
- continued.

Q. Which complaints are you referring to as grossly exaggerated? A. Those made by the Architect who was in charge of the work, Mr. Mould and by the City Engineer.

JUDGE: Q. Would you name the last person.
A. Mr. Salmon.

20 Q. Have you, in your experience as a building engineer ever come across a lower standard of work required by specifications? A. No, I think it is the lowest standard of masonry construction that I have ever come across in the whole of my life.

Q. You were associated with the Public Works Department for a period? A. I was Divisional Engineer in every department except Mombasa.

Q. In Kenya? A. Yes. In charge of each division.

Q. What is the normal practice in Kenya with regard to the minimum thickness of floors? A. 4".

30 Q. Is that the minimum? A. We have never used anything less than that.

Q. What are these specifications? A. They were specified here at 3" but in one case they tapered down to 1½".

Q. According to the contract? A. According to the contract documents.

Q. Are the thickness provided by this contract adequate? A. Not by anyone except, apparently, the Nairobi Municipality.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Q. Were specifications with regard to the roofs of the ablution blocks adequate? A. It was discovered by the Municipality that there were certain defects in the roofs.

Q. Was it necessary to alter them. A. They were altered I believe.

Q. The type of floor required. Can you describe briefly what that was? A. They were supposed to excavate down to filling, put in dry filling and then put concrete floors on top of that. 10

Q. On top of the filling? A. Yes, the filling consolidated it.

Q. Is that a good standard of floor? A. It is if the filling is properly consolidated and the concrete is of adequate thickness.

Q. With regard to the thickness specified in this contract, could cracks be avoided? A. It would be a bit difficult.

Q. Did you visit the site at any time when you saw excavations outside the external wall? A. Yes I did. 20

Q. Was that in March of last year? A. Yes.

Q. How far down were these excavations carried? A. They were carried down through the black cotton soil to rock.

Q. Did you examine all these excavations? A. I examined all the excavations that were open.

Q. Did they disclose to you what sort of material the bottom of the foundations rested on? A. Yes. It was hard rock or reasonably hard rock. Sufficiently hard for such a type of foundation. 30

Q. Have you observed any justification for the allegation that the foundations rest on black cotton soil? A. I have not.

Q. Do you believe it to be true? A. I do not believe that it rests on black cotton soil. May I be allowed to give my reason for that?

Q. Please do. A. The buildings had been up for about 2 years and had they been founded on black cotton soil they would undoubtedly have been very 40

badly cracked. I have examined the buildings recently and have been unable to find any signs of cracks due to settlement.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.
Examination
- continued.

10 Q. I should like to amplify that point a little. If one builds on black cotton soil is it absolutely certain that the result would be cracking? A. It would not only be merely cracking, but you find with buildings built on black cotton soil that you can put your hands through the cracks; the doors do not fit and the building has gone completely out of shape.

Q. If after this period of time there is no evidence of this, does that eliminate any possibility that it is built on black cotton soil? A. Yes, I certainly think so.

20 Q. Where, as in the present contract, provision is made for extra payment, if the foundations are deeper than a certain number of courses, in your experience do you have to persuade the contractor to dig deeper or restrain from digging too far? A. I should think he would be happy to excavate for the extra courses.

Q. I think you have examined the report on which the City Council's case is based? A. I have.

Q. Made by Mr. Wevill? A. Yes.

Q. You have studied that in detail? A. I have.

(Report dated 21st Aug. 1956 - put in by consent as Exhibit 61).

Q. Have you a copy of this Exhibit? A. I have.

30 Q. In general, have you anything to say about the allegation that some Shs.600,000/- of repair work is required? A. I consider that a case of rather gross exaggeration. Incidentally I would like to say that Mr. Wevill has assumed a higher standard of construction than was specified in the Municipality documents.

JUDGE: Q. Contract documents? A. Yes.

(Witness refreshes memory from file - no objection).

40 Q. Would you look at Mr. Wevill's first complaint, which is that the foundations are not being properly excavated "trenches not being ... weak places".

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.

Examination

- continued.

What have you to say about that? A. After 2 years the walls have not settled. Mr. Wevill also referred to some rot, that a mixture of black cotton soil have not been removed. It is rather difficult to understand what that is. When you level up a piece of rock you do not remove every vestige of black cotton to two or three square inches or anything of that sort. It is quite unnecessary, but provided the wall is reasonably based on rock, there will be no settlement and no movement.

10

Q. Is this under-pinning at all necessary in your view? A. It has been proved by what has happened in the two years the building has been up that it was quite unnecessary.

Q. Has there been any under-pinning? A. I gather so. No serious under-pinning was done. They merely excavated down to the foundations and repointed some of the work.

Q. Was that necessary? A. I do not think so.

20

Q. As a matter of building practice, where you have a Clerk of Works, Architect or other officials what would be the proper time to make any criticism about the depth to which foundations were done? A. The time foundations were excavated.

Q. You said Mr. McConnell that they had done a certain amount of not very serious under-pinning - repointing, I am sorry - in how many blocks? A. It is difficult to say it was done in little bits all over the place, there was no system of any description only fractions of the whole of the buildings.

30

Q. Fractions? A. Yes fractions.

Q. On the subject of what the City Council did in the way of repairs, did you observe they had touched up masonry at the gable ends? A. They did.

Q. Is that at the time of the Commission of Inquiry? A. About that time.

Q. Did it result in any improvement? A. Not the slightest.

40

Q. What would you say about the relative quality of the work done by the Plaintiff and that done by

the City Council? A. I should say there is very little difference. Possibly some of the Municipal work was even worse.

Q. Even worse? A. Yes, even worse.

Q. With regard to the concrete foundations, Mr. Wevill finds concrete is varying in quality, much of it being soft and easily broken. Secondly "where test in fractures" (quotes from 2nd para. of report).

10 Q. What comment have you to make on that?
A. The loading of one storey buildings of that description is so negligible that almost any foundation will carry it, except black cotton soil, which swells and moves with gentle moisture content.

Q. Have you made a careful examination of the concrete foundations? A. I have.

20 Q. Are they, in your view, adequate? A. They are perfectly adequate, because it was proved by the fact that there was no indication of settlement, but if you open up any building anywhere you will find various irregularities in the quality of the concrete and in the thickness of the concrete. It is not absolutely uniform.

Q. Again at what time would you expect any complaints with regard to the concrete foundations to be made? A. At the time construction was carried out under the careful supervision of the Municipal staff.

30 Q. Do you agree with the allegation of Mr. Wevill that the unequal loading will result in fractures?
A. I think the "proof of the pudding is in the eating". Any building that is founded on black cotton soil would show signs of distress after two years.

Q. Is it necessary, in your opinion, to cut out any part of the foundation? A. Quite unnecessary.

40 Q. Now foundation walling specification: "The stone to be first quality local stone with all corners square and regular". (quotes from 3rd para. of report)

Q. What have you to say about the quality of the

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 9

Samuel McConnel.

Examination
- continued.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.

Examination
- continued.

stone used? A. I would say specification was a complete contradiction in terms, because all quarry dressed stone in Nairobi of any buildings of any decent standards has to be redressed on the site.

Q. If it is to be re-dressed on the site what would the specification provide? A. The specification would call for re-dressing and would not describe it as quarry dressed.

Q. What would you call it then? A. I would say chisel dressed to specified dimensions. 10

Q. Did the stones used in fact comply with the description of quarry dressed stone? A. Yes, I should say yes - I should describe them as quarry dressed stone.

Q. Would any better quality of quarry dressed stone be available in Nairobi? A. No; there is only one quality and it is fairly rough.

Q. If the quarry dressed stone had to be re-dressed by masons on the site, what effect would that have on the price of the structure? A. It would increase it very substantially. 20

Q. Could you give figures? A. I should say it would increase the cost of the stone by possibly 50% at least.

Q. And again at what stage of the works would you expect any inferior quarry dressed stone to be rejected? A. As soon as the arrival on the site.

Q. What Mr. Wevill stated was "walling exposed ... resulting in excessively wide joints and thick beds". 30

(Quotes - 3rd Para. (a) of report)

Q. Can you do better than that with quarry dressed stone? A. It is very irregular.

Q. The quality of the stone itself - have you any observation to make? A. No, I am sure it will last as long as the house.

Q. How does it compare with the stone - the quality of the stone - used on the extensions of the Town Hall? A. It is not very different, but it would be re-dressed on the site. Apart from the dressing I should say just about the same quality. It appears to be Nairobi blue stone. 40

Q. It is called Nairobi blue stone? A. Yes.

In the Supreme
Court of Kenya

Q. Did you test the mortar used in the wall?

A. Yes, I carried out a number of tests with the P.W.D. Department. For 1½ hours we carried out tests.

Plaintiff's
Evidence

Q. When you say the P.W.D. - did they actually test samples for you? A. Yes, both for the Municipality and for the contractor.

No. 9

Samuel McConnel.

10 Q. Have you the results of these tests? A. Yes, I think I have. There is one case when the Commission of Inquiry visited the job and one of the Municipal Architects knocked away a piece of mortar and said "look what rubbish this is" and the contractor promptly said "we will have it tested".

Examination
- continued.

Q. Have you got the result of that test? A. I have got a reference here to the Municipal Commissioner

Q. You don't know that of your own knowledge?

A. I saw the results of the tests from the P.W.D.

20 Q. You asked the P.W.D. to carry out other tests for you, did you? A. Yes, I did.

30 Q. Were the results satisfactory? A. They reported the samples of the floor screed which I took in the presence of Mr. Goodwin, Clerk of Works, and sent to the P.W.D. for testing which specified - 1: 3.5 first sample: second sample 1 to 2.7: third sample 1 to 2.8: fourth sample 1 to .085 - the specification was 1 to 3 and these samples were taken from a floor that the Municipality were demolishing because they said it was unsatisfactory. I decided to take the samples because I was so amazed at their contention.

Q. Did you, yourself, test the mortar in the walls?

A. No all the tests were made by the P.W.D.

Q. But you did examine it at the site? A. Yes.

Q. Can you test it with a pen-knife? A. Yes this is the normal way a practical man would test any mortar. It gives a good indication of strength of the mortar.

40 Q. Do you remember whether it was a satisfactory result or not? A. I think, on the average the results approximated to the specification.

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 9

Samuel McConnell.

Examination - continued.

MR. SCHERMBRUCKER: I think, if we are dealing with expert evidence surely this witness will identify what samples he took and the person who examined them will say what they produced, but it is very unsatisfactory to say

JUDGE: I get the impression that this witness did not take samples from the mortar in the walls.

MR. McCONNEL: Yes we did.

JUDGE: You did, yourself? A. I took it, together with the contractor.

10

JUDGE: But you, yourself took samples from the mortar in the walls? A. Yes. I have always felt samples from any of these things should be taken by both parties to the dispute.

JUDGE: The point is, did you take some samples? A. Yes.

JUDGE: Which were analysed by the P.W.D.

Q. Perhaps you would examine your papers on that point. Is that a satisfactory test? A. Yes I tested the hardness and strength.

20

Q. Do you agree with Mr. Wevill that mortar is mostly soft? A. No, I do not.

Q. How would you describe the mortar? A. I should say it was the sort of mortar one would expect from the specification. The specification only required 1 to 6 mortar for the walling which is very poor mortar. I mean, the general practice is 1 to 3, or 1 to 4.

Q. Would you look at the specification for the walling. Did you test the mortar in the foundation walling? A. Yes both foundation and the walling above.

30

Q. You did? A. Yes.

JUDGE: Which are you referring to at the moment?

Q. Which are you referring to? A. The 1 to 4 is below the floor level and the 1 to 6 above the floor level.

Q. You stated mortar 1 to 6 is a poor mixture? A. Yes it is below the standard which the Government use for similar work.

Q. In your view the mortar used in the walling above the foundation level comes up to that standard? A. Yes.

In the Supreme
Court of Kenya

Q. Is that a sufficiently hard mortar for the purpose for which these buildings are required?

Plaintiff's
Evidence

A. Yes, quite hard enough. Some time ago a considerable number of buildings were built with mud-water, but this is very much superior.

No. 9

Samuel McConnell.

10 Q. You tested the foundation walling which 1 to 4 and it revealed what result? A. I should say it was reasonable. The reason they use it below the ground, of course, is because it is often wet.

Examination
- continued.

Q. Do you agree with Mr. Wevill's conclusion that the mortar in the foundation walling unreliable because of its variation in quality? A. No, I cannot say that, because the buildings are occupied and they are undoubtedly in a reasonable condition and it is the best proof that what I say is correct.

20 Q. Do you agree with Mr. Wevill that it is necessary to repoint - expose the whole of the walling below ground, break out jointing and flush with cement and mortar? A. No, I do not agree and it has not been done.

Q. Why do you not agree? A. Because the buildings are in use and there are no signs of defects, settlement or movement of the walls and therefore I must assume from that, that the mortar is satisfactory - that it is performing the function for which it is employed.

30 Q. Would any defects reveal themselves in the first two years? A. Yes, certainly - very much.

Q. Would cutting out the mortar in the joints achieve any beneficial result? A. I think it would do more harm than good.

2nd May, 1957
10.30 a.m.

Witness continues evidence on same oath.

Examination-in-Chief by MR. O'DONOVAN (Contd.)

40 Q. May it please your Lordship. Yesterday, Mr. McConnell you stated that you had taken samples of the mortar from the walls of this contract work.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Have you, during the adjournment, gone through your papers to verify that point? A. Yes, I have and I find that it was not I personally, who took the samples. I must apologise for that. This case started some 18 months ago and it is rather hard to think of everything.

Q. That was an error, was it? A. It was an error.

Q. But you did personally take samples of the concrete surfacing? A. Yes, I did, that is correct. 10

Q. Did you send the report about which you gave evidence yesterday to the City Engineer? A. Yes.

Q. I think you said yesterday in connexion with the floors that the specification provided for a mixture of cement 1:3 for the screed? A. Yes, I did, but I was in error because I had failed to appreciate that it was 1:4. This is a much weaker mixture specified by the municipality because 1:3 is the normal practice.

Q. Actually 1:4? A. Actually 1:4, but I was confused because in the P.W.D. and the railways nothing weaker than 1:3 is specified. 20

Q. I think this report shows that in fact the screed was slightly better on an average than 1:3? A. Yes that is so.

Q. Will you look at the next part of Mr. Wevill's report which deals with the floors and the filling under, on page 4? A. Yes.

Q. Mr. Wevill's findings were as follows: "Test holes were as specified". What comment have you to make on that part of his report? A. There is no evidence of any settling of floors due to black cotton, and I notice that he makes a reference to weak rock. The filling was put in under supervision. 30

Q. You presumed it was put in under supervision? A. Yes, by the Council's representatives.

Q. But apart from that it is according to the specification or not? A. I should like to see the specification first. 40

Q. Did you yourself see the filling? A. Yes.

Q. That is where some of the holes were dug inside?
 A. I did not see any place where the black cotton had not been removed.

In the Supreme
 Court of Kenya

Plaintiff's
 Evidence

No. 9

Samuel McConnell.

Examination
 - continued.

10 Q. Can you answer the question I put as to whether the filling which you saw complied with the specification? A. Yes, I would say that some of the stones were a little bit on the large side but I should say it was reasonably close to the specification. I would like to comment if I may. This specification, in my opinion, is unsound because it makes no reference to filling the spaces in between the individual stones with fine material.

Q. With regard to your answer that some of the stones were on the large side, is there anything in the specification which, in fact, limits the size, apart from the depth of the stone not to exceed 6"? A. No, there is nothing.

20 Q. Did you observe any black cotton soil under the floors? A. None, there might have been some signs of perhaps $\frac{1}{4}$ " or $\frac{1}{8}$ " of black cotton soil on the top of the rock, but that is immaterial, and no practical man would bother about that.

Q. If the floors had rested on a foundation of black cotton soil, would you expect to observe the result of that? A. I would have expected to observe. I would have expected them to settle and rather remind one of the waves on the sea.

Q. Has there, in fact, been any subsistence on the floors? A. No, I saw none.

30 Q. What conclusion can you draw from that as to the adequacy of the foundation of the floors?
 A. I consider them to be perfectly adequate.

Q. I think you were going to say something about the reference to soft rock strata made by Mr. Wovill? A. There is no objection at all to putting a building of this description on soft rock. As a matter of fact, it is capable of taking about 4 tons per square foot. These buildings are equal to about $\frac{1}{2}$ ton per sq. foot.

40 Q. Would you expect the City Council to make tests of the soil on the locality of these works before drawing up the specification? A. Yes, I would expect them to put down trial holes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Q. Did you see any evidence that that, in fact, had been done? A. That happened before the job started. I never saw it but I assumed they were made. It is normal practice.

Q. Mr. Wevill observes further that water had percolated through the walling and was standing to quite a considerable depth to the filling. Is that an adverse comment in a case where masonry laid to 4:1 is not water tight? A. I would never have dreamt of using 4:1 mortar on this structure. I do not think anything weaker than 2:1 cement mortar is any use in any structures that have to be impervious to water. 10

Q. I think it is not in dispute that the soil on this estate is black cotton soil to a depth of a few feet? A. That is so, all that part of Nairobi is black cotton soil.

Q. Have you any observation to make on Mr. Wevill's comment that little or no attempt had been made to ram the filling? A. Yes, it is very difficult to ram hard stone. In fact, I don't think you could ram that hard filling. It is not soft enough. But the filling should have been filled up with finer material of which there is no mention in the specification. 20

Q. Mr. Wevill goes on to say that the filling, particularly as it contains standing water, is bound to move, particularly on account of the variation in water content and seasonal changes. A. I don't agree. 30

Q. If he were right, would you have expected this movement to have occurred during the last two years. A. It certainly would.

Q. Then he goes on to say that the concrete floors were cut between 2" x 3" in thickness and varied in quality, and were easy to break? A. Some of the concrete floors were very hard to break, especially the one from which I took the samples.

Q. The sample you took was of the screed, that is the surfacing on the top of the concrete slab. Was the concrete slab itself hard? A. Yes, it was hard. 40

Q. You say the floors should have been at least 4" thick? A. That was the standard practice of F.W.D. and anyone else who does good work.

Q. Could you expect satisfactory results from a specification which provided for 3" to 1½"?

A. Certainly not.

In the Supreme
Court of Kenya

Q. Mr. Wevill says each floor in every block was inspected and all had cracks or showed signs of cracks? A. I think the cracks to which he refers are the shrinkage cracks in the screed, not cracks right through the slab.

Plaintiff's
Evidence

No. 9

10 Q. Not? A. No, I examined them. I saw some cracks in the screed, but they were surface cracks due to the trowelling. The floors can be seen there now.

Samuel McConnel.

Examination
- continued.

Q. In short, in your view, are the floors or are they not as good as one would expect with regard to the contract? A. Yes, perfectly.

Q. Mr. Wevill concludes: "Another matter floors relaid" Do you agree? A. I don't agree, and I suggest that the Court sees the floors and that His Lordship examines the floors himself.

20 Q. He also said in his report that the cause of the cracking is a possible weakness in the filling - that the weakness lies in the filling? A. I don't think so. The filling was a very hard solid material. Very hard rock.

Q. The next category dealt with by Mr. Wevill is the superstructure walling, page 5. I think you have already dealt with the question of the quality of the quarried dressed stone? A. I have.

30 Q. I have one further question to put to you on that. Was there any difficulty in getting the stone during the emergency? A. There was the very greatest difficulty in getting both stone, labour, and every other kind of material.

Q. What happened to most of the masons who quarried the stone, during the emergency? A. They were Kikuyus and I think they were put in the bag.

40 Q. Mr. Wevill complains that the "9½" standard course is of unequal thickness ... true alignment". Have you anything to say about that? A. Nothing else could be done with quarried dressed stone ... It has every possible irregularity. As I said before, it has to be dressed on the site in Nairobi to make a decent job.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Q. How was it done? A. They levelled up the stones as well as they could. They were very irregular stones and they made as good a job as they could.

Q. How does the alignment compare with that achieved by the City Council? Did they endeavour to improve on this result? A. They were certainly quite as good, if not in some cases considerably better. The City Council have covered their work with water so that you cannot see the results.

10

Q. What work is this? A. On the same site.

Q. Mr. Wevill says "Stones of inferior ... have been used"? A. I don't think so. The stone I saw was not likely to disintegrate during the estimated life of the buildings, which is 40 years.

Q. And then he says that most of the mortar is sand and could be broken quite easily? A. I don't agree with that.

Q. Can that be demonstrated to His Lordship at the site? A. Yes.

20

Q. If one takes a crowbar or an instrument specially fashioned by the P.W.D. A. If you are going to use a crowbar I don't think anything will resist it.

Q. Did you test for the hoop-iron bond? A. I did examine the structure in a number of places and I have actually got here some of the hoop iron I took at the works and some of the Ruberoid.

Q. We are dealing with the hoop iron. Was there any indication from your examination that the contractor had failed to use it where he should have? A. No, I saw a great many places where he had used it.

30

Q. Did you see any places where he should but had not used it? A. I could not see that without examining the structure. It was inside the walls.

JUDGE: Did you actually see any places where it ought to have been used and had not been? A. No, I did not, but My Lord I could not see inside the walls.

40

MR. O'DONOVAN: To examine it you would have had to chop away the mortar? A. Yes.

Q. What width of hoop iron did you find? A. $\frac{3}{4}$ ".
I have taken them since the case began. I took
two samples, as a matter of fact.

In the Supreme
Court of Kenya

Q. Could you put the piece of hoop iron in one
envelope by itself? Is that $\frac{3}{4}$ " hoop iron.
A. Yes, and I am prepared to take anyone to the
place or two places where I found it.

Plaintiff's
Evidence

No. 9

JUDGE: Is that going in as an exhibit? A. Yes,
My Lord.

Samuel McConnel.

10 MR. O'DONOVAN: Did you find any $\frac{1}{2}$ " hoop iron?
A. I saw only $\frac{1}{2}$ ".

Examination
-- continued.

JUDGE: You saw no $\frac{1}{2}$ "? A. No $\frac{1}{2}$ " My Lord.

MR. O'DONOVAN: Did you examine the damp course?
A. I did.

Q. Did that comply with the specification?
A. It was 3-ply. Here is a sample.

Q. My Lord, I tender the damp course as an exhibit.

20 JUDGE: That is 3-ply? A. Yes, 3-ply, My Lord.
(Exhibit 63). I may say that I can take anyone to
the same place and cut another piece exactly the
same if required.

MR. O'DONOVAN: If hoop iron had been used for
bonding different from that specified, would you
expect the Clerk of Works to notice at the time
and approve or reject it? A. I should certainly
expect him to know about it and either express his
approval or disapproval.

Q. Would that also apply to the damp coursing?
A. Yes.

30 Q. Next, Mr. Wevill contends that the internal
facings of the wallings of rooms have no appear-
ance of being dressed off and do not by any means
present a flush unbroken surface. A. There is
no mention in the specification to the dressing
off of the surfaces of the masonry walls. The
stone again is specified as "quarry dressed".

40 Q. Would you refer to paragraph 25 of the specifi-
cation? Could you read to his Lordship? I am
dealing now with the internal face of walls. I
would like to know what a fair face is with quarry

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.
Examination
- continued.

stone. Would you say that the internal walls were done well or not as well as they could have been?
A. I should say that they comply with the specification completely.

Q. Would opinions vary or coincide automatically on the meaning of phrases used in this specification? A. There are a very considerable range of interpretations, but apparently the work was carried out by the interpretation placed upon it by the Council staff.

10

Q. Mr. Wevill says that: "An attempt was equivalent of plastering". Is that a defect?
A. No, it would be necessary in bag wiping and to produce a fair face to use as much mortar as is required for plastering, but to plaster you would have to dress the stone to a fair face before starting. Bag-wiping is not used for stone dressed to a fair face.

Q. "The external faces are untidy". Could opinions vary on that subject? A. Considerably, as it is quarry dressed stone you cannot expect it to be very tidy. It is not possible.

20

Q. Then "Inferior pointing ... and presents little resistance to driving rain"? A. From what I saw of the pointing it was very reasonably done. I would point out in that connexion there is no evidence of the rain water penetrating any of the walls in any of the occupied houses.

Q. There is none? A. No, I have had a look at it.

30

Q. Is there any sign of dampness due to penetration of rain at all? A. No, none at all.

Q. Mr. Wevill goes on to say: "The ends of ... is falling away"? A. It is not very noticeable, and in fact the plaster seems to be fitting the timber quite closely.

Q. "Steps in many places tests were made".
A. Could you give me a reference.

Q. That is item (g) on page 7, I will read out. He says: "Steps in many tests were made".
A. I was not present when Mr. Wevill made his tests, but all the steps I saw were in perfectly good condition.

40

Q. "Boundary walls do not at these points".
 A. I cannot say that I saw any signs of their not being bonded. There might be one or two isolated bits in the whole of the building.

In the Supreme
 Court of Kenya

Plaintiff's
 Evidence

No. 9

Samuel McConnel.

Examination
 - continued.

Q. Mr. Wevill's conclusions are these: "Cracks have occurred ... settlement of the foundations".
 A. A good two years have elapsed and I went over the scheme the other day and endeavoured to find cracks and I was most unsuccessful.

10 Q. "In the interests ... and lime washed".
 A. The bag-wipe as specified is such that it would not have been hygienic. Unless you have a clean, smooth surface, any other type of finish harbours bugs. It is quite well-known.

Q. Mr. Wevill recommends: "The raking out ... and repointing". A. I think it is quite unnecessary.

20 Q. Then he says: "Cracks due to ... iron cramps should be inserted". A. That is the sort of thing that one does in a very high class building, and I have never heard of such a thing in native housing. One must remember that this is the cheapest class of permanent housing that I have come across in the whole of my lifetime.

Q. "The damp course ... more permanent material".
 A. That means the complete demolition of everything.

Q. Have you seen any deterioration of the damp course? A. No.

30 Q. The next subject dealt with in this report is the roof and joinery. First of all he says that "The nails used clenched". A. I can see no reference in the specification which I must say is most indefinite, to the nails being long enough to be clenched.

Q. According to normal practice, at what stage would you expect any criticisms of the roof timbers to be made? A. When the timber is delivered on site.

40 Q. And any criticisms about the way the roof trusses were constructed? A. When the roof was being constructed.

Q. The contractor says that he obtained his timber from Timsales. Are they a good firm? A. Practically all the timber has to be obtained from Timsales because they have practically a monopoly.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

Q. Are they a firm of standing. A. Yes. They supply most of the timber in Kenya. I should say they are a firm of the highest standing in the Colony.

Q. The concrete drains. First of all from Mr. Wevill's report: "The specification provides ... outer facing of the foundation walling". Is there anything very definite in the specification itself?

A. No, I should say "as directed" is on the instructions of anyone who is supervising the work on the ground. Personally I doubt whether such drains could be effective unless separated from the rock.

10

Q. And that is not required here? A. Not required here. It has not been done by the Council. They lay them direct on the black cotton soil.

Q. Would the effect of that be that there would be movement? A. It would mean that the drains have no proper fall. The water remains stagnant, remains putrid, and if you go round the estate on a hot day you know all about it. I think the Medical Officer of Health dealt with that at a municipal inquiry.

20

Q. Then follows in Mr. Wevill's report a lot of calculations adding up to some Shs.600,000/- as to the cost of repairs. A. There is no data on which to base this, and it is quite possible for anyone else to assess their value.

Q. Is that page 10? A. Yes, and 11, My Lord.

Q. I think there have been other estimates of the cost? A. A very considerable number. The values vary from zero to almost infinity.

30

Q. In your estimate, what is required in the way of repairs to put these buildings in order to bring them up to the standard required by the specification? A. A very minor amount that would be covered by the 5% retentions. That view appears to have been shared by others.

Q. Could a certificate for 90% of the value of this work, or 95% be honestly issued by any honest man unless in fact he did share those views? A. It would be quite impossible.

40

JUDGE: I do not follow that.

MR. O'DONOVAN: I am sorry. Could certificates for payment of up to 95% of the value of the work be honestly issued by any responsible officer unless he did share the view just stated by the witness? A. It would be quite impossible.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.

Q. In your experience in Kenya, has the value of the repairs which are required to be effected ever come up to the 5% retention. A. Never.

Examination
- continued.

JUDGE: Is that material? A. Possibly not.

10 MR. O'DONOVAN: In a work of this magnitude, and having regard to this kind of specification, would you, as a matter of practice, expect the work to be completed without a number of deviations? A. Quite impossible.

Q. And as a matter of normal practice would the Clerk of Works on the spot deal with these deviations? A. He would.

20 Q. Do you know Mr. Stone, who was the Clerk of Works? A. I have known Mr. Stone for a long time.

Q. For how many years? A. I should think almost 30.

Q. Is he a competent Clerk of Works? A. Very competent I consider.

Q. Is he the type of person whom a contractor would be able to hoodwink? A. I should think quite impossible.

30 Q. I think Mr. Stone will say that he had other works to supervise apart from this, but assuming that he spent a $\frac{1}{3}$ of his working day supervising this estate, the Plaintiff's contract, would that be sufficient for him to control it? A. Yes, he would be able to see all the defective material and defective work, I am sure.

Q. Would it conceivably be possible for the contractor to introduce inferior work to the extent complained of in Mr. Wevill's report by working surreptitiously after working hours or on Sunday mornings? A. No, there is no question of that.

40 Q. What control does a normally diligent Clerk of Works have on the quality of the mortar which is

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Examination
- continued.

being used? A. He presumably would examine it while it is being mixed. His main function would be to look at it when it was in the walls and test it after a few days and see that it had been apportioned sufficiently.

Q. Can he, in his normal diligence, control the quality of the mortar? A. Yes.

Q. Is that one of his duties to do so? A. It is a very important part of his functions.

Q. Would a normally careful and competent Clerk of Works be able to spot immediately any inferior mortar? A. Yes. He would have a lifetime's training of such work. 10

Q. Does an inferior mixture of water have any effect on colour? A. It does frequently, it depends on the sand. I am speaking in very general terms.

Q. But if the Clerk of Works on the site regularly inspects the mortar that is being used, would the colour, apart from anything else, indicate any inferiority? A. Yes, I think it would be one of the main things he would look for? 20

MR. O'DONOVAN: Thank you.

Cross-
examination.

Cross-examined by Mr. SCHERERBUCKER.

Q. May I just clear one point. In this case you have been employed by the Plaintiff and you have done some inspection on the site for which you obviously have to be paid a fee? A. Just the same as the Counsel.

Q. May I ask you to clear this point? Do you consider that you are bound by that to any particular duty? A. I do not, I have refused to take on work on more than one occasion because I could not support the client's contention. 30

Q. Do you approach the subject from the point of view of considering the client's contentions and deciding whether you can support them? A. I do. Before I take on a case.

Q. You do? A. In this case I examined the documents before I took on the job. 40

Q. You don't approach the subject quite objectively as an expert? A. I don't know what you mean.

Q. I understood you to say that you consider first the client's point of view and whether you can support them. Don't you approach the thing quite objectively as an expert? A. If I am not satisfied that the client had a sound case I would not support it. I am not clear what you mean by objectively.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Cross-
examination
- continued.

10 Q. The position is that you would be asked to make a report and you would look at the contract documents and you would make a report on the buildings as an expert? A. Yes.

Q. And your client would decide whether he ...
A. We would discuss the whole matter - and on the site - with everything examined - all the documents on the site. I was prepared to take it on.

Q. Does that mean that before you examine the work you form the impression that you would be able to support him? A. I could not do so until I saw the documents.

20 Q. The documents? A. I take on the job when I see the forms because when there were certain matters in these documents which you may think the client had a very sound case, and then I proceed to examine the work.

Q. You do have material before you which enables you to form the opinion which you may think gives your client a sound case before you examine the work? A. Yes, and I am prepared to tell you why.

30 Q. I am only trying to get at an understanding on some of the points I will come to. Did you, in the course of your examination of the work, prepare any sort of report comparable to Mr. Wevill's? A. I have made comments on

Q. That is not my question. Did you in the course of your examination of the work prepare any sort of report to your client comparable to Mr. Wevill's?
A. Not in perhaps such great detail, but I have prepared several reports for my client.

40 Q. Did you deliver to your client a report?
A. Yes.

Q. Which has not been produced? A. No, but

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.

Cross-
examination
- continued.

Q. There is no need for us to quarrel. I am only asking. A. You mustn't think I have done all this without going into the matter. Here are the various documents which I have prepared.

Q. You did prepare for your client more than one?
A. Yes.

Q. How many did you prepare for him? A. Three major reports.

Q. How many minor? A. We had correspondence.

Q. No! No! Minor reports? A. I don't know. I will have to look on the files. 10

Q. How many minor reports did you supply to the Plaintiff? A. There are three reports here. I don't know whether the minor ones were put in writing. They were discussed between

Q. My question is a simple one. Were there any minor reports? A. I am not quite sure about the rest of the correspondence.

Q. Can I take it that you don't remember? A. It is immaterial. 20

Q. May I take it that you do not remember whether you produced any minor reports? A. I don't remember.

Q. I put it to you that after you had the Plaintiff's instructions you visited this property about six times? A. At the time of the municipal inquiry. But since then I have visited it 20 times.

JUDGE: Up to the time of the municipal inquiry?
A. About 6 times before the municipal inquiry, and I should say at least 20 times in all up to the time of this case. 30

MR. SCHERMBRUCKER: Then, Mr. McConnell, these visits must have averaged about an hour each?
A. At least an hour. That would be the minimum.

Q. Do you mean to say that not one of these visits was less than an hour? A. Correct.

Q. How long would the longest be? A. About 2-3 hrs.

Q. All I want you to do is to study all the papers you can, and ask me for time if you want it. You are a much better mathematician than I am. I understand from your Examination-in-Chief that you have spent about 20 hours on the site? A. I have visited the site about 20 times and the minimum time would be an hour. Which means a minimum of 20 hours.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

10 Q. The wording of the evidence as I have it is at least 20 hours, in the aggregate.

Samuel McConnel.

JUDGE: Are you referring to the official inquiry?
A. Yes.

Cross-
examination
- continued.

P.W.2. I have not said 20 hours in the aggregate, I said

JUDGE: What are you referring to - evidence in Court?
A. Evidence in Court.

JUDGE: Examination-in-Chief? A. Yes.

20 MR. SCHERMBUCKER: The three written reports you mentioned. Were these prepared since the Commission of Inquiry? The Commission of Inquiry was in about February, 1956? A. My first one is a memorandum of November 26th, 1955. That was before the Commission. My second was a precis of the Commission of Inquiry Report.

Q. A precis? A. A summary of all the matters that arose at the Commission of Inquiry.

Q. Is that also one of the major reports which you made as an expert? A. Yes.

Q. What is the date of that? A. February 19th.

30 Q. Have you any notes of your own? A. These are my notes.

Q. Have you any field book? A. Once I make my report I destroy it.

Q. When you go and inspect these premises, don't you take a book to make notes? A. Yes, and then I have them typed.

40 Q. Then you throw them away? A. Yes, when I have satisfied myself that everything in the notebook is in the typed copy. That has been my practice for many years.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnell.

Cross-
examination
- continued.

Q. So you haven't any original notes here to-day?

A. That is not to say that these are incorrect.

Q. I am not saying so. The answer is that you have no original notes here to-day at all?

A. That is correct.

Q. If I may put this question to you. Your view of the municipality and particularly of its engineers is a very contemptuous one? A. I wouldn't say that. I don't know on what data you make this statement. I held strong views at the time of the Commission of Inquiry and I have no reason to deny those.

10

Q. I am giving you an answer to tell me. Are they good experts? A. I would rather not answer that. There is no reason for me to answer that.

Q. Let me go back to this. When you went down to inspect the work of Mr. Ataul Haq on the site, did you find it good, bad or indifferent. A. I found the work reasonably good and had complied with the specification.

20

Q. Would you agree with me that in reply to that self same question before the Commission you answered "It was of such quality that it had been approved by a galaxy of experts from the municipality"? A. That is correct.

Q. And you still hold that view? A. Yes.

Q. What do you mean by that? A. The Clerk of Works, African Housing Architect and the City Engineer - all these people constantly visited the site and presumably found nothing wrong because there is no record of any serious complaint.

30

Q. Do I understand that your attitude in this matter is that if there is anything bad it is not Mr. Ata Ul Haq's fault, it is the fault of this galaxy of experts, or do I understand that you are in a position to say precisely what the nature of the work is? A. Could you ask one question at a time.

Q. Certainly. I have got the impression, rightly or wrongly, that your view is that whatever was accepted by the galaxy of experts in the municipality is no further concern of Ata Ul Haq, and therefore you may not have inspected that work in detail? A. I did inspect in detail.

40

Q. So that it is not your point of view as an expert that there may be some bad work in this estate, but if there is it is the fault of the municipal experts? A. It is not part of my case that if the work has been approved by municipal experts then it is all right. That opinion is based upon my own observations.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Cross-
examination
- continued.

10 Q. I haven't got it quite clear yet? Let us put it this way. You are in a position to say that you do not concede that there may be bad workmanship in that estate which has been accepted by the municipal experts and therefore that finishes the matter? A. No, the fact that the municipal experts approved of the works I am not taking the view that because the municipal experts approved of the works it is necessarily good.

20 Q. No! No! No! Are you prepared to concede that there may be bad work in these blocks of buildings which has been taken over by the municipality, or do you say that there is no bad work? A. I admit that there might be bad work but I have not admitted that there is bad work.

Q. There might be bad work in these blocks where you have not been able to see it? A. Or anyone else has been able to see it.

Q. Never mind anyone else. We are only concerned with Mr. McConnel. A. I have not ... I should say, I cannot see through walls.

30 Q. But you are an expert? A. It is quite impossible for me to size up the quality of the work that is covered up.

Q. That is what I am saying. You say there might be bad work in these blocks that you have not been able to see? A. Yes, that is so.

Q. Your general opinion, do I understand it correctly, is that the work was done to specification? A. Yes.

40 Q. Accepting your point, we mustn't stray from the specification, are you in a position to say whether the contractors works were generally good or bad? A. I consider that the work was generally good and in accordance with the specification, that is the criterion. It has been

In the Supreme Court of Kenya

Plaintiff's Evidence

No. 9

Samuel McConnel.

Cross-examination - continued.

Q. I am accepting that standard. You say that the work was good. What has enabled you to form that opinion? A. My inspection of the work, my examination of the contract documents and the specification.

Q. Let us go back to the time of the Inquiry. At that time you were not in a position to say that, were you? A. Yes, I think I was. I had examined the works. I had seen all the documents. Yes, I was in a position to say so.

10

Q. Let me remind you that a question was put to you: "Was it good or bad?", and the answer to that: "I should say it was up to the standard of municipal requirements. Do you remember the matter going a little further: "Was it good or bad?" Your reply was: "I should say it was fair, in accordance with the specification" Would you stand by that or would you say it was good?

A. I should say it was good, reasonably good, in accordance with the specification.

20

Q. I am told I may be referring to something else, I am sorry if I am. Did you see any of Abdul Haq's work? A. Yes, lots of it.

Q. How did you think it compared with Ata Ul Haq's work? A. About the same.

Q. About the same? So what applies to one applies to the other. So to-day you say Abdul Haq's work was good? A. Fair. By fair, may I define it? Fair means that the work complied sufficiently well with the specification to be accepted.

30

Q. Fair means that? A. That is my definition of fair, I have seen jobs better than specification and some poorer.

Q. The position today is that Ata ul Haq's work is good? A. Good, based on the documents and specification.

Q. May I come to this point of specification. You said that the specification in this case was the lowest you had ever seen. Is it the lowest you could imagine? A. Very nearly. Could I say something. My view is that the only criterion is the lowest possible cost - nothing else mattered.

40

Q. Going back to the point. It was the lowest you had ever seen and very nearly the lowest you could

imagine? A. I am not referring to wattle door. Of masonry building Wattle door is lower still.

In the Supreme Court of Kenya

Q. Getting on to masonry. The stone you described is first class quarry dressed stone. Staying in the quarry for a moment. Can you get any better stone than that? A. It is all the same class.

Plaintiff's Evidence

No. 9

Q. Can you get any better than first class?
A. No, there is nothing better.

Samuel McConnel.

10 Q. Why do you put in extra words, answer the question? A. Sometimes you ask two questions in one and I want to answer the questions clearly.

Cross-examination
- continued.

Q. Good. What were the roofs of these blocks built of? A. Tiles and Kentiles.

Q. Would you regard that as better or worse than corrugated iron? A. Personally I prefer corrugated iron.

20 Q. What were the doors used in these buildings. How were the doors specified? Have you studied that specification quite often? Would it be correct to say that the doors specified were battened and braced doors? A. Framed and braced doors.

Q. Does that mean a lot of pieces of wood like flooring boards running down a bit with a cross angle piece on it? A. It means vertical boards and normally three horizontal pieces of heavier section which are secured to the hinges, and to keep the door from becoming distorted there are normally two angle braces at 45°.

Q. That is what a battened and braced door is?

30 JUDGE: Is a battened and braced door specified?
A. That is what I understand from the specification - "Framed, ledged and braced".

MR. SCHEERMERUCKER: Have you known specifications where doors have been battened and braced in your experience? A. Yes.

Q. Would that be a lower specification than the one we are dealing with here? A. Let me get you right. You say that if it is framed it is a higher specification than the other form?

40 JUDGE: I haven't followed this. Your question was: "Have you known doors which were battened and framed without being braced?"

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McConnel.

Cross-
examination
- continued.

MR. SCHERLBRUCKER: I am sorry, My Lord, the doors specified in this case are framed, ledged, braced and battened. The witness says he has known specifications where the doors were to be battened and braced, and my question Is that not a lower specification than the one in this case?
A. Lower than this.

Q. In these blocks, we have heard already that there was to be a screed. By screed I think I understand a mixture of sand and cement laid on top of a concrete base? A. Yes.

10

Q. Have you known specifications where the screed is omitted and the floor is left as a concrete floor? A. I don't think so. I have seen some all concrete floors. No specification produced by a responsible authority would omit a screed.

Q. Can you go back to my question? You have had long experience. Have you known of any specification where the floor is specified without a screed, that is a concrete base? A. I don't think so. It might be in the case where traffic ran straight over a rough concrete road. For dwelling houses or anything domestic, always a screed.

20

Q. Does the answer really add up to the word "No"?
A. Could you repeat the question?

Q. Have you known of any specification

JUDGE: You had better specify dwelling-houses.

MR. SCHERLBRUCKER: Have you known of any specification in a dwelling house or comparable building where the floor did not contain a screed?

A. No, I haven't.

30

Q. I put it to you that quite often in this type of building of African quarters the screed is omitted. Don't you know that? A. Not in my experience.

Q. Your experience is more concerned with water than mortar? A. I have been a P.W.D. engineer. I do also do a certain amount of water works, that is correct.

Q. That is your main job? A. I have spent half on housing and half on water.

40

Q. You have often given evidence on behalf of the City Council? A. Can you remind me of some. There might be one or two.

In the Supreme Court of Kenya

Q. We won't waste any more time. You are really 50/50 water and mortar? A. Not only water.

Plaintiff's Evidence

Q. Shall we say 50% water and 50% all other types of engineering? A. I don't profess to be a specialist in all other types. I am a qualified civil engineer. The types of civil engineering on which I am most interested are water supplies and structural buildings. But there are other branches I don't touch.

No. 9

Samuel McConnell.

10

Cross-examination
- continued.

Q. Provided you have a good solid foundation, in your opinion would it be possible to construct a building comparable to this estate with a mortar mix of 1:6 below the ground and 1:8 above? A. I wouldn't like the 1:6 below the ground because of the water, because it is a water-logged site. Above the ground I know of buildings 10:1 mortar.

20

JUDGE: You accept, in fact, that 1:8 above ground is adequate? A. I know of cases 10:1 above the ground.

Q. Do you accept that 8:1 is all right? A. I would even accept 10:1.

Q. 1:6 below ground is hardly adequate? A. If the ground wasn't waterlogged, I think it would be.

MR. SCHERIDBRUCKER: Have you ever known it specified by anyone else? 1:6 below the ground?

30

A. No, I know of a very fine house which is 10:1 mortar and the Government tried to purchase

Q. If you did have these proportions, I take it you would insist on clean sand? A. I should be very particular.

Q. And you would be very particular about a solid base on which to put the foundations? A. Yes, I have always taken good care of that.

Q. What was the concrete specified for this? Can you remember? A. I think it was 1:4.

40

Q. And the No. 10 for the reinforced stuff was 1:2:4.? A. That is correct.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McDonnell.

Cross-
examination
-- continued.

Q. Do you know of specifications weaker than 1:2:4 for comparable concrete? A. Not for reinforced concrete.

Q. Going back to your visits at the site. I think it was November, 1955, you made an appointment to visit the site with the municipal architect and your client? A. I do recollect going round with Mr. Mould.

Q. And the Clerk of Works, Mr. Goodwin? A. Yes, I know Mr. Goodwin. 10

Q. On the occasion of that visit, you remember that Mr. Goodwin was taking cuts on the instructions of Mr. Mould? A. I didn't take particular notice.

Q. I will help you, I am very helpful. A. Thank you.

Q. You will remember on various occasions as you went round the estate, Mr. Mould making this remark to you: "Good or bad, Mr. McDonnell", pointing to bits of work? A. I cannot remember. I would not have answered him. 20

Q. I am only asking you. You can say you don't remember if you like. If you prefer you can say you didn't do it. A. I couldn't

JUDGE: Would you just confine your reply to the question? When you answer just reply to the question.

MR. SCHERMBRUCKER: My question doesn't refer to your answer at all. It merely says do you remember on any occasion looking at bits of the work when Mr. Mould said to you: "Good or bad, Mr. McDonnell"? A. I do not remember. 30

Q. He might? A. It is possible but I have no recollection.

Q. You don't remember and you don't think he did it? A. I don't think he did it.

Q. Do you remember making a response to that question at least once, if not more? You had an architect and a Clerk of Works on the site? A. I do not remember making any response. 40

Q. Do you think you might have made a response?
 A. It is extremely unlikely because I would have considered it inadvisable.

In the Supreme
 Court of Kenya

Plaintiff's
 Evidence

No. 9

Samuel McDonnell.

Q. Do you remember reaching a climax when your client, the Plaintiff, Mr. Ata Ul Haq said: "Show me any mortar which is more than 1-15"? A. I haven't the slightest recollection of it and I do not believe it was said.

Cross-
 examination
 - continued.

10 Q. Do you remember whether Mr. Mould asked Mr. Goodwin to make a special note of that? A. I don't remember anything about it at all.

Q. Do you remember telling Mr. Ata Ul Haq not to be so rash? A. I did nothing of the sort.

Q. That was the only visit that you made in company with Mr. Mould? A. That is quite probable. There might have been another.

20 Q. You were aware that Mr. Mould was the recognised architect on the job from the date of that visit until he left the Council. Covering all the material time of this case? A. Yes.

Q. But you must have made some 20 visits altogether.
 A. Yes.

Q. Is it not usual in the profession when you visit the site to ask the architect in charge to be present? A. I did notify the municipality. I was appointed to do this work and I would have to visit these works and they didn't offer any objections. I was

30 Q. Is it or is it not usual in a case like this when you need the architect, to ask him to go along with you? A. Yes, and I did ask him to.

Q. Was there any occasion when you asked Mr. Mould and he refused? A. No, but they were always very busy and it was difficult to make an appointment.

Q. On the one occasion when he was there in your company how long did you spend there? A. Not very long, possibly an hour.

Q. It might have been two hours? A. I think it was a short visit.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McDonnell.

Cross-
examination
- continued.

Q. So it was a very cursory visit? A. I didn't think I should discuss the details very much with Mr. Mould in view of the

Q. Was it a matter of keeping the details till a later date when he wasn't there? A. No, there were no secret visits. I wanted to see it unencumbered and to make my own judgement.

Q. Let us go back to the visit I am talking about. Just a cursory visit? A. Yes, it wasn't a very detailed visit.

10

Q. Would you agree that at the time of the Court of Inquiry you were not really in a position to give a considered opinion of the nature of Ata Ul Haq's work, or not? A. I was.

Q. But up to that time you had only done about six visits hadn't you? A. Yes, in the course of these visits if you experienced, you can very quickly form an opinion.

Q. And you say, think of this because you are an expert, at the date of the court of inquiry you were in a position to give a considered opinion on Ata Ul Haq's work? A. Yes.

20

Q. Can you tell us just what the reasons for the subsequent 20 visits were? A. Various matters raised by my client and in view of the fact that there was going to be legal proceedings I felt I needed a closer knowledge.

Q. On what particular point did you need a closer knowledge? Why were another 14 visits necessary? A. The client came to me repeatedly and asked me to go down and have a look at them.

30

Q. If he had not come to you and pushed you into it, would you have considered it necessary to go any more yourself? A. If I knew that legal proceedings were pending I would have felt that it was necessary to go down and examine the work even in greater detail. For example, if I knew I was going to be cross-examined

Q. By me! Can we try to get the picture clear? Can you summarise the extra points covered by the subsequent 14 visits? A. Mostly mortar, the question of the damp course, and the question of the hoop iron.

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Q. Mortar, the floors, hoop iron and damp proof course. Those were the four main items? A. Yes, mortar was the predominant one.

In the Supreme
Court of Kenya

Q. Just to get this logical. Does it mean that at the date of the Court of Inquiry your considered opinion could not have considered these 4 points?
A. It could.

Plaintiff's
Evidence

No. 9

Q. It could? A. Yes, I gave a considered opinion.

10 Q. You are aware that the Court of Inquiry took an opposite view? A. They didn't agree with me.

Samuel McDonnell.

Q. By reason of your subsequent 14 visits, did you have to alter your considered opinion given as at the Court of Inquiry. A. No, not at all.

Cross-
examination
- continued.

Q. I think you said it was about November that you got your first instructions from Mr. Ata Ul Haq?
A. Yes.

Q. Did you write any of these letters for him after that date? A. No.

20 Q. There was a lot of correspondence between the Plaintiff and the municipality. Have you seen them?
A. I have not seen them. He may have consulted me about approving such letters.

Q. But you would only have done that since some date in November? A. As far as I know it was a long time ago. Can you show me some to refresh my memory. I remember particularly the one about crowbars.

30 Q. I am sorry. It is all solicitor's correspondence. You didn't help him with any correspondence prior to his visit in November? A. I cannot have done before he instructed me to. I do recollect that he had sent a number of letters to the municipality before he engaged me.

Q. You didn't have a look at the correspondence at the time? A. He did show me some. But I had nothing whatever to do with them.

40 Q. When you got your instructions, what did you concern yourself with? A. I said I wanted to see the specification and any certificates which had been given by the municipality.

Q. Was there a bill of quantities? A. No.

Q. Specification and certificates? A. I remember these were the two things which were of vital interest to me.

Q. Why were the certificates of vital interest to you? A. Because if the certificate had been given as evidence that the municipal staff concerned had satisfied themselves that a sum of public money had been earned

50 Q. Yes? A. I think there was a specification.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No. 9

Samuel McDonnell.

Cross-
examination
- continued.

There were a number of certificates signed "Correct" by the City Engineer. I therefore assumed there could not be very much wrong with the work if he had given these certificates and my client had a very sound case.

Q. Is that the sum total of the reasons for your regarding the certificates as of vital importance?

A. That was one reason.

Q. Give us another. A. I have always regarded the granting of certificates as proof that the work was accepted as complying with the specification.

Q. You will agree with me that that is a legal aspect? A. It is also one with engineers who deal with contracts. It is always assumed that a certificate is an absolutely sound document.

Q. Did that fact have any particular effect on the engineering aspect of the matter? A. I don't understand.

Q. Let me put it this way. If you had a certificate telling you that a certain quantity of work had been taken over from the architects (?) would you say that that relieved you from looking into that work? A. Relieve me?

Q. Relieve you. A. I didn't, just because these certificates had been granted, assume that they were proper ones.

Q. What engineering aspect is there on these certificates, apart from the legal aspects? A. An engineer who is granted a certificate would have considered that the person giving the certificate was absolutely satisfied that the work was up to specification and was therefore entitled to that sum of public money.

Q. What effect had that on you as an expert, as an engineer? A. It didn't affect my assessment of the value of the work at all, but I was amazed, more than amazed, to find work for which certificates had been granted for about 90% should afterwards be considered to be completely unsuitable and not in accordance with the specification.

Q. Let us get back to when you were instructed to look into the matter. What were your instructions?

A. My instructions were to examine the documents and then to inspect the work and to discuss the matter with my client.

Q. So a certain number of documents were handed to you? A. The specification and certain correspondence that had taken place with the municipality and certain certificates supplied by the engineer. Files of notes. Letters of various sorts.

Q. Were those handed to you or did you call for them? A. They were brought to my office.

Q. You did not have to call for the certificates or specifications? A. I asked him -- as soon as he wanted me to do the case I asked for the whole of the documents.

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Q. He brought you the specification and certificates which you thought were the most important? A. I thought they were all of paramount importance.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Resumed 2.15 p.m.

Cross-Examination: MR. SCHERMBRUCKER:

SAMUEL McCONNELL: (on former oath)

Samuel McConnell
Cross-examined continued.

Q. In 1955 - November, you arranged with the City Engineer to visit the site? A. Yes.

10 Q. And you went to blocks 30, 37 and 38?
A. Yes.

Q. Who was with you on that occasion? A. So far as my recollection goes, his representative was Mr. Mould.

Q. This is the same occasion we mentioned before?
A. Yes.

Q. Was that the occasion when you did a cursory examination of all the blocks? A. Yes.

Q. That is where you stated you noticed mortar being removed by crow-bars? A. Yes, that is so.

20 Q. Did you spend more time in blocks 30, 37 and 38 than in the others? A. No, I do not think so. I think we spent about the same amount of time in each.

Q. And Exhibit 59 was the letter you wrote on the 5th December, 1955 to the City Engineer (Quotes) "of the 17 blocks carefully examined", was that after your visit with Mr. Mould?

A. Yes, after my visit.

30 Q. Who were the two other technical experts?
A. Mr. Sutcliffe and Mr. Mellon who is the Architect.

Q. Mr. Mellon, was he at one time in the City Council? A. I believe he was.

40 Q. "You were very surprised to see the heavy hacking which was taking place at the joints involved ... damaging the timber work". Now we have already referred to the reply - Exhibit 60 of the 13th December, in which the City Engineer replied "Councils labour Works Superintendent" was that not correct? A. Well, I have never heard anything defined as 'raking-out' tool,

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

but it was a barbarous tool which was used for the purposes for which it was employed.

Q. We all know what a crow-bar is. A. This might have been a short crow-bar.

Q. How short do they come? A. 18" up.

Q: This was 18". A. Well, it might have been. I did not measure it.

Q. Would you accept that it was 18" long?

A. Yes.

Q. So, at any rate, it was a piece of iron 18" long. Was it hooked at one end? A. It was pointed I know or chisel shaped. 10

Q. "Councils labour is raking out to a depth of one inch". Did you refer to the specification when you got this letter? A. I studied it in respect of this.

Q. Is that correct, the Engineer's statement?

A. What statement?

Q. "In the original ... to one inch"? A. That was a provision he made after the work had been completed, that was not part of the original specification. 20

Q. Was it not? A. No. That was something he required to be done later. I think there is a letter the Engineer wrote.

Q: Do you remember whether you referred to the original conditions when you got this letter?

A. I do not know. I think I referred to his original letter. He gave these instructions independently to the specification so far as my recollection goes. 30

Q. Was there a requirement to rake-out to a depth of 1"? A. In the original specification?

Q. Yes? A. No. Nothing at all.

Q. Was there in any subsequent? A. I think there was, in the letter the Municipal Engineer wrote, but it was not part of the original specification.

Q. Did you actually see the mortar being raked out? A. Yes.

In the Supreme Court of Kenya

Q. And he says "in some cases mortar was so weak it completely ran out of the joints"? A.I did not see that.

Plaintiff's Evidence

Q. But your inspection was very cursory? A.No, I examined it when the joints were being raked-out and I saw no signs of the mortar running out of the joints. I did not merely see raking-out of the joints on that occasion but on several occasions.

No.9

Samuel McConnel Cross-examined continued

Q. But I think you told us your visit on this occasion was cursory, you spent no more time in blocks 30, 37 and 38 than you did in the others? A. Yes I went round.

JUDGE:

Q. Does the letter of the 5th December refer to more than one visit "the blocks have been inspected recently by two technical experts beside myself?"

Q. This other visit with the other two technical experts, did they follow soon after your visit? A. Yes.

Q. Well then, you had, before you received that letter - Ex. 60 made quite a careful examination? A. I thought I made a number of careful examinations.

Q. By the time you got this letter? A. Yes.

Q. You had a good look at the mortar? A. I had a good look.

Q. And you did not find any "that was so weak it would run out?" A. That is not so.

Q. Did you ever put a knife into any of this mortar? A. Yes. I used a knife.

Q. Did you ever find when you put a knife in there was any place the mortar ran out as sand? A. No.

Q. How many places did you put a knife into?

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In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

A. I should imagine two or three dozen.

Q. Now you said you had never seen a lower specification of masonry; by that you are referring to the stone or to the stone plus the mortar? A. Stone is stone, masonry is stone when it is put into the shape of the walls with mortar.

Q. Was that stone plus mortar? A. Yes.

Q. But you do agree that there can be cases of a lower specification of mortar? A. Not by a Public Body, but private individuals have used lower grades of mortar and quite successfully.

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Q. Now let us deal with the stone. The stone here was first quality quarry dressed stone? A. Yes.

Q. With all corners square and regular? A. Well it is a contradiction in terms. If it was quarry dressed, the corners could not be square and regular.

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Q. Do you say it is impossible to have quarry dressed stone with the corners square and regular? A. It is not possible as a commercial proposition in Nairobi. You cannot buy it in this condition.

Q. Is it not possible for a stone cutter to take quarry dressed stone, shall we say 9 x 9 and give it a little more attention which ensures its corners are square and regular? A. It requires a good deal more than a little, it requires a great deal of attention a great deal of dressing and additional labour.

30

Q. In order to get the corners square and regular it needs a great deal of dressing? A. Yes a great deal.

Q. But somewhat less dressing than would be required to dress the whole stone? A. Yes. Just a little.

Q. Just a little? A. Because - may I explain - when you shape a stone up the first thing you have to do is cut its chases along the corners

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so that you can define the levels with which to dress the rest of the stone and there is a lot of work in defining corners.

Q. Do you start from the corners? A. Yes. You have to chase along the corners of the stone to get the shape and then you dress the rest of the stone's surface.

Q. You would start with one end of the stone and square round the corners? A. Yes.

10 Q. And if you were dressing the whole of the stone you would then go straight through to the other side? A. No, you dress the other side first.

Q. So then you go to the other end and you dress the other end? A. Yes.

Q. Then you have a quarry dressed stone with each end square and regular - 9 x 9? A. The ends may be square but the rest of the stone is not square.

20 Q. Exactly. So what you leave out is the bit between the two corners, which would make it irregular. So therefore you could get a quarry dressed stone with each end dressed, corners square and regular? A. Yes.

Q. And you could either dress the bit in between or you could leave it undressed? A. If you wish.

30 Q. So that Mr. McConnel, you would agree then that it is quite possible to comply with this specification? A. No, I would not.

Q. Why not? A. Because, merely dressing the ends of the stone it is possible in between the two ends there might be a huge hump.

Q. In between the two ends is something - something other than the ends? A. Yes.

Q. So that you can have a stone with the ends and the corners nevertheless dressed and regular.? A. Yes.

Q. And in fact the stones in these buildings

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

were not dressed and regular as to the ends, they were just quarry dressed stones? A. Yes.

Q. So that in that respect they fall below Specification? A. I am afraid I do not agree with you.

Q. Well now have you agreed that the specification does say corners shall be squared and regular?

A. I have said that it is a contradiction in terms. You cannot have quarry dressed stone with the corners square and regular. It is impossible. 10

Q. I thought you just told me that with a lot of extra work in dressing you can, you on site, dress the ends so that they were regular and square.

A. That would be quarry dressed stone.

Q. No, that would be quarry dressed stone with the ends square and regular? A. Might I

Q. It would be possible to take stone which is quarry dressed in the first instance and get so far as having the ends dressed square and regular, so that all the eight corners were square and regular? A. Yes. 20

Q. And you could go further and dress the whole stone? A. Well if you do not dress the whole stone I do not see how you could make a job of it.

Q. You told us the practice of dressing stone is to do the two ends first? A. Yes.

Q. That would leave you with eight corners square and regular? A. Yes.

Q. And then dress in between these two ends and the whole stone would be dressed? A. That is so. 30

Q. But if you stop short after doing two ends, you would have a quarry dressed stone with the corners square and regular? A. Yes, you would.

Q. And what I would suggest is that you did not find any stone like that in these buildings?

A. I am sure some of them had a certain amount of stone dressing, but what I do maintain is stone which were treated in the way you suggest would not be any better.

Q. That does not matter. I am only asking you facts. Now, what do you say? A. Yes. 40

Q. What I am suggesting is you did not see any stones in this site to conform to what you have just described to us - quarry dressed stone with the corners square and regular? A. No, they were normally

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell Cross-examined continued

Q. Not normally - I said you did not see any in this site? A. No.

10 Q. Now, I think you said that the specification provided for the floor to be 3" in places, tapering down to 1 1/2" in other places? A. That is the ablution blocks.

Q. That was in the specification? A. It was in the drawings.

Q. Did you find any floors which were even less than 1"? A. I certainly did not.

Q. How many floors in the ablution blocks did you inspect? A. I saw the lot. I went round every building.

20 Q. Were you able to measure the depth of them? A. I cannot look at it and see 1" or 3" or 6".

Q. Were there any of these floors in which you could see what the depth of the floor was? A. I could not see unless it was opened up.

Q. So you are not in a position to say whether floors in the ablution blocks conformed to the specification or not? A. I presume they

Q. You, yourself, are not in a position to say whether they did or did not?

JUDGE:

30 Q. Did you see the floors opened up in the ablution blocks or constructed? A. No.

Q. You are not in a position to say whether floors in the ablution blocks complied with specification or not? A. They were except....

Q. Are we perhaps getting into difficulties over this. With regard to blocks 25 to 36, did you assume that these were all right because they had been passed by the City Council Officials? A. Not necessarily.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. Now the roofs of the ablution blocks. You told us you got two pieces of wood - like that and put them together - (Mr. Schernbrucker demonstrates) and a lot depends in that construction on the positioning of the collar and a lot depends on the soundness of the construction of the masonry in the building. You told us it would be a bit difficult to avoid cracks in this specification.

A. In what connection did I make that statement?

Q. In talking about the specification. A. Cracks in the floors - yes. 10

Q. Is that what it is. It would be a bit difficult to avoid cracks in the floors in this specification, but in this case you would not say it was impossible to avoid these cracks? A. In my experience I have never had to deal with such a weak screeding.

Q. The screeding was not weak was it? A. Well..
.....

Q. Your own samples show a very good screed? 20
A. Yes - from one particular floor. It does not prove they were all the same.

Q. Do you know one floor that was not? A. I know floors were specified 4:1. The floor from which I took a sample was very much better. Whether the others were better I do not know.

Q. I am not asking if any were better. Do you know of any floor in these buildings that was worse than the sample shown? A. None of those I saw opened up. 30

Q. So samples were better than the specification of the screed? A. Yes.

Q. When you are talking about cracks; that sort of result that you got from your samples they vary from 1 to something just under 3 do they not, and 1 to a fraction of 1"? A. That is so.

Q. You said it would be a bit difficult to avoid cracks on this specification. Were you referring to the screed? A. Both the screed and the concrete floor. 40

Q. Now in this case you said "a bit difficult".

It would not have been impossible to get a floor on this specification without cracks would it?

A. I would not guarantee it.

Q. You see you have said quite emphatically, impossible? A. Well I think it is pretty well impossible.

Q. Now there are lots of factors that can cause cracks in floors? A. Quite a number.

Q. Where mix varies? A. Yes.

10 Q. Where it is applied quickly after it is mixed or it is applied rather a long time after it is mixed? A. Yes.

Q. And in that respect would you say that when you are laying a floor it is always a little difficult to avoid cracks? A. Not if the floor is a reasonably small one and you use a reasonable thickness of concrete and the screed is about 2 or 3 to 1 at the outside.

20 Q. Now coming to the actual work in this case. Your own examination has given us a very good screed? A. The particular floor on the sample - yes.

Q. Were there cracks? A. Most of it had been pulled up because it was supposed to be defective.

Q. What block was that? A. I do not remember, but I brought along the Clerk of Works who saw it. It was one he had started to demolish.

30 Q. It was one of a group? A. Well they had started to demolish quite a number, but I was very much struck with this one because it seemed a complete waste of money to demolish it.

Q. All the correspondence refers to blocks by number? A. Yes.

Q. Would you say, as a result of your examinations and inspections you know these numbers and can identify the blocks? A. If you let me have drawings. I have other work to do besides this particular one.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell
Cross-examined
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. In March, 1956 you visited the site, when there were excavations at the external walls?

A. Yes.

Q. How many excavations were there? A. I should imagine about 20 or so.

Q. Did you transcribe from your pencil notes on to any of your typed sheets, how many there were.

A. I did not.

Q. Would you accept it from me there were 54?

A. There might have been. There was at least 20 so far as my recollection goes.

10

Q. Do you know that Mr. Wevill and Mr. Tysall state this? A. I saw it before Mr. Wevill came on the scene, therefore probably these were not the holes to which he referred.

Q. I refer to March 1956. A. I did not see Mr. Wevill on the works.

Q. Do you know these holes were kept open quite some time? A. It is possible.

Q. Have you any idea how long? A. No, I did not see Mr. Wevill's holes.

20

Q. I am talking about your holes in March 1956?

A. Yes, I know, quite a time.

Q. Have you no idea how long? A. 3 weeks possibly, perhaps more.

Q. I think you said you examined all these holes - is that right? A. I did not examine Mr. Wevill's holes.

Q. He was in the P.W.D. too was he? A. Yes.

Q. Now, do I understand there was no place exposed in any of these holes showing foundations were resting on black cotton soil? A. That is so.

30

Q. You did tell us that a man with any practice might miss little pockets? A. What I meant was the surface of the rock is very rough, irregular and there might be patches of 2 or 3 square inches where black cotton soil has not been removed, but it is negligible.

Q. If Mr. Wevill says there were places where foundations were not down to hard substance, can you suggest any reason for the difference in opinion? A. What do you mean by hard substance?

Q. Well there were places, where I am told, it was resting on black cotton soil. A. Well I never saw such places.

10 Q. Did you miss any? A. I am quite sure I did not.

Q. What was the substance that you found the foundations rested on? A. Rock and disintegrated rock - all of it perfectly suitable for foundation.

Q. Now black cotton soil has some very special peculiarities? A. Yes.

Q. It dries up in dry weather and shows big cracks? A. It moves with the change of moisture content.

20 Q. And in the rain fills up and swells? A. Yes.

Q. And if you had a building on black cotton soil with cracks in it the tendency would be in the wet weather for these cracks to close up and the building to tighten? A. I do not think cracks ever really clear up. They usually remain and get bigger. I have never seen a crack which black cotton soil has closed up, in my life.

30 Q. Have you seen ground where black cotton soil has been exposed? A. Yes.

JUDGE:

Q. Are you talking about cracks in the soil or building.

MR. SCHERMBRUCKER:

I just previously spoke about the cracks in the building that in wet weather, buildings on black cotton soil would have a tendency to close up.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnel Cross-examined continued

JUDGE:

Q. And close the cracks in the building?

A. In my experience cracks always widen and get wider all the time.

Q. Now leaving the building for the moment. It is quite a thing is it not, to see black cotton soil on the ground where you can put your hand or foot in the cracks and in the wet weather they are not there? A. In the black cotton soil.

Q. Is there not a tendency also where a building is on black cotton soil for the whole building itself to tighten up in the wet weather? A. No In all the buildings I have had experience of when it gets wet the cracks continuously get worse, they do not move like thermometers. Once you get cracks in black cotton soil buildings; whether it is wet or dry they get worse.

10

Q. If you had a building with very warm water in the ground got very wet round about it, is there a tendency for bad mortar to absorb the water almost like a sponge A. I do not think it would get a because on the outside

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Q. I am asking you to assume the moisture gets to the mortar. If you have a building with very warm water in it, is the mortar apt, coming into contact with the water, to soak it up like a sponge? A. Water only gets in a very short distance.....

Q. Where water comes into contact with the bad mortar is there a tendency for the mortar to absorb the water? A. Yes.

Q. It is a fact is it not? A. Yes.

30

Q. Now, in the dry weather, is the tendency for cracks, if there were any, to open rather than close? A. Yes.

Q. Now does the contract provide for hoop-iron to be laid I think, every second row? A. Yes.

Q. Wouldn't the effect of that be to strengthen the building and prevent cracks? A. It would have slight effect I have never used hoop-iron in any masonry work. I have never done in Kenya, it is not very effective

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Q. Do you not build a water tank with bricks?

A. Yes.

In the Supreme
Court of Kenya

Q. And do you not, usually put two bands of hoop-iron round the water tank? What is the purpose of this hoop-iron? A. Personally I never use it, I think it produces so little effect I never use it. It has some slight effect
.....

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

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Q. So slight effect? Let us put it this way. Its tendency would be to strengthen rather than weaken the building? A. Yes.

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Q. There could not be any other reason? It does not improve the look of the building? A. Well there might be a reason. When I was young and worked in England it was customary to put hoop-iron in every fourth course, in bridges and such like, but it has gone completely out of use in England and the only use I can think of in Kenya is because somebody got an aged specification in England and used it. I think mortar is much more important than hoop-iron. I would like to make an observation - I was trained in England and I value English training very much.

Q. Now, even if you disagree with it, you have seen Mr. Wevill's report? A. Yes.

Q. It is quite a long document? A. Yes.

Q. He has gone into the matter in some detail? A. Yes.

30

Q. And would you concede to me that he must have spent some time on the report to produce what he has produced? A. Yes I have not the slightest doubt about it.

Q. Have you made any detailed estimate as to the amount required to put the building to specification now? A. No, nor has anyone else so far as I am aware.

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Q. "nor has anyone else so far as I am aware" - that I cannot understand. I only asked you - have you? A. No.

Q. Mr. Wevill has? A. No. I have seen no

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

details. I can see large sums of money, but no details as to how they are arranged.

Q. You did tell us it could be done with the 5% retention money? A. Less than that.

Q. This general statement without any of the detail even Mr. Wevill gives, have you got any two items in it? A. I cannot see any items, no it is based upon my knowledge of building and my examination.

Q. You told us you did not see any serious underpinning. Did you see any underpinning at all? A. I did not. I do not think there was any done. There was no room to get any underpinning in so far as I could see.

10

Q. Now you say the City Council had touched up the gable ends about the time of the court of enquiry. What precisely did you mean by that?

A. They apparently raked-out the joints, done a certain amount of dressing and covered it over with a good layer of plaster. You could not see the joints and the stone work.

20

Q. Would what you saw be consistent with this statement "They raked-out the external walls 2" they took out some mortar and put in some more"?

A. No. They did a great deal more than that.

Q. Would they have done as much as that? A. They may have done, but what I saw when it was completed is the only thing I can tell you.

Q. Would what you saw be consistent with the statement that they did in fact rake out the external walls, take out mortar and put in other mortar? A. Yes, that is right.

30

Q. Now if there was poor mortar in the outside of these walls and one raked it out to the depth of 2" and put in good mortar would you agree that the effect of that would stop any moisture penetration into the walls? A. I would not like to say.

Q. Well, lets take it slowly. If there was poor mortar by that I mean even poorer than this specification - in the external joints of the wall, would that create a tendency for moisture to go in? A. Yes, there would be some penetration of moisture into the wall.

40

Q. Now if you were specifying a good building, what specification of mortar in the external walls would you prescribe? A. I would accept 6 to 1, but I would point walls with at least 3 to 1 of mortar to a depth of say $\frac{1}{2}$ " or $\frac{3}{4}$ ".

Q. And if you did 6 to 1 with pointing of 3 to 1, you could rest assured that the moisture would not penetrate into the walls? A. Well there would not be any serious penetration.

10 Q. If your mortar was, shall we say 1 to 15 would there be serious penetration? A. I doubt if the building would stand up.

Q. Never mind if it would stand up, would there be penetration? A. Yes there would be a terrific lot.

Q. And if it was even worse than 1 to 15 it would be even greater? A. I do not think that could happen.

20 Q. Now then you have told us that after the contractor stopped working on these blocks the Municipality went in and did some work. Can you tell us what they did? A. Well they proceeded in a very bad and irregular manner. There was no system. They proceeded to take out a lot of the pointing and re-point.

Q. On the outside? A. Yes.

Q. The external walls? A. Yes.

Q. What else did they do? A. They worked on the floors. They broke some of them up.

30 Q. Which blocks? A. One particular place was the one in which I took samples. They were spread over half a dozen blocks. There was no system about it, it was higgledy-piggledy, all over the place.

Q. When they took out these floors, what did they do? Leave them out? A. No. They laid new floors.

Q. Did you see them laying the new floors?
A. I did.

40 Q. Do you know what they put into the new

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

floors? A. Material similar to the Specification.

Q. What does that mean? A. That is 3" - 6 to 1 concrete and the screed 4 to 1. I was not there when the concrete was mixed or screed mixed.

Q. So personally you do not know, you only know they took out and re-laid? A. I was told

Q. What do you know? They took up floors and put them down? A. Yes.

Q. And nothing else? A. I think they did something to a few steps and I am not quite sure whether they repaired drains or not. 10

Q. Did you take any samples of their work? A. No.

Q. Did you have access to any tests made? A. Yes, I suppose I could have taken samples had I wished.

Q. You did not take any samples of their work yourself? A. No.

Q. Did you have access to any samples of their work taken by anybody? A. No, I did not.

Q. And yet you say that the Council's work was even worse than the contractors? A. Yes, because we sounded some of the floors for a complaint about the floors being hollow and some of their floors were more hollow than those done by the contractor. 20

Q. That is what you meant by it? A. Yes.

Q. Which of the contractors floors were hollow? A. Well there were several of them sounded a bit hollow, I cannot say how many - about half a dozen probably.

Q. Were they the ones the Council took up and replaced? A. I think so. 30

Q. You told us you had examined foundations - some foundations? A. Yes.

Q. Your opinion was that they were adequate? A. Yes, that is so.

Q. You went on to say that if owner had any complaint he should have complained at the time when the foundations were laid? A. Yes.

Q. Now when you say foundations were adequate was that where you had samples of them or were you expressing a general opinion? A. From what I saw of the whole material exposed was such that

Q. It was a general opinion based on general inspection? A. I expressed my opinion on a visual inspection of some 20 holes.

10 Q. You could not tell us whether there was any mortar in these foundations that was of a higher specification than 1 to 4? A. I did not take any samples out to test.

Q. Is that why you could not tell us whether there was any mortar that was below that specification? A. Not by visual examination.

Q. What does the specification say about excavating for foundations?

(File handed to witness)

20 Q. (Mr. Schermbrucker quotes) "the whole area covered or filling proceeds". Now although you think it is insignificant, I think you will agree that you did see black cotton soil under the foundations? A. In areas possibly covering 3 or 4 square inches.

Q. Now when excavations had been done the specification required a concrete footing?
A. Yes.

30 Q. Do you know from your examination from the technical side whether there was any provision as to depth of and width of that footing?
A. I cannot find anything (consults file).

Q. You never came across any such provision?
A. I cannot find anything.

Q. Now I do not suppose you examined any of these concrete footings did you, or had them analysed? A. I looked at them.

Q. You looked at them visually? A. Yes and scraped some of the concrete.

Q. Did you have that analysed? A. No.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. So you are not in a position to say whether it was 1:3:6 or not? A. No.

Q. Would you be in a position to say that in some places the thickness of this concrete footing went down to as low as 1" to 1½" A. I saw nothing like that.

Q. Going by the specification, should it be possible to pull out any of that concrete by hand?

A. No.

Q. Were you ever present when that was done?

10

A. I was not present when that was done.

Q. I do not want to get muddled over these holes. There were 54 holes open down to foundation bottom on one occasion? A. Yes, it is quite possible.

Q. You might have looked at 54? A. I did not examine the work when Mr. Wevill was on the job. I have never met Mr. Wevill on the job and I have not examined any work he has done.

Q. You only looked at 20 holes? A. Something like that.

20

Q. Then I suppose I can take it that in these holes you looked at there was no concrete footing that you could pull out by hand because it was so weak? A. There might have been I have no knowledge of that.

Q. Now you refer to the stone on the Town Hall, the New Town Hall that is being built outside (quotes) "the Town Hall stone has been chisel dressed on the site". I looked at it. The outside looks as though it is rough-faced? A. It is what is known as rock-faced. The face and side and backs are dressed and after that rock-face finished.

30

Q. So that on the outside of this stone you would have at each end, square corners, but in the middle rough dressed? A. That is what is always known as rock-faced.

(DRAWINGS BEFORE THE WITNESS)

Q. So specification for this foundation footing below the walls is 18" wide and 6" deep? A. That

40

is shown on the drawings, there is no reference to it in the specification.

In the Supreme
Court of Kenya

Q. Have you any reason for suggesting that these drawings were not supplied with the contract documents? A. Yes they must have been.

Plaintiff's
Evidence

Q. You accept that? A. Oh yes.

No.9

Q. And is it quite normal to have among contract documents certain drawings? A. Yes.

Samuel
McConnel
Cross-examined
continued

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Q. And if drawings are included with the contract documents is the purpose of that not to set out what is to be done? A. That is so.

Q. Well then, these footings are 18" wide by 6" deep? A. Yes.

Q. With a 6" over-lap on each side of the wall? A. 6" projection.

Q. Can I get down to lay-man's language and say "it sticks out 6" on each side of the wall"? A. Yes.

20

Q. Would you be prepared to contradict that not 5% of those exposed conform with that specification? A. I would not agree with that, because, of the 20 I saw, footings had reasonably complied with the drawings.

Q. Now you spoke about taking samples of the screed and so far as I know the screed as an item was satisfactory throughout? A. Yes throughout that particular floor.

30

Q. Throughout the whole of the blocks? A. I could not say we did not test the whole lot. There was one floor open and that gave me an opportunity to take a sample.

Q. Now if you had screed as good as your samples disclose and that the concrete floor underneath was bad, the screed would give way would it not? A. Yes.

Q. You said samples were taken from a floor which the Municipality were demolishing. A. That is so.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. Samples of what? A. Screed.

Q. You said they were demolishing it because it was unsatisfactory. Did you intend to imply they were doing it because screed was unsatisfactory?

A. It was the Municipality who considered it unsatisfactory, not me.

Q. Did the Municipality consider the screed was unsatisfactory? A. I could not tell you what was unsatisfactory, they just pulled the thing up.

Q. Would you accept it from me that what they considered unsatisfactory was what was underneath the screed? A. No, I do not think so, because the Clerk of Works would have objected to my taking samples of the screed only had that been the case.

10

Q. Let us get down to the actual fact. You say that they were demolishing floors because something was unsatisfactory? A. They considered something was unsatisfactory.

Q. Where did you get that information from?

A. Well, nobody takes a floor up

20

Q. How are you in a position to stand in that box as an expert and say the Municipality were taking up these screeds because they were unsatisfactory? A. Well it is inconceivable that anyone would pull up any work, for which good money has been paid, unless it was unsatisfactory. I think the people responsible for pulling up work, if it was not unsatisfactory, would get into very serious trouble.

30

Q. Can you shorten this and say when you saw them taking up the floors you assumed they were unsatisfied? A. Yes.

Q. But you did not know what they were unsatisfied with? A. The Clerk of Works did not tell me.

Q. Now had you examined any of these floors being taken up, before they were taken up? A. Some of them were sounded and were a bit hollow. I mean we dropped a wooden rod on them and they sounded a bit hollow.

40

Q. That means screed was not sticking to the concrete floor underneath? A. It might, or it might mean concrete slab was not adequately supported underneath.

Q. What would you say was the most likely cause when you tap a floor and get a hollow sound?

A. I should have thought it was the screed.

Q. The screed not sticking to the concrete?

A. I should have imagined that.

10 Q. Now if your screed is good it should stick to the concrete under-surface provided that the concrete under-surface is clean and wet? A. Yes.

S. So that if the hollow sound was due to lack of adhesion in the screed, the indication was that the concrete floor had not been properly cleaned or wetted? A. It might be so.

20 Q. Can you think of any other reason? A. The concrete slab itself rested on rather large stones and possibly the distances in between the stones were hollow. There is no reference in the specification to the size of the stones, or the necessity for filling interstices between the stones.

Q. Would you then, as a Consulting Engineer say that, given full scope, the contractor did it any how he liked? A. I would not.

30 Q. What would you expect him to do if there was nothing in the specification to say how he should do it? A. I should tackle the Clerk of Works on the subject straight away.

Q. Now, did you in fact see any of this fill underneath the concrete floors? A. Oh yes, quite a number of them.

40 Q. And from what you saw, would you say it was quite a possible cause for the hollowness that that fill was bad? A. I would say fill was bad. I would say the possibility is the specification did not require interstices to be filled. They may not have been filled and therefore you get the hollow sound.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. Try and take yourself away from this particular case. Can I ask you, as an Engineer, if, no matter whose fault it is at the moment, if you had filled underneath concrete floors - which was like the fill you saw - would you call it good or bad? A. It was very good stone. It was badly laid because there were hollows in it

JUDGE:

Q. There were hollows in the filling you saw?
A. Yes.

10

Q. As a Consulting Engineer and expert, would you say that, in your opinion, that might have been the cause of hollow sound in tapping the floor?
A. Yes.

Q. I put it to you Mr. McConnel, it is not usual to find the cause for a hollow sound underneath the concrete base? A. Oh yes.

Q. Is it not usual for the reason to be lack of adhesion between the screed and the concrete base?
A. Not necessarily.

20

Q. You have had more cases where it has been due to the fill underneath the concrete floor? A. I should think so, on the average.

JUDGE:

Q. Would the sound not be very different according to whether it was the screed not adhering to the floor or hollows below the concrete slab? A. I have never found any difference in the sound.

Q. There is no difference even to the expert ear?
A. Not so far as I know.

30

Q. Now you took some samples of mortar which you sent to the P.W.D. How many samples were there?
A. I cannot find any record of it. I was under the impression I had done so, but I don't think I did.

Q. You did test the mortar with a pen-knife and you say it was good? A. Yes.

Q. You never found any mortar which ran out; but

if you did put a knife into mortar and found it "ran out like sand" would you agree with me that it would be atrocious work? A. There would be something seriously wrong with it, yes.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell Cross-examined continued

10 Q. Now referring to the Council's work of cutting out some of the external mortar - above floor level we have heard the Council took some mortar out and put some more back. You said this action would do more harm than good. You do agree with me that if the mortar taken out is bad and the mortar put back is good, it would stop the penetration of water? A. Yes.

Q. And to that extent it would be an improvement? A. Yes.

20 Q. Would you also agree that if the mortar taken out was bad and mortar put back was good (I mean by that to specification) there would be a certain strengthening? A. Personally I do not think you can tamp mortar back to a depth of 2" and make a job of it from the surface.

Q. Assuming you have got your hoop-iron in do you not think it would do anything at all? A. I do not think it is possible to drive mortar into a depth of 2" in which mortar has already been laid, it is too difficult to cork it in.

30 Q. By that do you mean mortar they put in would fall out? A. Oh no, it would probably be very good on the surface but not very good just behind the surface.

Q. So the only improvement would be to stop water penetrating in? A. It would help that, yes.

Q. You took samples of the concrete floors, but not the screed?

JUDGE:

Q. He took samples of the screed from one floor.

Q. You did not take any samples of the concrete floor? A. No.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. When rock is specified what does it normally mean? A. Rock can vary "something that you could not take out with a shovel" is a very good definition. There is all kinds of rock.

Q. Now you told us that on the specification providing floor on 5" to 1½" - that is the ablation block "you certainly could not expect good work". Is that not rather an overstatement? I mean the ablation block - what is the length and breadth of the ablation block? A. I suppose 30 or 40 by 12.

10

Q. Now, assuming your foundations are all down to solid rock and your fill is good, do you still say it would be impossible under these circumstances to lay a floor which went from 3" to 1½" in thickness? A. Yes, I would dare to risk anything like that.

Q. If the foundation is on solid rock? A. You must remember there is the action of material say between the inside of the concrete slab and the rock and any material that is used as filling it is almost impossible to prevent a slight amount of settlement, no matter how well material is consolidated.

20

Q. Did I correctly understand you to say these buildings had been up for 2 years and there was not, in your opinion, any crack of any significance? A. In the walls that is so.

Q. That is the walls? A. Yes. There is practically no cracking or very little cracking, in the floors, which seems to indicate they made a very good job of the filling. I would not do it myself. I would not construct a floor of that thickness of filling.

30

Q. But you go on further than that, you say because of this thickness you certainly could not expect a good job? A. I would not expect a good job.

Q. Do you say these blocks have stood up for 2 years without any material cracks? A. They stood up very well indeed, far better than I would have expected.

40

Q. Well then in your experience is that any proof

that you could put in a good floor 3" to 1½" thick? A. No I would not dare do it on my work.

Q. You say you would not dare do it, but Mr. Ata Ul Haq might do it and get away with it. Do I not understand you to mean he has done it in this case? A. Yes.

Q. I say the floors were very badly cracked, but I am basing myself on your opinion? A. I am dealing with the ablution

Q. I think it was only the ablution blocks that had this particular specification? A. Yes.

Q. That is why I am confining myself to that? A. Yes.

Q. On the one hand you say quite positively "they certainly could not expect good work from a specification 3" to 1½" concrete floor and on the other hand you say in this particular case we got it. How do you reconcile this? A. I do not know how it is, he may have put more concrete in than was specified.

Q. How many ablution blocks were there? A. Oh dozens - quite a lot and they stood up remarkably well.

Q. You put in a piece of hoop-iron? A. I did.

Q. Did you notify anyone to go with you from the Council? A. No, but I can go to the same place and take another piece.

Q. Do you know the block number? A. I can show it to you. There is a road runs at right angle to the buildings and practically square and from the two corners of that square

Q. Now I think you will agree you are not in a position to say there is hoop iron in every alternate row? A. No I cannot see through opaque.

Q. All you can say is there is some hoop-iron? A. Yes.

Q. There is one piece you have seen? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

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In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnel Cross-examined continued

Q. You also took out 3-ply damp course. Are you making the suggestion that 3-ply damp course was used throughout the job? A. No.

Q. Do you know 1-ply and 2-ply was used? A. Yes.

Q. Do you know there was 3-ply ruberoid material, both in the City Council stocks and at Gailey & Roberts? A. I know nothing about that.

Q. You might look at para.25 of the specification - "jointing (quotes) "all external bag wiped". What does that mean? A. You get cement mortar and a piece of sacking and you rub it over to produce a reasonably smooth surface.

10

Q. On this type of specification, would that apply to the joints or to the whole stone? A. It would apply to the joints and the stone - the whole surface.

(SPECIFICATION HANDED TO WITNESS)

Q. Para. 25 is dealing with "jointing" is it not? A. Yes.

Q. What does jointing mean? A. Mortar is pressed in at the joints with a trowel.

20

Q. Is that a sort of pointing? A. It is crude pointing.

Q. And is that what you bag-wipe? A. It is the external walling - you will find that there is a reference to the internal walling (quotes) "walls to be bag-wipedunbroken surface".

Q. So would you say it requires the whole to be bag-wiped? A. Yes.

Q. Were these walls bag-wiped? A. They were.

30

Q. And were they dressed off to a fair face. A. Yes.

Q. I note that when we start dealing with this clause you agree. Would you like to know what a fair-face is. I take it you do not know? A.Well different people have different interpretations. Can I define what I think is fair-face?

Q. Yes. A. It is one in which all the marked irregularities are chipped off and projections removed. It is an undulated surface, but there are no sharp changes in the surface.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-examined
continued

Q. It is as near as you can get it without smooth surfacing? A. It is very inferior to plaster.

10 Q. You can either have the whole stone faced or you can have it rough faced or quarry faced, but when it is in the wall - put in quarry faced it is subject to a certain amount of dressing is it not? A. Yes. To get the surface to have no sharp places. A general sort of evenness.

Q. And you say that was done? A. Yes.

Q. To your satisfaction? A. Yes, to comply with the specification.

JUDGE:

20 Q. You have referred to disintegrated stone under the surface? A. Yes.

Q. I want you to tell me how it compares with murrum. A. Murrum is a similar sort of stone. If it is disintegrated stone I should consider it a similar sort of thing and quite capable of carrying the same sort of loading.

30 Q. I think there is a big difference between natural rock and the ground and loose murrum? A. Yes, murrum varies very considerably but you cannot be too definite about these things. The disintegrated stone to which I referred was fit to take the foundations.

3rd May 1957.

Resumed 10.30 a.m.

Cross-Examination: MR. SCHERMBRUCKER:

SAMUEL McCONNEL : (on previous oath).

Q. Mr. McConnel you referred to para. 'F' on page 7 of Mr. Wevill's report. Perhaps I can

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-
examination
continued

read it (quotes)"the flues to the cook rooms..... left rough" And I think you said with regard to that, that it was rather an old English custom and you would not specify it, but so far as this contract is concerned it was specified. A. Yes.

Q. Now talking about damp-course. I think you said lots of buildings had no ruberoid damp course?
A. Yes.

Q. They have 3:1 mortar? A. Something of that sort yes.

10

Q. 3:1 would that be quite sufficient without damp-course? A. Well I have lived in a number of houses without it and I have found no reason to complain and no moisture has risen in the house.

Q. I ask you that, because I think you said, earlier, to keep moisture out you should have 2:1; or is that in some other part of the building?

A. Well, I think pointing 2:1. The damp course is largely a matter of opinion. I think 3:1 ample, but some people think 2:1. I have been living in the same house for 10 years and there is no ruberoid damp course in it and I do not suffer.

20

Q. Dealing with the complaint about nails on page 8 - (quotes) "they were not long enough to go through the timber concerned". You said you could find nothing in the specification to say nails should be of any particular length. You do not suggest by that, that the contractor should use nails that were too short for the job do you? A. No, I would suggest that he use nails that satisfy the Clerk of Works or supervising officer.

30

Q. And normally those nails should be long enough to go through the timbers concerned? A. That is a matter for the supervising authorities.

Q. But while we have you in the box here, as an expert, what would you recommend if you were the supervising authority? A. I should draw up a specification that would enable me to put in nails that were sufficiently long to be clenched.

40

Q. What do you mean by 'clenched'? The nail penetrates through the timber and turns over.

Q. But you are not suggesting that a good workman should use a nail shorter than that, if it was not so specified? A. The Municipality appear to have been satisfied.

Q. Never mind what the Municipality were satisfied with. You are not suggesting that normally, because the specification does not give a detailed length, that a good workman would not, in any event 'clench' his nails? A. I have not done work under these conditions.

Q. If you went along and looked at work, without looking at the specification and you found nails were short - too short to be 'clenched' - would you call that good or bad workmanship? A. I should have the whole thing altered.

Q. Would you call that good or bad workmanship? A. I would not call it good workmanship.

Q. Now you said that you thought the retention money should be sufficient? A. I did.

Q. To bring these buildings up to specification? A. Yes.

Q. Do you agree with me therefore, that we have not yet reached the stage to say that they are to specification? A. No.

Q. You did say that it would be quite impossible for any responsible officer to have issued the certificates if he did not share your view that the work was good enough to justify the certificates. A. Certainly.

Q. Do you not think you are being a little extravagant in using the words 'quite impossible'? A. It would have been impossible for any of the engineers I have been associated with.

Q. I suggest that you mean it would be 'unusual'? A. No. I think 'unusual' is too mild a term to use.

Q. Would you, assuming for a moment that that work was in fact not up to specification - was a long way short of specification - agree that

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell
Cross-examination continued

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In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell Cross-examination continued

certificates have been issued? A. Oh, certificates have been issued.

Q. What do you mean by saying 'it would be quite impossible'. A. No Engineer with an ordinary sense of engineering ethics, would issue certificates unless he was absolutely certain that he was justified in disposing of some of his client's money.

Q. Therefore, prima-facie by the issue of the certificate he should have been so satisfied? A. I should imagine he was.

10

Q. But you are not in a position to say that because he issued a certificate it is impossible for there to be any bad work in the buildings? A. No, there might be minor defects in the buildings, but nothing of the nature of those alleged by the Municipality.

Q. Why? A. Because he has been constantly inspecting the work.

Q. How do you know he has been inspecting the work? A. You have had the evidence of the Commission of Inquiry.

20

Q. You were not there at the time? A. I heard the evidence

Q. Yes, but you must not talk about evidence you have heard. A. No engineer with sound engineering ethics would ever issue a certificate unless he was absolutely satisfied himself.

Q. Now when there are alterations in specified work they should normally be covered by variation orders? A. Certainly.

30

Q. Now you dealt with Mr. Stone, you gave us your opinion of him. Were you ever present before you were retained by the Plaintiff to see anything Mr. Stone was doing on this contract? A. Not on that contract.

Q. Would you not go so far as suggesting that if there was a Clerk of Works on the job the building contractor be entitled to get away with work below specification if he could - would you? A. Oh no, not at all.

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Q. I referred yesterday to your visit - your one and only visit to the site with Mr. Mould and I think it is only fair I should now go through Mr. Goodwin's notes which I have got. I have been given these notes dated 25th November. I understand My Learned Friend wishes to object to these.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell
Cross-examination continued

MR. O'DONOVAN:

No objection if he (Mr. Goodwin) is being called.

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MR. SCHERMBRUCKER

Mr. Goodwin has left the City Council. Submits if notes can be produced and identified, they would be relevant.

Submits that if Mr. Mould can say notes were taken in his presence and can identify them, they can be produced by Mr. Mould.

RULING:

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Notes not admissible if Mr. Goodwin not called, though they may be used by Mr. Mould to assist his memory if taken in his presence.

No objection to Cross-examination on matters contained in notes.

30

Q. I am instructed that on the occasion of this visit you put forward certain points of objection which were these (quotes from Mr. Goodwin's notes). Can you remember or say whether you expressed these views to Mr. Mould at that meeting? A. Could I say something? May I say that I saw no notes being prepared whilst I was with Mr. Mould or Mr. Goodwin and I do not believe they were prepared in my presence.

40

Q. Now will you tell me whether you can remember or can say that you said to Mr. Mould at the time of this interview that the City Engineer had given certificates that buildings taken over were satisfactory and that the contractor was paid for his work? A. I probably told him, - I cannot recollect the exact words - that we held certificates signed by the City Engineer, marked "correct". I do not think I told him in

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell Cross-examination continued

the words you have just quoted, but I think I did say that

Q. But you cannot be sure? A. No., I cannot. I have no recollection of the notes. I am sure they were not taken in my presence.

JUDGE:

Whether or not notes were taken - the point that is put to you that requires an answer is, can you remember or say that you expressed the view that the Architect had regularly visited the site without objection to the standard of the work?
A. Yes.

10

Q. You did say that? A. It is extremely probable that I did say that.

Q. Well now, what foundation have you for making that statement? A. Because the various Municipality officials are paid to exercise proper supervision; it is part of their job that they should approve of the large sums of money being paid to the contractor and it is the only inference I could draw from it.

20

Q. So it was inference you draw from the fact that the certificates had been issued? A. No, I would say that it is just a question of ethical conduct.

Q. You had no personal knowledge of it? A. I have not been on the job morning, noon and night since it started, but I think it is a reasonable inference to make.

30

Q. It was an inference you made? A. Yes.

Q. From the fact you had seen the certificates? A. Yes and had been told various things by various parties.

Q. Plus hear-say? A. Well, from the Clerk of Works.

Q. And you were repeating what the Clerk of Works had told you? A. Well, as I have said I was not present the whole time.

Q. Did you say that the Clerk of Works was on the

40

site every day? A. I would not be able to say that. He was certainly in charge of the work, but I could not say he was on the job every day.

Q. I understand you are sufficiently mindful of this visit to say you did not make that statement - say you don't remember if you like.
A. I do not remember.

10 Q. And did you say he should have brought the contractors attention to any defects at the time? A. I have no recollection of saying that. I might have said it. I still stand by the statement.

Q. That he should not have allowed work to proceed until work was rectified? A. I have no recollection.

20 Q. Do you remember whether you remarked "buildings after nearly a year showed no signs of serious deterioration in your opinion?"
A. That I do not remember making. I saw no notes being taken, but I possibly said buildings did not show any serious signs of deterioration.

Q. Do you remember whether you said they were not dangerous or unsafe? A. I do not think I said so, but I do not think they are dangerous or unsafe.

30 Q. Well, let us summarise this. Do you remember on that occasion whether you emphasised the fact that whatever was done the Clerk of Works must have been satisfied? A. Possibly, I cannot tell you.

Q. Do you remember expressing any opinion that the raking out 2" and repointing was not, in your opinion, essential? A. I do not remember making such a statement but I would accept it.

40 Q. Would you accept you also said you thought $\frac{1}{2}$ " - $\frac{3}{4}$ " would be adequate? A. If the raking out was necessary that would have been adequate to put the work in order.

Q. Well, Mr. McConnel was it necessary there?

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnell
Cross-
examination
continued

A. I do not consider it was necessary, but it was not for me to discuss the matter with the Council's representative in view of the subsequent proceedings.

Q. I am suggesting that when you and Mr. Mould were there, you did put forward points and these are the points you put forward and you said that raking out $\frac{1}{2}$ " and $\frac{3}{4}$ " would be adequate - can you remember? A. I have no recollection of that and no notes were prepared in my presence.

10

JUDGE:

You are being asked whether you said or did not say certain things - whether notes were prepared is immaterial.

Q. Can you remember whether you said them or not? A. I cannot definitely remember.

Q. You might have or you might not? A. Some of the things I might have said.

Q. I am only talking about raking out? A. I do not think I discussed it in very great detail with Mr. Mould because of the subsequent proceedings. I thought it inadvisable.

20

Q. Can you remember whether you expressed the opinion "City Council should have employed reliable and capable supervising officers"? A. I have no recollection of it.

Q. Can you remember whether you had that opinion at the time? A. I assume they did employ suitable officers.

Q. You told us, at the time of Inquiry you felt pretty strongly. Can you remember whether at this time you had in mind that the City Council should have employed capable supervisory officers? A. It was on an entirely different matter.

30

Q. Now we will come down to this one point. Can you or can you not say whether at the time of this visit - 29th November - you did have in mind that the City Council should have employed capable supervisory officers? A. I can only assume they did. I have no recollection of making that statement.

40

Q. Can you remember whether that was your opinion on the occasion of this visit - that you had that in mind? A. No.

In the Supreme
Court of Kenya

Q. You cannot remember? A. No, I cannot remember.

Plaintiff's
Evidence

Q. You might have? A. Yes.

No.9

10 Q. Have you any recollection that Mr. Mould expressed certain views to you, one of them was that the City Council had not received 'fair value' for their money in this case? A. He might have said that.

Samuel
McConnel
Cross-
examination
continued

Q. Do you remember Mr. Mould emphasising that the contractor should have worked to specification? A. He might have said that.

Q. Do you remember that he took up the view generally that the contractor had not kept to the specification? A. Oh yes.

20 Q. Do you remember whether Mr. Mould showed you some samples of mortar which he said were well below requirements? A. No, I do not remember - he might have done.

Q. It is rather an important one. Can you not get yourself into the position of saying whether he did or did not? A. I do not think he did.

Q. Had you anything to do with part 'C' of this contract? A. Colonial Construction Company asked me for advice.

30 Q. There is only one point? Did you go with the party, at this meeting, from part 'B' to part 'C'? A. It is quite likely, yes.

Q. Did you know that Mr. Wevill was making an inspection of these premises in April, 1956.
A. Yes, I did. I visited the site once and saw him obviously making some examination, and from hear-say I heard he was doing something of the sort, but I saw him on the site.

Q. Did you inspect at that time, the holes that were dug down to the bottom - to the

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-
examination
continued

base of the concrete of the foundations? A. I did not.

Q. Did you know there were such holes in existence? A. Well I knew that he was carrying out investigation, but I was not invited to see anything he did and I felt that I must not approach Mr. Wevill, as he was acting for the other side.

Q. Did you put through any application to be allowed to go and look at these holes? A. No.

Q. Well then you would not know what the average depth of the foundations was? A. I did not examine them. 10

Q. Yesterday I was dealing with irregularities in the foundations. It was on this occasion, in these holes that some of the foundations showed in every lot of the concrete footing below that. A. So you said.

Q. Would you not be in a position to say anything about that? A. I have already said I did not examine Mr. Wevill's work. 20

Q. There were some places in these buildings where there was no ruberoid damp course at all. Would you know that or not? A. I would only know what I have seen myself.

Q. Well, I am only asking you whether you would know or not that in some places in these buildings there was no ruberoid damp course? A. It was impossible to state without demolishing the walls.

Q. Would it be possible to tell it from a hole dug down adjacent to the foundations? A. You had to dig into the wall itself to satisfy yourself there was no ruberoid. 30

Q. So if you dug into the wall would you have to dig in very far? A. You would have to dig at least 1" or so.

Q. And the damp course ruberoid covered the full width of the foundation wall? A. Well normally it is unsightly. I usually point it up with cement mortar. 40

Q. And it should normally cover the full width of the foundation wall? A. Yes.

In the Supreme
Court of Kenya

Q. Now would you agree that since - shall we say since the beginning of 1956 - costs, prices of building material and labour have gone up considerably? A. Oh yes., considerably.

Plaintiff's
Evidence

No.9

10 Q. Now you have already been through Mr.Wev-ill's report so I will not go through it in detail, but you will agree it is arranged under different headings on the basis of - quoting specification, giving tests and findings and giving the conclusions? A. Yes.

Samuel
McConnel
Cross-
examination
continued

Q. You have studied that report? A. Yes, I have.

Q. Can I say you agree that the quotations from the specification are correct? A. Well I will just have to look at them individually (studies report).

20 Q. You cannot tell me off-hand? A. No, I must check it.

Q. But Mr.McConnel you have studied this report of Mr. Wevill's very carefully? A. Yes.

Q. And I am asking you quite a normal question. Would you normally know whether he had correctly quoted specification or not?

A. There are one or two points in which I disagree with him in his interpretation of the specification.

30 Q. In his quotation from specification this is first headed under each item? A. I have not got a copy (copy handed to witness).

Q. Can you tell me if there were any wrong quotations from specification? A. I would like to look through my notes now (consults notes). I think, generally speaking they are perfectly correct. What I do think is that Mr. Wevill read into the specification a good deal more than was in it.

40 Q. I am not asking you what he read into the specification. A. I think generally speaking it is perfectly correct.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.9

Samuel McConnell
Cross-examination continued

Q. Now then we wont worry about his tests and findings because you might have your own views about them, but in his conclusions these are a very important aspect of his report? A. I presume so.

Q. Are there any of these conclusions that you do agree with? A. Some of the things. I only dealt with those I did not agree with. Those I agreed with I did not worry any more about.

Q. There were some you agreed with? A. Yes.

10

Q. You cannot tell us from your notes, which of those conclusions you do agree with, without spending a lot of time? A. Would you like me to read out my notes?

Q. No you can refresh your memory. Are you in a position to tell us how many of the conclusions you agree with?

JUDGE:

I think you should go through the various items in detail.

20

MR. SCHERMBRUCKER

I do not want to waste any more time than I have to.

MR. McCONNEL:

Would you allow me to read out my notes on each conclusion.

MR. SCHERMBRUCKER:

I do not think we want all the comments only the ones, if there are any, you whole-heartedly agree with.

30

JUDGE:

I think if you want this it would be quicker to put the actual conclusions to the witness otherwise the witness is going to have to go through his notes on the one hand and the conclusions on the other.

MR. SCHERMBRUCKER:

In that case I will leave the evidence. He has gone through it in fair detail.

Q. You cannot tell us which of them you agree with? A. No.

In the Supreme
Court of Kenya

Q. Just one or two individual points. In block 38, I am told there was not one floor that had not cracked. How many floors would you say were cracked? A. I should not say there was not one floor that had not cracked.

Plaintiff's
Evidence

No.9

10 Q. I am only talking about block 38? A. There might have been hair cracks. Hair cracks are very minor shrinkage cracks.

Samuel
McConnell
Cross-
examination
continued

Q. These are only cracks in the screed. We are not challenging the screed it was good. Cracks must have been due to something below the screed. A. They were not all cracked. I would not agree with that.

Q. But you cannot tell us from your notes how many were cracked in 38? A. I would certainly have noticed if there had been an abnormal number and made a note of it.

20 Q. Can you tell us the number, how many rooms? A. No.

Q. Now the pointing on these blocks. Am I correct in saying that should have been done with mortar mixed with red? A. I beg your pardon.

Q. Do you know from your visual inspection whether there was a lot of that pointing that was just painted over red? A. I do not know.

30 Q. On the visit with Mr. Mould in November 1955 you referred to digging of trenches round the building and you said that they were attempting to break up jointing? A. No.

Q. Did you say they were breaking up jointing? A. No I certainly did not.

40 Q. What I mean is in November you made a visit with Mr. Mould and there were some holes dug and trenches round the building. Are you making any suggestion that anybody there was breaking up jointing? A. I certainly did not, not that I am aware.

Q. They were not doing it? A. No.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Cross-
examination
continued

Q. Did you notice them taking out mortar? A. No, I don't think I did.

Q. Now you did suggest Mr. McConnel that the absence of Bills of Quantity meant a saving of 2½% on the contract to the Council? A. Yes.

Q. Now I would think, would you not, that Bills of Quantity for the Council contract would be prepared by the Council's own expert staff? A. It would still cost money. I think they have often had bills prepared outside.

10

Q. Would you agree that in most cases they would prepare their own Bills of Quantity through their own expert staff? A. I do not know. I know they have given it out.

Q. Do you know them sufficiently well to know they have staff who can prepare Bills of Quantity? A. Their staff change so often I would not like to say.

Q. You do not think much of the staff? A. I have nothing against the Municipality staff at all.

20

Q. You made inspections of the site of these buildings. When was the date of your last inspection? A. I visited Mr. Ata Ul Haq during the adjournment, I do not know the exact date.

Q. How long was the visit? A. About three-quarters of an hour.

Q. You did have visits when you were really studying the place? A. Yes.

Q. Did you have visits where you inspected room-by-room? A. Yes. There are a great many rooms. I visited, I think, all the rooms on different occasions.

30

Q. When was the last occasion you did that sort of inspection. A. Oh many months ago.

Re-examination: MR. O'DONOVAN:

Re-examination

Q. I think you said Mr. McConnel that certain of the floors were hollow? A. I did.

Q. Do you remember in which blocks they occurred?

A. On going home last night and consulting with the contractor I found out that it was not one of Ata Ul Haq's floors it was one belonging to another

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Re-examination
continued

MR. SCHERMBRUCKER:

Is this consultation with the contractor since witness started giving evidence.

Mr. McConnel

10

I should explain that I am making every effort to be certain of every statement, that what I say is absolutely correct.

JUDGE:

You are only entitled to give evidence of your own knowledge, not hear-say evidence.

Q. Mr. Schermbrucker wanted to know a certain point I will put the question to you. You said you saw the contractor and Quantity Surveyor?

A. Yes.

20

Q. When did you see them? A. That was two or three weeks ago.

Q. Did you, since the adjournment yesterday, see them - Mr. Newton or the contractor?

A. Yes I saw the contractor not Mr. Newton, I tried to see him but he was out.

30

Q. My question to you was, in which of the blocks do you recollect these hollows occurred. Have you any further recollection of the matter or do you wish to correct your previous statement? A. My recollection has been proved by what the contractor tells me and I find that the hollow floor

JUDGE:

Q. Are you relying on what the contractor tells you or your own recollection on the matter? A. From what the contractor told me, my recollection of the position of the floor has been sort of revived and brought home to me.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.9

Samuel
McConnel
Re-examination
continued

JUDGE:

Q. You are speaking of your own recollection of these floors now? A. Yes, but brought back to me.

Q. What I want to know is, although you may have been reminded of it, you are speaking of your own recollection and not of what you have been told? A. Yes, of my own recollection now.

Q. Well what have you to say about my question of the blocks where the hollows occurred? A. I misinformed the court. It was a piece of work that the Municipality had carried out on a floor belonging to another contractor. 10

Q. What is the name of the other contractor?
A. Chanan Singh.

Q. You saw the floor being taken out, about which you spoke yesterday? A. Yes, this is not the same one.

Q. From which block did that occur? A. Oh, it is a long time ago. It was one of Ata Ul Haq's rooms, but which it was I do not know. I called the Clerk of Works and showed him the screed I took away. We could possibly remember the number of the room. 20

JUDGE:

Q. I just want to clear up the question of the hollow floors. Were there any of the floors constructed by this contractor which sounded hollow? A. The Contractor who is Plaintiff, Sir? 30

Q. Yes. A. Well I think there were one or two. We sounded a very considerable number of floors.

Q. And there were one or two of the floors the subject of this case? A. Yes, one or two may sound slightly

Q. I just want to know whether some did sound hollow? A. Yes.

Q. Were they serious sounding hollows? A. No, sounding hollow could vary between something very slight and something very pronounced.

In the Supreme
Court of Kenya

Q. And on the contractors work how would you describe the hollows. Was it important or unimportant? A. I think quite unimportant.

Plaintiff's
Evidence

No.9

10 Q. You also stated Mr. McConnel, that to some extent work was not in accordance with the specification. Would you elaborate? In what respects? A. Well, the chimneys were not parged and there were a number of minor matters in which specification seems to have been varied by the Clerk of Works; which he was perfectly entitled to do. There were some verticle louvres which were certainly a long way below specified thickness.

Samuel
McConnel
Re-examination
continued

Q. You saw there were some verticle louvres?
A. Yes, which were thinner than specified.

Q. Does not that complete your answer? A. Yes.

20 Q. In this particular case - of this contract - I think certificates were issued by Mr. Bridger, the City Engineer? A. Yes.

Q. Did you intend, by the answers which you gave to my learned friend, to imply any criticism of Mr. Bridger in issuing these certificates? A. None at all.

Q. Do you know Mr. Bridger well? A. Yes.

30 Q. What have you to say as to his capacity and integrity? A. I would not question either his capacity or integrity.

Q. You were asked whether you had seen Mr. Stone functioning on this particular contract and you replied "no, but I have seen his work in relation to other contracts"? A. Yes, on many occasions.

40 Q. Do you remember what his position was when he retired from the Railway service? A. He was Chief Draftsman in charge of the drawing office and he also supervised building construction work in Nairobi.

Q. How extensive is his building experience?
A. I should say very extensive indeed.

In the Supreme
Court of Kenya

No.10

EVIDENCE OF ATA-UL-HAQ

Plaintiff's
Evidence

ATA UL HAQ (affirmed)

No.10

Cross-examination: Mr. Mackie-Robertson.

Ata-Ul-Haq
Cross-
examination

Q. Now, Mr. Ata Ul Haq, as I understand the evidence which you gave in chief, you contend that you have executed this work in accordance with the contract and specifications, except for a few minor points - is that right?

A. Yes.

10

Q. And in some respects you did a better job than the specification requires? A. No. I did the work in accordance with the specification.

Q. You put cedar facia boards instead of podo facia boards? A. Yes.

Q. And is not cedar recognised as better wood than podo? A. We used both types.

Q. Answer my question. Is not cedar generally recognised as being superior wood to podo?

A. Yes.

20

Q. So that in respect of the facia boards, you were doing a better job than the specification required? A. We used cedar with the permission of the Clerk of Works.

Q. Which was better wood than that required?

A. Yes, cedar is better than podo, but I thought that during the retention period I would be saving something by doing this.

Q. In other words you say that you thought that the cedar which you used for the facia boards would stand up for the six months maintenance period better than the podo which you were using on the job? A. Yes, because podo wood gets worse in the rainy season and cedar does not.

30

Q. Now, Mr. Ata Ul Haq, can you tell me what was the specification for the concrete to be used in the foundations? A. Yes.

Q. What? A. Specification was 1: 3: 6.

In the Supreme
Court of Kenya

Q. And did you comply with that specification throughout this job, in laying the foundations?

A. Yes.

Plaintiff's
Evidence

Q. First of all the walling below ground level - below plinth level - did the specification say 1 to 4? A. Yes.

No.10

Q. Did you comply with that specification throughout this job? A. Yes.

Ata-Ul-Haq
Cross-
examination
continued

10 Q. Now can you tell me what the specification for mortar was in the walling above ground level? A. 1 to 6.

Q. And did you comply with that specification throughout this whole job? A. Yes.

20 Q. Before I go any further Mr. Ata Ul Haq, on these last three points - mixture of concrete mixture for the concrete in the foundations - mixture of the mortar below ground level and mixture of mortar above ground level - if you want to change your answer in any respect this is your chance to do it, I will not give you a chance later on. A. No I don't want to alter it.

Q. Are you quite sure if we go and take samples now that we will find in each case, results complying with the specification? A. Yes, you can go where you want to qualify my answer that when you mix mortar there is always a variation in the consistency of the mortar.

30 Q. Well, will you tell me Mr. Ata Ul Haq, the procedure which you used in this contract for mixing your mortar? A. We mixed the mortar with the help of concrete mixers.

Q. So I gather from your evidence-in-chief, but how did you measure out the stuff that went into the concrete mixers? A. We had made up boxes which we used.

40 Q. And how long did you keep the mixture rotating in the concrete mixers? A. The time of rotation varied from 10 to 15 minutes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Now is that not sufficient to ensure that the materials are all properly mixed together?

A. During that period the attitude of the labourers was if anybody asked them to do something according to certain instructions - if you said to do something according to the instructions - they hated our instructions and lost their tempers and came to blows with us, and only a few days had passed after which our Kikuyu labour was detained.

Q. Now, Mr. Ata Ul Haq, are you trying to suggest to the court that by reason of the difficulties you experienced with your labour, it was impossible for you to mix concrete properly and comply with the specification for this job? A. I have explained to you the circumstances and other difficulties which we encountered, but I do not want to alter the answer I have already given.

10

Q. As I understand your explanation it means that it was so difficult for you in dealing with your labour that you may not have complied with the proper mixing of the concrete? A. No, we did mix the mixture to the required consistency.

20

Q. Well now, to go back to my original question. If you had the mixture for concrete or mortar in the concrete mixer for 10 to 15 minutes, is that not sufficient to ensure that the materials are properly mixed? A. Yes. It is the correct time and the required consistency should be reached.

Q. Would you explain to My Lord, your previous answer that in mixing concrete there are sometimes variations in the mixture? A. Yes, it is true, because I cannot stand, in person, over every machine.

30

Q. And neither could Mr. Stone? A. Yes, he cannot.

Q. So that you say that there might be variations in the mixture due to carelessness of your workmen? A. No, we were very careful and we always warned them to be very careful.

40

Q. You are either telling the Court that there were possible variations in these mixtures or there were not. A. There is always variation in the mixture.

Q. Tell me whether the variation is a fault which you personally accept as your fault?---

A. It is not a fault, but it does happen in practice.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Q. And it happens because the right quantities of the various ingredients have not been put into the concrete mixer? A. No.

Q. Will you tell me how the variations occur?

10 A. It happens because it depends on the discretion and intelligence of the operator of the mixer who feels that now the mixture must have obtained its required consistency and he takes it out.

Ata-Ul-Haq
Cross-
examination
continued

Q. The consistency would depend only upon the amount of water which had been added is that right? A. Yes, we used the right quantity of water.

20 Q. And if you used the right quantity of water you will get the right consistency? A. That is true, we have to use the right quantity of water for mixing it, but it does happen not only in my work, but it will happen in every other man's work.

Q. Quantities of sand and cement which go into the mixture are laid down and mixed are they not? A. Yes.

Q. And so after that you have to add the requisite quantity of water? A. Yes.

30 Q. Now if you are right in the quantities of dry materials which you put in, the consistency can only be affected by the amount of water? A. No, that does not depend upon the quantity of water.

Q. Well, can you explain what does affect the consistency? A. The variation I have already explained is due to the wrong judgment of the operator, who operates the machine. If he feels required consistency has been obtained, he takes it out.

40 Q. Can you explain where the judgment of the operator goes wrong - either in what he puts

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10
Ata-Ul-Haq
Cross-
examination
continued

into the mixture or for how long he keeps the mixture running? A. If supervision is not there, the African may take out the mixture before its consistency is reached.

JUDGE:

Q. The question was are the variations due to the wrong quantities, or not being put in long enough? A. The difficulty is that we had work which was spread out at different places.

10

Q. The question is quite simple. You said there are variations which occurred in the concrete mix? A. Yes.

Q. Now the question you are asked now is, are these variations due to wrong quantities having been put into the mixer, or are they due to the mixer not being operated long enough? A. Yes, if you put in a mixture with the right amount of ingredients and the machine does not rotate for the proper time

20

Q. What did happen here, were the right quantities put into the machine? A. We had seen ingredients put in in the right amount in the mixer, because we had instructed the boys.

Q. So you say variations are due to errors in the time the machine was operated? A. Yes and there is always variations in this mixture.

Q. Now you told us that your mixers were running from 10 to 15 minutes. Do you suggest that that time would be insufficient to achieve the proper mixture? A. It was the proper time to get the proper mixture.

30

Q. So that a variation could only arise where your employees did not run the mixture for that period? A. No, I used to be always there to supervise.

Q. Would you suggest, Mr. Ata Ul Haq, that perhaps on some occasion concrete was made and mortar used without having been put into the concrete mixer at all? A. No, we could not have used it without mixing.

40

Q. And would you agree with me that 2 minutes is the period accepted as being requisite to achieve a proper mixture when you are using a mechanical concrete mixer? A. No.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.10

Ata-Ul-Haq Cross-examination continued

Q. Would you tell me what you contend is the minimum period required to achieve a proper mixture? A. As I have already stated, from 10 to 15 minutes.

Q. 10 minutes is the minimum period? A. Yes.

10 Q. And if the mixer is not run for 10 minutes, then as I understand, one is liable to get variations; such as you have already spoken about? A. Yes, it is correct and I have already said that I cannot remain standing over every machine.

20 Q. Well now, would you tell My Lord the extent or range of variation in the quality of the cement and mortar or concrete which might arise due to this cause? A. It is very difficult to answer that question because it depends on the number of rotations of that mixture and if there is carelessness, variations might occur and if so variation might be very minor.

Q. You will agree that it is your job to ensure there were no prominent variations? A. That is correct, yes, but times were difficult and dangerous.

30 Q. Suppose you were making up a mixture of mortar for use above ground level that is 1 to 6, what would you call a prominent variation on that? A. I cannot give an opinion about it. After the machine rotates a certain amount, then 2 more rotations more would make a better mixture

40 Q. I am merely asking you to tell the court what you mean by a prominent variation, using 1 to 6 mixture as an example? A. It depends. The right answer to your question could be given only if one counted up all the rotations of the mixture

JUDGE:

I do not think he grasped the question.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. The question is, what amounts to prominent variation from the correct mixture 1 to 6? A. The prominent variation may cause a mixture of 1 to 9 at one place and 1 to 3 or 4 at another place.

Q. One would not expect to find a variation of 1 to 20? A. No.

Q. Or even 1 to 12? A. Not at all.

Q. And where this variation occurs, if as a result one finds a mixture in one place of 1 to 9, there will be a corresponding place out of the same mixture of 1 to 4? A. Yes, I have already said so. 10

Q. Now could you also explain what you mean by prominent variation where mixture is supposed to be 1 to 4? A. The Africans have put in a less quantity of one ingredient.

Q. We will come back to that later - tell me now what you consider - how would you interpret in your own words a prominent variation if mixture is described as 1 to 4? A. There can be little variation. 20

Q. So little that it is not worth while mentioning a figure? A. The variation may amount to, on one side 1 to 6 and on the other side 1 to 3.

Q. Now, I put it to you Mr. Ata Ul Haq, that in point of fact a reasonable allowance for variation in mixing would not be more than one-half on either side - that is 1 to $5\frac{1}{2}$ against 1 to $6\frac{1}{2}$? A. At that time labours attitude was so difficult that if the owner or employer moved a few paces away from the machine, they used to think themselves masters of everything. 30

Q. Are you suggesting to the court you were unable to control your labour force? A. No, we used to control them.

Q. But you say that as soon as you turned your back you had no control over what they were doing? A. No, we tried to control them as far as possible.

Q. Well now, please tell My Lord, whether these 40

workmen were under control and carrying out their job or doing what they liked after your back was turned? A. We did try to keep them under control, but there was a shortage of labour.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. And you will agree with me, that in any event, you, the contractor, were responsible for the work yourself? A. Yes.

10 Q. Now just finally before I leave this point. The question of the mixture that went into the foundations. Do you agree with me that the mixture in the foundations is perhaps the most important part of the building? A. Yes.

Q. So that I suggest that you would exercise very particular care to ensure that the mixture for the foundations was correct? A. Yes, we did take care.

20 Q. Did you supervise this matter personally? A. Yes I used to supervise myself, all the labour.

Q. We are speaking now of the mixing and laying of the foundations? A. Yes.

Q. Are you personally satisfied that the materials which went into the mixture for the foundations - concrete, was 1: 3: 6? A. Yes. It was being tested from time to time by the Clerk of Works.

30 Q. My question is that you personally are satisfied that the materials which went into the concrete mixers were 1:3:6, as specified? A. Yes.

Q. And you made particularly sure when mixing the foundation concrete that the concrete mixers ran for the appropriate time? A. Yes, that is true, but I could not stand over every machine.

40 Q. Well now, suppose variation arose in foundation concrete such as you have suggested with regard to the mortar, what variations would that produce, if it were a prominent variation? A. As I have stated there might be little variation.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Yes I know that, and I am prepared to accept that, within reasonable limits, but what do you say the variation might be, in what you have called a "prominent variation"? A. Are you talking about foundations now?

Q. Yes. A. It would amount to 1:3:6 or 8 or 9 at one place - at one side it could be 1:4:8.

Q. Is that the maximum on the top side - the weak side? A. Yes.

Q. In the prescribed mixture 1:3:6 that amount is 1 of cement to 9 of other ingredients - cement sand and aggregate combined - do you agree? A. Yes.

10

Q. Now, if we had a variation - a prominent variation due to improper mixture instead of 1 to 9, what is the most you would be likely to find?

A. In my opinion I should give the difference - or variation - only as far as it is concerned between two things - cement and gravel or chips - because the sand automatically goes along with them.

20

Q. The sand is still there in bulk? A. Yes, I agree, but the amount of the cement is corresponding to the amount of the gravel.

Q. I do not know whether you are trying to avoid giving an answer or not, Mr. Ata Ul Haq, but to a 'lay-mind' it seems fairly simple? A. Yes, so far as sand is concerned we have put in three parts of sand and if there is a variation, on one side there will be more sand and on the other side less sand.

30

Q. We are talking about variations that arise in the concrete mixers, where it should be 1 to 9, what variation would you expect at the most, due to improper mixing? A. I think that ratio 1 to 6 can vary 1 to 8 at one point and 1 to 4 at another.

JUDGE:

Q. He is asking about the mixture 1 to 9. What is the variation? A. It is not always the same quantity of sand along

40

with stone chips, but if on one side there is 1 to 9 cement and gravel there will be likewise a difference in the quantity of sand. There should, if on the other side there is ratio of 1 to 4 of cement and gravel, be likewise a difference from that point.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. You do not speak English, do you? A. No.

Q. And you do not read English? A. No.

10

Q. So you have never read the specification or contract? A. Yes, because a man in my employment read it to me.

Q. You had it read over to you? A. Yes, whenever I wanted to execute any work I used to get it read to me so that I could do it properly.

20

Q. Have you ever had specification or contract translated into your language so that you could read it yourself? A. No, it was not necessary, whenever I wanted to know what was on the specification that man would read it over to me.

Q. And can you read the plans? A. Yes, I can read the plans to some extent.

Q. Now do you remember in the course of your evidence in chief, being asked about the shelving in the kitchen for which you were claiming extra? A. Yes, because we figured one extra shelf in every kitchen.

30

Q. I think you said in evidence-in-chief that you put two shelves into each kitchen, whereas plan only required you to put one? A. In the specification there is mention of UNIT and each unit is to be fitted with two shelves.

40

Q. What you stated 'in-chief', according to the typescript is "one shelf is shown in the plans, but I constructed two" - do you remember that? (quotes from p.15 - typescript) A. No, I said that in each unit we fitted two shelves extra.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

Ata-Ul-Haq
Cross-
examination
continued

Q. I asked you whether you remember saying the course of your examination-in-chief "one shelf is shown in the plans, I constructed two" - do you remember saying that? A. Yes, we have fitted two extra. One was already mentioned in specification, but we fitted another, making two shelves in the kitchen. In one we fitted two extra shelves.

Q. As I understand you now, you are saying that in each place where the plan showed one shelf you put two shelves? A. I think it is not shown on the plan, but it is mentioned in the Specification. 10

Q. Can you tell My Lord where it is mentioned in the specification?

MR. O'DONOVAN:

Item No.44

(Mr.Mackie Robertson quotes Item No.44)

Q. And this is also shown on the plans? A. It might be. 20

Q. Will you take it from me that it is shown?
A. Yes.

Q. Well, my point is, that that is precisely what the record of your evidence says you have done - constructed two shelves? A. I have not understood you.

JUDGE:

Q. The specification has just been read out which says that two shelves have been put in. How many shelves did you put in? A. I meant by unit My Lord, the combination of two rooms and in the specification of this unit there is mention of two shelves, but we have fitted four shelves in each unit. 30

Q. You meant two shelves in each room of the unit? A. By unit I meant two rooms and two kitchens attached to them. One kitchen attached to each room and we have fitted these shelves in the kitchens. 40

Q. And the specification provides for two shelves for the unit? A. The specification provides two shelves to be contained in each unit - that is one in each kitchen and we have fitted two in each kitchen.

In the Supreme Court of Kenya

Plaintiff's Evidence

Q. You fitted therefore, four in the unit?
A. Yes.

No.10

2.15 p.m.

Ata-Ul-Haq
Cross-examination
continued

10 Witness continues evidence on same oath.

Cross-examination by MR. MACKIE ROBERTSON
(Cont'd).

Q. Just before we leave these shelves, you say that you put two shelves in every kitchen? Is that correct? A. Yes.

Q. So that it now depends on whether His Lordship interprets dwelling as meaning covering one kitchen or two, whether you claim for extras, do you agree. A. Yes.

20 Q. Now let us go back to the question of the concrete and mortar. You know that Mr. Wevill has made an examination of the works on behalf of the City Council? A. Yes.

Q. And do you know that in the course of his examination he took a number of samples for testing by the P.W.D. of concrete and mortar?
A. I do not know.

30 Q. Well, I now hand to you a copy of a P.W.D. report which will be proved later, on samples taken by Mr. Wevill. Could this be marked in for identification, My Lord? Would you read to him the first two paragraphs, Mr. Interpreter? Before I go any further I would like to say that we are only concerned with part 'B' of this report. The report, in fact, covers parts 'A' and 'C'. (Interpreter reads document to Plaintiff). If we take sample No.1 that is, a piece of concrete foundation from Block 31, room 194, which is part of your work.
40 The appearance of that is described on page 2 of the report as one large lump of concrete,

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

weight, 3,800 grammes, very easily broken down. Would you agree with me that if foundation concrete is made to the specification of 1:3:6 it should not be very easily broken down? A. No, I don't agree with you.

Q. If we turn to page 7 of the report the analysis result is given as showing the cement total aggregates of 1:24:3, and the ratio of the cement from stand to stand is given as 1:11:3 to 13?

A. No, I don't agree there.

10

Q. That is the result given. Do you agree with me that these results do not bear any comparison at all with the specification laid down? A. Yes.

Q. Now, subject to these figures being proved correct at a later date before the Court, can you offer My Lord any explanation as to how analysis results of these figures could be obtained?

A. If these samples are taken in my presence and analysed in my presence, then I agree with His Lordship.

20

Q. I ask you to accept for the purpose of this question that these figures will be proved to His Lordship's satisfaction at a later date. Assuming that they are proved, have you any explanation to offer to His Lordship? A. How can I say? I do not know from where these figures have come.

Q. I have told you where they came from. I have told you that these are analysis results of samples taken by Mr. Wevill and analysed by the P.W.D. A. No, I don't agree and moreover it can never be possible that these figures should be the correct result of that.

30

Q. In other words you have no explanation to offer for this analysis of 1:24:? A. The samples which were taken in my presence, they showed the correct result of that.

Q. Let us take No.18, which is described on page 1 as a piece of concrete foundation from Block 38B, room 185. That was one of your blocks, wasn't it? A. Yes, this is my work.

40

Q. The description of that sample on page 4 is:

"One large piece of concrete weight 3,500 grammes, some black cotton soil adhering to one side easily broken down". I suggest to you that the adherence of black cotton soil on one side shows that you had not fully excavated the black cotton soil from that block? A. We did clear the black cotton soil.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

10 Q. Look at page 7 and get the analysis of that sample. It comes out at 1:52:8. Have you any comment to make on that? A. I have no comment. How can I comment on this point. I do not know from where these things were taken and who analysed them.

Ata-Ul-Haq
Cross-
examination
continued

Q. Just to be clear. Are you taking the stand that you deny that these samples could have come from your work? A. I cannot say.

Q. They might have come from your work? A. I cannot say anything about these things. Nothing transpired or happened in my presence.

20 Q. Apart from not being able to read English, can you read figures? A. No, I cannot read figures even.

30 Q. Would you please read to him the first column on page 7 down to Item 40, Mr. Interpreter? (Interpreter reads to Plaintiff). Without going into the detail sample by sample would you agree with me that on average these figures show a very serious divergence from the specification? A. Yes, this is correct. But I cannot say anything about these figures.

Q. If they are correct you admit that you have diversified to a great extent? A. Yes, provided these figures are true. Only then I admit that I have falsified.

Q. In fact, if these figures are true then I suggest there has been little or no attempt to comply with the specification at all? A. Yes.

Q. Have you seen Mr. Wevill's report on his inspection of your work? A. No, I haven't.

40 Q. Have you had it read to you? A. No.

Q. I will read some of it to you. Looking at

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

page 1, Mr. Interpreter, would you read paragraph (b) at the bottom of the page. There is a reference there to some black cotton soil. Do you agree that it was your job under the contract to remove all the black cotton soil? A. Yes, we removed all black cotton soil.

Q. If Mr. Wevill's report is correct, do you agree that you couldn't have removed it all?
A. Yes, provided this accusation is correct, then it means it was not removed.

Q. Under the specifications you were required to level off the bottom of the trenches, were you not? A. Yes, but where there was a slope we left the steps there which cannot be levelled.

Q. There was also provision for that in the specifications. Leaving aside slopes, you were required to level off the trenches before laying the concrete? A. Yes.

Q. I put it to you, on Mr. Wevill's report, that you didn't do that in all cases throughout the job? A. But we did.

Q. So that you say that Mr. Wevill's report cannot be correct? A. I am saying what I have done. I cannot comment on this report.

Q. I am asking you to comment. A. I am talking about what I have done.

Q. You say that you did level off the trenches. Mr. Wevill says in his report that the bottoms of the trenches are not level. In the face of his comment, are you prepared to qualify or withdraw your claim. A. No.

Q. Under the heading of "Concrete foundations" would you read to the witness paragraph (a) of Tests and Findings? (Interpreter translates to Plaintiff) A. But we laid this foundation and concrete according to the instructions given in the specifications.

Q. That is what you say. But if you had laid it according to the specification would much of it have been soft and easily broken? A. But we did it according to the specification.

Q. If you had laid it according to the specification would it have been soft and easily broken? A. No, in my opinion it should not break.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. I put it to you that Mr. Wevill found it to be soft and easily broken because you had not laid it according to the specification? A. No, we did it according to the specification.

10 Q. Would you agree with Mr. Wevill's opinion that where concrete is soft and easily broken, not necessarily yours, anybody's, it might be explained by a weak mix, faulty mixing, or if left to stand too long before mixing and placing? A. Yes, all these three are possible.

20 Q. Let us go on to Tests and Findings, paragraph (c). Would you read to the witness the three sentences? (Interpreter reads to Plaintiff) Would you agree with me that if the foundations had been properly set out and properly made there would be a 6" projection beyond the walling all round? A. Yes.

Q. In fact that was what you were required to provide according to the plans? A. Yes, and we made it as shown in the plan.

Q. Well now, on Mr. Wevill's report I put it to you that your concrete was not properly set out - the foundations were not properly set out? A. No, we laid the concrete foundations correctly.

30 Q. Would you tell the Court how you laid the foundations. Did you put a 6" piece of shuttering down each side, or how did you do it? A. It was exactly 18" and we filled that completely.

Q. I understood you to say in your Examination-in-Chief that you excavated the whole floor area of each block before you put in your concrete foundations? A. Yes.

40 Q. This is what I have just made a note of your saying at the time: "We used to put in the foundation after we had excavated the whole floor area of each block". Did you say that or not? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. So that your trench could only have one side to it? A. Yes. On the outer side, against the wall of the earth on the outer side. Inside there is nothing.

Q. When you have put down your concrete foundation, what prevented your concrete from running away? A. First of all we removed the earth from the whole floor area but after that we again dug a trench 18" wide again deeper than the level which we had already dug.

10

Q. Why did you take your foundations deeper down than the whole floor area? A. Because we wanted to lay the foundations.

Q. Was that because you didn't excavate the whole area down to rock? A. No we excavated to the rock.

Q. And then, having reached rock over the whole area of the block you went down 6" further for the foundations? A. Yes.

Q. And before going down that extra 6" for the foundations you had already got rid of all the black cotton soil in the area? A. Yes, the whole black cotton soil had been removed.

20

Q. So that according to you there could be no possibility of any vestige of any black cotton soil remaining in the bottom of the foundation trench? A. Yes, there could not be any vestige of any black cotton soil.

Q. Can you offer the Court any explanation as to why Mr. Wevill says that: "We found black cotton soil below the foundations"? A. When we laid the concrete for the foundations, it is possible that a little or some black cotton soil might have slipped down by the foot of a labourer which had remained underneath the foundation.

30

Q. There might have been a trace which got there through sticking to one of the labourer's feet? A. Yes, it often happens that it gets attached to the foot of an African labourer.

Q. There would be no more than that? A. Yes, there should not be black cotton soil underneath the foundations.

40

Q. And if there does happen to be pockets of black cotton soil underneath the foundations, do you agree with me that you have not been complying with the specification? A. No, we cleared the whole of the black cotton soil.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

10

Q. Yes. But if it has been found that there are pockets of black cotton soil underneath the foundations, then you have not been complying with the specification? A. Yes, but it cannot be proved, these pockets of black cotton soil.

Q. Let us turn to the foundation walling on page 3 of Mr. Wevill's report. Can you remember first of all what size of stone you had to use for this foundation walling? A. The size of the stone was 6" x 9" which was to be used.

Q. And the courses were to be $9\frac{1}{2}$ " centre to centre? A. Yes.

20

Q. According to Mr. Wevill's report, he found that there were between 3 and 5 courses underneath the floor. That is, there were 3 to 5 courses below plinth level? A. These courses might be covering the length of only about 20-25 feet, and at all other places, the number of courses is not less than 4.

Q. There might be. At some places 3, some places 4 and some places 5? A. No there are 6 courses and even 7 courses below plinth level.

30

Q. The Mortar between these courses should have been 1:4? A. Yes.

Q. Mr. Wevill says in paragraph (c) of his Tests and Findings: "The mortar tested mostly soft". Do you agree with me that if the mortar had been properly made on a 1:4 mixture it would not have been soft? A. But we did the mixture that was specified.

40

Q. But if you had put it as specified 1:4 it would not have been soft? A. Yes, it should not be soft.

Q. Do you recollect that you had to put hoop-iron re-inforcement in these walls? A. Yes, we put it.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.10

Ata-Ul-Haq Cross-examination continued

Q. How often were you supposed to put it in according to the specification? A. I think according to the specification we were to put this in alternative courses.

Q. Quite right. Can you remember the size and gauges of hoop-iron which was prescribed? A. I think they were of 3/4" in size.

Q. And gauge? A. I don't remember the gauge.

Q. No.20 B.W.G. have you ever heard of that? A. I don't remember, but I can say that we did put in what was prescribed. 10

Q. I suggest to you that through a mistake on behalf of yourself or your employees, the hoop-iron was not put in the walls? A. There must be.

Q. It must be there you mean? A. Yes.

Q. So that if it isn't there it isn't due to a mistake? A. If they are not there then it was my mistake.

Q. It is your mistake? A. Yes, if it is not there. 20

Q. If it is absent through mistake, is it possible that it is absent throughout? A. There must be because we have put it.

Q. This is what Mr. Wevill says in Item (d) : "No hoop iron bond is visible at the places tested". A. It is possible this might be in the other joints.

Q. Mr. Wevill knew from the specification that it had to be in alternative courses. Do you know Mr. Wevill? A. No, I have heard that name but I do not know him. 30

Q. You have never been involved in a case with him before? A. No.

Q. Let us go on to the floors on page 4 of the report of Mr. Wevill. Mr. Interpreter, would you read out the Tests and Findings at the bottom of the page? (Interpreter reads to Plaintiff).

Amongst other things Mr. Wevill says there were some pockets of black cotton soil under the filling. A. No, there should not have been.

Q. I agree that there should not have been but I put it to you that there was because you had not complied with the terms of the contract to remove the black cotton soil? A. No, I don't agree.

10 Q. When you were putting in the back fill, will you tell the Court how you went about that?
A. We put the filling to some level and then we rammed it and consolidated it and then we put in another layer of filling, then rammed it and consolidated it. And we did like that.

Q. How many layers did you put? A. That depends upon the depth. We might have had to put 6 layers and then 5 layers or 4 layers.

20 Q. You have told us that in some instances there were 7 courses of stone. In a case of 7 courses of stone, how many layers of back fill?
A. I think we must have put 10 to 11 layers where the depth was 7 courses deep.

Q. And what do you use to ram the layers?
A. With hammer like things.

Q. Hammers wielded by hand? A. Hammers operated by hand.

JUDGE: I do not think a hammer is a good description. I think he means a rammer.

30 MR. MACKIE-ROBERTSON: Mr. Wevill found in his examination that some of the stones in the back-fill were as long as 2'. Do you agree with that? A. Yes, they might be lengthwise 2' but not in the height 2'.

Q. Irrespective of what the height may have been in precise terms, Mr. Wevill said that little or no attempt at ramming could have been made as the size of the stones used rendered it impossible to ram. A. No, we did ram.

40 Q. When Mr. Wevill cut through the concrete floor he found that it varied between 2" and 3"

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

in thickness. If Mr. Wevill is correct in that do you agree that you were not complying with the specification? A. No, I don't agree. I cannot admit that.

Q. The specified thickness of the concrete was how much, leaving the ablution blocks out of it?
A. 3" thickness.

Q. So that if Mr. Wevill found if it is correct that he found some of the concrete was less than 3" and was only 2", you were not complying with the specification? A. No it cannot be. It is not possible. It is not possible that Mr. Wevill

10

Q. Do you mean that it is not possible that Mr. Wevill found concrete that was less than 3" deep?
A. No he cannot.

Q. There would be no excuse for your laying concrete less than 3" thick would there? A. There is no excuse for laying thickness less than 3".

Q. You knew it was meant to be 3" right from the beginning? A. Yes.

20

Q. And if it had only been 2 $\frac{3}{4}$ " that might have been due to a mistake? A. Yes, that must be a mistake.

Q. But 2" is too much. If it was 2" it could not possibly have been a mistake. In fact you say there cannot be any of 2" at all? A. Yes, if it is 2" then it is a mistake.

Q. Perhaps you didn't quite get my question. I put it to you that if there is concrete which is only 2" thick the difference between the specification is so great that it must have been done intentionally, it could not have been done by mere mistake? A. No, it is not a mistake.

30

Q. Mr. Wevill says of the screed: "That was found mostly reasonably hard". A. The thickness of the screed must be $\frac{3}{4}$ " to 1".

Q. What is the specification? A. $\frac{1}{2}$ ".

Q. And you say that you understood the specification? A. Yes, we understood the specification.

40

Q. Deliberately? A. Yes, deliberately.

In the Supreme
Court of Kenya

Q. You are telling My Lord that you went out of your way to do a better job than the specification required you to do? A. Yes, according to my own version.

Plaintiff's
Evidence

Q. Why? A. Because that thing has to be brought to one level.

No.10

Q. Which it is perfectly possible to do with a $\frac{1}{2}$ " screed? A. No.

Ata-Ul-Haq
Cross-
examination
continued

10 Q. You say it is impossible to reach a smooth level with $\frac{1}{2}$ " of screed. Is that right? A. No, because we have to also see that the water should go out of the room. The level should be such the water in the room should flow out.

20 Q. I asked you to leave aside the ablution block for the purpose of this examination. Leaving aside the ablution block and dealing only with the dwelling house block. A. The screed in the dwelling house blocks - the thickness of the screed should be between $\frac{1}{2}$ " - $\frac{3}{4}$ ".

Q. Come! Come! you are a contractor of considerable experience are you not, Mr. Ata Ul Haq?
A. Yes.

Q. What do you mean, with that experience behind you telling the Court that the screed should be $\frac{1}{2}$ " to $\frac{3}{4}$ ". Isn't it laid down somewhere what it will be? A. We did that because in the room we had to see that the water flows out.

30 Q. Is there any form prescribed in the plans of the dwelling house units? A. The supervisor had instructed me that the water should not remain stagnant if it is there. It should be kept moving or flow out.

Q. Answer my question. Is there any form provided in the specification? A. I don't remember perfectly well, but it should be there.

40 Q. I put it to you that there is no form provided for the dwelling house units? A. I don't remember, but I did it according to the instructions given to me.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. I put it to you that the prescribed screed is $\frac{1}{2}$ " thick? A. That is correct.

Q. You knew that from the beginning of the contract? A. Yes.

Q. But nevertheless you told the Court that in the goodness of your heart you laid down a screed which was $\frac{1}{2}$ "- $\frac{3}{4}$ " thick? A. Not out of the goodness of my heart but on the instructions of the municipal authorities.

Q. I put it to you that you did that in order to make a good strong surface to the floors? A. No. 10

Q. I suggest that you put down a deliberately hard screed to cover the deficiencies in the concrete underneath? A. No, that is not true. You have just told me that Mr. Wevill's report says that the screed's thickness varies.

Q. And mostly reasonably hard? A. Whatever the specification dictated we did according to that.

Q. My point is that you deliberately, and you admitted that you deliberately went better than the specification as far as the screed was concerned? A. Yes, that is not true. 20

Q. You are withdrawing that remark? A. No, we did it according to the instructions.

Q. On whose instructions? A. Clerk of Works and architect.

Q. And what did they instruct you to do? A. They had asked me that the floor should be sloping towards the outside.

Q. Can you tell us who it was, the architect or the Clerk of Works or both? A. Both. 30

Q. And what were their names? A. Mr. Tanner and Mr. Stone.

Q. When were you given these instructions?
A. At the beginning of this laying of these screeds.

Q. And as a result of this you are using more cement in the screed? A. No.

Q. No? Wait a minute. The screed laid down is $\frac{1}{2}$ " , the screed in the specification is $\frac{1}{2}$ " thick, is that true? A. My last answer was to the question that if we start using more cement, and to that I said we did not start using more cement.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

Q. Answer my present question? A. Yes.

No.10

10 Q. And according to your evidence the architect and the Clerk of Works asked you to lay a screed which in some places would be $\frac{3}{4}$ " to give you the slope? A. Yes.

Ata-Ul-Haq
Cross-
examination
continued

Q. Well, now, if you are laying a screed which is $\frac{3}{4}$ " instead of $\frac{1}{2}$ " you are bound to use more cement, more mortar? A. Yes.

Q. Which means that it is going to cost you more? A. Yes definitely.

20 Q. And if it is going to cost you more you are entitled to a variation order? A. It is a very minor thing, but we have done other things for which we did not have a variation order.

Q. Answer my question. If any part is varied, you are entitled to a variation order, aren't you. A. Yes, it is our right.

Q. Did you get one? A. No.

Q. You didn't ask for one? A. No, I did not.

Q. You will remember your engineer giving evidence yesterday that he took 4 samples of screed and sent them to P.W.D. for testing? A. Yes.

30 Q. And the results were given as 1:3, 1:2.8, 1:2.7, 1:2.085, do you remember that? A. Yes.

Q. It shows that you were putting more cement into your screed than the specification required you to, doesn't it? A. It might be.

Q. Cement is expensive stuff, isn't it? A. Yes.

Q. Much more expensive than sand? A. Yes.

Q. So that it was costing you more to lay these screeds than it need have if done according to

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

the specification? A. I used as far as possible the same amount of mortar which was described in the specification.

Q. You say: "Amount of mortar"? A. I used the ingredients in the same ratio as were prescribed in the specification.

Q. My point is that these tests show that you were doing better than the prescribed ratio, don't you agree? A. Yes, I agree that according to the tests we used better than prescribed. 10

Q. And I put it to you once again that you were laying deliberately a very good screed to make up for the deficiencies in the concrete underneath? A. No.

Q. Is there any other reason you can suggest that you were laying a better screed than required to do? A. But we used the mortar in the same ratio as prescribed.

Q. Let us have an answer to the question. We have already agreed that one bit of screed was better, and in places very much better than required. Can you offer any explanation as to why that should be so unless it was that you were trying to cover up deficiencies underneath? A. No, I used only the mortar in the same ratio as prescribed and I did simple sloping. 20

Q. Well, now, when you were giving evidence as to the laying of the foundations you told the Court that having laid the concrete foundations you then waited until it was dry and you got Mr. Stone's permission before beginning to build the foundation walling. Do you agree that? A. Yes. 30

Q. Be very careful, I don't want to trap you. Did you lay the foundation concrete and then leave it till it was dry before commencing the next step? A. Yes.

Q. Isn't it a fact that the specification requires you to keep it watered? A. Yes, that is correct.

Q. You didn't do that? A. Yes, we did sprinkle water over it. 40

Q. So that you didn't wait until it dried? A. In

the early stages we did pour water over it.

In the Supreme
Court of Kenya

Q. Did you know what the specification required you to do in that respect? A. I don't remember perfectly well, but I do remember this. That water should be poured over it sprinkled.

Plaintiff's
Evidence

Q. For how long? A. In my opinion about two weeks.

No.10

Q. I put it to you that you didn't do that?
A. No, we did.

Ata-Ul-Haq
Cross-
examination
continued

10 Q. 14 days is the prescribed period my Lord. It is on page When you came to laying a screed on top of the concrete floors what was your procedure? A. First of all we did fill in the places in the original filling with small pieces of stone. Then we rammed those and brought to an even surface. Then we rolled it. That was then shown and got approved. After that we laid the layer of concrete mixture.

20 Q. That is the concrete mixture of the screed?
A. After we reached the surface which I have just described, after that we lay the screed.

Q. My question was: You proceed with laying..
.....

JUDGE: I take it to mean between the laying of the concrete floor. The note that I have of this is that they filled and levelled the surface, rammed and rolled it, then shown and approved and then they put the layer of concrete on top of that.

30 MR. MACKIE-ROBERTSON: My question was to laying the screed on top of the concrete. A. The screed is not laid at that time. After that we put

JUDGE: The question is after the concrete has been laid, how did he proceed to lay the screed on top of it.

40 MR. MACKIE-ROBERTSON: There might be a gap of 3 months between the concrete being put down and the screed being put down. A. Yes, sometimes that period elapsed.

Q. If you are going along to one block to lay

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

the screed and everything is ready, what is the procedure you go through when you begin the operation of laying the screed. A. We make indentations, My Lord, in that concrete which has already been laid, and these indentations are washed and cleared. Then we lay the screed over it and after we have done that with chisels and then we clear that with a brush, clean it, wash it and lay the screed.

Q. The making of the indentations is chiselling a rough surface to give the screed something to grip? A. Yes. 10

Q. And having done that you say you washed the surface? A. Yes.

Q. Did you see this being done yourself? A. Yes, after this thing is cleared and washed that has also to be approved.

Q. This is done room by room, not block by block? A. Yes, from one side and go to the other.

Q. You can only do one room at a time? You cannot screed the floor of a whole block, you can only screed one room? A. Yes, room by room, We did that. 20

Q. And there were a very large number of rooms, weren't there? About 400? In the one block? In the whole job? A. Yes, more than 400.

Q. Did you see every one of these floors being screeded yourself? A. Yes, because it was done under my supervision.

Q. But you weren't standing looking over the shoulder of every workman you had on the site, were you? A. If the labourer was sitting I could see over his shoulder, if he was standing I could not. 30

Q. And if 70 of them were sitting or standing at different places on the site, could you see over the shoulders of them all? A. There is no need for collecting them together in one place.

Q. How many workmen did you have working on this place, on average? Both Indians and Africans? 40

A. There were 15-25 skilled artisans and the other labourers ... the number of labourers was very high.

In the Supreme Court of Kenya

Q. 100? A. More than 100.

Plaintiff's Evidence

Q. And these men were employed on different jobs at different parts of the site? A. Yes.

No.10

Q. And when you were watching one you could not be watching another, could you. A. I used to see them and there was also a supervisor.

Ata-Ul-Haq Cross-examination continued

10 Q. And floors were being screeded at different places at the same time? A. No.

Q. Only one floor at a time? A. Yes, we used to screed one block at a time. In that also we tried to lay as much screed as was possible.

Q. Not only one room at a time? A. Yes, we were going off screeding one room then we moved to another room.

Q. And did you see every room being screeded? A. Yes.

20 Q. And did you see the floors being brushed and washed out in every room? A. I used to see myself and I used to ...

Q. I want to know whether you yourself saw the proper procedure carried out in every room? A. Yes, I used to see myself and I used to see the whole procedure.

Q. Were you satisfied that the proper procedure for laying the screed was observed in each and every room? A. Yes.

30 Q. Evidence will be laid that in some instances the screed did not stick to the concrete floor. Can you offer the Court any explanation as to why it did not stick to the floor? A. There might be some hard core. It can never

Q. You perhaps don't understand.....

JUDGE: Did it produce a hollow sound? You say that there could not be cases where it did

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

not stick? A. It cannot be, My Lord, without sticking at any place but the hollow sound can come from there.

MR. MACKIE-ROBERTSON: I put it to you that some of your screeds did not stick to the concrete because you had failed to brush out and wash the concrete underneath before laying the screed?
A. We thoroughly cleared it.

6th May, 1957

10.30 a.m.

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Witness continues evidence on same oath.

Cross-examination by MR.MACKIE ROBERTSON (cont'd)

Q. I want to continue with some further aspects of Mr. Wevill's report. Mr. Wevill in his report on page 6 says that the superstructure walling: " contains a very considerable unequal depth". Do you agree that this is true? A. We have used the quarried stone as we received it.

Q. I will put my question to you again. Yes or no? A. No it is not true. Stones are not of irregular shape. We used in the same form which we received from the quarry.

20

Q. The report goes on: "This has resulted out of square". Do you agree that that is true? A. The quarried dressed stone can never be in regular shape.

Q. Please ask him whether he agrees that the second sentence is true? A. Yes, that is true, but after the side of the stone is redressed, then the joints will be of regular shape.

30

Q. In fact, some of the beds between courses were $2\frac{1}{2}$ " thick and some of the joints $2\frac{1}{4}$ " thick. A. If we used the quarried dressed stones then the bed on which we have to put these courses of stone have to be of irregular shape.

Q. Do you agree that some of the beds were $2\frac{1}{2}$ " thick? A. In my opinion it can never be $2\frac{1}{2}$ " thick.

Q. Do you agree that some of the joints were $2\frac{3}{4}$ " thick? A. No, it can never be.

40

Q. Mr. Wevill also says that some of the stones were soft and porous. What do you say to that?
A. No.

In the Supreme Court of Kenya

Q. Do you agree with me that if some of the stones were soft and porous, then they wouldn't comply with the specification of first quality local stone? A. It can never be.

Plaintiff's Evidence

No.10

JUDGE: What can never be? A. It can never be that we have not used the stone according to the specification.

Ata-Ul-Haq Cross-examination continued

10

MR. MACKIE ROBERTSON: But do you agree with me that first quality building stone is not soft and porous? A. I agree, but we did not use that in the works.

Q. And if in fact you did use soft and porous stone, do you agree that that was in contravention of the specification? A. Yes, provided you can prove that we used soft and porous stones, then I agree that we contravened the specification.

20

Q. You have already told the Court that you put in hoop-iron bond wherever the specification required? I would like to give you an opportunity of qualifying that statement, and I suggest to you that you did not in fact put in hoop iron in all the places where it was required? A. No. We put in at the required places.

Q. In Mr. Wevill's report, Mr. Wevill says: "In most places tested it is absent". A. But we did put in.

30

Q. So you deny Mr. Wevill's statement? A. When we have put in the hoop iron I can only say that we have put in. That is all.

Q. Do you agree with me that if you had put in the hoop iron as specified nobody could have taken it out without knocking the building down?
A. Yes, nobody could take it out.

Q. So that it will still be there to this day?
A. Yes.

40

Q. Mr. Wevill also says in his report, paragraph (b) "That such iron and not as

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

specified". A. There is no technical point in it which is not understandable by anybody. I can take out any hoop iron and measure it.

JUDGE: Does he agree that some of the hoop iron was thin baling iron about $\frac{1}{2}$ " wide? A. There might be some of the baling iron which must be of $\frac{3}{4}$ " width but not $\frac{1}{2}$ " width.

MR. MACKIE-ROBERTSON: Am I to understand that there might be some that is only $\frac{1}{2}$ " thick? Let us get this clear.

10

JUDGE: Do you say positively that all the baling iron which you used is $\frac{3}{4}$ " wide? A. Where there is a small portion of inner walling between two pillars and we generally put the iron strip of that size there.

MR. MACKIE-ROBERTSON: Which is only $\frac{1}{2}$ " wide? A. $\frac{3}{4}$ " wide.

Q. Well, now go back to my question. Do you say that you used $\frac{3}{4}$ " hoop iron throughout the whole job?

20

JUDGE: Is he drawing a distinction between baling iron and hoop iron?

MR. MACKIE-ROBERTSON: That may be possible. Did he use $\frac{3}{4}$ " iron throughout the whole job? A. Only $\frac{3}{4}$ " wide iron was used for the reinforcement.

Q. And do you deny that you used any $\frac{1}{2}$ " iron at all? A. No.

Q. Let us turn to the damp course. Mr. Wevill says that in places where the damp course is exposed it was found to be thin and was not of 3-ply material? A. We used 3-ply, 2-ply and 1-ply sheets.

30

Q. And I understand your case to be that you only resorted to 2-ply or 1-ply when you were unable to get 3-ply? A. That depends upon the situation in the market, if one thing is not available and for the use of others the permission is granted then we do use the other thing.

Q. But your excuse for using 2-ply or 1-ply is because you couldn't get 3-ply. Is that right? A. Yes.

40

Q. Would you tell My Lord where you tried to get 3-ply? A. From Gailey and Roberts and other dealers.

In the Supreme Court of Kenya

Q. Can you tell My Lord when you tried to get it? A. Perhaps I have a receipt in my possession and in relation to the date of that receipt I might be able to give the date on which I tried.

Plaintiff's Evidence

No.10

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Q. I put it to you that in point of fact Gailey and Roberts were carrying a stock of 3-ply felting for damp course at all material times of the contract? A. That is totally wrong.

Ata-Ul-Haq
Cross-examination
continued

20

Q. Did you ever ask the Clerk of Works if the Council had any 3-ply felting for damp course? A. No, I didn't ask the Clerk of Works if the City Council had any in stock. But I did ask him and told him my position that I was not getting 3-ply course sheets, if I could be allowed to use the other ply course. He allowed me to do that.

Q. Did you ask him to issue a variation order? A. No, at that time nothing transpired about this.

Q. There never was in fact a variation order for use of lower ply? A. Yes, he did not make any variation order for using this 1 or 2-ply course.

30

Q. Did you ever consider using 3 layers of 1-ply instead of 3-ply? A. It is not possible.

Q. Why? A. No, we used only 1 layer of 1-ply. Not 3 layers.

JUDGE: Did he think of using 3? A. No, I didn't think of that. Neither was it suggested when we asked the permission to use.....

MR. MACKIE ROBERTSON: Do you agree that 1-ply or 2 ply is cheaper than 3-ply? A. Yes, there is a little difference in price.

40

Q. Can you produce to the Court your invoices or vouchers in respect of purchase of damp proof felting? A. Yes, after searching.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. You have been served with a notice to produce them, haven't you? A. I don't remember fully well if the notice has been given or not.

Q. You can take it from me that it has. Have you made any attempt to find these things? A. As far as my recollection goes, my advocate has not instructed me to find out all the receipts.

Q. No doubt you have them all in your office. Is that so? A. Yes, there must be.

Q. So you will be able to find them and bring them along to the Court? A. Whatever I might be able to find I will produce. 10

Q. Can you tell My Lord from whom you bought such coursing as you did use in this contract? A. I think I bought from 2-3 firms. If I search for the receipts and am successful, after that I think the receipts will speak for themselves.

Q. I would like you to tell the Court now from which firms you bought these materials. A. I am positive about one firm, that is Gailey and Roberts. I am not sure about the names of other firms, but I can definitely say that we did buy a lot from Gailey and Roberts as they were the major suppliers of it. 20

Q. Would you read to the witness paragraph (d) on page 6? (Interpreter reads to witness) Ask him: Do you agree with that comment by Mr. Wevill is a fair comment on the work? A. The comment which is fair, I will agree to that only, but not the comment which is not fair. 30

Q. Is this a fair comment on the work? A. No.

Q. It is not? A. No.

Q. Do you allege then that the internal walls were dressed off to a fair face? A. The stones which were bulging we dressed them to the required surface, and the stones which were behind them level of the surface, we put in mortar to bring it to the one surface, and after that we washed it and then painted it or white washed it according to the instructions of the Clerk of Works and the architect. 40

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. The specification required you to bag-wipe the joints only inside or smooth off the mortar between the stones with a bag aligning the line of the joints themselves. Is that correct?

A. We only bag-wiped it after we had first brought that thing to even surface.

Q. But what you were required to bag-wipe was the joints, the mortar between the joints?

10 A. But we dressed the stone from inside when it is already fixed in the wall. If it is cut a bit deeper then we fill that gap with the mortar and bring it to the even surface. After this is done we wipe it with the bag.

Q. And what you bag-wiped was the joints?

A. We have got to bag-wipe the joints as well as that surface which we were bringing to the even surface.

Q. The specification required you to bag-wipe the joints. Do you agree?

20 JUDGE: Is that correct? I was under the impression that the specification called for the walls to be bag-wiped. I may be wrong.

MR. MACKIE-ROBERTSON: It may be a question of interpretation. In the second line of the paragraph it says "...internal wall surfaces of rooms to be bag-wiped". But in the detail it does speak of the joints: "... bag-wiped joints shall be left flush with the stonework"

30 JUDGE: The impression I get, subject to anything which may be said, is that the whole wall should be bag-wiped and then something should be done to the joints? A. I understand that is the correct interpretation.

40 MR. MACKIE-ROBERTSON: The specification dealing with this subject says that before the walls to be bag-wiped, that is before bag-wiping walls should be dressed off to a fair face so as to remove all projecting stone. A. Yes, I have already stated that we brought to the even surface.

Q. But I put it to you that it is bad workmanship to build a wall which then requires to be

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

plastered up to bring it to a fair face? A. No, it is mentioned in the very beginning of the specification.

Q. What is mentioned? A. The question was : It is bad workmanship to fill the deep holes to bring to the even surface. The answer is that it is mentioned in the specification. He says you can read that paragraph.

Q. I put it to you that there is nothing in the specification which requires you or authorises you to build up such stones by plastering? 10

A. It is mentioned in the specification that the bulging out stones are to be dressed and that stones which are behind are to be brought to one even surface by filling with plaster or mortar.

Q. I put it to you that it is bad workmanship if by reason of the way you have built up the wall it is necessary to have patches of plaster at various places of the wall to bring up to a fair face? A. No, it is not bad workmanship. 20

Q. Do you agree that it doesn't look very nice if you have a wall at one end of the room with a big plaster patch in the middle of it? A. It depends upon the nature of the job. Then you have to plaster the wall to dress these stones to be first even surface.

Q. Does it look a very good job if you have a big patch of plaster in the middle of a stone wall? A. It cannot be in the middle. It should be..... 30

Q. According to this specification there was nothing to require you to carry out internal plastering of the walls was there? A. According to the specification we were not required to plaster the walls, we were to bring to the even surface and then wipe with the bag.

JUDGE: Page 5, paragraph III (d). The last sentence says: "Cement mortar is not to be used to level off faces of walling, which is to be left rough". In the specification does that refer to the external walling only or both walls. I am not clear what it does mean. It is not clear whether this last sentence refers to the external 40

faces the walling only or to both. A. In the context one would normally expect it to refer to the external facings, but I would not like to ask the Court to apply such a high interpretation upon a document of this nature. It is not a legal document. The inference is, however, that it does refer to the external walling.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

10 JUDGE: The inference from that being that it may be used to level off internal faces? A. One would think so.

Ata-Ul-Haq
Cross-
examination
continued

JUDGE: At any rate there is no prohibition of its being used to level off internal faces.

20 MR. MACKIE-ROBERTSON: Except in so far as the thing does not appear in a specification it should not be done. If there is an express prohibition to its being done as regards one wall, isn't the inference that it may be used for any? I agree that it is not very clear but I think that is the only inference. If the wall is dressed off to a fair face there should be no need for cement plastering at all. Finally, on this subject, I put it to you that you resorted to an excessive degree of plastering inside because of your bad workmanship of the building of the walls? A. No, it was good workmanship.

30 Q. You know that the specification required that the external face of the walls was to be struck jointed?

JUDGE: What is struck jointed? A. I am told, My Lord, that he doesn't understand.

40 MR. MACKIE-ROBERTSON: Are you telling the Court that you don't know what struck jointing is? A. If you can explain The Witness doesn't know. The witness says what he understands by struck jointing is that after the wall is built then a straight piece of timber is put on it to see if it is an even surface, and then with an iron rod they draw a line to see which is bulging out.

Q. I put it to you that what you have just described is "sunk rule" jointing. Do you

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

agree? A. Supposing this is the joint, this is a straight rule and is put here and on that rule a piece of rod is rammed, to make a deep line in that joint. That is what he says. He understands by this struck jointing.

JUDGE: That can be explained later. I haven't the least idea what struck jointing is.

MR. MACKIE-ROBERTSON: Now if we turn to the window openings. You omitted to level the edges of the window sills. Do you agree? A. Instead of cutting that sill, My Lord, we had instructions that we were to use the cement plaster to slope. You can come and see it.

10

Q. Chamfering of the edges consists of cutting the stone away to a sloping surface. Is that correct? A. Yes.

Q. And you omitted to do that? A. But the instructions were otherwise from the Clerk of Works and architect. They asked me to put the cement in the slope.

20

Q. Do you admit that you omitted to chamfer the edges? A. No, whenever we had to do any change we discussed it first and then we did it.

JUDGE: Did he chamfer the edges at the window openings? A. No, but we used the cement My Lord, to make a slope.

MR. MACKIE-ROBERTSON: If you didn't chamfer the edges there was no slope at the edges? A. We used the cement to make a slope. You can go and see that.

30

Q. You used the cement to make a slope between the window itself and the top of the stone. Is that right? A. Supposing this is the window sill, whenever we put in the sills we made a slope.

Q. Instead of cutting the stone? A. We used the cement to make the slope towards the edge of the sill according to the instructions of both Clerk of Works and architect.

Q. Can you produce to My Lord a variation order

40

in that respect? A. No, it is not a very material point.

In the Supreme Court of Kenya

Q. You agree that it is a departure from the specification? A. In every work such little variations are always done.

Plaintiff's Evidence

Q. Answer my question. Do you agree that it is a departure from the specification? A. Yes, there is a difference in the specifications. We were to chamfer the edge of the stones, but here we made the slope of the cement.

No.10

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Ata-Ul-Haq
Cross-examination
continued

Q. And do you agree with me that any departure from the specification should have been authorised by variation order?

MR. O'DONOVAN: That is a matter for argument.

MR. MACKIE-ROBERTSON: I won't pursue that, My Lord, as my friend has an argument as to the interpretation.

Q. The windows that you were installing were timber-framed? A. Yes.

20

Q. I put it to you that while it is a not uncommon practice to make a cement slope with steel framed windows, it is bad practice to make a cement slope with a timber-framed window? A. I can show that both practices are common.

Q. The important thing is making a good joint to the edge of the window. Is that so? A. I have not understood the question properly.

30

Q. The important thing in putting in the cement sloping is to make sure that the cement makes a good join with the window? A. The inner edge of the cement slope is kept a bit high to stop the rain water coming in.

Q. And to stop the rain water coming in it has to be a tight join? A. Either I have not understood or

JUDGE: The point that is being put to him is that there should not be a crack between The cement should not come away? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

MR. MACKIE-ROBERTSON: And in point of fact the way you have made a slope on these windows leaves a crack? A. No.

Q. Turning to the roofs, do you agree that the roof timbers were lap jointed, nailed with wire nails which were not long enough to go through for clenching on the other side? A. We used nails of 4" length and 5" length and we did clench the joints.

Q. Mr. Wevill says just the opposite: "That the nails on the one side". A. That is not correct. 10

Q. You agree that it is important that the nails should be clenched? A. Yes, and we have clenched the nails.

Q. Do you agree that the roof trusses are not framed? A. We have framed them. We got them approved by the Clerk of Works and these were approved also by the architect.

Q. When did you last go and inspect these buildings on the inside? 20

JUDGE: If I followed the answer to that question, I think you are talking at cross purposes. "We have framed them and when they were approved they made the trusses" - I don't know what the technical significance is, but it seems they are being used in different senses.

MR. MACKIE-ROBERTSON: Will you tell the Court what you mean by framing? A. By framing means that there are other wooden members which are to become attached and then it becomes a truss. First of all there is a horizontal bar and then there is a sloping member and then there are internal trusses which separate these two things and then it becomes a truss. 30

Q. You supply that framing on every truss?
A. We framed them and then we used the trusses.

Q. According to Mr. Wevill's report, you didn't frame the trusses. The trusses were not framed.
A. They were framed. Even now you can go and see that these are framed. 40

Q. When did you last go and see them? A. I don't remember the exact date when I went last to visit.

In the Supreme
Court of Kenya

Q. About a year ago? A. No, I think I went there lately.

Plaintiff's
Evidence

Q. Did you then observe that the joints of the timber roofing were opening and sagging?

No.10

A. These joints cannot open because these are trussed by another piece of wood.

Ata-Ul-Haq
Cross-
examination
continued

10 Q. In point of fact, I put it to you that some of them are opening and sagging? A. No.

Q. Do you agree with me that if the trusses were properly made they would not open and sag?

A. I agree that they would not be sagging and I maintain there is no sagging of these frames.

Q. I think evidence has already been given on the hinges which you used on the doors. They were fixed with screws without any bolts?

A. Are you meaning the doors or windows?

20 Q. Mr. Wevill says in his report that the "... hinges throughout without any bolts".

A. I still say that there is a difference between a window and a door. I don't know what you mean by these hinges being used on doors and windows.

Q. Let us deal with the windows. Do you agree that the windows have been fixed by 'T' hinges?

A. Yes, we have secured these by screws.

30 Q. But does not the specification require you to put one bolt to each hinge? A. Yes.

Q. What is your excuse to the Court for not having used one bolt to each hinge? A. These hinges which are used, they are not provided with a hole which is compatible for a bolt, but the holes which are made in it are compatible with screws.

Q. Do you agree that the specification required you to fix each hinge with one bolt? A. Yes, in the specification it is mentioned.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. So it is your responsibility to supply hinges of such a type to allow you to use one bolt for each hinge? A. I did try my best in the town to get such a type of hinge, but no such types were available.

Q. It was impossible to obtain in Nairobi at the relevant time a hinge which could be fixed with at least one bolt? A. It was impossible, and I don't think you can show me any of that type used anywhere.

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Q. Couldn't you have altered one of the holes in the hinges to enable you to fit a bolt? A. We could use the hole to make it a hole which would take properly the bolt, but that may cause damage to the hinge.

Q. And in the solution blocks the specification required that the doors should be self closing? A. Yes.

Q. But in point of fact you did not hang these doors so that they were self closing? A. No, we used self-closing doors.

20

Q. If you did the job properly do you agree that they would be self-closing, even now? A. Yes.

Q. And in April, 1956 when Mr. Wevill made his inspection? A. Yes.

Q. Now do you recollect that the specification provides for all door frames and window frames, etc., to be fitted with metal cramps set into the structure? A. Yes.

Q. But in point of fact instead of metal cramps you used thin, flat, baling iron? A. No, we made the cramps and got approval.

30

Q. What did you make the cramps of? A. From the flat iron pieces.

Q. In fact, thin, flat, baling iron was what was used? A. No, not from the baling iron.

Q. What sort of iron? A. We used the metal which is generally used for these purposes.

Q. I put it to you that the fixing as you used

it is not proper metal cramping? A. We have used the same which was required for the metal cramps.

Q. How thick was the metal which you used?

A. I don't remember the thickness of the metal cramp now, but we did make it and get it approved.

Q. Do you agree that the metal should be from 1/16 to $\frac{1}{8}$ inch in thickness? A. I do not remember the thickness of that metal which we used, but we did prepare a lot of cramps and then get this approved and then used them.

Q. Answer my question. Do you agree that in normal metal practice, the iron should be 1/16 to $\frac{1}{8}$ " in thickness? A. Yes, approximately.

Q. I put it to you that the metal which you used was very much thinner than that? A. No we used for making cramps the metal which is generally used.

Q. Do you remember laying drains at this site?

A. We used the already made up drains there.

Q. You remember laying the drains? A. Do you mean by fixing this or laying this?

Q. The drains lying on the ground, on the top of the ground? A. Yes, but these are submerged in the earth.

Q. That is our objection. On the drawing those drains should be laid on hard core fill.

A. Yes, we have laid as mentioned in the specification.

Q. Do you agree with me that in many places the drains have sunk so that they are no longer lying on a true fill so that they can carry water away? A. I have written a letter in which I have explained the question to the City Council authorities why they used the lorries over these drains which caused this thing. Because when they were planting small plants they used to carry these things in lorries and these lorries caused this damage.

JUDGE: He agrees that they have sunk? A. I

In the Supreme Court of Kenya

Plaintiff's Evidence

No.10

Ata-Ul-Haq
Cross-examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

don't agree, My Lord, that the laying of these drains have sunk, but those are appearing now to have sunk because the damage was caused to them by the use of lorries over them.

MR. MACKIE-ROBERTSON: A lot of these drains were required to be laid on the outside walls of the buildings where lorries could not have gone?

A. I agree that lorries could not go.

Q. If those drains have sunk so that they cannot carry off water, it is due to your having laid them there. A. Yes, if it is so. 10

Q. Do you remember when Mr. Mould took over the responsibility for the architectural supervision of this contract? A. I am not fully aware of that.

Q. You were about $\frac{3}{4}$ of the way through the contract, weren't you? A. I do not recollect how far we had completed the works.

Q. You were working on blocks 25, 26 and 27. These were almost complete when Mr. Mould took an interest in this matter. Do you remember? A. It is possible. 20

Q. And Mr. Mould got out a list of defects on these three blocks which you subsequently put right? A. Yes.

Q. Weren't blocks 31-34 the ones which were occupied before they were taken over? A. No, that is not correct. Those blocks were passed but I did not receive a letter of approval.

Q. How did you know they were approved? 30

A. Firstly they inspected the blocks and they pointed out the defects which we removed. Then they again inspected and then they approved.

Q. You had nothing in writing, had you? A. There is one letter which I have written to the City Council, the contents of which were like this. As the blocks had been approved, why is it so I am not getting my letter of approval for these blocks, and there was a reply to that letter from the City Council in which they stated that it was no longer my concern as these had been approved by the City 40

Council and occupier. That letter I wish should be read over in this Court.

In the Supreme Court of Kenya

Q. We will try to find it. But do you agree with me that you had no approval in writing before these blocks were occupied? A. They had not given any written approval at that time.

Plaintiff's Evidence

No.10

10

Q. But 31-34 weren't the first blocks to be completed surely. A. Yes, these were not the first blocks to be completed.

Ata-Ul-Haq Cross-examination continued

Q. You had already received take over certificates in respect of some of the earlier blocks? A. They did not use to issue the letter at the place of works but they used to inspect first of all and go back to the office and from the office issue the letters of takeover.

Q. The letters of takeover came from the Town Hall? A. Yes.

20

Q. Sent by the City Engineer or one of his deputies? A. Many were sent by them.

Q. Someone at the Town Hall? A. Yes.

Q. Never by the Clerk of Works? A. No, I don't think any letter was sent by the Clerk of Works. About the first blocks we are talking about.

Q. The standard form of letter was like that (exhibit 25) was it not? A. Yes.

30

Q. And these letters intimated to you that certain units were accepted by the Council? A. Yes.

Q. And those letters came to you from the Town Hall? A. Yes.

Q. All of them? A. Yes, all letters came from the Town Hall.

Q. None of them were ever issued by Clerk of Works? A. Clerk of Works also used to deliver many letters at the site instructing us what is to be done.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. But the Clerk of Works never issued to you any letter of acceptance of any of the units?

A. No, he never used to give a letter of this type.

Q. From time to time would you write in complaining that some of the certificates had been held up? You wrote to the City Engineer? A. Yes.

Q. Not to the Clerk of Works? A. No.

Q. And you knew perfectly well that the authority for issuing acceptances of the work was the City Engineer in the Town Hall and not the Clerk of Works on the site? A. At times, My Lord, if I stood in need, I could ask a chit from the Clerk of Works at the site which he used to give but I generally did not ask for this, or even I could ask any other thing at the site.

10

Q. But payment certificates and take-over certificates always came from the Town Hall? A. Yes.

Q. It was about the time that you were completing 31-34 that you had trouble with the floors in Block 38. Do you remember? A. They had inspected that block. They had given me a list of certain things to be done, but whatever alterations they suggested I did these.

20

Q. Sticking to the floors for the moment. Every floor in Block 38 had serious cracks in it?

A. No, there were minor repairs in every block and I have already tendered to this Court a list which details all the repairs to be done which I did.

30

Q. Mr. Mould will say in evidence that there were serious cracks in every floor in Block 38. Do you agree with that? A. No, I don't.

Q. Mr. Mould gave you instructions that you were not to proceed with the screeding of these floors until he told you to? A. When he inspected the screed it had already been laid on every floor.

Q. Do you remember telling us about one occasion when Mr. Mould went away to Kampala for a short time? A. Yes.

40

Q. I put it to you that just before he went to

10 Kampala he gave you instructions that you weren't to screed these floors until you had permission from him? A. Yes, Mr. Mould had said that. The following day the City Engineer, Deputy City Engineer, and the Architect they had gone there the following day they called for a pick-axe and with the help of that pick-axe they had tested every floor from many points and after they were satisfied they had instructed me to lay a screed on each floor. You can ask those three persons whether they instructed me or not.

Q. At the same time, when Mr. Mould was away in Kampala, is it not a fact that Mr. Tanner made you dig some holes for Mr. Mould to see when he came back? A. Mr. Tanner was instructed by the City Engineer and Deputy Engineer to ask me to dig holes.

Q. You did dig some holes? A. Yes.

20 Q. But all the holes were filled in and all the floors in Block 38 were screed before Mr. Mould came back from Kampala. A. That is totally wrong.

Q. The holes were not filled in when Mr. Mould came back from Kampala? A. A long time after he had come back the holes were refilled and he - Mr. Tanner - had seen these holes.

30 Q. And the floors were all screeded before Mr. Mould came back from Kampala? A. He did not stay many days there at Kampala. I think he went one day and came back the next day. As far as I recollect the screed was in the actual process of being laid when he came back.

Q. I put it to you that Mr. Mould was actually away about a week? A. No.

Q. Would you agree that these floors were screeded whilst he was away? A. No, when he came back at that time the screed was in the actual process of being laid.

40 Q. After they had been laid these floors were tested and there were hollow sounds in practically every room in Block 38? A. No, that

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

is totally wrong.

Q. In one room, in fact, the whole floor was hollow?
A. No, at very rare points there might be the emission of hollow sound.

Q. In fact, the floor was so hollow sounding that Mr. Mould ordered the whole screed to be taken up and left open for inspection?
A. No, not at all.

Q. I suggest to you that in fact you did take up the floor as ordered, but you immediately re-screeded it again instead of leaving it open for inspection?
A. That is totally wrong about this block.

10

Q. Was there any block in which you were ordered to take the whole screed up for inspection?
A. I don't remember perfectly well, but if you can refresh my memory

Q. What about Block 39?
A. About the inspection of Block 39 I have tendered a report and the repairs and alterations which were asked me to be done I did those.

20

Q. I put it to you that there was one block in which you were made to take up the screed twice, do you remember that?
A. No, you should particularise.

JUDGE: Was there any occasion on which you were required to take up the screed twice?
A. No, not twice.

MR. MACKIE-ROBERTSON: Do you remember digging some test holes at the request of Mr. Mould?
A. Yes.

30

Q. About June 1955?
A. I don't remember the exact date, but the time might be about the time mentioned.

Q. And I think the holes were inspected by yourself, Mr. Mould, Mr. Goodwin and Mr. Thomas?
A. I want to know about which holes you are talking because we have dug holes on three occasions.

Q. These were the holes which Mr. Mould asked you

to dig after his return from Kampala. A. Can you tell me that number of holes?

In the Supreme Court of Kenya

Q. No, I am afraid I cannot. Don't you remember digging some holes for Mr. Mould after his return from Kampala? A. Yes.

Plaintiff's Evidence

Q. Do you remember examining these holes in company with Mr. Mould, Mr. Goodwin and Mr. Thomas? A. No, I did not examine the holes in company with these three.

No.10
Ata-Ul-Haq
Cross-examination
continued

10 Q. Mr. Mould will say in evidence that you did examine the holes in company with these three people and that the mortar was tested with a knife and found to be very good. Don't you remember that? A. No, I was not there with them.

Q. And that was the occasion when Mr. Mould called for some labour to increase the size of the holes? A. I don't remember that.

20 Q. And the mortar outside the original holes was then found to be very bad. A. I was not with them.

MR. O'DONOVAN: As this is a point of some importance, I wonder if my learned Friend would let the Court know at what period this was alleged to have occurred? A. June, 1955.

MR. MACKIE-ROBERTSON: And it was then that Mr. Mould in company with these other two gentlemen and yourself took these samples of the concrete? A. He might have taken but he did not take these samples in my presence and in my sight.

30 Q. You do recollect being asked to sign, you have already mentioned it in evidence, the bags into which the samples were put? A. Yes, I remember that.

Q. And in fact you saw and were present when the samples in question were taken and put in the bags. A. When they took the samples I was not there.

40 Q. You saw the sample bags all right? A. I saw those paper envelopes containing something lying on the road.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

JUDGE: On the road, at the side? A. Yes, at the side, and there is a path in between those buildings.

MR. MACKIE-ROBERTSON: Who was present at that time? A. I don't remember perfectly.

Q. Do you agree that Mr. Mould was there?
A. Yes.

Q. And the Clerk of Works, Mr. Goodwin? A. I don't think he was there at the place where these envelopes were put on the footpath. 10

Q. Was there another gentleman whose name perhaps was not known to you, Mr. Thomas? A. He might be, but I didn't see him.

Q. And when you refused to sign the sample envelopes the other three gentlemen signed?
A. Mr. Mould had asked me to sign on the paper envelopes containing the samples but I refused because I questioned him what are the contents of these things. He said to me.....

JUDGE: When he refused to sign did the other three men sign? A. I don't remember, only Mr. Mould had asked me to sign and I refused because I had protested to him and said that if he wanted me to sign then he should not take the samples in my absence. 20

MR. MACKIE-ROBERTSON: After the signing, were you given an opportunity of going to the P.W.D. to deliver the samples? A. No, I don't remember, when he refused that he was not ready to take other samples in my presence. I retired from that place. 30

Q. You know that the next day some more samples were taken? A. No, I don't remember.

Q. When your son was present? A. No.

Q. How do you know whether he was present or not? A. He was not there on that day in question because he was engaged on another job.

Q. I must put it to you that the following day your son was present when further samples were taken by Mr. Mould, Mr. Goodwin and Mr. Thomas? 40

A. I think he was not there but if you want you can call him as a witness. Ask him.

In the Supreme Court of Kenya

Q. I put it to you also that your son, like yourself, refused to sign the sample envelopes?
A. You can suggest what you like.

Plaintiff's Evidence

JUDGE: Does that mean you don't agree with it?
A. No.

No.10

10 Q. Did you ever hear the result of the samples which were taken on those two occasions?
A. Yes, I received a letter.

Ata-Ul-Haq Cross-examination continued

Q. A letter giving the results shown in that report? A. Yes, it might be.

JUDGE: Is the letter in evidence? A. I will tender it for identification purposes.

JUDGE: The letter or report? A. The letter is a covering letter and I will tender this as one exhibit to be proved.

20 JUDGE: You are asking the witness whether he received the information contained in them. Was a letter containing that information alleged to have been sent to him or was the actual report sent to him. He has admitted he received a letter. A. Exhibit 50 is a letter dated 21st October, which sets out the results.

Resumed 2.15 p.m.

Cross-Examination: MR. MACKIE-ROBERTSON (Cont'd)

ATA-UL-HAQ:

30 Q. Now Mr. Ata Ul Haq, in the course of your examination-in-chief, you told My Lord, that you had dug foundations for these dwelling houses and other units until you got to stones. Can you tell My Lord what kind of stones you were speaking of? A. Yes.

Q. What kind? A. Rock - which is fit for foundations.

Q. Would you agree that over a fair area it was

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

decomposed and decomposing rock? A. Yes, at places the rock appears and at others gravel appears and at other places murrum appears.

Q. Now gravel consists of a lot of small stones -- is that correct? A. Yes.

Q. A lot of small stones mixed up with a little bit of mud? A. No, there is no mud.

Q. And these stones are loose ones, but bonded together? A. Pebbles of this gravel are generally separate from each other.

10

Q. So that the surface presented by the gravel bed is a loose stone surface? A. Yes.

Q. And in places where the rock outcrop is beginning to show through and is breaking down, the surface is very similar? A. All the surface is of rock.

Q. What I am putting to you Mr. Ata Ul Haq is, in some places rock is beginning to break up - what is known as disintegrating or decomposing? A. Yes, at some places it does disintegrate.

20

Q. Would you agree with me that the disintegrating patches are similar to the gravel bed - similar to the loose stone surface of the gravel bed? A. Yes, because disintegrated rock is the same thing as gravel.

Q. And I am sure that you will agree with me that a loose stone surface is not a satisfactory surface on which to lay building foundations? A. That is a satisfactory surface for foundations.

Q. Well now you also told us in your examination-in-chief that there was no advantage to you not to dig as deep as might be necessary for the foundations - do you remember that? A. Yes.

30

Q. And the reason for that was that you were paid under the terms of the contract - you were to be paid for any extra depth you had to go down over four courses? A. Yes.

Q. Now, was the figure that you were entitled to receive for extra depth a profitable one? A. When

we quoted the price at that time of contracting, we fixed the price for extra digging.

In the Supreme Court of Kenya

Q. Can you remember the price you put in for excavations in black cotton soil and other material - for removing it? A. I think we quoted approximately 27c per cubic ft.

Plaintiff's Evidence

(Mr. Mackie Robertson quotes "20c..... to cart away").

No.10

Ata-Ul-Haq
Cross-
examination
continued

10

Q. Now, did that allow you adequate profit?
A. Yes.

Q. Whilst digging deeper courses which added to your price for the contract you also had to complete your job within a specified time?
A. Yes.

Q. And to dig a deeper foundation would have taken a longer time? A. No.

Q. Now you tell My Lord that up to now buildings have shown no sign of subsidence because there are no cracks in the buildings? A. Yes.

20

Q. When did you last see these buildings, so as to make a proper inspection of them? A. I think the last time I saw them was last week.

Q. Did you go inside them? A. Yes, I went inside many rooms.

Q. Many rooms? A. Yes.

Q. In which blocks? A. Block 38.

Q. 38 only? A. And I also went into the rooms on block 29.

Q. Was block 38 occupied? A. Yes.

30

Q. And block 29? A. Yes.

Q. Well now Mr. Ata Ul Haq, I put it to you from that inspection of the buildings you must have observed quite a number of big cracks in the buildings? A. There are always repairs accruing during the retention period and these must be of a very minor nature and if there are

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

cracks those must be hair-cracks - not any deep cracks.

Q. When did you last do any work upon this site?

A. I don't remember the date, but I have the correspondence which was exchanged between my Counsel and myself, which would give an approximate date

Q. Would you agree, roughly, in the middle of 1955? A. Yes practically that.

Q. So that any retention period would have expired about the end of 1955? A. Yes, I was asking them if they found any repairs which should have been done by me, which I was ready to do.

10

Q. And from the end of such retention period to the present time would be about 16 months?

A. Yes.

Q. Now I put it to you Mr. Ata Ul Haq that the cracks which have developed in these buildings are not hair-cracks, but are serious cracks? A. No. You can go and see.

20

Q. And having excavated the foundations; when you were running in the concrete foundations, you told My Lord that Mr. Stone supervised your actual making-up of the mixture? A. Yes, he used to.

Q. But that making-up of the mixture took place in concrete mixers, holding 4 to 4½ cu.ft. at a time only? A. Yes.

Q. And like a good contractor on a big job you had many concrete mixers all working at the same time? A. Yes, not one but many.

30

Q. So that you, yourself were not able to watch each mixer all the time it was working? A. Yes, nobody could do that.

Q. And so Mr. Stone was not able to supervise your actual making-up of the mixture all the time? A. Yes, he cannot stand near every machine watching.

Q. Do you agree Mr. Stone had a great deal to do on this job? A. Yes, he was Clerk of Works.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Clerk of Works on your contract and also Clerk of Works on other contracts at the same time? A. Yes, and another one at the same time.

Q. By Mr. Chanan Singh? A. Yes.

Q. And also another contract by Colonial Contractors? A. Yes.

10 Q. So that he had three contracts altogether under his control as Clerk of Works? A. No, so far as I know he was not Clerk of Works for three contracts.

Q. But you have already agreed he was Clerk of Works for Chanan Singh? A. Yes.

Q. And Colonial Contractors? A. No.

Q. You will agree he was supervising maintenance repair work being carried out in Umbatela Estate? A. Yes he used to go there at times.

20 Q. So there were times when Mr. Stone was not on the site of your building contract at all? A. No, not a day passed.

Q. I do not mean for a whole day. There were during the day perhaps each day, perhaps every other day, but there were times during working hours when Mr. Stone had to go to other jobs and was not on your site? A. Yes, but his personal representative was always there.

Q. His personal representative being an African Assistant Clerk of Works? A. Yes, his African assistant.

30 Q. And when Mr. Stone was not on the site, or even when he was on the site, he could not be watching all the materials that went into the concrete mixers? A. Yes, he could not see all the mixers.

40 Q. But sometimes when he came back to the site he would say to you perhaps "what mixture are you using" and you would say "1:3:6"? A. He used to check from a distance how the work was going on and how the ingredients were being put into the mixers,

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Now, would you explain to my Lord how a person checks from a distance what ingredients are going into a concrete mixer? A. He could see from a distance how ingredients were being put into the mixers.

Q. From the distance of Umbatela Estate? A. No, from that same site.

Q. And when he was not on the site? A. In his absence his personal representative used to roam about the machines. 10

Q. And then, getting back to my recent question, sometimes when Mr. Stone came back to the site from visiting other places he would ask you about the mixture you were using and you would say 1 to 3, 1 to 4 or 1 to 6, whatever it was you happened to be doing? A. The man who knows his job, he does not ask from others

JUDGE:

Q. Did Mr. Stone ask you? A. No, I don't think he ever asked. 20

Q. There was never any doubt in your own mind as to what mixtures you were required to be using in any particular part of the work? A. We used whatever was required of us.

Q. I am not asking what you used, I am asking you if you were perfectly clear in your own mind what you were required to use? A. Yes.

Q. And you told your employees what they had to use? A. Yes.

Q. And you supplied your employees with the appropriate amount of cement and sand and so on, which they required to comply with the specification? A. Yes. 30

Q. So that if you are mixing mortar 1 to 4 for the foundation walling below ground level, if you are mixing that 1 to 4 and one of your employees made it 1 to 6 he would have been going very far wrong? A. Yes.

Q. And if your employee took the proper quantities

from your store for making 1 to 4 mixture but instead made 1 to 16 that employee would be cheating you would he not? A. No, it is not possible.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Q. What is not possible? A. It is not possible that he remove the ingredients in the ratio of 1 to 6 then make it 1 to 16.

10 Q. But if he had taken ingredients from your store when you were not looking and then produced only 1 to 16 it means you would be losing cement somewhere would it not? A. No.

Ata-Ul-Haq
Cross-
examination
continued

Q. Now I put it to you Mr. Ata Ul Haq that if you were supposed to be producing 1 to 4 mixture and produced only a 1 to 16 mixture, that you were not giving the City Council what they were paying for? A. Yes, if we used the mer-tar in the ratio of 1 to 16 instead of 1 to 6 we would clearly not give what the Council paid for.

20 Q. You also say you have not done that?
A. Yes, we did not do that.

Q. But if you had done it, if you had been a very naughty boy and done a thing like that, that would be equivalent to cheating the City Council out of its money? A. But we did not.

30 Q. I am asking you to suppose. I am putting the supposition that if your work had been such that instead of 1 to 4 or 1 to 6 you were putting into the buildings a mixture 1 to 16 that would be equivalent to cheating the City Council out of its money? A. If we had done that.

Q. But in point of fact you had no reason for cutting down upon the mixture in any of the concrete specifications, had you? A. No, there was no reason. We used the mixture of required consistency.

40 Q. And when you asked the officials of the Council to come and pass your work and approve it and take it over, you were putting that work forward to them as complying with the specification 1:3:6, 1:6 and 1:4? A. No, I did not ask these people, but the Clerk of Works used to call these offices

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-UL-Haq
Cross-
examination
continued

Q. And when you did a job you knew it had to be inspected and passed or approved? A. The inspections were being carried on as the work was progressing.

Q. And you hold out your concrete work as being according to specification? A. Yes.

Q. Now you told My Lord in the examination-in-chief that from time to time Mr. Stone used to come along and fill a box with the sample of the cement or mortar which you were using? A. Yes. 10

Q. And he used to send some samples to the P.W.D. for testing? A. Yes.

Q. Did he send these samples to the P.W.D. or did he leave them lying about the site? A. I cannot say. He might be sending them to the P.W.D.

Q. Did you ever get a bill from the P.W.D. for dealing with these samples? A. No, I did not receive any bill from the P.W.D.

Q. Is it in as a term of the contract that any samples taken for testing, the expenses of the testing have to be borne by you? A. Yes. 20

Q. And if you never had any bill then presumably none of the samples went to the P.W.D.? A. I used to ask him verbally about the samples and he told me that the sample stood the testing.

Q. But you never saw any P.W.D. Reports? A. No.

Q. Did Mr. Stone tell you that he had sent the samples to the P.W.D.? A. Yes.

Q. In fact you had lots of conversations with Mr. Stone about the work? A. No, there was nothing to be talked much about the works. Whatever was essential was talked over. 30

Q. And so Mr. Stone was a friend of yours? A. No, before this contract I did not know him.

Q. For how long did you have to deal with him in connection with this contract? A. Yes. We had to deal with him only as long as he was the Clerk of Works of my job.

Q. For how long was that? A. I think our works lasted for about 10 to 12 months.

In the Supreme Court of Kenya

Q. And I put it to you during that time you became very friendly with Mr. Stone? A. I was under his charge, that is all.

Plaintiff's Evidence

Q. And on occasions you lent him the use of transport

No.10

MR. O'DONOVAN

Ata-Ul-Haq
Cross-examination
continued

10

Would my Learned Friend make it clear whether there is any innuendo behind this question, because if there is going to be any suggestion of collusion between Clerk of Works and Plaintiff, I must object to it being canvassed in court unless pleading was disclosed by offence.....

JUDGE:

Are you suggesting there is any collusion because it is not in the pleading.

MR. MACKIE ROBERTSON:

20

No, My Lord, it is not pleaded. Whether or not it requires to be pleaded I am not prepared to submit at this stage. I will withdraw the question at this stage.

I should make it clear that for the Defence we do not concede that it is necessary specifically to establish any conspiracy to defraud between Plaintiff and Mr. Stone to enable the evidence which might lead to that assumption being laid before the court.

30

JUDGE:

Perhaps that may be the subject for argument.

Q. Well now, you will remember this morning I asked you if you could produce your accounts for the purchase of hoop-iron and materials in connection with this contract? A. Yes.

Q. Have you got any of them? A. No, it was a very short time.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Well now, leaving the question of receipts aside for the moment. When you came to plinth level and had to put your damp course in, you laid one layer of felt along the top of the course immediately below plinth level? A. You mean one course under the plinth level.

Q. Perhaps I am wrong there. The course of walling that is level with the top of the slab?

A. Yes, After we have filled the stone and consolidated this with gravel etc., and it is made uniform surface - after that, over that we put damp proof course. On top of concrete slab we put damp proof course.

10

Q. You laid the damp proof filling on top of the concrete slab and then you built the walls up from the damp proof coursing - is that correct? A. The walling above that plinth level is started after we put in the damp proof course.

Q. And the damp proof felting was laid directly on top of the concrete slab? A. Yes and we have to remove all the creases and then we start the walling above that.

20

Q. But there was nothing in between the damp proof felting and the concrete slab? A. A little paint is used in all between.

Q. What sort of paint? A. It is a sort of bitumen.

Q. How do you apply that. With a paint-brush?

A. Bitumen is heated first and after that applied with a brush.

30

Q. But there was no cement screed below the damp proof felt? A. The process is that, first of all we lay the concrete slab, then on the concrete slab we put a little thin layer of cement wherever it is required, then we paint the surface with that bitumen. Over that we stick this damp-proof felting.

Q. Well now, I put it to you, in point of fact, Mr. Ata Ul Haq, did you not put down a cement screed, or set your damp-proof felting in bitumen? A. We did.

40

Q. Well now, on the subject of hoop-iron. You offered in your examination-in-chief to demonstrate at the site that the reinforcing has everywhere been put in. Could you tell My Lord how you can demonstrate that? A. Yes. Because I can show that at some places the ends of that reinforcing are sticking out and are visible to the naked eye.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

10 Q. Do you agree with me that it would be perfectly possible to put in a bit about 2 or 3 inches long with a bit sticking out of the wall? A. Where that end appears sticking outside, if you like I can show that end inside from 2 to 5 feet - even 10 or 15 feet.

Ata-Ul-Haq
Cross-
examination
continued

20 Q. Would you agree with me Mr. Ata Ul Haq, the only real way of proving whether hoop-iron is in, is by knocking down part of the wall? A. No. There is no reason to pull down the wall, but I can remove the joint - I can rake the joint and then show it.

Q. But it cannot be determined by merely looking at the wall? A. By looking at the surface of the wall you cannot imagine how long it is inside.

Q. And it is not at every course that a little bit of the hoop-iron sticks out is it; it is only now and again? A. It is not put in every course.

30 Q. Yes I know, every alternate course, but it is not in every course that the hoop iron is put in, or meant to be put in, that there is a bit sticking out at the end? A. Yes. There might be some which are inside totally.

Q. And so, if the Clerk of Works inspected a wall which had been built whilst he was not looking at it, he could not tell, from visual inspection, whether all the hoop-iron was there or not? A. I cannot say what he would think.

40 Q. Perhaps not, but I am asking you to agree with me that, if the Clerk of Works had been away to Umbatela Estate or Mr. Chanan Singh's contract and finds whilst he has been away, you have built a wall up so high (demonstrates) it

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

is impossible for him to tell, merely by looking at the wall, whether you have put in all the hoop-iron or whether you have not? A. You cannot build a wall so high in the temporary absence of a man who goes away for only a short period.

Q. So that your answer is, that it was impossible for you to build a wall so quickly that there were another two courses on it before Mr. Stone came back again? A. Firstly I must know what is the time you are talking about that he remains absent from the job. 10

Q. You are in a better position to know that than I am, Mr. Ata Ul Haq. You were there - you are the contractor - you were building on the site. I have never been there at all. You know when Mr. Stone was there and when he was not there. A. Both the works were being carried out in the same neighbourhood and if you suggest that he went away only for 10 or 20 minutes and you suggest at the same time we raised a wall up to that level, it is not possible. Even if he remains away from the works for about two hours, still I do not think the wall could be raised up to the level you suggest. 20

Q. I did not think you were such a slow worker. What I am putting to you is, that Mr. Stone was not able to stand and observe every alternate course of stone that was being laid on your site. He could not see, in fact, whether you were putting in hoop iron at every place you were meant to be putting it in? A. Yes, that is correct. Nobody could do that. 30

Q. I am sure you will agree with me that "TIM-SALES" have been described as one of the leading companies in Nairobi in their line of business - sales of timber of all grades and standards?
A. Yes.

Q. You could go there and buy first class timber.
A. Yes.

Q. And you could go there and buy very low class timber? A. Yes. 40

Q. Can you produce to me, any vouchers to show what class of timber you purchased there? A. We

bought all standard timbers, which is required for roofing.

In the Supreme
Court of Kenya

Q. You indicated that to us before, but can you produce any sales invoices to show that it was all standard grade? A. Yes.

Plaintiff's
Evidence

Q. Will you do so? A. Yes.

No.10

Q. And in the same way, can you produce invoices to show you bought tiles from "KENTILES" as first-grade tiles? A. Yes.

Ata-Ul-Haq
Cross-
examination
continued

10 Q. That Company sells also second and third grade tiles does it not? A. Yes, they sell low-grade tiles.

Q. And in fact, you returned to them a lot of the tiles which had been sold to you. You returned them to "KENTILES" as rejected?

A. Checking goes on at all these blocks and if they point out so many tiles which are to be rejected, then we remove these tiles and they are sent back.

20 Q. And they were exchanged for you? A. They used to supply first-class tiles and they changed those rejected tiles.

Q. In fact it cost you nothing but a little bit of extra labour to re-lay first-class tiles?

A. Yes.

Q. Now you told My Lord that you did not know of any other local tile company, but I tell you there is a well-known company called "COAST BRICK & TILE COMPANY". A. I do not know them.

30 There might be that company making tiles but I always used to buy from "KENTILES".

Q. And in your experience of doing six-and-a-half-million shillings of building work, you never came across the "COAST BRICK & TILE CO"?

A. No we never indented goods from that Company.

Q. Well now, you said in your evidence-in-chief, Mr. Ata Ul Haq, that Mr. Mould went with you to Kentiles once and inspected the tiles there, but I suggest Mr. Mould's visit was to endeavour to help you with supplies and deliveries? A. As

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In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

far as I guess intuitively, he went there to make two enquiries:(1) Whether I was actually buying first-class tiles and (2) whether there was really a shortage of tiles.

Then you told us Mr. Ata Ul Haq of the procedure for taking over the blocks of houses. After they were completed there was inspection after inspection - room by room - but I put it to you that such a procedure did not occur in respect of the last six blocks? A. Yes, they used to check room by room.

10

Q. And there was an inspection first of all by the Clerk of Works and then one by the Architect and then one by the Building Inspectors and so on and so forth, but not for the last six blocks?

A. The same procedure was adopted in respect of the last six blocks also.

Q. I put it to you that these last six blocks have not, in fact, been accepted or taken over by the Council. A. The blocks were tested and they were accepted on behalf of the City Council.

20

Q. By whom, on behalf of the City Council?

A. When everything was checked and everything was completed to their satisfaction, then a letter was handed over to me by the Clerk of Works.

Q. That was a letter signed by the Clerk of Works? A. Yes.

Q. And addressed to the African Housing Architect?

A. I do not know to whom it was addressed, but he gave it to me.

30

Q. It was addressed to the Town Hall, not you?

A. He might have sent a copy of that to the Town Hall, but he gave me also one.

Q. Anyhow it was not a letter like the acceptance that you received in other cases? A. Yes, it was not that type.

Q. And in fact this was the first letter which you had ever received signed by the Clerk of Works, saying the blocks were complete and taken over by the City Council - or words to that effect?

40

A. No, on a previous occasion also I had not

received a letter of acceptance and I wrote to the Council

In the Supreme Court of Kenya

Q. To the City Engineer? A. Yes.

Plaintiff's Evidence

Q. Not to the Clerk of Works? A. I had written that letter to the City Engineer.....

No.10

10

Q. Why did you send that letter to the City Engineer instead of to the Clerk of Works? A. I may explain that this time I have not written to the City Engineer, but the Clerk of Works himself has given me one letter.

Ata-Ul-Haq Cross-examination continued

Q. Why, when you had a complaint to make, did you write to the City Engineer instead of to the Clerk of Works? A. Because any trouble has to be notified to the City Engineer.

Q. And in point of fact, you cannot produce to the Court any 'take-over' certificate emanating from the Town Hall, in respect of the last six blocks. A. But the man who gave me the letter is an employee of the Town Hall.

20

Q. You had no letter that came to you from the Town Hall taking over the last six blocks? A. Yes, there is the letter-head of the City Council, on that paper.

Q. Did it come to you from the Town Hall or did it come to you from the Clerk of Works on the site? A. When the works are complete and inspection complete that letter was handed over to me by the Clerk of Works.

30

Q. Whereas in all other cases you had received your letter through the post from the City Engineer? A. Yes.

Q. Now Mr. Ata Ul Haq, you have been given no variation orders in respect of this contract except the ones which you have produced here in Court? A. I do not think there is any other variation order beside what I have produced in Court, but I have done a lot of extra work which I can show today.

40

Q. You have in fact applied for variation orders in respect of some of your work but have

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

been refused it? A. I think I have written a letter about variation order in respect of foundations and in reply to that I received one stating that it would be issued soon.

Q. And certain other aspects, for instance for the extra batten in the roof, you applied for a variation order but you were refused? A. Yes, we made application for other variation orders which have been rejected.

ADJOURNED 4.0 p.m. - 6.5.57

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RESUMED 10.30 a.m. - 7th May, 1957.

Cross-examination: MR. MACKIE ROBERTSON

ATA UL HAQ (on former oath)

Q. Now Mr. Ata Ul Haq, one of the items for which you are claiming extra payment is the assertion of the latrine head plate - 4 x 2 - for which you are claiming Shs.972/- but that is an extra in respect of which no variation order was ever issued to you. A. Yes, there is no variation order.

20

Q. And I suggest it is a measure which you carried out on your own initiative, without instructions? A. No, we had instructions.

Q. Whose? A. Both the Architect and the Clerk of Works.

Q. Which Architect and which Clerk of Works?
A. Mr. Tanner and Mr. Stone.

Q. And the next item in your claim for extras is Shs.5660/- for plastering a 4" wide strip to the concrete slab? A. Yes.

30

Q. And here again you have no variation order in respect of this item? A. No.

Q. And I suggest to you, that had you laid the shuttering for the concrete slab and properly tamped up the concrete, this work would have been unnecessary. A. No, these two suggestions could not have obviated this necessity.

Q. Do you agree that item is not covered in the specification? A. Yes, it is not mentioned in the specification.

Q. And the plastering of a 4" wide strip was only done to cover up the rough edge of your concrete slab? A. Yes, that was the purpose.

Q. And if concrete slab had not had a rough edge it would have been unnecessary to put this plaster strip? A. Yes.

10 Q. Now you are also claiming Shs. 2721/- for an extra podo batten? A. Yes.

Q. And this is one of the first claims for extras which you actually advanced to the City Engineer before you commenced your present action? A. Yes.

Q. And the City Engineer turned down your application for variation order in respect of this extra podo batten? A. Yes.

20 Q. In fact I think he turned it down on two occasions on the 11th September, 1954 and the 24th March, 1955 - do you remember that? A. Yes.

Q. Letter of the 11th September is already in My Lord, as Ex. 22 and I now put three other letters to the witness dated 27th August and 24th March.

Q. Would you identify these letters as correspondence which was exchanged between yourself and the City Engineer.

30 Q. (letters of 24th March and 27th August, 1954, put in as Exhibit B)

(letters read out to witness)

A. Yes.

Q. Now, Mr. Ata Ul Haq, would you tell My Lord, what you understand by the word crow-bar?

A. By that the word 'tarimbo'.

Q. That is a long piece of metal, sharpened at one end and which is used for levering? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. And I suggest that it was nothing like any such instrument which you saw employees of the City Council using to rake out the mortar at Ofafa? A. But I saw

Q. I am giving you an opportunity to correct yourself if you want to Mr. Ata Ul Haq. The instruments which were being used were not long iron bars that would come within the ordinary meaning of the word crow-bar, or as you used 'tarimbo'. A. What I saw was a bent instrument at one end, which is used for striking the walls. 10

Q. In fact it was a short rod of iron about 18" long with a hoop at one end? A. The straight end must be 18" to 20" but I cannot say what would be the curved length of the crook end.

Q. But neither the crow-bar or 'tarimbo' have a hook at the end of it, have they? A. Generally it has not, but these which are specially designed to drive out the nails, they have one of their ends a bit crooked, to take out the nails. 20

Q. Now I put it to you that you speak English and understand it reasonably well Mr. Ata Ul Haq? A. I cannot speak, but I can understand to a certain extent.

Q. And I suggest to you that your conversations with Mr. Mould, the Architect, were carried on in English. Perhaps not in the best English, but were carried on in English. A. Sometimes in Swahili and sometimes in broken English. 30

Q. Is it not the case that you probably spoke to Mr. Stone in Swahili, but to Mr. Mould in English? A. Sometimes I used to speak to somebody in Swahili who translated that into English for me.

Q. Did you have a son working on this contract from time to time? A. Yes.

Q. What is his name? A. Arshad Ul Haq.

Q. You have a son called Abdul Ul Haq? A. No.

Q. He is a brother of yours? A. Yes.

Q. And did he assist you from time to time on the contract? A. No, not in my business. 40

Q. But did he not attend meetings on your behalf, in connection with this contract? A. Yes. Once we received a letter from the City Engineer, stating I should go there in the company of my brother.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Q. Anyhow your brother went along and did the talking for you, because he speaks very good English? A. But he had sent for him, the City Engineer.

10 Q. In fact it is your brother sitting in the court? A. Yes.

Q. And your son also speaks English, does he not? A. Yes, to some extent.

Q. Did you have an English speaking foreman in charge of the works? A. My son knew English, but the foreman he did not know English.

20 Q. Was your son there the whole time? A. No, he used to practically be all the time in the office and at times he used to visit the place of works.

Q. And when Mr. Stone visited the site of the works on Sunday mornings, it was only a short visit? He was not working there the whole Sunday morning when it was supposed to be his day off? A. That is correct.

30 Q. Now, I suggest to you, Mr. Ata Ul Haq, that you have not, in fact, previously carried out six-and-a-half-million shillings worth of work for the City Council as you told us? A. Yes, I must have done a contract worth about six-and-a-half million shillings, but at that time I was working in partnership with my brother.

Q. But you, yourself, have never previously had any contract at all with the City Council? A. I did work, but I worked in company with my brother and in fact my brother had gone to India at that time and I was carrying on alone.

40 Q. But all these previous contracts were in your brother's name - in the name of Abdul Al Haq - not in a partnership name? A. Yes, these contracts were in his name, but the contracts which were taken over by him later on, I was in partnership with my brother at that time.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Cross-
examination
continued

Re-
examination.

Q. And in completing the form of tender for this particular contract, in the space where you were asked to give details of previous contracts carried out for the City Council or other Public Authorities, you put a line through it and entered nothing at all? A. Yes, because previously we were working together.

Q. But you put nothing down in your tender form?
A. I do not remember perfectly well, I might have crossed that column out.

10

Re-examination: MR. O'DONOVAN:

Q. Is this the first contract you have had in your own name with the City Council? A. Yes.

Q. You said the previous contract in which you were financially interested, amounted to six-and-a-half million shillings? A. Yes. Not the price of one contract amounted to that figure previously, in which I was interested financially.

Q. Did the total you were interested in financially amount to that? A. Oh yes.

20

Q. Did you, in regard to these previous contracts, deal personally with the officers of the City Council? A. Yes.

Q. And with regard to the work - the actual physical work - on the site in the previous contracts, who used to supervise it? A. I used to supervise the physical side, or operations of the work.

Q. Now, did the Clerk of Works during the progress of the works, ever require you to remove and rebuild any part of the mortar?

30

JUDGE:

Q. That is this contract?

MR. O'DONOVAN

I am talking now, My Lord, about the present contract.

Q. I am referring to this contract. A. I do not think he did.

Q. Were you required at any time to re-construct any part of the walling? A. Yes.

Q. Does that involve removing the mortar?

A. Yes.

In the Supreme
Court of Kenya

Q. Were you at all times prepared, during the works, to remove and replace any defective work that was pointed out to you? A. Yes.

Plaintiff's
Evidence

Q. You said, I think, that it took you about 10 to 15 minutes to mix mortar in your cement mixing machines? A. Yes, I have said so.

No.10

10 Q. Of that time, how much of it was taken up in measuring the ingredients? A. For measuring the ingredients which were to be put into the mixing machines it takes about 4 to 5 minutes.

Ata-Ul-Haq
Re-
examination
continued

JUDGE:

Q. Are not the ingredients poured in whilst the mixer is turning? A. Yes.

20 Q. And it is kept turning for 10 to 15 minutes whilst ingredients are being put in - is that correct? A. No, first of all we remove the first mixture, then we start the machine revolving and then we start pouring in the ingredients and pouring in the ingredients takes 2 to 3 minutes. In 10 to 15 minutes is included time which is taken for putting in the ingredients.

Q. As regards foundations, you came across different types of material at the bottom - rock, gravel and murrum? A. Yes.

30 Q. Did the differences in the depths to which you dug the foundations have anything to do with the differences in the rock and gravel formations? A. Sometimes the three things appear at one level, but it depends upon the instructions of the Clerk of Works. If he says we have to go to the harder substance then we have to dig deeper and dig different depths after coming to that strata.

40 Q. Do you mean by that last answer that the Clerk of Works would give you instructions about the different depths to be dug, depending upon the substance struck? A. Yes.

Q. You told my learned friend, Mr. Mackie Robertson, that you recalled no occasion when you had

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Re-
examination
continued

laid down the screed twice in any block - is that correct? A. Yes, that is correct.

Q. Did you ever have to remove the screed on Mr. Mould's instructions? A. Yes.

Q. In how many rooms? A. I think in two rooms.

Q. Do you mean the entire screed? A. Yes.

Q. Was there any inspection of the concrete slab before you re-laid the screed? A. Yes.

Q. With regard to the stone which you used, can you say whether any better quality quarry dressed stones were available in Nairobi at that time? A. No, not in my opinion. 10

Q. Were they approved by the Clerk of Works before you used them? A. Yes, he used to check the samples first of all.

Q. Who was the person in fact who supplied the stone to you? A. Karsan Gopalji.

Q. Was he the owner of the quarry? A. Yes.

Q. Do you know where the City Council obtained their quarry dressed stone? A. Yes, because at that time he had a years contract with the City Council to supply stone. 20

Q. Were they getting that there as well? A. Yes.

Q. The internal walls had to be dressed up to a "fair face"? A. Yes.

Q. I think you said that was in fact done?
Q. Yes.

Q. Did your labourers dress all the stone inside once and leave it at that or was the work gone over on more than one occasion? A. I do not understand that question. 30

Q. After the walls were constructed. I take it the internal surfaces were dressed to a smoother surface - is that correct? A. Yes.

Q. Was that work examined by the Architect?
A. Yes.

Q. After their examination was there any further dressing of the internal walls? A. Wherever they found a defect or prominent bulging out we again dressed that portion.

Q. Did they examine that further work? A. Yes.

Q. Was there any further dressing off, or did you get it exactly right the second time, or did you have to go on doing it? A. No, after the second inspection they did not ask me to do anything.

10

Q. Who made the inspection? A. The Clerk of Works and the Architect both used to inspect.

Q. Which Architect? A. Mr. Tanner.

Q. Did Mr. Mould make any inspection of the internal wall? A. Yes.

Q. Did he require you to do any further dressing of the internal wall? A. Yes.

20

Q. I think you said it was not possible for you to be everywhere during the progress of the work so as to supervise in detail, every single thing that was done? A. Yes.

Q. If there were, in fact, any defects in workmanship, were they, so far as you were concerned, intentional? A. No it was not intentional at all.

Q. Have you in fact, repaired every single defect that was pointed out to you up to the date when you got the Clerk of Works letters that they were satisfied? A. Yes.

30

Q. Will you look at Exhibit 32 (handed to witness) Memorandum from Mr. Goodwin to the Architect, showing list of all the floor defects which were found on inspection. Who was the Architect? A. Mr. Mould was the Architect at that time.

(Mr. O'Donovan quotes from Ex. 32)

Q. Was Mr. Mould present at that inspection?
A. Yes, Mr. Mould and Mr. Ross.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Re-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.10

Ata-Ul-Haq
Re-examination
continued

Q. Did you repair all the defects? A. Yes.

Q. Now I think, that in cross-examination, you said that you dug trial holes on several occasions? A. Yes.

Q. Did you say on three occasions you had dug trial holes? A. I think we dug holes on two occasions.

Q. Can you be certain about what happened?
A. I think we dug twice.

Q. Only twice? A. Yes, only twice. 10

Q. You were asked in cross-examination to look for invoices for purchase of materials? A. Yes.

Q. Can you produce your invoices - some of them for the purchase of damp-proof coursing? A. Yes.

(Invoices produced relating to tiles, hoop-iron, timber and damp-proof coursing).

MR. SCHERMBRUCKER:

May I suggest that these invoices can be made available to the Defence during the adjournment? 20

JUDGE:

Very well.

MR. ATA UL HAQ

Whatever invoices I could find I brought to Court.

Q. You make them available to the Defence for their inspection? A. Yes.

Q. The tiles you purchased were first quality tiles? A. Yes.

Q. You said Mr. Stones attentions were divided between yourself and Mr.Chanan Singh? A. Yes. 30

Q. How far away were the works on this other contract being constructed? A. Both works were being carried on, on the same plot, because both are adjacent.

No.11

In the Supreme
Court of Kenya

EVIDENCE OF CHARLES WILLIAM NEWLYN

Plaintiff's
Evidence

1st July, 1957

10.30 a.m.

No.11

CHARLES WILLIAM NEWLYN (Sworn)

Evidence of
Charles William
Newlyn.
Examination

Examination-in-Chief by MR. O'DONOVAN

Q. What is your full name? A. Charles William Newlyn.

10 Q. Are you a chartered quantity surveyor?
A. I am.

Q. Do you practice in Nairobi? A. I do.

Q. What professional qualifications have you?
A. I am an associate member of the Royal Institute of Chartered Surveyors.

Q. Have you any other degrees or qualifications?
A. One dating back many years - First Class Builders Surveyor. London City Guilds.

Q. How many years experience have you of building contracts? A. 34 years.

20 Q. How much of that has been in Kenya?
A. Nearly 8 years. September, 1949 I arrived in Kenya - East Africa.

Q. I believe you were instructed by the Plaintiff in this case to examine certain works he had constructed at Ofafa Estate, Nairobi?
A. I was.

Q. When was that? A. At the beginning of March this year.

30 Q. Were you asked to examine the works and report on them? A. I was asked to examine the works as far as could be seen which is above ground level, and give a report on the work in conjunction with the specification.

Q. On how many occasions have you inspected the

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn.
Examination
continued

work? A. I can give you the dates of the inspections. They are mostly Saturdays and Sundays. March 2nd, 5 hours; 7th, 2 hours; 10th, 4 hours; 14th, 3 hours; 16th, 4 hours; 23rd, 4 hours; 24th, 4 hours; 30th, 4 hours; April 20th, 4 hours.

Q. What is the total number of hours on the site?

A. 34 hours, irrespective of the time spent formulating the report.

Q. Have you studied the contract and the specifications? A. I have made a full study of the contract conditions and the specification in relation to the work. 10

Q. Have you also studied the report on alleged deficiencies in workmanship compiled by Mr. Wevill?

A. I have.

Q. Before I ask you any questions about details of the work I would like to put general questions to you. The first is, do you agree with Mr. Wevill's report? A. No, not entirely I cannot entirely agree with Mr. Wevill's report. 20

Q. As a general comment, are you able to say whether the works are worse than, as good as, or better than the specification? A. From the appearance of the superstructure I should say the work is reasonably in conjunction with the specification. Going on visual tests only.

Q. Were you asked recently to examine the foundations and to take samples? A. I was asked recently if this could be done, but owing to the very inclement weather it has been impossible to take samples owing to the waterlogged state of the site. 30

Q. When you describe the site as waterlogged, I believe the whole site consists of black cotton soil to a certain depth? A. The site itself contains black cotton soil, and you had only to step off the path and you would be over the ankles in water.

Q. Would it be fair to the contractor to take samples of mortar in these circumstances? A. I consider it would be very unfair. 40

Q. And did you in consequence decline to do so?
A. I did.

In the Supreme
Court of Kenya

Q. Why would it be unfair? A. Mortar, to get samples properly, should be raked from the joints, and the water pressure going through the walls would undoubtedly have washed away a certain amount of cement.

Plaintiff's
Evidence

No.11

10 Q. Is there, in fact, in these waterlogged conditions, considerable pressure of water on the foundations? A. I should say a lot of this water which is running down the Doonholm Road is surface water which comes from the heights of Nairobi and as the heights of Nairobi are considerably higher than Doonholm Road there would be some considerable pressure of water against the foundations.

Evidence of
Charles William
Newlyn
Examination
continued

20 Q. If Mr. Wevill took samples in April of last year in waterlogged conditions, do you think these would have been fair samples? A. I should say the concrete might have been but I should be rather doubtful of the mortar.

Q. Have you had experience of building on black cotton soil? A. I have had experience of three buildings in Nairobi where black cotton soil has had to be excavated out.

Q. Can you speak with authority about black cotton soil? A. I can speak with authority on black cotton soil.

30 Q. Have you examined the walls of the building for signs of cracks and settlement? A. I made it one of my chief points to examine the whole of the buildings for any signs of settlement. No signs of settlement could be found, and this is after 12 months since Mr. Wevill's report of last year. There has been very heavy rain, and in my opinion, had there going to be any settlement it would now be showing itself.

40 Q. What do you draw from that as regards first of all the depth of the trenches? A. I should say that the foundations are done on rock and that there could be no possibility of heavy pockets of black cotton soil under them.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

Q. You rule it out as impossible? A. I rule it out as being impossible that there is any heavy pockets of black cotton soil. I would not rule it out as impossible that there might be $\frac{1}{2}$ " or so depth in the rock formation. That in any case would not be detrimental to the safety of the buildings.

Q. Your conclusion is that the trenches were dug to an adequate depth? A. They were dug down to a solid foundation. 10

Q. In excavating in waterlogged conditions would any other explanation occur to you for the presence of black cotton soil? To put it more specifically, what effect has waterlogging on black cotton soil after the building has been constructed? A. Black cotton soil expands with the quantity of water in it.

Q. Can any seep under the foundations? A. In waterlogged conditions such as the site at Doonholm Road, if there were soft pockets of rock I should say that there is quite a possibility of black cotton soil seeping under the concrete. 20

Q. Have you seen the analyses which were made of samples of concrete of the foundation? A. Yes, I have studied those.

Q. Are you able to say whether or not they could possibly be typical of the general quality of the foundations? A. It would be making a rash statement to say one way or the other. Having not examined the foundations I would not like to make a direct statement either way. 30

Q. Let me put it to you this way. Would you expect any cracking if the foundations were as bad as those analyses indicated? A. If they were as bad and with the quantity of water in the ground, I should definitely expect some form of settlement to show itself.

Q. I don't want to press you any further than you want to go, but can you make a fairly simple inference from that as to whether the samples could or could not be representative of the overall quality of the foundations? A. In certain instances I should say yes, but in one particular 40

instance I should feel inclined to doubt it.

JUDGE: I am sorry, I did not quite get that.
A. In certain instances I should rather doubt it.

MR. O'DONOVAN: I don't quite follow your answer I must confess. I asked you whether May I remind you of your previous answer. You said you would expect cracks or settlement if the foundations as a whole were as bad as the analysis showed the samples to be? A. In certain tests, yes.

Q. I then asked you whether you could go on from that to say whether the samples were representative in your view of the whole of the foundations or not? A. I should say that the samples bear a reasonable relation to each other and would be probably a fair example, but in certain cases where there has been a very bad test report I should feel inclined to wonder what has either gone wrong with the concrete or the test, as if the mix was so weak I should have expected it by this time to have disintegrated with the water pressure and let the walls down and caused settlement.

Q. Would you look at Exhibit 'A'. Item No.18. What have you to say about that? A. Using the normal trade term, I should say that the mix has been given a smell of the cement bag. I see also that the sample is quite a big lump and with such a weak mix I cannot see quite how such a large lump was cut out without disintegrating.

Q. What do these specifications provide as the proper mixture for foundations? A. 1:3:6

Q. What is the maximum variation from that apart from isolated pockets which in your view would be possibly consistent with their continuing to do their work satisfactorily? A. Normally speaking I should not expect to find any variation one way or another.

JUDGE: You would not expect to find any variation? A. A very minute variation, My Lord.

MR. O'DONOVAN: If you have a foundation which

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

should be 1:3:6, but which demonstrably is continuing to work satisfactorily - that is so isn't it? These foundations are holding up the building? A. They appear to be doing it very well.

Q. Can you infer that that they must be roughly according to the specification or that they must comply within certain limits to the specification? A. No, I don't think anybody could infer from that without examination. One could infer that the lowest reasonable limits I should imagine would be a 1:5:10 mix. 10

JUDGE: The lowest reasonable limits? A. The lowest reasonable limits one would anticipate as being a normal safe concrete would be a 1:5:10 mix. For that type of work.

JUDGE: Are you saying that the inference is that it is approximately 1:5:10. The standard of work was not below that? A. I should say not, taking an average.

MR. O'DONOVAN: You mean if it were worse than that ... A. If it were worse than that I should not consider that the buildings would be as sound as that. That is taking the soil and water conditions into consideration. 20

Q. Have this season's rains been exceptionally heavy? A. I should say from reports I have seen that they have been more or less average.

Q. And there has been no discernable settlement at all? A. No discernable settlement anywhere on the site as far as could be seen. 30

Q. I take it you have had many year's experience of working with Clerks of Works? A. I have had 14 years working with contractors whereby if I did not do as I should have done I would have had a very good kick. I have had very good experience during the war partly on supervision and partly working in conjunction with engineers or Clerks of Works.

Q. Is the examination of the concrete and mortar mixtures one of the most important functions of the Clerk of Works? A. Yes, I should say that the correct mixes of concrete and mortar are one of his chief functions, and seeing that these are obtained. 40

10 Q. Can an experienced Clerk of Works control and enforce the specifications in this respect without great difficulty, without chemical analyses and so on? A. He could give a visual check, once ascertaining the colour of the sand because that varies a great deal on the site. Once he had seen several mixes, say 1:3:6 using the same materials, or 1:2:4, he should get some idea of the colour and texture and be able to tell roughly.

Q. Would he be able to tell any marked variation simply by appearance? A. He should do, taking in consideration that if you get a brown sand with less cement you would get a browner appearance and with more cement you would get more of a grey appearance in the mortar.

Q. According to Mr. Wevill, I will read his conclusion: "The concrete generallyexists will occur". I take it that you disagree.....

20 JUDGE: This is from Exhibit 'A', is it?

MR. O'DONOVAN: No, My Lord, this is from Mr. Wevill's report which is Exhibit 61, dealing with the samples. I am reading from the second page. He says that; "...uneven settlement willsub-base". Does the sub-base refer to the rock or murrum underneath the concrete? A. I should refer to the rock or murrum underneath as the base. Normally, the sub-base....

30 Q. Mr. Wevill calls it rock or murrum sub-base. Do you agree or disagree that the bearing capacity of the rock or murrum is inadequate? A. No, My Lord.

Q. You do not agree that it is inadequate? A. The rock cannot be inadequate.

Q. Do you agree that there is any uneven settlement? A. I cannot say that there will be any uneven settlement.

40 Q. Do you say that there would be uneven settlement by now if there were going to be any settlement? A. If there were going to be any settlement it would have shown itself by now.

Q. Do you consider that any underpinning is

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

necessary? A. No, I do not consider any underpinning is necessary.

Q. Do you consider it is necessary to cut out anything? A. From the appearance of the superstructure I should say it is entirely unnecessary.

Q. Mr. Wevill says that the concrete might be considered adequate as a levelling up on which to build the walling. He says the concrete might be adequate but the murrum in the sub-base is inadequate. Could the concrete be adequate if these analyses showing mixtures 1:18 and 1:23 were typical of the foundation? A. There is a contradiction in Mr. Wevill's statement, he cannot maintain that the concrete is adequate and the sub-base not adequate. He already says that the foundations should be excavated down to rock level and according to information and reports, rock level has been reached.

10

Q. Would you confine yourself to answering my question. I only want to ask this. Would you say of a concrete foundation made with a mixture of 1:18, 1:23 and so on - would you say that on top of such a concrete foundation it was adequate on which to build a wall? A. Yes, providing the foundation level is sound.

20

Q. You said the specification called for 1:3:6. I think you said the maximum variation was 1:5:10, and anything beyond that would be sound or unsound? A. Can it be put like this? Very often on rock sites one puts a concrete blinding. Probably it has been shown as 1:20 to receive the basis or wall foundations, but on top of that again comes the actual concrete. That binding is 2" - 3" thick, but it is still strong enough to take the foundations.

30

JUDGE: The concrete what? A. The concrete binding is 2" - 3" thick.

MR. O'DONOVAN: Here we have foundations which are on an average 4 courses thick? A. Yes.

Q. All I am trying to get from you is this. We have a report of Mr. Wevill's that the concrete foundation itself, not the binding the four courses, may be considered adequate? A. No, Sir.

40

The concrete foundation is 6" thick. The wall is 4 courses.

In the Supreme Court of Kenya

Q. I beg your pardon. We have a conclusion that the concrete foundation might be considered adequate. We also have analyses showing that the concrete is made of a mixture 1:18 and 1:23. I am asking you whether it is reconcilable or irreconcilable. In other words, whether a concrete foundation made on an average with a mixture like that would be adequate or not? A. On a sound rock foundation it would be adequate to support light structures such as the Ofafa estate buildings. Providing the rock foundation is hard.

Plaintiff's Evidence

No.11

10 Evidence of Charles William Newlyn Examination continued

JUDGE: These foundations are I think there was evidence that the foundations were a matter of 2 - 3 ft. deep.

MR. O'DONOVAN: I thought they were four courses. The foundation is made of stone walling. We were talking about the concrete foundation of Mr. Wevill's report. A. I maintain that the concrete of 1:23 mix, which is known in the trade as a blinding, would be strong enough to support the walling. Providing the rock is solid and there are no cavities.

JUDGE: I am not sure that we are talking about the same thing.

MR. O'DONOVAN: May I put it this way. Will you look at this report, Mr. Newlyn? I refer to the bottom where he speaks of conclusions.

30 JUDGE: My recollections may be astray after the lapse of time. I just want to make sure what these foundations were supposed to be? A. Mr. Wevill's statement says that the concrete might be considered a good blinding on which to build the wall. I agree with Mr. Wevill's statement. It is only what is called a blinding. On a rock foundation it would certainly be quite suitable for such lightly constructed buildings.

40 JUDGE: The specifications apparently provide for a 6" job and that would be what you refer to as a blinding? A. That is very different. That is specified as a 1:3:6 concrete foundation. Blinding is generally a very weak mix to level up uneven surfaces which are to take the further concrete or walls.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

JUDGE: I am sorry. I don't quite follow. The specification apparently provides for concrete foundations 18" wide and 6" deep. That is what I understand has been decided 1:18 etc. Is that adequate for that foundation? A. On the solid rock, yes.

JUDGE: It would be? A. For such light constructions.

JUDGE: That is not what you describe as a blinding? A. A Mix.

10

JUDGE: No. The 6" thickness would not be blinding? A. No, My Lord, the weak mixes are generally called blindings.

MR. O'DONOVAN: I would like to put one or two further questions on this to you. Leave aside blinding and concentrate on a 6" foundation. The mixture for that should be 1:3:6 should it? A. That is normally accepted good practice.

Q. What would you say would be the maximum variation from that mixture of 1:3:6 before the concrete foundations cease to be a good concrete foundation? A. As I have already remarked, 1:5:10 is the poorest mix I should expect to find.

20

Q. If it were poorer than that would you expect to see any signs of settlement or cracking? A. That would be hard to define again. It would depend entirely on the excavated foundation. What the concrete was standing on. If it was a normal soil, or carrying a load of $1\frac{1}{2}$ - 2 tons a square foot I would expect to see cracks with a 1:5:10 mix, but on a rock subsoil one could never tell without excavating and breaking it up.

30

JUDGE: What you are saying, if I understand you correctly, is that if the foundations were resting on rock with the weak mix such as is indicated it would not necessarily result in cracks. Alternatively if the foundations were not resting on rock that you would expect to see cracks?

A. Within limits the weak mix or rocks according to the rock formation. Rock formation does not always run true. You get pockets and if there was a very weak mix resting over a soft pocket, one might expect to see a fracture.

40

JUDGE: Putting it at its highest. Unless the rock foundation was sound you would expect to find cracks with a weak mix? A. If there was soft rock or holes in the rock.

MR. O'DONOVAN: The combination of the rock and the foundations seems to be satisfactory?
A. From the length of time that has expired I should say yes.

10 Q. I will leave that subject for the moment. The foundation walling, I think is the next item with which Mr. Wevill deals. Have you got his report in front of you? (Report handed to witness). First of all the specification provides that the stone must be first quality local stone with all corners square. It is to be quarried dressed stone. A. I haven't had a chance to
20 examine the stone below ground level. The foundation wall from ground level to floor level certainly appears to be the best stone available locally. From foundation level to ground level I have not examined.

Q. From your general experience. Where you have quarried dressed stone would you expect to get unevenness of edges? A. I should expect to get very unevenness of edges. Having tried myself to do a bit of masonry work.

30 Q. Within what range of thickness would the edges vary? A. They certainly would not vary to the extent of Mr. Wevill's report which I believe is $2\frac{1}{4}$ or $2\frac{1}{2}$ in some places. I should expect to get a variation of perhaps $1\frac{1}{4}$ down to $\frac{1}{2}$ or $\frac{3}{4}$.

JUDGE: Would it affect the stability of the work? A. Providing the mortar was sound, no.

40 MR. O'DONOVAN: Can you say from the absence of any cracks whether you would expect the mortar to be sound? A. From the absence of cracks I should rather gather that the whole of the bearing - I would not like to say the whole of the mortar without checking, but it would certainly seem that the mortar is reasonably sound quality as well as the bearing.

Q. The next subject is the floors and the filling under it

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

JUDGE: Can I just interject. This is partly going back. If I understand you right, if both the foundations are unsound, the foundation bearing surfaces and there is a weak mix of concrete and mortar then you would expect cracks. If one or the other is sound, if the foundation bearing surface and the mortar mix is weak you would not necessarily expect cracks. Conversely, if the mortar mix was sound and the foundations were uneven, equally you might not expect cracks in some circumstances. It is a combination of bearing surfaces and weak concrete when you would expect cracks? A. That is right under normal conditions. You can get abnormal circumstances.

10

MR. O'DONOVAN: Would you describe conditions here as normal? A. On this particular contract I should consider the conditions normal for one or the other circumstance.

Q. Will you deal with Mr. Wevill's criticisms about the floors. A. The main comment is really on the specification. It states the filling shall be 6" in layers. If it would be possible to obtain a 6" stone slab as big as this room I would be carrying out the specification. The contractor has laid biggish stone from what is appeared, but taking an average thickness of each stone I should say it is somewhere like 6" thick. There is no size laid down as to the overall size of the stone. The hard filling is not asked to have any sand or murrum inter-mixed. Again from Mr. Wevill's Report it would appear that this is Mr. Wevill's interpretation that sand or murrum should have been filled between the stones.

20

30

Q. Are you saying in fact that he is going beyond the specification? A. I am, My Lord. To cover that from an estimator's point of view, had the Council after I had commenced working on the contract come to me and said: "No, that isn't what we want, we want stone mixed with sand and murrum", with that depth of filling I should want Sh.1/50 to Sh.2.00 per square foot of floor area, and I should have been quite within my rights.

40

JUDGE: Would that have justified a variation of claim? A. That would have been justified.

JUDGE: You saw one floor broken up? A. It was a good clean, hard stone. It appeared to have

been what is termed "hand packed". If the Engineer at Embakasi had the same packing under the runway he would have been very satisfied.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

JUDGE: The concrete floors? A. Certainly the floors themselves, as far as can be seen are showing no signs of crack. I make this statement, that were the concrete slabs cracked, I should expect to find signs of cracks down the exposed edges and on the external wall faces. I checked most rooms that I was able to get into for hollow sounds and failed to find any appreciable hollowness. Only in one particular instance where some repair had been carried out. The contractor states it was carried out.....

10

MR. O'DONOVAN: Apart from one repaired floor, they were mostly sound and showed no signs of cracking by looking at the exposed edges?

A. There were certain cracks and craziness in the cement screed but from the appearance of the screed they appeared quite a good mix and several explanations as to why cracks and crazes should appear in screeds are to be found.

20

Q. Are they known as hair cracks? A. Yes.

Q. How are they caused? A. Some can be caused by extensive trowelling, some can be caused by the difference in mix between screed and concrete. In fact on a thin screed of this nature it is generally accepted that the only known way to prevent it is to lay the screed with the concrete while the concrete is still "green". The screed adheres to the concrete and you get a uniform finish.

30

Q. Is that called for by the specification?

A. It is not called for by the specification.

Q. Are these hair cracks at all serious? Do they require repairs? A. They are not at all serious providing the screed itself is adhering to the concrete and in most cases there appeared to be no signs of the screed lifting from the concrete. The hair cracks are more or less shrinkage cracks which cannot be avoided at all. You notice them in most houses with cement floors.

40

Q. The superstructure walling. "First quality

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

local stone quarry dressed with all corners square and regular". A. The only conclusion anybody could put on that "All corners square and regular" is the squaring up at the corners.

JUDGE: Could you explain that? A. You have got a sharp angle, you have got an opening here with a sharp angle down each side (witness demonstrates). The interpretation is that all corners should be dressed square and regular at openings and external angles of walling.

10

JUDGE: The corners refer to the corners of the walls and not the corners of the stones? A. Yes, My Lord.

MR. O'DONOVAN: In order to ensure that each individual stone was regular would it have to be redressed and chiselled on the site? A. That is rather a big question. When one considers that a block of stone is anything from 12-18" long, 9" deep and 6" average width, and has got 6 faces, 8 corners and 12 edges, I should say even were anybody to try and dress and square the facings it would still be uneven and it is not asked for in the specification.

20

JUDGE: What you are saying is that the dressing of the actual corners of a stone square would not necessarily improve the block in any way? A. You could do that without improving the block in any way.

MR. O'DONOVAN: What type of stone has been used for this walling? A. What is known as Nairobi blue stone. I should imagine that can be seen visually.

30

Q. The specification calls for reinforcement of hoop iron in alternate courses? A. That is correct.

Q. Did you examine them to see whether that had been complied with? A. I examined the building to the extent that on a considerable number of corners the ends of this reinforcement could be seen, and in every case where it was seen it was $\frac{3}{4}$ " wide. Without taking a sample and checking up with a wire gauge I would not like to make a definite statement, but it was reasonably stout.

40

Q. As far as you could see, had the specification been reasonably complied with as far as the hoop iron was concerned? A. As far as one could see it had been complied with.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Q. Did you check whether a damp course had been inserted? A. I checked where it was visible. In most buildings there was one small place here and there where this could be checked.

Evidence of
Charles William
Newlyn
Examination
continued

10 Q. Wherever you checked it was there in fact damp course? You didn't fail to find one?

A. Not where I checked.

Q. It is supposed to be made of felt is it not?

A. Felt saturated in bitumen and with a coating of bitumen on each face of concrete.

Q. Is the damp course subjected to any pressure in the wall? A. It is bound to be subjected to the pressure of the wall.

Q. What result would that have on the felt?

20 A. It would have some slight tendency to compress it.

Q. Is there very material difference between 1 ply, 2 ply and 3 ply felt? A. There is a reasonable degree of thickness between the 3 grades.

Q. Is one much better than the other? A. Yes, the three ply is better than the two ply and the 2 ply is better than the single ply. For damp proofing or roofing purposes.

30 Q. The internal facings of the walls. They had to be treated so all projecting stone facings were removed? A. In the case of all the rooms I was able to see I maintain the contractor has carried out this clause as well as can be expected, taking into consideration the quarried dressed stone. To ask for

40 Q. So far as the external walling is concerned, is it in your view up to specification? A. I consider that the walling on the superstructure reasonably carries out the terms of the specifications.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Examination continued

Q. Is it reasonably regular? A. The courses were reasonably straight and vertical.

Q. Did you find instances where the work had been done again, that is to say where the mortar had been raked out and the joints repointed? A. Yes, there were several instances.

Q. How does the original work compare with this touched up work? A. My opinion is that the original work in appearance is far superior to a lot of the repointed work.

10

Q. Mr. Wevill states that the courses are out of level and the joints 2 1/4" - 2 3/4" wide are very much in evidence. Do you agree that the courses are out of level? A. I do not agree that the courses are out of level and I do not agree that raking out of joints to expose stone that there are any courses 2 1/4" - 2 3/4" widejoints rather.

Q. "The mortar for the joint has been flushed to stone faces externally and ruled to form a rounded groove to represent the pointing". A. As I previously remarked, the faces of quarried dressed stone are so rough that this flushing of joints to the stone faces might appear to give an exaggerated wide joint when none in fact really exists.

20

Q. Had any cracks appeared in the external walls? A. The only cracks that I noticed in the external walls was at the junction cast in situ, and the end of the stone wall abutting against the room.

Q. How is a crack of that sort caused? A. By shrinkage.

30

Q. Will you get the same type of crack when you build a wall against a concrete column? A. Yes. It is usually at the junction of the column and the stone to form a joint in the plaster surface to take up any slight shrinkage.

Q. Is that called for here? A. No, because it is not a plaster finish.

Q. Does this shrinkage between the lintel and the wall affect the soundness of the structure? A. In no way.

40

JUDGE: The shrinkage is not detrimental to the building? A. No.

In the Supreme Court of Kenya

MR. O'DONOVAN: Is that the only place where there were any signs of cracking in the superstructure? A. Yes, it is not a crack, just a shrinkage.

Plaintiff's Evidence

Q. It is not caused by settlement or poor mortar? A. Nothing that I could see was caused by mortar.

No.11

Q. Did you test the mortar in the superstructure walling? A. I dug the mortar in several places with a knife.

Evidence of Charles William Newlyn Examination continued

10

Q. Is that a recognised test? A. It is quite a recognised test to see if the mortar is firm. In most places tested the mortar was found reasonably firm. In a few instances a knife point went in fairly easily but in no instance did the joint start running out as fine as sand.

Q. What is your opinion about the quality of the mortar used in the walling? A. I should say that the quality of the mortar reasonably holds up the sand.

20

Q. The next item is the division walls of cubicles. Did you examine the facing of the division walls of cubicles? A. I did.

Q. I think Mr. Wevill in his report suggests that they should have a fair face. Is that correct? A. According to the drawing, My Lord, it shows that the ends of the cubical divisions are fair faced, but might I add that with a quarry dressed stone one has either got to inform the contractor that this has to be dressed fair because it doesn't say so either in the drawings or in the specification. Normally quarried dressed stone is rough and the contractors took a reasonable precaution and plastered the ends of these walls and it would be anticipated that that was done in agreement with the Clerk of Works...

30

.....

JUDGE: They were plastered, you say? A. Yes.

MR. O'DONOVAN: Were they well plastered? A. I consider they were well plastered and flushed up. They have received a lot of rough treatment since from the tofos.

40

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

Q. Reverting to hoop iron reinforcement. Would that prevent cracks if there were any settlement?
A. Hoop iron has never been known to prevent any settlement cracks from showing.

Q. Mr. Wevill says that the walls are not impervious to driving rain? Do you know whether Nairobi blue stone is weatherproof? A. I believe it is a well-known fact that Nairobi stone of any standard is not weatherproof. It will absorb water rapidly.

10

Q. Would you expect dampness with a specification of this sort? A. A 6" stone wall untreated - I would never be surprised to see driving rain penetrate even if the joints were cement and sand 1:3.

Q. Perhaps I might ask you in reference to that last answer. On the whole, do these specifications call for a building of good quality or a low quality building? A. I should say the specification as a whole calls for quite a cheaply priced building which I think the Council have got to quite a reasonable standard.

20

Q. Do you think there is anything unhygienic about the internal wall faces? A. No, My Lord, I do not consider the walls are entirely unhygienic.

Q. Do you think a better finish should have been obtained? A. Under the conditions of the specification, I think the Council have got what was asked for in the specification. The only way a smoother finish could have been obtained is if the Council had specified a quality dressed stone with all faces dressed on the site.

30

Q. What difference in price would that have made? A. The price of the stone walling itself, I should imagine it would be about Sh.1/- to Sh.1/25 per sq.ft. There is also one thing to be borne in mind, that a 6" quarry dressed stone when dressed on the site would probably not give more than a 5¼" or 5½" thick wall.

40

Q. Is there anything in the specifications providing that the stone is to be chamfered to form a weathering? A. I don't think that there is any direct clause in the specification. There is,

however, a very slight indication on one of the drawings and where these openings occur the contractor himself carried these out in cement and sand.

Q. He did form weatherings in cement, did he?
A. Yes.

Q. That is, I take it on the window openings?
A. And the shutter openings.

10 Q. Did you see any of these being subjected to damage? A. I saw a couple of totos with a piece of iron knocking on one and a piece fell off. I told them off. It wasn't really in my province, but I think I was justified in doing so.

Q. I don't think all the flues have been parged?
A. I wasn't able to look at them all. Some of them have been partly parged and some have not been parged at all.

20 Q. Does that make any difference to their efficiency as a ventilator? A. Not as a ventilator. It is liable to be a nesting place for spiders and so on. But even if parged, the same things apply.

Q. What sort of fires do Africans use? A. Mostly charcoal burners.

Q. Do you need parged chimneys for those?
A. No, it wouldn't be necessary.

30 Q. Steps. Is there anything to say that steps must be provided for in all buildings? A. The only indication of steps seen in contract documents is shown as a typical $\frac{1}{2}$ " cross section. There is nothing to show on the drawings.

Q. What drawings are you referring to? A. The $\frac{1}{2}$ " section drawing.

Q. Perhaps you could identify a particular drawing? A. The only indication of steps was shown in drawing No. 3183 (AH/2/14).

40 Q. Have you got the drawing there? A. That is a typical cross-section. It does not say that it applies to every block. Neither is it asked

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

for in the specification at every opening in every block.

Q. Does it show how much hard filling there should be under the step? A. It shows an average.

Q. Does...did you ascertain whether any stone steps had been constructed? A. I believe they were at every opening I went to see. They were dirty because of the black cotton soil which had been trod over them.

Q. But they were at every entrance? A. I should not like to call it a step. Just a stone block. 10

Q. Have you examined the roofs and the joinery? A. I have had a good look at the roof.

Q. Has the contractor constructed the roofs in accordance with the drawing? A. I should say that the contractor has carried out his obligations as regards the drawings and the specification for the roof construction.

Q. How are the rafters fastened? A. I should imagine, looking at them, from the floor. I haven't examined them on a ladder. I should imagine. 20

....

MR. SCHERMBRUCKER: I don't think imagination is evidence.

MR. O'DONOVAN: Did you ascertain how the rafters had been coupled together? A. The rafters were fixed in a normal manner to a ridge and wall plate, and where specified they were fastened with the appropriate collar.

Q. What have you to say about the complaint that the nails are not driven through two thicknesses of timber and not clenched? A. The specification does not call for nails to be clenched. Unless asked for it is very unusual to do that form. 30

Q. Is there anything wrong in using a nail which is not clenched? A. Providing one uses the 2" - 3" thicknesses of timber, a 4" nail should not penetrate the two thicknesses. There is nothing wrong with that whatsoever.

Q. Is that normal practice? A. Quite normal. In England too. 40

Q. Did you see any indication whatever of roof timbers sagging or being distorted? A. There was no evidence of any sagging.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

10 Q. Was there any indication of the timbers coming apart, having been inadequately spiked or nailed? A. No, I should not say there was any indication of timbers coming apart, but one often gets a slight twist which even though the timber is well and truly fixed will give the appearance from floor level as though it may be pulling apart. This also happens in England.

Q. Have you experienced locally made tiles? A. Very bad experience, My Lord. I have put them in a kitchen in my own house and I am afraid it badly leaks.

Q. As far as appearance is concerned? A. The appearance is not at all as good, they do not fit so well.

20 Q. Does that result in waviness? A. It gives an appearance of acute waviness, especially when viewed in sunlight in certain directions.

Q. Mr. Wevill has something to say about the gutters? A. There is one point I would like to mention about this. I would like some guidance from the person who drafted this specification. It says: "The galvanised valley linings.....battens".

Q. Does that appear to be unpracticable? A. Entirely unpracticable.

30 Q. Did you say it can or cannot be carried out? A. One cannot possibly hang the tiles after it is carried out.

Q. Did you test the doors and the frames to see whether they were solidly fixed in place? A. Every room I went into I pushed on the door frame to see whether it was fixed firmly. I found no sign of movement.

40 Q. Does that indicate to you that whether or not metal cramps were fixed? A. It would not indicate whether metal cramps were fixed, but it would indicate that the door was firmly fixed into position by some means.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

Q. Would it be possible to see whether metal cramps were in position without moving the door?

A. Without going down to the door frames, I would be disinclined to say how the door frames were fixed.

Q. The specification provides that the ablution doors should be hung so as to close automatically?

A. Well, My Lord, there is another Chinese puzzle. If the gentleman who drafted the specification could tell me how hanging a door can be done on strap hinges, hinges set to close the door automatically, I would be very much obliged.

10

Q. Will you deal with the subject of concrete drains? Did you observe cases where there had been a sinking of the concrete channel? A. Normally speaking the drain ran reasonably and one could see that it had been done reasonably well.

Q. Is there anything in the specification to show that the contractor should fill in the drainage with hard filling? A. There is nothing at all

20

in the specification nor on the drawings that tells the contractor that this should be done. There is a clause in the specification: "The contractor toas directed". I am reading this from Mr. Wevill's report on page 9. My interpretation of that clause is that the extra filling mentioned there is in the case where the concrete drain commences normally above existing cement level. It therefore has to have some support to carry it and that this has been carried out. That indicates to me that any trench dug for that drain channel has nothing more than a 3" murrum bed, whether it is dug 3" or 2 ft. under that column. The extra filling is a case where the channel rises above normal ground level to obtain a proper fill from the ends of the ablution block.

30

Q. If the contractor were required to excavate to rock level and fill the trench with hard fill before putting the drain in, would that justify a variation order? A. If I were the contractor I would definitely claim a variation order for such construction.

40

Q. I would like you to deal with Mr. Wevill's estimated cost of repairs. The item of foundations. Do you consider that any of these costs

are necessary? A. Item 1, I should say certainly nothing required for underpinning. One might be justified in saying a certain amount might be required for pointing. Item 2, floors. From the inspection made I do not consider it necessary at all to break the floors, remove the filling and relay the flooring and concrete. I consider this absolutely unnecessary.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

10 Q. What effect would the charcoal braziers have on the floors? A. The heat reflected down on the cement screed would have an effect of rapid deterioration.

Evidence of Charles William Newlyn Examination continued

20 Q. Would you allow nothing under that head at all? A. There may be one or two screeds which I wouldn't definitely say are bad screeds. Some of them definitely appear to have been affected by the use of charcoal braziers in quite a few cases where they were in the centre of the living room where they are not supposed to be. Also, there are one or two surfaces that were showing signs of what we call "scanning" due, I believe, to the over-zealousness of a workman over-trowelling.

Q. What is the effect of over-trowelling? A. Over-trowelling brings the cement to the surface to give a nice glossy finish for a time but would eventually craze off.

Q. Could you give us an idea of what all that would cost in your view?

30 JUDGE: Cost of what? A. Repairing such floors.

MR. NEWLYN (witness) It would be rather impossible. I don't know the quantity.....From what I inspected I should say that about 20 rooms wanted rescreeding of the 180.

40 JUDGE: Of the ones you inspected you say about 20 out of the 180? A. About that, but I will qualify that statement to the effect that it is not considered the whole of it is the contractor's liability. Some of it is caused through charcoal braziers.

In the Supreme Court of Kenya

2.15 p.m.

MR. CHARLES WILLIAM NEWLYN:

Plaintiff's Evidence

Examination-in-Chief by Mr. O'Donovan: (continued)

No.11

Q. At the adjournment, Mr. Newlyn, I was asking you about the cost of repairs and your comments on Mr. Wevill's report? A. That is correct.

Evidence of Charles William Newlyn Examination continued

Q. And I think you dealt with the foundations and the floor screeds? A. Foundations and floor screeds.

Q. The figure of Shs.310,000/- which is contained in Mr. Wevill's report, that figure is the cost, is it not, of taking up all the floors, including the concrete hard core, and re-making? A. From the amount included in that schedule, Shs.310,000/-, I should conclude that that is what the item is for. Without knowing what the actual makeup is, I cannot say for sure.

10

Q. Would you consider any work necessary, apart from the possible relaying some of the screeds? A. I do not consider that there is very much in excess of a few floor screeds they need re-doing.

20

Q. With regard to the next item - "Superstructure Walling" - would you allow anything for repairs to that? A. Raking joints and re-binding, I consider there may be a small quantity of that required, but certainly not the whole of the external wall faces need raking and re-binding.

(b) (QUOTES). From the previous statement made I consider that the contractor has carried out his obligations under this heading and that in no way can there be a claim for Shs.206,000/- for this work. (c) (QUOTES). Damp course, reduced value. I agree with Mr. Wevill that there is no three ply damp course. The Council are entitled to claim a reduced value.

30

Q. With regard to roofs and joinery, what have you to say? A. Reinforcing and re-spiking roof. This constituted about 130 individual rooms, plus latrines and ablutions. In no way considered that roof timbers need re-spiking to improve the standard in any shape or form. Bolt-ing hinges and new hinges to doors. First remark

40

as regards that is when one calls for bolting hinges, they do not refer to a hook and ride.

...

JUDGE:

Q. Doesn't the specification here call for bolting specifically, speaking subject to correction? A. It does call for bolting, but it does not call for a hook and ride or a strap hinges, or 'T' hinges.

10 Q. Are the 'T' hinges described in the specifications? A. It says "strap hinges". You can get strap hinges to screw or you can get strap hinges to bolt.

Q. Would you consider that any claim is justified there - roofs and joinery - as an item? A. There is a certain legitimate claim to bolting into hinges, I consider generally under the specification, but there is certainly no considered claim for the ablation doors being specified as on 'T' hinges.

20 Q. Drains. Do you consider that there is any claim there? A. Judging from the general standard of the drains, I think the contractor there has tried to carry out his obligations under the specification.

Q. Do you think he did so? A. I think he has carried out his obligations under the specifications.

30 Q. Should the City Council itself have to lay any drains on this estate? A. I understand the whole of the main drains is carried out by the City Council.

Q. How is the main drain constructed? A. There were cases where lums of 15 or 12 in., may be 18 in., channel are falling in opposite directions and causing a collection of waste water.

JUDGE:

Q. That does not have much bearing on this case?

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

Q. The work which has been carried out, the re-binding, do you think it has improved the works at all? A. Most of the re-binding work I consider is definitely no improvement.

Q. Would you allow anything under that head? A. If the claim was that for that re-binding, I should certainly not allow any claim for that.

Q. When you examined the quarters did you think they all appeared to be occupied? A. So far as I could ascertain, all quarters were occupied. Of course, I could only get in those that were unlocked. 10

Q. Do you consider that the claim in respect of loss of rent while repairs were being effected is justified? A. No, I should say that any necessary repairs required to individual rooms would in no way call for the closing down of rooms for a complete month.

Q. And Mr. Wevill adds a percentage, which comes to a tremendous amount; for increased maintenance, does he not? A. No, I believe that for the repairs carried, charges for maintenance should not exceed the normal $\frac{1}{8}\%$ per annum applicable. 20

Q. Hadn't he added some fraction? A. "Addition $\frac{1}{8}\%$ per annum should cover this risk."

Q. Do you agree that? A. I do not consider there is any additional risk where the $\frac{1}{8}\%$ would be required. As previously stated, there is no sign of settlement to date and it is not anticipated that any settlement will occur now. 30

Q. And under the heading of "Depreciation Value", what is the normal number of years for which a property of this kind is designed? A. I should say normally "star" property might be expected to stand for 40 years, but the whole question devolves again on Mr. Wevill's....

Q. Would this property, properly looked after with normal maintenance, last 40 years, do you think? A. I should say it should, yes.

Q. Do you consider that its useful life would be as much as 40 years, even though it remains in a 40

state of reasonable repair? Do you think that the City Council had looked far enough ahead with this type of design? A. I should certainly think the City Council have not looked far enough ahead with this type of design, judging by the African outlook at the present moment I should give it about ten years when the African would be willing to live in such accommodation.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

10 Q. It consists of single tenements? A. That is correct.

Evidence of
Charles William
Newlyn
Examination
continued

Q. And without any separate ablutions or latrines? A. There are latrines and wash-houses in a block.

20 Q. And how far are they away from the living block? A. Depending on the sizes of the block. In some cases people would have to walk at least a hundred yards; I should say in some cases, they are very lucky, they have just got to cross the open area, or right next door. But on an average I should say the distance is 70 to 80 yards.

Q. But a fair summary of your views is that this design of tenement will be ...

MR. SCHERMBRUCKER:

Is this relevant?

JUDGE:

30 I do not think it has much bearing on the case. In substance I understand the witness agrees with what Mr. Wevill has to say.

Q. You would not, yourself, allow anything under that heading? No, I certainly would not.

Q. Did you measure what extra work had been done? A. Yes, I made a calculation of some of the extra works carried out by the contractors.

Q. I do not think you made any calculations of the foundations - that is to say, the extra depth? A. No, I have not made any calculations

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Examination
continued

of the foundations at the moment, as to do so would mean requiring the drawings that show the different depths.

Q. And have you prepared a schedule of costings of these extras, apart from the foundations?

A. I have prepared a schedule of costings of the various extras.

Q. Does it amount in respect of items claimed by the contractor, excluding the extra depth of foundations, to Shs.42,500/-? A. No, it amounts to Shs.528..... 10

Q. No, my question was in respect of extras claimed by the contractor, but excluding the foundations, does it amount to Shs.42,500/- odd?

A. That is the total amount of extras so far claimed for the contractor, I agree that; and that is a total of Shs.10,000/- not claimed.

Q. And have you found, in fact, extra work totalling a little over Shs.10,000/- which has not been claimed? A. That is correct. 20

Q. And have you valued this extra work so far as you can verify in accordance with the contract?

A. I have valued the extra work in accordance with the contract.

Q. Do you now produce schedules you have prepared of the extra work claimed and the extra work not claimed?

MR. SCHERMBRUCKER:

I should like to get this point clear. I think we must object. We have had no evidence yet to show that any extra work was certified claimed for. I did consider asking for particulars of para. 3 (d) in the reply (QUOTES). 30

JUDGE:

Wasn't there some evidence some time since the last hearing of extra work that was authorised but apparently was not paid for; and there was also evidence of other variations which were claimed by the plaintiff 40

but in respect of which he did not get a variation order, but he claims he was entitled to one.

MR. SCHERMBRUCKER:

It might have been, My Lord. If we confine ourselves to those then I sit down.

(SCHEDULE OF EXTRA WORKS, CLAIMED AND UNCLAIMED, PUT IN AS EX.64).

MR. O'DONOVAN:

10 I had hoped that the witness would have been able to take samples of some parts of the foundation. He said it was impossible to do so fairly. I should like to reserve, if I may, the right to try and get such samples and, if necessary, to recall this witness on them.

MR. SCHERMBRUCKER:

No objection.

JUDGE:

20 If no undue delay will be caused, the witness can be recalled later so as to give evidence as to samples on the foundation.

Cross-examined by Mr. Schermbrucker:

30 Q. Mr. Newlyn, last week when you visited Ofafa, it was in response to a request to go there for the purpose of taking samples, was it not? A. To my information, no. I received information at 9 o'clock in the morning that contractors might be able to get on the site at 3 o'clock in the afternoon, could I make arrangements to go there with them. I went over with the contractors at 3 o'clock and there were quite a few gentlemen present. I had no information whatsoever that I was supposed to meet these gentlemen...

JUDGE:

Q. I understand from your answer that

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Examination continued

Cross-Examination

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-examination continued

you were not aware what you were required to do when you got there?

A. Yes.

Q. You were not asked to go there to take samples?

A. I was to go there with the contractors, but I was not to meet anybody else other than the contractors.

Q. I asked what was the purpose of your going to the estate, to take samples? Did you go with that object in mind? A. I went with the idea of looking to see whether it was fair and reasonable to be able to take samples. I did not anticipate that at 3 o'clock in the afternoon.....

10

JUDGE:

Q. Would you please confine to answering, as shortly as possible, the questions put to you. Your principal, if there is any doubt, will clear up the matter in re-examination. Did you go with the idea of taking samples? A. I went with the idea of seeing what the conditions of the site were to take samples.

20

Q. And by the time you met up with the City Council representatives you had been on some sort of inspection, obviously? A. I had walked around the site to see if I could see any kind of settlement and to see what the conditions of the ground were like.

Q. And did they then conduct you to a building where the floor had been taken up right down to the foundation? A. The contractor did not conduct.....

30

JUDGE:

Q. Were you taken there or not? A. I was conducted there.

Q. And was there, in fact, a hole in this building right down to foundation fitting? A. There was a hole in the floor of the building.

Q. Was it down to foundation fitting? A. So far as I could see it was down to foundation fitting.

40

Q. Was the offer made to you to take any samples you might want from them? A. The offer was made to me.

Q. And did you reject that offer? A. I did not actually reject the offer. I said it was unfair under the circumstances to try and take samples.

Q. And what was your reason for saying that? A. Partly owing to the water; secondly that I did not know whether tests could be ready in time for samples taken.

10 Q. Did you say there was no point in taking samples because they could not be tested by Monday? A. That is quite correct; but I should like to add a rider.

Q. I only want that at the moment. You can clear it up later. If it had not been for the difficulty of examining the samples by Monday, would you have taken any? A. Not unless I might have taken other samples. Those were in the town as well.

20 Q. And was it made open to you that you could take samples from wherever you wished? A. It was made open to me that I could take samples from wherever I wished.

Q. And was your reason for not doing that the same - that you could not get them analysed by Monday? A. The reason for it was that, should one try to excavate all the holes one would want about a dozen pumps at least to get all the holes free of water.

30 Q. Well now, what I am leading up to is this - are you suggesting that once concrete is soundly and satisfactorily laid and set at the bottom of a foundation, will the subsequent introduction of water spoil it or reduce its cement content? A. Concrete, no, it should not.

40 Q. Let us assume for the moment that the concrete fittings in the buildings was properly laid, you could certainly pull out chunks of concrete fitting from that hole you saw in the building when we were down on the site last week? Looking into the hole of the floor of that building it was a practical proposition to take out a piece of foundation fitting, was it not? A. I could not say.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

Q. Well now, did you see some alleged samples of foundation fitting lying around on the top of the floor? A. Not alleged concrete.

Q. Well, was there some concrete which was alleged to be foundation concrete? A. No, there was some concrete which was alleged to be floor concrete. It is a lot different.

Q. There was also concrete, I put it to you, that was taken out of the fittings? A. There was none pointed out to me that had been taken out of the fitting.

10

Q. Then you have no comment to make if other witnesses come along and say that it only had to be dropped on to a stone to break? A. I have no comment to make, no.

Q. Would you say that concrete set to a specification like this should have broken when dropped on to a stone, or not? A. If it was a proper concrete it should not.

Q. If it was according to the specification in this case? A. If it was according to the specification, I agree it should not break.

20

JUDGE:

Q. This is foundation concrete we are talking about? A. Yes.

Q. Should any of the concrete specified in these buildings at all, at this stage, have broken on being dropped on to a stone? A. No, I would agree that it should not.

Q. Did you have pointed out to you what was alleged to be mortar scraped out of the foundation walling? A. Yes. And that was my contention this morning, that in scraping mortar from a joint with the water there, the cement - I did not see it taken out.

30

JUDGE:

Just confine yourself to answering the question.

Q. Was it a sort of dirty, brown, loose sand?

A. I quite agree it had that appearance; but as I remarked this morning it is quite probably that was caused with the amount of water in the joint, as it was raked the cement content automatically disappeared.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. In your practice in East Africa have you come across Mr. Wevill? A. Yes, I know Mr. Wevill reasonably well as a Member of the Institute.

10 Q. An F.R.I.C.S.? A. Yes.

Q. You have told us that you qualified as a Chartered Quantity Surveyor. When was that?
A. 1946.

Q. Prior to that you had quite a lot of experience in the building trade? A. I had 14 years with contractors, and from 1937 to date in professional Quantity Surveyors' Offices.

Q. And you started your examination of Part B of Ofafa in March? A. Yes.

20 Q. And since then you never looked below the floor level? A. No.

Q. Did you have Mr. Wevill's report at that time? A. I had Mr. Wevill's report at that time.

Q. So anything you say about below floor level must only be a deduction from your looking at the above floor level part of the building?
A. Agreed. I have already made that remark.

30 Q. Have you seen any test results of mortar below floor level? A. I have seen a list of results submitted to the court.

Q. (Ex. A before the witness.) Do you recognise any below floor level mortar results there? A. Only sample No.15, it would appear to be from below floor level.

Q. What does that show? A. "Water from plinth wall".

Q. And then what result does it show? A. 1 to 15.8.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. When did you first see that, roughly?
A. I should say about ten days after the court
last adjourned.

Q. Did you know when you started your examination
of this property in March this year that the mor-
tar both above and below floor level was alleged
to be very much below specification? A. There
were reports to the effect that it was considered
bad.

Q. But you did not think it necessary to go down
and look at it, did you, or did you not think it
necessary? A. I cannot answer the question
without explaining the position.

10

Q. Alright, I will take that as the answer. Now,
there was one of your answers I may have recorded
wrongly - "Samples taken in April last year, con-
crete might have been fair, but rather doubtful
of the mortar". Can you remember what you said?
Early in examination-in-chief. Did you say any-
thing like that? A. No.

20

Q. Did you see any samples taken in April?
A. I have seen no samples taken in April last
year.

MR. SCHERMBRUCKER:

My learned friend has the same answer record-
ed, only he has got: "Samples taken by
Wevill in April last year, concrete might
have been fair but rather doubtful".

JUDGE:

Yes, I have the note here: "Considerable
pressure of water against the foundations,
doubtful if samples of mortar taken by
Wevill in April would be fair, concrete
probably would be".

30

Q. Did you mean by that that it would be fair to
take concrete samples? A. The mortar may be
affected by water pressure but the concrete should
not be.

Q. You said that this specification in this case,
on the whole calls for a cheap costing, I think it

40

is about Shs.15/- a square foot? A. That is quite correct.

Q. But if the specification had been adhered to, the Council would have got quite a reasonable job, is that right? A. Yes. And I consider they have got a reasonable job.

Q. The floor concrete - correct me if I am wrong - was 1:3:6? A. That is correct.

10 Q. And I think you said that was quite good practice? A. It is normal practice.

Q. And you would even accept for this type of building a lower specification? A. I never said that for floor concrete.

Q. When you spoke about the 1:5:8? A. We were talking about foundation concrete then.

20 Q. Can we go back to floor concrete - what would you accept as the weakest specification for floor concrete for buildings of this type? A. This specification. I do not consider any floor concrete should be less than a 1:3:9.

Q. Does that mean you would accept weaker foundation fittings than floor concrete? A. Taking into consideration various aspects of site, yes.

Q. What was the concrete fitting specification in this case? A. 1:3:6, I believe.

30 Q. And it was that - you said you would go as far as - what was it? A. Taking into consideration block, for the weakest mixture I would put 1:5:10.

Q. Let me put it this way - if you were working on a specification of 1:3:6, would you accept a difference of as much as 1:5:10 on that job? A. No, if I was in charge of the job I would not accept anything less than 1:3:6, if the specification says 1:3:6 it should be 1:3:6. There may be a variation of $\frac{1}{4}\%$, there should not be any more.

Q. And does the same apply to mortar? A. Yes,

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

I should say it should apply to mortar equally as well.

Q. Is the method to use two boxes, and fill them up four boxes and sand and one of sand? A. The normal practice is to have cube boxes made, one for a cubic foot of cement, perhaps half a cubic foot of sand.

Q. So it is merely a mechanical process?

A. There should be no difficulty in getting that mix. 10

Q. And when you come to mortar it is done the same way? A. Similar process.

Q. On your inspection visits to Part B, have you noticed quite a lot of repair work in various floors? A. I did notice quite a lot of repair work.

Q. Even a layman can see it? A. Yes, a layman can see it.

Q. When you talk about 'hair cracks' in concrete, is that the same as 'crazing'? A. 'Hair cracks' or 'crazing', it is the same explanation. 20

Q. Hair cracks or crazing are things you get even in the best building? A. Yes.

Q. But they do not call for patching? A. No, they do not call for repair at all.

Q. You can get these crazings or hair cracks on using an over-rich mixture? A. No, I should not say over-rich mixture; I should say that you can get, not crazing but disintegration of the surface skimming, by an over zealous workman in over-trowelling. 30

Q. May I put it this way - in this case I think the concrete specification was 1 to 4 or 1 to 3? A. I believe it is 1 to 3.

Q. Now, it would be bad to have more than three parts of sand in it? A. No, I should not say that. Manhole specifications generally call for a larger specification of cement than 1 to 3.

Q. What is the weakest mix you would expect for a screed on floors of this nature? A. I have seen them done in 1 to 5.

In the Supreme
Court of Kenya

Q. Am I right in thinking that it is not good to have them too rich in cement? A. That is entirely erroneous.

Plaintiff's
Evidence

No.11

Q. What is the highest mixture of sand and cement that you would specify for a screed.

A. Depending on the type of work.

Evidence of
Charles William
Newlyn

10 Q. I am talking about this type of work? A. 1 to 3, 1 to 4, is the normal specification.

Cross-
Examination
continued

Q. Would 1 to 1 be as strong as 1 to 3? A. 1 to 1 should be three times as strong as 1 to 3.

Q. So that 1 to 3 for this type of building is quite a reasonable specification? A. It is quite a reasonable specification, I quite agree.

20 Q. And in the course of your inspections have you had an opportunity of having a close look at the screed? A. I have examined the surface of the screed.

Q. Have you ever had a piece off the concrete? A. I have had nothing to do with breaking anything up.

Q. Do you agree that, generally, the concrete of those buildings was good? A. I agree, quite good.

Q. Have you seen the test results of the screed? A. Not definitely.

30 Q. Anyhow, when you looked at that broken building last week, there were several bits of screed available? A. Yes.

Q. And would you say they were all good? A. I should say the samples were quite good, I would not like to guarantee the mix.

Q. To the eye? A. Yes, and to the feel.

Q. Now, you say that you would not consider underpinning necessary in any of these buildings? A. No, I would not.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. Mr. Wevill has been down and had a look below the floor level, and he has said that he considers underpinning necessary. Would you consider yourself in a position to contradict that? A. Judging from external appearances at the moment, I should say no underpinning is necessary. I would not like to make a definite statement without viewing some of the underground.

Q. You would not go so far as to say - although I have not looked underneath, I am quite prepared categorically to contradict Mr. Wevill? A. I would not contradict Mr. Wevill right out, I am talking from personal observations only.

10

Q. Would the same remarks apply to Mr. Wevill's statement that cutting out is necessary in certain places? A. I should anticipate that there was no cutting out necessary, but I would not guarantee that again without underground inspection.

Q. Coming to the concrete again - I think you will correct me if I am wrong, I think I am referring to the foundation fittings - when you talk about blinding, was that foundation fittings? A. No, blinding is not actually foundation fittings, this is the term of a lower, weak, mixed concrete used for levelling up rough rock surface prior to putting down the concrete foundation.

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Q. So you would not accept blinding in place of foundation fitting that was specified here, which had to be 6 ins. thick? A. No, I would not accept blinding.

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Q. That is irrespective of what the bed was?
A. Irrespective of what the bed was.

Q. But you did talk about blinding in connection with mix of 1 to 18? A. Yes, as I say, that is quite normal where you get rock sub-strata and you are down to the foundations to go as low as 1 to 20 for a thin concrete blinding, which is to level up that rock before you start on the foundations.

Q. And can you tell the court, if you use blinding like that what thickness would that be?
A. General specification is an average two to three inches thick, depending.

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Q. And it would be a concrete - that means it

would be a cement sand and aggregate? A. Yes. And you sometimes specify as low as 1 to 20, it is just a levelling.

Q. But there was no blinding of that nature specified in this contract at all? A. No.

Q. So that anything of that mix would be far from our specification? A. I agree it would be.

Q. And there would be no excuse for it? A. There should be no excuse for it.

10 Q. (EX.A. BEFORE THE WITNESS). There are certain test results of foundation concrete there. I think you said, in regard to those, that they would be adequate for light buildings like the Ofafa housing? A. Yes, most of them would be adequate for light structures; taking into consideration the rock sub-structure I should say that most of them would be suitable for light structures like the Ofafa Estate, taking into consideration the rock sub-strata.

20 Q. Could you pick out roughly, what does the best of them give it at? A. There is one 4.7 to 5.6, which is really under the 1:3:6, sample No.40. There is sample No.5 and sample No.6.

Q. What is the worst? A. The worst is very bad, No.18, 1 to 16.6 to 36.2.

30 Q. On an average would they be adequate for light buildings like the Ofafa housing? Would water come through them or not? A. Concrete will absorb water in any case.

Q. Would there be a greater degree of water coming in than there would be through a mix of 1:3:6? A. I think any water would be more likely to seep under the rock and under the concrete rather than through the concrete.

JUDGE:

Would concrete of the standard of mix obtaining here? A. 1:3:6 should be very water resistant, than the weaker mix.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. At any rate, taken on the average those are very far from specification in this case? A. I should say about at least 50% are well out of the specification range.

Q. Taking No.40, if you were responsible for the specification, would you accept the result of No.40? A. I think for normal foundations I would be prepared to accept that. There is a slightly greater sand content or less aggregate content, which should not make a terrific amount of difference for normal foundations.

10

JUDGE:

Q. Are you saying that you would be prepared to accept the standard mix in No.40 as a general proposition? A. As a general proposition.

Q. Would you accept that if you were clerk in charge of works on the specification that was in this contract - in other words, 1:3:6? A. It is near enough to all intents and purposes.

20

Q. You would regard that as being near enough to 1:3:6? A. Yes.

Q. That is rather more than your 40% limit? A. No, I do not think so. Your 10.1 gives rather a wrong impression. That would be a 1 to 5.4 instead of a 1 to 6 mix.

Q. What about No.5 again. You have got a slightly higher aggregate content than you should have? A. It would not be all that bad.

Q. But you should not have it? A. You should not have it, I quite agree.

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Q. Blinding - you are not suggesting that there was any blinding in this work? A. I am not suggesting there is any blinding in the work at all. I think I did suggest, however, it would have been as well with a rough side.

Q. But it was not substantiated and you could not say that they used it? A. It was not substantiated and I could not say they used it.

Q. In the same way, you could not say whether

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the foundation walls allowed an overlap on either side? A. No, I could not.

In the Supreme Court of Kenya

Q. Taking this specification of 1:3:6 foundations fittings, would that be adequate if it rested on a largish pocket of black cotton soil? The specification was to go down to rock or murrum? A. Agreed.

Plaintiff's Evidence

No.11

10 Q. But you have heard that you cannot rely on rock or murrum, you sometimes have pockets underneath? A. Agreed. Now, the pockets may be large in area and shallow in depth, or small in area and deep in depth. To which do you refer?

Evidence of Charles William Newlyn Cross-Examination continued

Q. Shallow and large in area. What do you call shallow? A. Depression of two to three inches, it could be there, I do not think it would be detrimental to the foundation.

20 Q. You do not think the pressure of water underneath sufficient to affect it? A. The only thing, if there were any terrific pressure the black cotton might be pushed out.

Q. Bearing in mind, in your opinion that the pressure under-ground at this particular area is fairly strong? A. I should imagine it would be fairly strong.

JUDGE:

30 Q. Does that happen if there is a shallow pocket of black cotton soil below a foundation, does it get pushed out by water pressure? A. It is rather a conjecture. It may do. I should say it depends on the internal filling whether that would happen or not. The pressure would be liable to go into the foundation. You have got the pressure outside the walls and it would depend on whether there is a sufficient quantity for the water to cause any trouble.

40 Q. Water pressure could push the black cotton soil up from below the foundation? A. It could do.

Q. In the specification No.15, it says: "Stoneand rock". Are you suggesting that

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

that does not refer to the corners of the stones?
A. I am suggesting that does not refer to the individual stones, but refers to the quoins and angles of the walls.

Q. It goes on to say: "Samples of stone.....for approval"? A. That proves my contention that samples of the quarry dressed stone were produced to the engineer and met with his approval without any further dressing.

Q. (15 AND 16 IN THE SPECIFICATION BEFORE THE WITNESS.) A. I cannot see anything in this that would make me alter my opinion. 10

JUDGE:

Q. In the course of Mr. Wevill's report on the foundation walling, he quotes a specification (QUOTES). Do you maintain that that again refers to the external angles of the house and not to the individual stone? A. Correct.

Q. Now, I think we have all got a rough idea of what quarry dressed stone is by now. Would you agree that it would be, in fact, possible to take quarry dressed stone and square the corners on that stone? A. I stated this morning that I could take the stone and for three ways on each corner, for about an inch, I could square them, but that would not be dressing individual faces. 20

Q. Would you agree that it is practically impossible to take a quarry dressed stone and square the corners? A. You can square the corners an inch each way, but that will not add or improve the stone. 30

Q. But you can square the corners? A. It will not improve the joints.

Q. If you did square the corners I quite realise that the ends of the stone would be quarry dressed, and so would the sides and top and bottom; but if you square the corners when those stones were put in position, you would at least have a lock joint between them? A. No, you would have to chisel dress all faces. 40

Q. You mean to get them to meet flush? A. To

get square and rock joins, as you are asking for.

In the Supreme
Court of Kenya

Q. Now, I think you said you have not had a chance to examine below floor level. You have never been refused a request? A. No.

Plaintiff's
Evidence

Q. When you had a look at the mortar above floor level, you did probe with a knife?
A. Agreed, I did.

No.11

10 Q. Have you any notes on that? A. I have rough notes. They are more or less in builders shorthand.

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. Have you any notes that you could interpret to us yourself? A. Yes, but not with me.

Q. Before we leave, you say that most places you found fair? A. Agreed.

Q. But you did some where the knife went in?
A. Agreed.

20 Q. Would you be surprised to hear that there were places in that mortar where a chisel went right through? A. I think I would be surprised, unless I could see it with my own eyes.

Q. Will you tell His Lordship how you distinguish between Ata UlHaq's work and the work done by the City Council? You examined some work in the mortar above floor level which was the original work of Ata UlHaq? A. Agreed.

30 Q. And you examined some which had been redone? A. Examined some just for the purpose of seeing the quality of the work.

Q. How did you distinguish between what was done by Haq and what was done by the Council?
A. From information received, that done by the Council was mostly on colour washwalls. It stood out.

Q. The only way you could it was by getting it from someone else? A. That is agreed.

Q. Did you take any of what you believed to

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

be the re-done work out? Have you any idea how far the new work went in? A. No idea at all.

Q. Coming down to the floors. The specification provides that all the loose soil and black cotton soil should be removed under the floors, down to the firm bed rock or murrum? A. Agreed.

Q. And then that space should be filled with rammed layers of 6 in. at a time? A. 6 ins. of what?

Q. Perhaps you would to say what? A. "Clean hard stone or broken concrete" 10

Q. In 6 in. layers? A. Agreed.

Q. If you are going to grant that, what would you accept as the largest size stone for the purpose? A. The largest size stone could be a piece 6 ins. thick. There is no size of stone specified. 6 in. layers.

Q. It is No.26 in the specification "Fill in.... 6 ins."? That is correct.

Q. Under these floors is - I hope I am right in saying that they were not long slabs of rock, 6 ins. stones? A. I quite agree. 20

Q. It was all irregular stones of all shapes and sizes? A. I quite agree.

Q. And what we saw last week was excessively large stone? A. Regarding individual stones there is no size specified.

Q. I am only asking you - what we saw last week were large stones of all shapes? A. Agreed.

Q. None of them more than 6 ins. any way? A. On the average for thickness, there is length and width, cannot be taken into consideration. 30

Q. And if you were going to ram them in 6 in. layers there must be at least one dimension which would not be more than 6 ins.? A. Agreed.

JUDGE:

Q. You were saying that the stones you saw last

week were not more than 6 ins. any way?
A. Taking an average thickness.

In the Supreme
Court of Kenya

Q. Do you mean to say if you have got a stone
12 ins. at one end and 6 ins. at the other, you
can push that in and ram it in a 6 in. layer?
A. Yes.

Plaintiff's
Evidence

No.11

JUDGE:

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

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Q. If I understand you right, you say that a
stone which is perhaps considerably thicker
than 12 ins. at one place may be still only
average 6 ins. and therefore could still be
used in a 6 in. layer? A. Depending on
how it was bound in with other stones, yes.

Q. What you say, in your opinion that stones
of that nature, 12 ins. down to 1 in., can be
rammed in layers of 6 ins. without any sort of
filling? A. I did not say it was rammed in
6 in. layers, it was hand packed.

20

Q. It was not rammed in a 6 in. layer? A. I
have never said that it was not rammed in 6 in.
layers.

Q. Do you agree with me that it was not ramm-
ed.....

JUDGE:

Q. Was it rammed or not? A. I cannot say.
I was not there to see the stone laid.

Q. Could that stone that you saw lying there?
A. It could have been rammed.

30

Q. It was not lain? A. Yes; and each
stone could have been rammed.

Q. But it was not rammed in 6 in. layers with-
in the meaning of this clause? A. It is im-
possible for me to say. I was not on the site
at the time of the construction.

Q. Accepting that you were not there at the
time of the construction, the stone that you
saw in this building last week was not lain?
A. Hand packed; and I stated could be rammed.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. Are you going to say, on oath, in this box, what you saw was rammed in 6 in. layers? A. I have never said it was rammed in 6 in. layers.

JUDGE:

Q. The question you are being asked - was it rammed in 6 in. layers? A. I have said it was packed. I cannot say it was rammed in 6 in. layers. Hand packed stone cannot be classed as 6 in. layers.

Q. You emphasised that there was no filling of the interstices specified? A. There is not. 10

Q. Talking as an expert witness, would you say that it was good or bad building practice? A. Very bad building practice not to specify the size of the stone for filling, or how it should be properly laid.

Q. Speaking as an expert, would you say it was good or bad practice on the part of a contractor to lay stone in 6 in. layers without including something to fill the interstices? A. I should think the contractor is entitled to lay stone without any material to fill the interstices in accordance with the specification. 20

Q. Now, let us start with the specification. The specification says - "Rammed 6 ins." To you, as a man of experience, does that mean putting in stones without any filling to the interstices or not? A. In my experience, if nothing was asked for filling the interstices, nothing is included in the price, and therefore nothing is laid. 30

Q. Would you like to criticise this specification? A. I certainly would.

Q. Having had a lot of experience in building, from the point of view of a floor, is it good or bad practice to ram broken stone like this in layers of 6 ins. without any sort of filling? A. Very bad practice, as you have nothing to bind the filling material.

Q. There was the specification here? A. There was the specification here. 40

Q. If you had been doing this job, would you as a builder, would you have felt that you were complying with the spirit of this specification, to place a lot of large boulders without any filling? A. Providing the stone did not exceed the 6 in. layers, I would say I was complying with the specification as it stands.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

10 Q. Would you feel justified in asking for an extra to cover filling to comply with good practice? A. I could ask for an extra, but providing the architect in charge of the job did not object to the stone as it was being laid. I should not feel justified because the cost of filling would be fairly considerable.

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. Would you agree that in the stone that was exposed, we saw last week, there were quite large, very noticeable, holes between the stones? A. Shall we say not large, but fairly reasonable to what one would expect.

20 Q. Would you say that bearing in mind the conditions down there, black cotton soil, that there was every possibility of those stones moving? A. No, I would not agree to that.

Q. You would not agree to that? A. No. There is only one way they could move, and that would be downwards, and the rock would stop that.

Q. And the process of water underneath would not have been sufficient to shift them? A. Not stone, no, and that size.

30 Q. In normal good building practice, are holes of this sort rammed with stone and some sort of filling to the interstices when you are ramming the area below concrete floor level? A. Again, that depends on your building. I have seen large buildings such as aeroplane hangars where there is 3 ft. of large stone filling, nothing in between the stones, but they are rolled with a roller, because they have to take rather an excessive weight. In the case of these houses

40 the stone has been very well hand packed and I consider will take any weight that those floors have got to stand.

Q. I suggest to you that if this specification

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

had been properly observed, there should have been no stone bigger than 6 ins. in any way. In fact, good practice would call for broken stone of a much less size - smaller size? A. Good practice, providing it is specified yes; but if it is not specified, no.

Q. Normally, if you were on the contractor's side, what size stones would you choose to comply with the specification. A. If I had a whole lot of stone 6 ins. thick I would take that.

10

Q. If you used ordinary large stones of varying shapes? A. That can be laid, if it is done in the right way.

Q. But if it is rammed there is normally quite a bit of breaking up of the stone? A. With Magadi stone, I should have thought hand ramming, it would be rather impossible to get even a reasonable amount of breaking up of stone.

JUDGE:

Q. What are used as rammers? A. They are about a 7 lb. round head with a wooden handle. The head consists of steel.

20

Q. Ramming in layers of 6 ins. really means to get a consolidated hole? A. No. It can be a solid layer of 6 ins. You do not lay anything from 8 to 9 ins. of stone.

Q. You mean, to take a 9 in. stone and pound it down to 6 ins.? A. When a 6 in. layer is in order, it generally means a solid thickness.

Q. Does it mean you break the size of the stone down in the ramming? A. Not only that. It may mean that it also presses one stone into the interstices of another and the bottom layer a little into the sub-strata.

30

Q. Anyhow, you compress it down from 9 ins. to 6 ins.? A. I quite agree. It depends - 7, 8 or 9 ins.

Q. And if you are laying something that must not exceed 6 ins., would it not be good practice to compress 6 ins. down to floor? A. Normal practice is not less than a 6 in. layer in any case.

40

Q. Anyhow, you would even suggest that there was not anything rammed? A. No. Except to say that it may have been individual stones hand tamped, packed into position.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Q. If you have got a solid base, would I be right in saying that you can lay a screed on pure sand and have a good result - a 2 to 3 ft. filling of pure sand? A. No, I would not agree with that.

Evidence of Charles William Newlyn Cross-Examination continued

10 Q. Did you notice any places in this township - you know there is a wall that goes round in certain places? A. Yes.

Q. And buildings go up to the wall in places? A. I believe the buildings connect to the walls.

20 Q. Would I be correct in saying that where those buildings connect to the walls they are not keyed in? A. I believe in one or two places that is the case, but I believe it is owing to the fact that they were altered after they were originally built.

Q. That is only conjecture. Do you know whether they were keyed in? A. These particular ones were not.

Q. You did examine - did you notice in quite a number of places, at the end of a wall particularly, you can see little bits of hoop iron sticking out? A. That is quite correct.

30 Q. And did you notice that in several places these appeared in alternate rows at the bottom and then they went up to every third row? A. I looked at corners. In some cases there was no metal at all.

Q. Were there places where it was invisible, that a piece was sticking apparently in alternate rows at the bottom of the building and then it suddenly went up to the third row? A. I would not say that I noticed that particularly.

40 Q. And when you checked these damp courses, did you find quite a lot of it was one ply? A. I have not taken samples of damp courses.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

Q. To one familiar with it, it is quite easy to see whether it is one or three ply? A. You cannot build damp courses within the thickness of a wall.

Q. Didn't you see little bits sticking out in places? A. I saw vague traces of

Q. Were there places where you could have felt it? A. No, there were not.

Q. You never saw any places where you could feel it? A. I saw places where I could see it, but I saw no places where I could get at it.

10

Q. From what you saw and with your experience, you cannot tell this Court whether you saw 1, 2 or 3 ply? A. Not whether it was 1, 2 or 3 ply.

JUDGE:

The witness, I understand, is not in a position to say whether it was 1, 2 or 3 ply.

Q. Are you in a position to say whether, generally, this damp course was set in bitumen or not? A. That would be impossible to tell.

20

Q. Specification 25 (QUOTES). Did you see any signs that internal walls were bag wiped? A. I agree to the eyes all the internal walls were bag wiped.

Q. That gives them a reasonably flat surface? A. No.

JUDGE:

Q. Do you mean a flat surface from roof to floor, or from end to end, or do you mean a smoother surface?

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Q. I mean a surface, I do not mean a plastered surface, but if it is to be bag wiped and dressed off to a fair face, would that mean that there would have been a reasonably smooth surface?

A. I believe the specification says ".....and bag wiped". That has been carried out and gives a reasonably smooth surface.

Q. The specification says - "Walls to be bag wiped;

shall be dressed off to a fair face before wiping so as to remove all stone surface."

A. That has been carried out.

Q. Bag wiping means putting some sort of cement cover? A. Cement, and wipe it over with a bag.

Q. In your opinion, the internal walls of those buildings comply to the specification? A. Indeed they do.

10 Q. Are you in a position to say from any examination you did whether the mortar in the walls above floor level comply to the specification of 1 to 6 or not? A. Just judging on a field test, I should say that a lot of it did.

Q. And a lot of it did not? A. No, a small amount did not.

20 Q. What makes you say that a small amount did not? A. Because I tried large areas and found very firm joints and it was just occasional joints here and there - if there was $2\frac{1}{2}\%$ of the joints soft on what I actually tested that would be a lot.

Q. If you had a specification of 1 to 6 and you tried to dig a penknife into it, would you expect it to run out? A. No, but I should expect some of it to prod rather more easily than some of the joints did.

30 Q. On a 1 to 6 specification, would you expect to get your knife into it? A. Certain amount, yes; but on some of the points I could not have scraped the surface.

Q. Would you expect to get a pencil into it? A. A sufficiently hard pencil, yes.

Q. You would not expect a knife or a chisel to go right into the wall? A. No, I certainly should not.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

In the Supreme Court of Kenya

10.30 a.m. 2nd July, 1957, resumed.

All present as before.

Plaintiff's Evidence

MR. NEWLYN:

No.11

Cross-examination by Mr. Schermbrucker: (continued)

Evidence of Charles William Newlyn Cross-Examination continued

Q. Mr. Newlyn, have you got your field notes with you this morning? A. Yes.

Q. Would it be a difficult matter to let us know how many of these buildings you tested for mortar above floor level? A. I am afraid I cannot say definitely how many buildings. I just tried them in a block. I have gone through the rooms and touched here and there.

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Q. I think you said the quality of mortar used reasonably holds up the stones in these houses? Would you say that? A. I did not say "reasonably holds up stones", reasonably joins the stones together. There is a difference in holding and joining. Reasonably holds the wall together.

Q. The quality of mortar used reasonably holds the walls together? A. That is correct.

20

Q. In that are you referring to the mortar above floor level? A. I am referring to the mortar above floor level.

Q. And would it be correct to say that above floor level mud with pointing outside, holds the walls together? A. No, I would not agree to that, that mud would hold the walls together, unless the walls are built with mud normally.

Q. Is it not true that there are a lot of buildings still in Nairobi which were built with mud, mortar, and pointed with cement? A. I cannot vouch for that statement.

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Q. You do not know? A. I can say there is one building in Nairobi where the walls appears to be standing up without any mortar whatsoever.

Q. That is another point. A. I am just answering your point.

Q. I do not think you are? A. I am. I say I know of no buildings in Nairobi. I have not been sufficiently long in the Colony to know what is built with mud.

Q. I am talking about stones put one on top of the other and then on top of the stones you put mud, and then point with cement? A. I do not know of any building in Nairobi where the building has been built with mud and pointed with cement.

Q. Now, I think you said you would never be surprised to see rain penetrate a 6 in. wall of stone? A. That is quite correct.

Q. Have you seen - have you actually seen any? A. Yes, I have.

Q. Have you seen the buildings in this township when it has been raining hard? A. I have seen the buildings in this township when it has been raining hard.

Q. I mean Part 'B' of Ofafa? A. No, I have been over there when it has been raining hard.

Q. Would you expect to find conditions where, in fact, after heavy rain there was a mist inside the room? A. Yes, I do not doubt it.

Q. And if these houses had been built to the specification you have seen, would you still expect to find a mist inside the room? A. I would still expect to find it.

Q. Would you expect to find that generally, in all of them? A. Under the conditions of the ground, the site, the water level of the ground, the thinness of the foundation walls, I should say yes.

Q. Now, would you look at the specification No.27 (BEFORE THE WITNESS), page 7. Would you agree now that the specification calls for chamfering stone? A. No, it says "to form the chamfered edges", it does not say it necessarily has to be cut on the stone.

Q. If you were a builder, Mr. Newlyn, what

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

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In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

would you chamfer? A. I consider that a cement splay would answer the purpose.

Q. If you were the builder and you were interpreting specification 27, what particular article would you chamfer? A. I say I consider that the cement splay answers the question of chamfer.

Q. Does that mean that you would not chamfer anything? A. There is nothing that says that the stone should be chamfered.

Q. I am asking you, if you were the builder working under that specification, do I understand you to say that you would not chamfer anything?

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A. Unless I had been given specific instructions to chamfer anything, no.

Q. But this specification uses the word "chamfer"?

A. A chamfer is also a cement splay.

Q. Does it use the word "chamfered edges"? A. It uses the word "chamfer", but it does not say cut a chamfer.

Q. You would interpret that to be, instead of chamfering the edges of stone putting on cement?

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A. I have told you the answer to that question would be quite answered by putting on a cement splay.

Q. Does a cement splay stick to wood? A. Cement splay is not supposed to stick to wood, it is supposed to stick to the stone.

Q. The answer is - it does not stick to wood?

A. It can be made to stick to wood.

Q. According to your experience in East Africa, is it not general practice under the windows to have the stone chamfered - that is, cut away in a slope? A. Unless it is shown on the drawings it is not.

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Q. Is it a general practice on buildings in East Africa? A. No.

Q. In your house, is it built of stone? A. It is built of stone, plastered inside and outside.

Q. Is the stone underneath the windows outside chamfered? A. To form a sill, yes.

40

Q. Have you got any boys' quarters at your house? A. Yes.

Q. Have they got windows? A. Yes.

Q. Is the stone under their windows chamfered away? A. Certainly not.

10 Q. When you were there you saw some totos knock something off? A. They were not actually knocking off, they had a piece of flat metal which they were dragging along the window, caught the cement splay, and were pulling pieces off and also scraping the wood frame.

Q. What was falling from the building, was that a cement mixture of some sort? A. I have said a cement splay, or cement and sand if you prefer it.

20 Q. Was that the cement splay which was put in a position where 27 refers to chamfered edges? A. I do not know actually where No.27 refers to chamfered edges. It says "chamfered edges", it does not say to sills or where.

JUDGE:

It says "To window openings as detailed".

Q. Now, you referred to the steps item saying - "I would not actually call them steps, I would say a "stone flat"? A. Agreed.

Q. What do you mean by a "Stone flat"? A. The best definition to say - a step is where one steps, a flat.

30 Q. Would it be correct to say that most of these cases where stones, or stone flats, are level with the black cotton? A. Most of them, when I saw them, were level with the black cotton soil.

Q. How carefully did you examine the roof? A. I examined the roof by looking internally at the trusses, the rafters, ridges.

JUDGE:

Q. From the ground? A. From the ground.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.11

Evidence of
Charles William
Newlyn
Cross-
Examination
continued

Q. Have you any field notes on that inspection?
A. I have a general note.

Q. Can you tell me what width the valleys were?
A. I believe that was stated - 6 ins. wide.

Q. Do you know what the specification was?
A. I do know what the specification was - 9 ins.
wide.

Q. Would you say that the trusses you saw were
in accordance with the specification? A. Accord-
ing to the detailed drawing in the specification,
I would say that the trusses were correct. 10

Q. You would agree that in no place was there a
clinching of the nails? A. I have not agreed
that. I say it is impossible to see it from the
ground.

Q. Clinching of nails would be good building
practice? A. Not necessarily.

Q. Have you worked on any buildings locally where
there have been similar conditions and the nails
have not been clinched? A. I am afraid not. I 20
have worked on better contracts.

JUDGE:

Q. In other words, all the buildings you worked
on, the nails were clinched? A. On all the
buildings I have worked on they have been
bolted. They are stronger jobs, bigger
jobs.

Q. Would you agree that there is noticeable sagg-
ing of the rooves on these buildings? A. I will
not agree. 30

Q. Well, would you agree that when you are stand-
ing at a distance, looking at the rooves, you can
see them waving? A. I would agree that when
you look at Mangalore rooves at a certain angle,
the tiles give an appearance of waving; but if
one looks in the right direction, there is no wav-
ing of the roof.

Q. Do I understand from you there is no such
thing as a self-closing hinge for a door? A. You

understand from me that you cannot put 'T' hinges to close a door automatically.

Q. Are there other kinds of hinges that are self-closing? A. Yes, but not 'T' hinges.

Q. Didn't the specification lay down strap hinges? (NO ANSWER).

JUDGE:

Q. Is a strap hinge necessarily a 'T' hinge? All strap hinges are 'T' hinges? A. Yes.

10 Q. And they cannot be made self-closing? A. No.

Q. Didn't you say two minutes ago strap hinges are? A. Certain types of strap hinges have special hinge fittings for fitting into concrete or brick.

JUDGE:

Q. Can there be strap hinges which are self-closing? A. Not 'T' strap hinges.

20 Q. But I understood you a moment ago to say that all strap hinges were 'T' hinges? A. For the purpose of wood doors, yes, but not for heavy gates.

Q. We are not talking about heavy gates? A. I know we are not, I am telling you that a 'T' hinge or strap hinge for this type of joiner work cannot be made self-closing.

30 Q. Would you agree -- I am reading specification No.52, on page 10, heavy door furniture, and it says at the bottom of it - "All strap hinges secured with one bolt and screws"? A. Yes.

Q. And then, under "Ablution doors" - "and thesized screws"? A. Yes.

Q. You would agree that was the specification? A. I agree.

Q. Were they strap hinges that were used? A. Strap hinges.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.11

Evidence of Charles William Newlyn Cross-Examination continued

JUDGE:

Q. A 'T' hinge was used? A. Yes, similar in construction to a strap hinge.

Q. Does that mean it was not a strap hinge?

A. It does not mean it is not a strap hinge.

Q. Were strap hinges used, or were they not?

A. A form of strap hinge, yes a form of strap hinge or a strap hinge.

Q. You would agree that none of them had a bolt in them? A. I noticed that some had not and

the contractor agrees he has not fixed them.

10

Q. Did you find any yourself? (NO ANSWER)

JUDGE:

I do not think that is in dispute.

Q. In fact, were these doors self-closing?

A. With a "slam" spring they should have been.

Q. Did you try any? A. Yes. Some of them closed. I did not try them all.

Q. How many closed? A. I cannot say.

Q. Did they close because of the spring fixed to them? A. That is the purpose of the spring. I have already informed the court that I do not consider the hinges would close the door and that is why the small spring was fixed.

20

Q. Did you say some of the doors were self-closing? A. No, I will make my statement again, I said I considered that the hinges will not close the door, therefore that was the purpose of specifying the slam spring, which its purpose is to close the door.

30

JUDGE:

Q. As I understand you, you did not find any doors which were self-closing without the spring. They were self-closing with the spring, were they? A. Yes.

Q. Just one more question on this before we leave

it. Is it not possible to set the frames of the door, together with 'T' hinges, so that you can have a self-closing door? A. I am afraid I have never seen such a practice carried out.

In the Supreme Court of Kenya

JUDGE:

Plaintiff's Evidence

Q. Is it possible? A. I should say myself it is impossible.

No.11

10

Q. Would you agree that if there is cotton soil under the concrete floor of these buildings, it ought to come out? A. I would agree if there is any large quantities of black cotton soil it should come out.

Evidence of Charles William Newlyn Cross-Examination continued

Q. Now, coming to Mr. Wevill's figures, you do not agree with most of these items, but if you could assume for a moment that Mr. Wevill is right in his items, have you any criticism of the figures that you base against them?

JUDGE:

20

I think you will have to be more specific than that.

NO RE-EXAMINATION

No.12

No.12

EVIDENCE OF ROBERT VALENTINE ADAMSON

Evidence of Robert Valentine Adamson Examination

MR. ROBERT VALENTINE ADAMSON: duly sworn, states:

Examined by Mr. O'Donovan:

Q. What are your full names? A. Robert Valentine Adamson

Q. Are your position - you are in the Public Works Department? A. Yes.

30

Q. And what is your position? A. I am an Engineer Chemist.

Q. Did you in January of last year, receive

In the Supreme Court of Kenya

samples of cement, brought to you by the Plaintiff, Mr. Ata UlHaq, and Mr. McFeely? A. Yes.

Plaintiff's Evidence

Q. Did you analyse it? A. Yes.

Q. Is this a copy of your report, showing the ratio of cement in that sample was 1 to 4.2?

A. Yes, this is a copy.

No.12

Evidence of Robert Valentine Adamson Examination continued

(COPY OF REPORT PUT IN AS EX.65
NO OBJECTION FROM MR.SCHERMBRUCKER).

Q. Do you identify the signature on this letter (BEFORE THE WITNESS)? A. Yes, it is the Chief Materials Engineer's signature to a letter dated 10th June, 1957.

10

(LETTER OF 10TH JUNE, 1957, PUT IN BY
CONSENT AS EX.66.)

Q. And that is an extract from the records of your Department? A. Yes.

Q. Read out, briefly, what the analyses show?
A. "Sample C.7656 1 to 4.8".

Q. Those samples were received by your Department from Mr. Goodwin, the Clerk of Works? A. At least his signature was on the samples. I personally was on leave when these samples were received.

20

Cross-examined by Mr. Mackie-Robertson:

Cross-examination

Q. What are your academic qualifications, Mr. Adamson? A. Associate of the Royal Institute of Chemists.

Q. And you have been employed, I think, with the P.W.D. for six years? A. Yes.

Q. As an analytical chemist in the materials branch? A. Yes.

30

Q. Do you recollect receiving a number of samples from a Mr. Wevill, Chartered Quantity Surveyor?
A. Yes.

Q. Can you remember when that was? A. Approximately June 1956.

Q. Were there a large number of such samples?

A. Yes, there were about 70, I think, approximately.

Q. And would you tell My Lord how they were done up? A. They were done up in paper bags which had been sealed with cello tape and each had Mr. Wevill's signature on the label.

Q. And was each paper bag numbered? A. Yes; and labelled giving a description of the location of the sample.

10 Q. Location from where the sample had been taken? A. Yes.

Q. Now, did you make any record of the description of each sample and the test resulting from each sample? A. Yes.

Q. How did you do it? A. I wrote it in a book.

Q. A special kind of a book? A. No, my laboratory working book.

20 Q. And would you tell My Lord what you recorded in your laboratory working book? (NO ANSWER)

JUDGE:

Q. Have you got the book available? A. No.

Q. Can you remember, did you have any columns? A. Yes, a page for each entry.

Q. In broad terms, what did you record for each entry? A. A description of the actual sample; what I considered it looked like and whether it was over-sanded or too much stone or whether it appeared hard or soft.

30 Q. Notes of an examination? A. Yes.

Q. And then, having done that, what sort of test did you put each sample through? A. I broke down the sample and mixed and quartered it.

Q. Is that a standard practice? A. Yes. And then I burnt it at a temperature of 900°C. for

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.12

Evidence of
Robert
Valentine
Adamson
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.12

Evidence of
Robert
Valentine
Adamson
Cross-
examination
continued

about four hours; and then I weighed the sample and dissolved it in Hcl., which dissolves all the cement out of the sample; and then I tested the solution for calcium content.

JUDGE:

Is the method of testing very material?

MR. MACKIE-ROBERTSON:

There was a suggestion that perhaps the analyses might have gone wrong.

Q. To put it briefly, Mr. Adamson, were the tests that you carried out on each of these samples the standard, accepted, tests for analysing? A. Yes. 10

Q. And did you deal with each one separately, one at a time? A. Yes. Well, they were in batches of three or four.

Q. But did the samples get mixed? A. No. I marked everything carefully, there was no chance of that.

Q. Now, can you tell My Lord whether there is any accepted allowance for error in the results which you achieve under this test? A. Well, we tend to over-estimate the cement content by making allowances which tend to be on the over-estimation side. 20

Q. And that allowance is already included in your reports? A. Yes.

Q. And apart from that allowance, is there any margin of error? A. About 10% is general.

Q. 10% of your figures? A. Yes. I think in my case it is more 5% on the low side and 10% on the high side. 30

Q. And as a result of the tests which you carried out, did you write out a report? A. Yes.

(EX. A BEFORE THE WITNESS).

Q. Is that a copy of the report? A. Yes.

Q. It was actually, I think, signed by Mr. Strongman? A. Yes.

Q. Was it prepared by you? A. Yes.

In the Supreme
Court of Kenya

Q. In this case, Mr. Adamson, we are only concerned with your samples, 1 to 19 and No.40. If you would just refresh your memory from your report there, I would like you then to tell My Lord your general opinion, as to the general average of those samples that were submitted to you? A. They were somewhere in the region of cement, total aggregates, 1 of cement to 20 of aggregates. That includes both sand and stone.

Plaintiff's
Evidence

No.12

10

Q. Now, would you say that that is a good mixture or a poor mixture? A. That is a poor mixture.

Evidence of
Robert
Valentine
Adamson
Cross-
examination
continued

Q. In one or two exceptional cases, mainly where the aggregates are all sand, the mixture seems to be considerably stronger, is that correct? A. Yes.

20

Q. Can you tell My Lord those are examples of screed? A. Yes.

Q. And they were quite good? A. Yes, as an average they were much better than the foundation concrete.

Q. In fact, Mr. Adamson, the quality of the screed was in marked contrast to the lack of quality in the floor concrete or foundation concrete? A. Yes. There were some of the surface ones which were not quite so good as others.

30

Q. Speaking generally? A. Speaking generally, yes.

Q. Can you identify that, it is another report from your Department? (BEFORE THE WITNESS).
A. Yes, this is from our Department, signed by Mr. Olpinski, who was Acting for the Chief Materials Engineer.

(REPORT PUT IN BY CONSENT AS EX.C.)

Q. Did you, personally, have anything to do with the testing of the samples referred to in that report? A. Not in that report.

40

Q. Coming back to the samples which you did

In the Supreme Court of Kenya

Plaintiff's Evidence

No.12

Evidence of Robert Valentine Adamson Cross-examination continued

personally handle and, in particular, Mr. Wevill's samples, you took those over from him yourself?
A. Yes.

Q. And they were kept under lock and key when not being examined? A. Yes.

Q. And you are quite sure, are you, that there is no possibility of those having been mixed up with anything else? A. No. Whenever I took them out I wrote a general description of the type of sample it was, and its weight and any other information on it, and that tied then with the other that I did on it.

10

Q. And the results which you show in your report correctly reflect your analysis of the samples you received? A. Yes.

NO RE-EXAMINATION

No.13

Evidence of Thomas Henry Stone Examination

No.13

EVIDENCE OF THOMAS HENRY STONE

MR. THOMAS HENRY STONE: duly sworn, states:

Examined by Mr. O'Donovan:

20

Q. Your full names, please? A. Thomas Henry Stone.

Q. And what is your experience in the building trade? A. It started in 1905. I was with the Great Western and South East Railways. I then came out to Kenya for the then Uganda Railways. I was in charge of the drawing office to start with, but I was also made engineer, inspecting buildings and watching the buildings during the course of construction. I was also engaged on bridge work and general railway work. I was also 12 years with the Air Ministry.

30

Q. So you have over 50 years of building experience and most of it in this country? A. Yes.

Q. When did you leave the East African Railways? A. In 1913 - the Kenya Uganda Railways. I was

Chief Draughtsman when I left. It is a grade equal to the District Engineer.

In the Supreme Court of Kenya

Q. When did you enter the employment of the City Council? A. In February 1955.

Plaintiff's Evidence

Q. I think you were appointed by the City Engineer to supervise the contract of works by Mr. Ata UlHaq at the Ofafa Estate? A. That is so.

No.13

Q. And when did you commence your work there?

10 A. I commenced work in what was known as the drawing side, I started there first. That would be February 1954.

Evidence of Thomas Henry Stone Examination continued

JUDGE:

Q. That means you entered employment in 1955?

A. Yes.

Q. And when did the Plaintiff in this case, Mr. Ata UlHaq, start his work? A. In June.

Q. You were there from the outset? A. I was.

20 Q. And you worked at the beginning with Mr. Tanner? A. Yes.

Q. Who is an Architect in the employment of the Council? A. Yes.

Q. And was Mr. Mould there as well? A. No, not at that time, he arrived somewhere about March of the following year.

Q. Was there a period when Mr. Mould and Mr. Tanner were there together? A. Yes.

Q. They were working together? A. Yes.

Q. How long did that last? A. A few months.

30 Q. And then Mr. Tanner left, leaving Mr. Mould solely in charge? A. That is so.

Q. Finally, you left yourself? A. Yes. I left, actually terminated service, in June 1955. I had a month's leave due to me which I took from the beginning of May.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. And I think Mr. Goodwin took over from you as Clerk of Works? A. Yes, he did.

JUDGE:

Q. You were Clerk of Works in respect of this contract? A. Yes.

Q. Did you work as Clerk of Works on any other contract at the time? A. Yes, I was on 'A'.

Q. Is that the same thing, is that Part 'A' in this housing estate? A. Yes.

Q. And the plaintiff's is known as Part 'B'?
A. Yes, and Part 'B' as well. Then I had what is called the maintenance investigation of Mbotela Estate. There were three contracts. 10

Q. The one was maintenance only? A. Yes.

Q. And did that stop a couple of months after the Ata UlHaq contract started? A. Oh no, it carried on for many months.

Q. Well now, am I right in thinking that the maintenance contract would not take as much of your time as your functions in relation to building in progress? A. An average was 30% on Ata Ul Haq's work, 30% on Channan Singh's and about 40% on maintenance. 20

JUDGE:

Q. So far as this contract is concerned, Ata Ul Haq's contract, you spent approximately 30% of your time on that? A. Yes.

Q. Were you there every day? A. Every day.

Q. For how many hours? A. Well, it was variable. Sometimes three hours at Ata UlHaq's site, more sometimes. It varied. 30

Q. When you worked on Sundays, did you go there on Sundays? A. Yes, but not every Sunday.

Q. Did you go there on every Sunday that he worked? A. I did not go every Sunday, but I went on 'snap' checks on a Sunday and stayed there for an hour or an hour and a half.

Q. Did you have any assistant to help you? A. I had one African assistant.

In the Supreme
Court of Kenya

Q. And he was an assistant Clerk of Works?
A. He was not called the Clerk of Works, he was given some trading designate. I do not know his designation.

Plaintiff's
Evidence

No.13

Q. Could you rely on him? A. I am afraid I could not.

Evidence of
Thomas Henry
Stone
Examination
continued

Q. Did you rely on him? A. I did not.

10 Q. I take it that a building does not spring up overnight, each stage of it takes days, or even weeks? A. It does, it takes days. Some portions are performed quicker than others.

Q. Was there any aspect of the plaintiff's work which was constructed entirely without your supervision? A. None to my knowledge.

20 Q. Were you able, with the few hours a day which you spent on his site, to supervise to your satisfaction the quality of his work?
A. It was so. The time I spent on the site I was satisfied with the work he performed.

Q. Was it sufficiently supervised to satisfy you? A. It was.

Q. And your superiors? A. I should say yes.

Q. Were you able to see, in those few hours a day, everything that was done? A. I saw all the work that was completed during the day.

30 Q. Apart from yourself and Mr. Tanner and Mr. Mould and Mr. Goodwin, did you have any other officials of the City Council visiting the site?
A. Yes, Mr. Saunders, the Deputy Chief Engineer.

Q. How frequently? A. I should say he came once a week, on an average.

Q. How long did he spend there? A. He would contact me and he would stay half an hour.

Q. Anybody else? A. Mr. Bridger, the City Engineer, came down about once every fortnight.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

He spent about an hour. He used to go round.

Q. He would go round, making a proper inspection?
A. He would ask me if I was examining anything
and ask about the progress of the work, about
trenching in particular.

Q. Did any other people come, any building in-
spectors? A. Building inspectors came when
buildings were due for examination. They did not
appear frequently. There were a building inspec-
tor and an assistant inspector.

10

Q. How many were there? A. Two.

Q. They were not regular visitors? A. Not re-
gular. They were called in.

Q. They would come when the building was ready to
be handed over? A. Ready for inspection prior
to handing over.

JUDGE:

The particular blocks that are the subject of this
action, was this witness actually concerned with
those blocks?

20

MR. O'DONOVAN:

My Lord, he was concerned with all of them.

Q. There were 17 blocks in all, were there not?
A. The numbers went from 25 to 39. I think I
have a plan here. I dealt with 11 blocks.

JUDGE:

Q. How many blocks were there in the plaintiff's
contract? A. 17.

Q. And were 11 completed during your term of
office? A. Yes.

30

Q. And handed over? A. Not all handed over,
completed, and some were in the process of inspec-
tion by Mr. Mould.

Q. So 11 had been completed. How many of the 11
had been handed over? A. I cannot remember.

Q. And six were not complete when you left?
A. Yes.

In the Supreme
Court of Kenya

Q. What stage of construction had the six reached? A. Some had reached tiling the roofs, and decorating to be done.

Plaintiff's
Evidence

Q. Would I be correct in saying that in the case of all six incomplete, the walls were all up, and the roof trusses? A. I should say that would be so, yes.

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

10 Q. Some still had the tiles to be put on?
A. Yes.

JUDGE:

Q. That is in the case of all these six?
A. Yes.

20 Q. What is the procedure which was followed when the building inspectors called to examine a block which was ready, prior to handing over? A. He contacted me and I took him round each room, and we investigated the floors, walls, trusses, rooves, tiles, and everything. We then examined all the sections of the building, every part of it, room by room.

Q. Did you then compile a list of defects which you noticed? A. I made a list of defects there and then, on the spot.

Q. Was that an exhaustive list? A. A comprehensive list.

30 Q. And did you give it to the contractor? A. I made four copies. I sent a copy to the contractor and two or three copies to the Architect.

Q. What steps were taken to verify that those defects had been put right? A. The contractor remedied the defects; I inspected them again and when I considered that the building had been completed I again got in contact with the architect, who arranged for a visit by the inspectors again. This would be the second time.

40 Q. And what happened on the second visit?

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

A. A further inspection was made, just as detailed as the first one. If the repairs were accepted by the building inspectors, the architect was duly informed and he took action in connection with the process of handing over the buildings. I had nothing to do with that.

Q. Was there a Mr. Roberts amongst the officials who visited the site? A. Mr. Roberts visited the site, but I did not happen to be there, it was during a change.

10

Q. What sort of contractor did you find the plaintiff? A. A good contractor.

Q. On the whole, were you lenient with him, or not? A. I was not lenient. I was very strict. We were at loggerheads many times.

Q. When you required repairs to be carried out or defects to be remedied, did you, personally, ensure that they were remedied? A. I personally saw them done. I saw them completed.

Q. Is that an example of your list of defects which you compiled when the building inspectors arrived (BEFORE THE WITNESS) - (EX.36)? A. Yes, that is in my hand-writing. That is the sort of list that I made.

20

Q. Now, before I deal with any details, I want to ask you one rather important question. The City Council in this case raises an allegation of fraud and they allege that the contractor defrauded you by misrepresenting to you the character of the work that he had done. The question I shall put to you is this - in your supervision of his work, did you rely on any representations or statements made to you by the contractor? A. I did not. I relied entirely on my own observation.

30

Q. The foundations - I think the foundations had to be approved, or rather, the trenches had to be approved, before any concrete was put in? Do you remember? That is provided for by the contract. Do you remember that? A. Yes. Actually, that was the second operation, there was one before that - excavating over the site. Then the second operation was to remove the whole of the black cotton soil within the bounds of the foundation.

40

Q. First of all, did you see that done? A. I did; and the cotton, the sub-contractor did that.

In the Supreme
Court of Kenya

Q. Was all the black cotton soil removed?
A. All the black cotton soil was removed.

Plaintiff's
Evidence

Q. Are you satisfied that it was all removed?
A. I was satisfied.

No.13

Q. Does that apply to the excavations in all 17 blocks? A. Yes.

Evidence of
Thomas Henry
Stone
Examination
continued

10

Q. Is the next step the digging of trenches for the foundations? A. Yes. The trenches were sucked out and they were cleaned out. It was a bouldary foundation and these boulders were removed and then the foundations were checked with a pick for solidity.

Q. Were they dug down to solid rock or murrum?
A. They were dug down to hard rock.

Q. Were they levelled off? A. They were cleaned out.

20

Q. Were they sufficiently levelled off to satisfy you? A. Yes.

Q. Were more than four courses - was a depth of more than four courses dug in many places?
A. In some places. I cannot just remember all.

Q. Was that done under your instructions?
A. It was done to enable the floor level to conform with the surrounding ground level.

30

Q. Did you direct what extra depths had to be dug? A. I did, yes.

Q. And were they dug in accordance with your directions? A. They were.

Q. Now, was any inspection made of the trenches before any concrete was put in? A. Yes.

Q. By whom? A. By myself and the architect, Mr. Tanner.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. Did you and the architect approve them before
any concrete was laid? A. We did.

Q. In all cases? A. In all cases.

MR. O'DONOVAN:

My Lord, section 25 of the Specifications, which
require this specific approval at this stage.

Q. Do you now, on reflection, consider that there
was any mistake in your or Mr. Tanner's approval?

A. I do not think we made a mistake or skimped
anything. 10

Q. Do you think you left any black cotton soil?

A. No. It was a very rainy period. The place
was water-logged. The water table was very high
in the ground. There was very heavy rains and
some of the black cotton soil could have been
washed back in the trenches after we examined them.

Q. Have you examined the buildings recently?

A. I went down some little time back and spent,
I think, a whole day there.

Q. How long back was that? A. I should think
it is about a month - six weeks. 20

Q. Did you see any signs of subsidence of the
building? A. No.

Q. Of any building? A. No, not even a move-
ment of the roof, which is the first sign.

Q. That is the first thing to go? A. Yes.

Q. You have some considerable experience of the
results of black cotton soil? A. Yes, many
years.

Q. Can you make any deduction about the founda-
tions from the fact that the buildings are not
subsiding? A. I should say that due to them
being built on good foundations, they have not
subsided. 30

Q. In the conditions at Ofafa, of black cotton
soil and high water, if the foundations had not
been good, what would have happened? A. The
first thing is that the black cotton soil would
swell and crack the buildings

Q. Would that happen in the first year? A. It would depend on the moisture content of the ground.

Q. We have been through two rainy seasons, would it have happened by now? A. It would have happened.

Q. Did you supervise the laying of the concrete foundation? A. I supervised the laying of the concrete foundation, yes.

10 Q. In all cases? A. In all cases.

Q. Did you supervise it being mixed? A. Not all of it. Some of it. I made 'spot' checks. I could not stand there the whole time.

Q. Did you satisfy yourself on the point whether the concrete foundations conformed to the specifications? A. I did.

Q. Did it? A. It did.

Q. Now, with respect to their width? A. You have 6 ins. each side of the wall.

20 Q. Was it correctly laid? A. It was set out at 18 ins. by means of pins and when the stone block work was put in, sometimes the wall was in excess of 6 ins.

JUDGE:

Q. If I understand that, the concrete was set on an 18 in. width? A. Yes.

Q. And you say the wall, when it was built, sometimes exceeded 6 ins.? A. The thickness of the stone, yes.

30 Q. Which would diminish? A. The external dimension, but not materially. In other words, the width of the foundation was far above what was required for the load that was placed upon the foundations by the building.

Q. Now, you have said you made spot checks of the mixing of the concrete for the foundation? A. Yes.

Q. Did you think, in fact, that the concrete

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

was being properly mixed? A. Yes, it conformed to the mix required by the specification, 1:3:6.

Q. Did you make any tests of the strength of the concrete? A. Not in the foundations in a crushing machine. I tested the concrete in field methods, by observation, in my hands, by its appearance and the general look of it.

Q. Were any test blocks taken? A. Not of the foundations. Slump tests were taken. That is a test required to satisfy one of the viscosity of the concrete. If put into a cone, levelled off at the top and the cone is removed and then observe how much settlement takes place. It otherwise indicates to one the quantity of water that is being used in the concrete.

10

Q. These field tests and slump tests to which you refer, were they sufficient to satisfy you of the adequacy of the concrete foundation? A. Yes, quite. I should also mention that I tested the sands that were used.

20

Q. Before the builder had done building the foundation wall on top of the 6 in. foundation, did you hold him up until you had approved of the foundation? A. I did.

Q. You would not let him put a block down until you were first satisfied about the foundation? A. I would not let him start building the stone wall until that was approved.

Q. And did the architect approve? A. Not in every case, he did see some of them.

30

Q. How many of them? A. I do not know. Quite half.

JUDGE:

Q. And you yourself approved in every case? A. I did.

Q. As a matter of building practice, is it a case of correcting something wrong then or never? A. You must correct it then. You cannot do it after you have built your wall.

Q. Would it be more expensive later on to correct any faults? A. Yes.

40

Q. Did you give the contractor to understand, in all cases, that his concrete foundations were approved?

In the Supreme
Court of Kenya

MR. MACKIE-ROBERTSON:

Plaintiff's
Evidence

With respect, My Lord, I do not think my friend should be leading.

No.13

JUDGE:

Evidence of
Thomas Henry
Stone
Examination
continued

That is a leading question.

10 Q. Did you indicate your approval to the contractor? A. Yes, verbally.

Q. What have you to say about the suggestion that a lot of loose material has been left under the foundation? A. When you say loose foundations, what do you mean?

Q. Soft, loose, material? A. That is due to some loose material being brought in on the soles of the feet of the Africans.

Q. Is it serious? A. Not at all. It is a thin film and would not affect them in any way.

20 Q. What would you say about the suggestion that there were "quite appreciable depths of soft, loose, material"? A. I do not believe that. The only thing that could have happened in that case was if they broke through a section of rock and there was black cotton soil underneath.

Q. What do you think of the suggestion that it is necessary to underpin the foundation? A. I do not consider it necessary at all.

30 Q. What have you to say about the forecast that fractures will result in the foundations and the walling? A. The buildings will be there for 40 years and there will be no defects.

Q. Do you agree that there has been any uneven distribution in the loading of the foundation, anything that matters? A. Not at all.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. The foundation walling: "The stone was to be first quality local stone with all corners squared. ...". What sort of stone was used? A. Nairobi 'grey' stone.

Q. Did you approve the stone that was used?
A. I did. The stone was approved by the architect and myself before building operations commenced.

Q. I believe it was quarry dressed stone?
A. Yes. "Quarry dressed", that is a very loose term. 10

Q. That is a term used in the specification?
A. Yes.

Q. At that time, the Emergency, I think, was at its height? A. Yes, shooting was going on in the vicinity of the site. We had to take cover.

Q. What effect had the Emergency on the quality of the quarry dressed stone? A. The stone suppliers had very good Kikuyu labour. When the Emergency arose the Police took them all away and they had to find other men to do the work, and they were not very satisfactory. The stone that was delivered was not dressed to the same degree of perfectness as previously. 20

Q. Was any better dressed stone obtainable at the time this was obtained here? A. A number of Kikuyu detainees were placed at Langata and they started supplying stone. The contractor had some of that stone, which was very much better dressed than those we obtained from the quarries. 30

Q. But, apart from that, was this the best that could be obtained? A. It was. As a matter of fact the Council were taking stone from the same quarries - the non-Kikuyu dressed one.

Q. Did you and the architect take into account the difficulties before approving the samples of stone? A. No, we did not, because the samples were delivered before the height of the Emergency arose.

Q. You, in fact, approved all these samples of roughly dressed stone before any was used? 40
A. Yes, I approved the stone as it arrived on the

site, as it was delivered. It was the best that was obtainable.

In the Supreme Court of Kenya

Q. Was any stone used which was not approved?
A. Not to my knowledge.

Plaintiff's Evidence

Q. Was any stone used which was not up to sample? A. There may be some, because I have already said that the sample was before the Emergency and that was built afterwards, and a little was not so well dressed.

No.13

10 Q. Did you nevertheless accept it? A. I did.

Evidence of Thomas Henry Stone Examination continued

JUDGE:

Q. You say there was no stone which you did not approve? A. That is right, I saw all the stone used.

Q. Even under good and stable conditions, does quarry dressed stone leave anything to be desired? A. Yes.

20 Q. What? A. It has to be dressed again after it has left the quarry to get fair beds and good square corners.

Q. And what would that require? A. Additional dressing by Africans to the stone.

Q. Was that called for in the present case?
A. No.

Q. If the stones were re-dressed at the site by skilled labour, what would they be known as?
A. It depends on the foundations, on the face-fair chisel dressed, rough chisel dressed.

Q. Would it be called "quarry dressed?" A. No.

30 Q. The criticisms here are: "To walling beds". What do you say about that? A. I say that the stone was delivered from the quarries varying in depth to some extent.

Q. But you accepted because of the difficulties at the time? A. Exactly.

Q. Now, the mortar used in the foundation, that

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

should be 1 to 4. Was it? A. It was 1 to 4.

Q. Did you satisfy yourself about that, or not?

A. I did, I attended the mixing of that. When sand is wet and dry there is a difference. The wet sand bulks and the dry sand remains as dry sand, and it does make a difference in mixing mortar if it is not taken notice of at the time it is mixed. For instance, in rainy weather you mix with sand bulks and you take a box of that and it makes a slight difference to a box of dry sand. 10

Q. To a person of your experience, can you tell visually whether poor mortar is being used?

A. Yes, you can see it by the colour, upon feel.

Q. Were you satisfied with the mortar? A. I was satisfied with the mortar that I saw mixed.

Q. Did you see any bad mortar? A. Occasionally I did, I saw some being mixed and I had it thrown away. I saw an excessive amount of water.

Q. Did you see any bad mortar which had already been used? A. No, I did not. 20

Q. Was hoop iron used? A. Hoop iron was put in.

Q. Do you agree that "raking out all joints in the foundation walls" is necessary? A. Not at all.

Q. Or in repointing? A. Not at all.

Q. Now, with regard to the floors. Complaint is made that the excavation below the floor was not carried on to rock or murrum and not all the black cotton soil was removed? A. It was removed. 30

Q. Did you approve of the excavation below the floor before the filling material was put in? A. I approved the excavation on the first instance, when the black cotton soil was taken out some of the boulders were thrown into the excavation, but that was rock boulders.

Q. Did the architect see the extent to which the

excavation below the floors had been done?

A. Yes.

In the Supreme
Court of Kenya

Q. Did he approve? A. Yes, he approved with myself. We used to stand in the trench and look.

Plaintiff's
Evidence

Q. What filling material was used? A. A hard core filling called "Magadi Rock".

No.13

Q. Is that a hard rock? A. Well, it is hard. It has to be broken with a sledge hammer. That was also approved by the architect.

Evidence of
Thomas Henry
Stone
Examination
continued

10

Q. And he saw and approved all the Magadi rock boulders that were used? A. Yes.

Q. Did he see it being put in? A. On occasions, when the contractor was breaking it up prior to throwing it in and packing it.

Q. Now, it is said that some of those stones were more than 6ins. in depth? A. They probably were. You get sometimes more than 6 ins. What was lacking there was no aggregate to fill the voids.

20

Q. Nothing was provided in the specification? A. No, to fill the voids, the space between each block.

Q. Did you have any discussions with the architect about that? A. Yes, he was not agreeable on account of the expense that would be incurred.

Q. This was Mr. Tanner? A. Yes.

Q. What was the procedure followed by the builder in laying this hard filling? A. Lorry loads of boulders, hard Magadi rock, were brought to the site adjacent to the foundation while they were off loaded. They were then broken up by the contractor with sledge hammers and deposited into the foundation by his labourers. There was no form of compaction. Hammers were used, and rammers.

30

Q. What is a rammer? A. A rod with a weight on the end.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

JUDGE:

Q. You say hammers and rammers were used?

A. Yes.

Q. And do I understand that they were ineffective?

A. Well, not as effective as they should be.

Q. Why not? A. The method of dealing the blow resounded from the block, as there was nothing to back it with at the sides of the block - that is owing to the absence of the small aggregate required to fill voids.

10

Q. Was the architect aware of the practical difficulty which was occasioned by this? A. They were explained to him but he did not take any notice.

JUDGE:

Q. That is to Mr. Tanner? A. Yes. One thing he permitted that when the foundations reached a certain height from the top he permitted the contractor to put in some small, dry, hard material, which the contractor did, and he then rolled it with a hand roller.

20

Q. That was near the top of the filling? A. Yes. That was approved by the architect.

Q. Is the filling now satisfactory with regard to this solid material? A. I do not consider it satisfactory and it is proved by a slight settlement.

Q. Is it as good as the specification required? A. Yes, it is.

Q. I will read out Mr. Wevill's report on this: "Test holes.....irregular shape". Did you have boulders up to 2 ft. long? A. They may have been 2 ft. long, but they were no more than 6 or 8 ins. in depth, if you laid them flat.

30

Q. He says: "The excavation has not been carried on to the rock"? A. I disagree with that.

Q. He says: "Water had....."? A. Water would percolate through Nairobi greystone under any circumstances, especially 6 ins. thick. You will find it in foundation anywhere.

Q. He goes on to say: "It is obvious could have been improved"? A. Yes, ramming was carried out.

In the Supreme
Court of Kenya

Q. You said at the top few inches there was a layer of finer material? A. Yes.

Plaintiff's
Evidence

Q. Which was put in after special consultation of the architect? A. Yes.

No.13

Q. Was the filling approved before the concrete was put on top of it? A. Yes.

Evidence of
Thomas Henry
Stone
Examination
continued

10 Q. In all cases? A. In all cases.

Q. By whom? A. By myself.

Q. And the architect? A. Saw on occasions, he approved, he walked on top of the foundations. He used a stick to see if it was hard.

Q. Did you use a stick? A. Yes, I used a crowbar.

20 Q. Did you require any of the work to be redone? A. I did not. During the period of putting in the stones I occasionally had to ask the contractor to break it up in small blocks.

Q. Was it satisfactory to you, having regard to the specifications, confirming specifications? A. Yes.

Q. Did the contractor, in any case, lay a concrete floor where you had not approved of the filling? A. Not to my knowledge.

Q. Did you supervise the laying of the concrete floor? A. I did.

30 Q. Did you supervise the concrete mixture for that? A. I did, yes.

Q. Did you satisfy yourself as to its quality? A. I did.

Q. Did you take any test cubes of that? A. I took sometimes two, sometimes three, sometimes four, test cubes of the floors. Sometimes more than that, because some of the blocks there are

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

very large blocks and I took several test blocks. Now, those test blocks were sent on the instruction of the architect to the testing shop in Landhies Road. It is the Highways Department. City Council have a testing machine there and I, with my assistant, tested those blocks. I did the testing. That was to avoid expense. I was told by Mr. Tanner. I then entered the results on a proforma which was sent to the architect at the Town Hall; and in each case, apart from the slump test, those tests on the block were satisfactory and never below 2,000 lbs. per sq. in. It is put on a cube and it sustains that pressure up to 2,000 lbs.

10

Q. Did you send any to the Public Works Department? A. No, I was not instructed to do so.

Q. Because of expense? A. Yes.

Q. Did you satisfy yourself about the laying of the concrete floor, its thickness and so on?

A. Yes, I checked the thickness. I had my assistant on with pegs, which were put on for levels and to see that the floor came up to these levels.

20

Q. Would there be variations? A. There would be, because the top of the foundations varied a little, according to the pockets.

Q. In the ablution blocks, do you know whether the foundation was as good, or better than the specification. A. As far as I know - are you referring to the concrete?

Q. Yes? A. It was as good as the rest.

30

Q. The thickness? A. I think there was a variation (WITNESS LOOKS AT PLAN OF THE ABLUTION BLOCK) It is $3\frac{1}{2}$ ins. thick. It was made in accordance with the drawing.

Q. Was any slope put? A. It is graded.

Q. Is a slope provided? A. It is provided there. It says so.

Q. When you spent a day at the site about six weeks ago, did you have a look at some of the floors?

A. I was examining walling for cracks and any

40

undulations in the roofs. Most of the buildings were locked up and I could not get in.

In the Supreme Court of Kenya

Q. Do the floors, in your opinion, conform to this specification? A. Yes.

Plaintiff's Evidence

Q. But if they are not satisfactory, to what do you ascribe that? A. Settlement of the filling under the floor would cause a slight crack.

No.13

Evidence of Thomas Henry Stone Examination continued

10 Q. And why should there be settlement? A. Owing to the fact that there is aggregate between the stone blocks.

Q. Now, the super-structure walling: First of all, it is said - "The stones used in the super-structure walling are irregular shaped, the corners are not square and the depths are unequal"? A. That is quarry dressed stone.

Q. Your remark that you approved all the stones, does that apply to this as well? A. It does.

JUDGE:

20 Q. I understand that you agree with those remarks? A. I agree with the remarks, as it was quarry dressed stone.

Q. That they were irregular shaped and of uneven depths, but that was owing to its being quarry dressed stone? A. Yes.

Q. You approved of that? A. Yes.

Q. And did the architect? A. Yes.

Q. And did the others in the hierarchy? A. No comment was made.

30 Q. Did they see it? A. They saw it.

Q. Everybody else who came? A. The stone on the site. They made no comment on the stone in the walls.

Q. Is this a visible condition? A. It is visible for anybody to see.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. The Building Inspectors, the City Engineer, the Deputy City Engineer, the Architect, did any of these people, on their visits, complain about it? A. Not at all.

Q. Could any of them have failed to have noticed it? A. I do not think they could have failed to have noticed it.

Q. And you say you approved because you had no alternative. A. That is so.

Q. Was it a matter you discussed with Mr. Tanner? A. Yes, I discussed the quarry stone with him and he was quite satisfied that it was being bedded in. Of course it is not as good as the stone that has been redressed. 10

Q. Did you require any part of the walling to be re-done? A. Yes, I had sections re-done.

Q. What, particularly bad sections? A. Yes, that I did not consider up to the specification, especially in the foundation wall.

Q. Did you indicate to the contractor your approval of the stones he was using? A. I did not put it in writing, but I told him it was satisfactory. 20

2nd July, 1957.

2.15 p.m.

Witness continues evidence on same oath.

Examination-in-Chief by MR. O'DONOVAN (contd.)

Q. At the adjournment I think we were dealing with the superstructure walling. What in your view was the character of the work done there, was in good, bad or indifferent? A. Very reasonable. 30

Q. Did you supervise the mixing of the mortar for the walling? A. I observed the mixing as it was in progress, but not every trowel-full.

Q. Did you test it from time to time? A. I did.

Q. Did you test it for hardness? A. I took some pats and I put them in a tray and allowed them to dry up.

In the Supreme Court of Kenya

Q. Were you satisfied with them? A. I was satisfied with the degree of hardness.

Plaintiff's Evidence

Q. Have you recently tested for hardness?
A. No.

Evidence of Thomas Henry Stone Examination continued

10 Q. Were there at that time difficulties about getting water and sand? A. There was extreme difficulty in getting water. There was very little water there - at times we had none at all. It was a dry year.

Q. I don't want you to go into details. Were you working under difficulties? A. Great difficulties.

Q. Did you see the hoop iron which was used for reinforcement? A. I saw the hoop iron but I cannot say that I handled it.

20 Q. Did you approve of what you saw of it?
A. I passed the work.

Q. Did you pass it yourself? A. Not personally in its entirety. I didn't approve of it in a roll.

JUDGE:

Do I understand that you did see and approve some but not every roll? A. No.

MR. O'DONOVAN: Was it $\frac{3}{4}$ " hoop iron? A. What I saw of it was and 20 gauge.

30 Q. Would you call it baling iron? A. Well, it goes under a different name.

Q. Incidentally, does it improve the stability of the wall? A. Not a bit. It is useless. It is placed in the centre. If it was placed at the side

Q. Why did you have it placed in the centre?
A. It was specified in the centre.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. I understand that a certain amount of single ply damp proof coursing was used? A. There was difficulty in purchasing 3-ply and I asked the contractor to get 2-ply. I said: "We don't want 1-ply unless we can help it, we want 2 - 3 ply".

Q. How was it to be fitted? A. It was put in on the top of the concrete floor slope underneath the bottom course of the wall.

Q. Had it to be painted? A. With bitumen. 10

Q. Was that done? A. In some mixes.

Q. Why was it not done in some cases? A. I don't know. When I made some examinations the work with bitumen was not going on so I instructed the contractor that he was to do it and then he put it in.

Q. Did you order any work to be removed and to be redone on that account? A. No.

Q. Why not? Didn't you think it was necessary? A. I did not think the damp course was satisfactory at all. I prefer..... 20

JUDGE: I don't follow this. You say that in some places it was not done. Did you not order that work to be redone? A. I did not order it all to be pulled down because I do not consider that the damp proof course is satisfactory and prefer a cement screen.

MR. O'DONOVAN: Was there a cement screen? Yes.

Q. Was this your personal decision or did you refer to the architect? A. I did not refer to the architect. I told him about it when he came to see the work. 30

Q. Did he approve? A. He made no comment but seemed quite satisfied.

Q. Did you explain to the architect what you have just told his Lordship? A. I did.

Q. Who was that? A. Mr. Tanner.

Q. In spite of your misgivings about the use of damp proof course and bitumen, you nevertheless ordered the bitumen to be used whenever you saw they were not doing it? A. I did.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

10

Q. The internal faces of the wall. The complaint is that they are not properly dressed off. Will you tell us about that? A. Dressing is carried out by the contractor on the blocks which are protruding beyond the lower ones or the ones that are above. The stone was uneven in places and the blocks are dressed to bring them to a fine surface.

Q. Who directed the contractors which blocks had to be dressed? A. I personally directed him and the architect directed me.

Q. On individual stones? A. Yes, on the walls.

20

Q. Did you have much trouble over this? A. Not a lot of trouble. We progressed with the work of dressing.

Q. How many times was it redone? A. I cannot answer the exact number of times. It was done twice or thrice. Not in each room.

Q. Did Mr. Mould, the architect who took over from Mr. Tanner take any part in directing which stones had to be redressed? A. Extensively. He was there every day and he was directing what had to be done.

30

Q. I am talking only of the internal facings? A. Internal faces and the openings which had to be dressed. Mr. Mould personally supervised them.

Q. What was his approach to the subject of the internal facings? Was he very difficult to please? A. I should say he wanted a good job. He required the work done in a very highly finished manner. He wanted it well done.

Q. A highly finished manner? A. Yes, he wanted it dressed off very smoothly.

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Q. Were his directions complied with? A. The contractor worked away continuously and he eventually was satisfied.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. That was before you left? A. Before I left.

Q. In other words, you did eventually reach a stage when there were no more projections which had to be chipped off? A. Almost.

Q. According to Mr. Wevill's criticism the effect is still very rough. What have you to say about that? A. I disagree. The quality of the stone is very fair.

Q. The he says: "An attempt has equivalent of plastering". The question I want to ask you is this. Where the job is done almost to the equivalent of plastering, is that better than the specification or not? A. Better than the specification. 10

Q. The external faces. Were they to be struck jointed? A. The architect altered that.

Q. Which architect? A. Mr. Tanner. He had a flush joint.

Q. He allowed that. Verbally or in writing? A. No. 20

Q. To whom? A. The contractor and myself.

Q. Do you call it a flush joint? A. Yes, it is flush with the stone.

Q. Did Mr. Tanner observe the results of his directions? A. Yes.

Q. What had he to say about the results? A. Nothing. He seemed satisfied.

Q. Have you seen that a certain amount of re-pointing has been done since the contractor has finished? A. I don't call it pointing - I call it crazy paving. 30

Q. Does it improve the work? A. It makes it worse.

Q. "Ends of the Division falling away". Were they properly set? What have you to say? A. I think that was shown to Mr. Tanner and he had a reason for doing that. I think that the

pointing on the stone due to the irregularity of the stone didn't show up very well and it was then suggested that we should fill the space between the frames with cement plaster reaching up from the ground to the top of the door frame.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

JUDGE: You remember that being approved?

A. Yes, definitely, I remember standing with him for some time and talking about it.

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MR. O'DONOVAN: "No timber window openings". A. I cannot remember dealing with that. I honestly don't remember. I don't think I discussed it with Mr. Tanner. Not the chamfered edges. Is that on the external face?

Q. That is on the window openings. A. If it was inside they were done.

20

Q. Do you know how they were weathered or if it was weathered? A. I think they were just dressed off slightly below the wooden frame.

Q. You don't remember? A. No, but I think they were dressed off.

Q. Some flues were not parged? A. That is true.

Q. Was there any discussion? A. Yes, between Mr. Roberts, Mr. Mould and Mr. Saunders.

Q. What was the discussion? A. They all went down and had a look.

30

Q. When? A. I cannot just tell you the month. They had a meeting on the site and then there was a meeting with the Clerk of Works at the Town Hall. We were all spoken to about it.

Q. Was any decision reached? A. I did not hear of any.

Q. Do you know whether any allowances were to be agreed on it or not? A. That I don't know.

Q. Were steps provided? A. At the entrance.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. Were they placed on the hard core? A. A certain amount. It didn't go right down to the rock.

Q. Did it have to go down? A. Not as I read the specification.

Q. You didn't think it necessary? A. No.

Q. What depth of hard core did you put under the steps? 1' to 1'3".

Q. Are these steps actually on the level of the ground? A. In some cases they are nearly so. The ground is undulating. It slopes. In some cases they might be just an inch or two above the ground. 10

Q. The boundary walls do not appear to be fitted into the building? A. It was agreed with the architect that there should be a broken joint from ground level up to the top of the wall from one side. One end of the wall should be left over.

Q. Why? A. So that it should not interfere with the courses. 20

Q. In short, what was done was approved? A. Yes.

Q. You told the contractor to do it that way? A. Both of us. The contractor and myself.

Q. Is it usual in your experience in jobs of this sort to give all these verbal instructions? A. Yes, as a registered architect I give verbal instructions on behalf of the client. I am empowered to do it on behalf of the City Council.

Q. Is it normal? A. Normal.

Q. In your experience in this class of work could you possibly complete the thing exactly according to the specification? A. You cannot complete it according to the specification or plan. There is always some little thing. 30

Q. Roof and joinery. I think it is agreed that the roof timbers are lap jointed. What exactly does lap jointing mean? A. It means lapping the joints one alongside the other.

Q. And they they were nailed with wire nails?
A. Yes.

In the Supreme
Court of Kenya

Q. Before any roof timbers were erected on the buildings was any specimen made? A. Yes. A template was made.

Plaintiff's
Evidence

Q. Was this template put on the building or left on the ground? A. It was put on the building first and then taken off and put on the ground and then the contractor made his trusses.

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

10

Q. Was this template complete in all particulars? Lap jointing, nailing and so on.
A. Yes. The reasons

Q. Was the template approved by anybody?
A. It was approved by the architect and myself.

Q. What sort of nails? Were good nails used?
A. Wire nails.

Q. Wire nails were used? A. Yes.

20

Q. Were wire nails used in the template approved by yourself and the architect? A. Yes.

Q. Is the length of the wire nails of some importance? A. As long as

Q. Would you consider how long they were and the size? A. I would say 4" long for lapping and joining two pieces of 2" timber is adequate. And it would require a certain number of nails. Not just one.

30

Q. Did you verify what size of nail was used for the roof timbers? A. I saw 4" and on some occasions 5".

Q. If it had been in your view inadequate you would have stopped it? A. I would have stopped it.

JUDGE: The ones you saw were in your view adequate? A. Yes.

MR. O'DONOVAN: Did the architect see that the nails were being used? He saw them in the job and he saw them being driven in.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. In the template? A. Yes, and in the trusses.

Q. Did he approve of them? A. He didn't say so in so many words but he didn't express.....

Q. He approved of the template? A. Yes, he approved.

Q. In what terms? A. He said it was satisfactory.

Q. He said nothing special about the nails?
A. No.

Q. The complaint was made that they were not sufficiently long to go right through and be clenched on the other side? A. No. 10

Q. Was it necessary in your view to clench them?
A. No, the clasp of the nail was sufficient.

Q. Have you recently examined these joints?
A. No, I haven't.

Q. Have you experienced nailing joints together like this? A. In temporary trusses.

Q. How temporary? A. They are used in temporary buildings. It means that the buildings are put up for a short number of years. 20

Q. Some 40 years? A. 20 - 25 years.

Q. Not 40 years? A. No.

Q. You know of cases where they have lasted 25 years? A. Yes.

Q. The absence of clenching was a thing of which you were well aware, and the architect? A. Yes.

Q. Did you see any sagging in the roofs when you examined the site? A. No, I was rather surprised. The roofs were very regular. 30

Q. Why did that surprise you? A. I thought (inaudible).

Q. "No wall plate has been provided on top of the inner division walls". What is an inner division

wall? A. A wall that separates the kitchen and front verandah.

Q. Is there any wall plate on top of it?

A. I cannot remember that, but I don't think there is in some cases. Discussion arose about that, and I would like to refer to the plan to see if it shows one.

10 Q. Would you look at the plan. Do you remember whether there was any alteration made by carrying the walls out? A. That strikes a note. Instructions were given in order to prevent the smoke from the kitchen gaining access to the living room and it had to be sealed off under the tiles.

Q. In view of that, would that affect the absence of the wall plate on the division walls?

A. You could not build stone work on top of timber.

20 Q. You remember that instruction? A. Yes, it was some time ago it happened on Section A and Section B.

JUDGE: It was done on both sections? A. Yes.

MR. O'DONOVAN: Are the valleys as now constructed in accordance with the directions you and the architect gave? A. Yes, they are stronger.

Q. They are much stronger? A. Yes.

30 Q. Is there any difference in the price?

A. That I didn't go into in detail. It was hoped that there was not a great deal of difference. There may be a slight increase.

Q. An increase? A. Yes, there is more work.

Q. The door frames. How were they fitted?

A. They were fitted by means of strips which were screwed to the frame and bedded in the wall.

Q. What was the strip made of? A. I think it was made out of iron. I cannot say the gauge without looking at it. I don't remember

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

it being specified in the specification but it was certainly a fairly heavy gauge iron. More of a hoop iron.

Q. Is it a strip hinge? A. No, the strip hinge is fitted to the shutters.

Q. I beg your pardon. I referred to the door frames. "The onlymetal cramp". Do you agree? A. I consider it was absolutely useful and served its purpose.

Q. You thought it adequate? A. Yes.

10

Q. You approved it? A. Yes.

Q. And the architect? A. I don't think he had an interest in it.

Q. Did you approve of the fixings for the window and louvre frames? A. Yes.

Q. "The frames to thein many places"?
A. I don't remember that.

JUDGE: You don't remember that? A. Not being nailed with nails. They were fixed with the same type of cramp.

20

MR. O'DONOVAN: Did you see the ablution cubicle doors, the frames being put in? A. Yes.

Q. You must have seen how they were fastened at the time? A. Yes. I remember now because one cramp had to go right through the wall. There is a very thin wall and there is a frame one side and a frame the other. They had to put on a cramp to go right through the wall and it wasn't physically possible to put the screw in.

Q. What did you do? A. There was a bolt put right through from one wall to the other.

30

Q. You saw what was done at the time it was done?
A. Yes.

JUDGE: And you approved it? A. Yes. It was a very difficult situation.

MR. O'DONOVAN: "Hinges throughout are plain

T-hinges....self-closing". Are they plain T-hinges? A. Yes.

In the Supreme Court of Kenya

Q. Why are they? A. Because they were approved by the architect. He was shown.....he actually had a room shown to him before they were fitted.

Plaintiff's Evidence

No.13

Q. Why are they fitted with screws and not bolts? A. The holes were drilled for screw heads and after consultation it was decided to use screws instead of bolts.

Evidence of Thomas Henry Stone Examination continued

10

Q. Why? A. Because they were drilled for screws.

Q. Are hinges drilled for bolts usual? A. I haven't seen them in this country. You can put a bolt through but it is not customary.

Q. You would have to make a special hole through to fit a bolt? A. Yes.

Q. Have you ever seen that done in this country? A. I have seen it on one or two occasions, but very seldom.

20

Q. Could you explain what this self-closing hinge is? Was it a hinge with any sort of mechanism? A. A spring hinge.

JUDGE: That was approved. Fitted with a spring? A. Yes.

MR. O'DONOVAN: Let me get this clear. The specification calls for some sort of closing device. Can you tell his Lordship? A. An 8" coil spring.

30

Q. Apart from the spring is there anyway of fixing the hinges so that the door closes automatically? A. You can set the hinges so that the door automatically swings to. The frames can be put up on a canvas so that the door will go to.

Q. What was done in the present case? A. I am not sure. But I know I set the door out of perpendicular so that the door would close automatically. But I am not sure.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. You cannot quite remember what occurred in this case? A. No.

Q. Is it a matter to which you must have attended at the time or not? A. It is a matter to which I should have given my attention but I cannot remember whether I really did or not.

Q. And lastly the drains. This is the criticism. First I will read the specification: "The contractor to.....foundation walling". What have you to say about all that? A. A lot of drains were not finished when I left the work. Some had been put in. Those that were put in to my knowledge were satisfactory. I just cannot remember about the hard core underneath, but I am almost certain it was put in. What happened was that a considerable number of lorries were driven over that site and caused them to be depressed. Municipal lorries.

10

Q. You saw that happen? A. Yes, and complained about it.

20

Q. Did you understand the specification to mean that you had to dig right down to solid rock? A. No.

Q. Would there be movement where drains are placed on black cotton soil with a 3" layer of murram underneath? A. Definitely.

Q. If the work is done according to the specification? A. Yes. In the wet weather the drain would move up and in the dry weather it would sink. They would move laterally and vertically.

30

JUDGE: On the specification you don't think it would be possible to avoid the movement? A. I don't think it is. It would not crush the drain in because it was a very solid channel. It would lift it. It would lift it up out of position before it could crush the drain.

MR. O'DONOVAN: Certain things had to be specifically approved. Samples of tiles. Was that done? A. Yes.

Q. Was the tiling completed when you left? A.No.

40

Q. What had been completed, had it been completed

to your and the architect's satisfaction?

A. Yes.

Q. So far as the work was completed during your term of office was concerned, was there in your opinion any justification whatever for withholding payment of the full contract price?
A. I do not consider there was any reason to withhold any money beyond that required for the maintenance period.

10 Q. Was there extra? Were the foundations dug to an extra depth? A. In some places they were.

Q. Did you keep a record of it? A. I made a record and handed it over to Mr. Goodwin.

Q. Did you see the plan? A. No, I didn't see the plan that he prepared. I never saw Mr. Goodwin's plan.

Q. Perhaps it is your diagram. Would you look at it. No.7? A. No, that is not mine.

20 Q. You gave figures to Mr. Goodwin? A. Yes, I made a plan. I gave the depths in feet.

Q. Did that involve any extra excavation of black cotton soil? A. Yes.

Q. And extra stone work? A. Yes.

Q. I take it that it would automatically involve extra filling under the floors? A. Yes.

30 Q. The contractor claims an extra in respect of flashing of two flue stacks? A. The drawings in the specification stated that the chimneys have to be flashed on the one side only and there was a modification to that and they were flashed all the way round.

Q. Do you remember who gave instructions to that effect? A. The architect himself.

Q. There is actually a variation order about it? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone Examination continued

JUDGE: There is a variation order? A. Yes.

MR. O'DONOVAN: Do you remember anything about steps in roof No.4? A. There were steps in the building. That was because the floors were dug one below the other in Block 29. It necessitated the roofs falling correspondingly below each other.

Q. Was that extra work done? A. Flashing?

Q. I am talking of the steps? A. It was formed in the construction of the building. One below the other.

10

Q. Who gave instructions to that effect? A. The architect.

Q. The next item is 6" precast concrete drain. 827 running feet. Is that correct - 6"? A. Yes.

Q. Was it installed? A. Not all of it when I left.

Q. Some of it? A. Yes.

Q. Provided for in the specification? A. Yes, there was an allowance. We gave a separate price.

20

JUDGE: That is not provided for in the specification? A. It is covered by the specification so far as the length of the drain was measured and paid for.

MR. O'DONOVAN: I am sorry. Would you look at paragraph 57 of the specification. The contractor is to rely on his tender for providing 1,200 running feet provisionally to be measured on completion. Any greater or less length required would be subject to a variation order.

30

JUDGE: This was excess over the provisional amount allowed for in the specification?

MR. MACKIE-ROBERTSON: The witness hasn't spoken of the actual figure.

MR. O'DONOVAN: Boundary wall on blocks 26-27? A. Yes, I should explain that. When the plans for the boundary walls were prepared they were

prepared with the buildings being in a certain position but some of the buildings were not in exactly the same position as shown on the plan so that it had to be modified slightly with the result that they....(inaudible) between the buildings where the boundary wall was to be placed. It had to be modified. I prepared a plan and I showed it to the architect. I took it up myself and he agreed that that alteration should be made.

10

Q. What did that necessitate? A. It necessitated, I think, altering the foundation of the wall.

Q. In other words, extra work? A. Yes.

Q. Was it done? A. I did not see it completed.

Q. Was it commenced? A. Yes.

20

Q. Murram path. Block 29? A. The Emergency comes into this. The churches were asked if they could do something about the africans in the area and they decided to take over the Church of England, Catholic and other denominations, and that they would post certain ecclesiastical people in these buildings. They made up the ground with murram so that the V.I.P.s could come there when they took over and this was done on the instructions of the architect in a very short time.

30

Q. Who laid the murram path and when was this done? A. I should have to look at some records.

Q. At the very beginning? A. Yes, when we had finished 29.

Q. In the middle of December? A. Yes.

Q. Who instructed the builders to do this?
A. The architect.

40

Q. The inspection holes. Were they dug in your time? A. Mr. Tanner, Mr. Saunders gave instructions to me to see that the contractor opened 10 holes inside and 10 holes outside. I

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.15

Evidence of
Thomas Henry
Stone
Examination
continued

did have a plan but I cannot just remember where these holes were situated, but there were 20 holes.

Q. Did you see them being done? A. Yes.

Q. Which month? A. I cannot remember.

Q. How long before you left? A. About 3 weeks before I left. It might be in May.

Q. Were they all dug in your time? A. Yes, the 20.

Q. Were they examined after being dug? A. They were examined by Mr. Saunders and I think Mr. Tanner, though I did not see them go in the holes I know they examined them.

10

Q. Did they expose the foundation walls and the foundation? A. Yes, everything.

Q. Were any samples taken? A. I don't remember. I think I saw Mr. Mould take some samples, but I didn't really notice.

Q. Do you remember when they were filled up? A. They were not filled up when I left.

Q. Was any suggestion ever made to you that the contractor must have repointed the mortar in the spots where these holes were dug? A. No, I saw no information about that.

20

Q. You have never heard of it before I mentioned it? A. Yes.

Q. This is the very first time that you have ever heard of it? A. Yes.

Q. Would it be a practical proposition for a builder to go burrowing round in a hole which is dug, remove the cement, put in superior cement? A. That would be very difficult. The holes were not big enough for me to crawl round. I don't know how he did it.

30

Q. If he did it. A. I could not get in.

Q. Would it be possible to rake out the joints at the bottom of these holes and repoint them? A. No.

Q. Would it be possible for the contractor to have done it without your noticing unless he did it in the middle of the night? A. He could have done that but not during the daylight hours. He would have been seen.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. Did the people who examined the foundation walls where they had been exposed evince any signs of astonishment? A. I think they were somewhat surprised.

10 Q. Why? A. What was in the holes was quite good. I looked in the holes.

Q. Was it quite good? A. Yes.

Q. Did they talk to you about it? A. No.

Q. Do you remember during your time the total period during which these holes remained open? A. They remained open I am sure until I had left.

Q. After they were opened were they ever enlarged? A. Not to my knowledge.

20 Q. Children's latrines. Three children's latrines? A. Yes, the seats were altered. They were subject to a variation order.

Q. Extra shelves in the kitchen? A. That happened on both contracts A. and B. Originally there was one shelf in each kitchen. Two shelves to one dwellinghouse. There were insufficient shelves it was considered, and it was then considered that two should be put in the kitchen. Meaning 4 in one dwellinghouse.

30 Q. Was that done? A. Yes.

Q. Who gave the directions? A. I think it was done and the architect approved of it.

Q. Who directed it to be done? A. I don't remember, it was done and approved afterwards, and I think there was some settlement like this. The plates were thinner than that specified. They were accepted by the architect and one shelf was taken as put. The extra shelf was offset by the thinner plates.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

Q. Did that put in extra work? A. What I have just said was the architect's idea of a settlement.

Q. You remember that? A. Yes.

Q. Latrine head plate. 648 running feet. A. The door frames were put in and they were left open on the top and I drew attention of the architect to this and said it would be very much better if these head frames were pressed together as the fixing to the walls would be very difficult and he agreed. He gave his permission for this to go in. 10

Q. It is not provided for by the specification?
A. No.

Q. This extra work. Would you, in due course, have expected a written variation order to be made out? A. Yes, I would.

Q. Is it usual for it to be done afterwards?
A. Within a reasonable time afterwards, yes.
A certain time.

Q. According to common building practice in this country, would a builder be entitled to assume that an employer was entitled to a variation order? A. If he didn't receive it in a certain time he could write and demand it. 20

JUDGE: You mean that it was a general practice that the builder would work on a verbal instruction first expecting it to be followed up by a variation order. He would not refuse to carry out the work until he got the variation order?
A. He can do, strictly legally, but it isn't normal practice. 30

MR. O'DONOVAN: 14,150 ft. of plastering. What about that? A. This was not my pigeon. I didn't have to deal with this. When this floor was cast, it left a very rough edge protruding over the edge. It was agreed with the architect that this edge should be given a plaster to form a bond.

Q. Was it plastered? A. Yes.

Q. On whose instructions? A. The architect's instructions and I was there. 40

Q. Is it required to be done in the specification? A. I don't think it is in the specification.

In the Supreme
Court of Kenya

Q. There are two more small items. Repairing damaged walls. Damaged by somebody else's lorry? A. On building 29 there is a gable wall at the end of the latrine block and some silly fool with a lorry ran into it and knocked the wall down, and cracked it. This was reported with the particulars of the lorry and the owners of it.

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Examination
continued

10

Q. Wasn't it a contractor's lorry? A. No, I don't think so. I think it was some other contractor. It was fully reported. It was said that the damage would have to be repaired.

Q. Was it to be paid for as an extra? A. That I know nothing about.

Q. Was the work done? A. Yes.

20

Q. $1\frac{1}{2}$ x 1 podo batten. 13,608 running feet. A. The fascia board was fitted to the feet of the rafter and on the drawing it only shows the fascia board being nailed to the rafter and supporting the deal above it. When we tried to carry out the work we could not do it that way. The architect was brought down to see, and the setting of the fascia board as well. It was then decided that a tiling batten should be placed on the back of that fascia board and this was done. That is the extra running feet of tiling.

30

Q. Is that an extra? A. Yes, it was not shown on the drawing.

Q. Who gave the instructions? A. The architect, and he passed it.

Cross-examination by Mr. Mackie-Robertson

Q. As I understand you in evidence, you say that the contractor has done a thoroughly reasonable job on this Ofafa Estate? A. Yes, that is right.

Cross-
examination

40

Q. And, in fact, apart from the stone not being

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

up to sample because of the Emergency conditions, broadly speaking you say that the rest of the contract was done according to the specification?

A. Yes.

Q. On the question of cement mix and mortar mix. You have told my Lord that from your spot checks the specification was being complied with?

A. Yes.

Q. But you were only there about one-third of the time. A. Yes, about one-third of the time.

10

Q. The contractor's site covers 3-4 acres?

A. 7 acres.

Q. This particular part? A. Yes.

Q. And I suppose that once he got into his swing, work was going ahead on several blocks simultaneously? A. Not simultaneously. He was working round in a circle. He was working on one building, walling, and then he was concreting. Going round in a set pattern.

Q. But wouldn't it be the case that while people were digging the foundations there, and putting in concrete here and A. To start with, but it eventually ceased. The concrete was at one end and then he went on to concrete the next block and then he would concrete the next block and so on.

20

Q. Did you say he was working only in one part at a time? A. No.

Q. Doing one job at a time? A. Yes.

Q. Although you were only there about one-third of the time you saw that the work was done?

30

A. It was inspected each day. I inspected the work in the morning or the afternoon as the case may be.

Q. When he was mixing up his foundation concrete, for example, can you tell us how he measured out his quantities? A. He used a cube box.

Q. The method laid down? A. Yes.

Q. How did he mix it? A. He had stacks of sand and cement which he brought over.

In the Supreme Court of Kenya

Q. Did he mix it by hand? A. No, in a concrete mixer.

Plaintiff's Evidence

Q. Did you sometimes stand and watch this operation going on? A. Yes.

No.13

Q. Can you give us any idea of how long each batch was in the mixer? A. I should say from 7 - 8 minutes, possibly a little more.

Evidence of Thomas Henry Stone Cross-examination continued

10 Q. 7-8 minutes in a mechanical mixer is more than enough? A. Yes, it is a little more than necessary.

Q. From the mixing point of view. Provided he carried out when you weren't there what he did when you were there should have been no complaint? A. No.

20 Q. As I understand your evidence, according to the materials you saw going into the mixture, the specification was being complied with, whilst you were there? A. Yes.

Q. But you couldn't answer for that in respect of batches of concrete being mixed whilst you weren't there? A. After the concrete was laid I inspected the concrete or mortar.

30 Q. What do you expect to find if you go along and see some concrete which has been laid a couple of hours earlier perhaps and you stand there and look at it. What do you expect it to tell you? A. You look at it for colour. That is a guide. If there is any doubt you go up and catch hold of it and feel it. Or you ram a knife in. It depends how old it is.

Q. What colour do you expect? A. That depends on the sand.

Q. Were you using a uniform grade of sand throughout? A. It wasn't uniform throughout, of course, it couldn't possibly be. The colour would not be uniform either.

Q. The differences in colour would only be

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

noticeable in any event if there was a very great difference in the strength of the mix? A. You would see if it was a weak mix.

Q. If instead of 1:3:6 it was 1:4:7, it wouldn't be noticeable in colour? A. If it became 1:3:10 it would.

JUDGE: You mean a possible difference in the mix would in fact be a very substantial difference? A. Yes, a great variation.

MR. MACKIE-ROBERTSON: So that your colour only helps you to detect a serious deviation from the specification? A. Yes. 10

Q. And even again with your testing it by hand or knife it is not an accurate test like a chemical analysis? A. No, it is just a field trial. But you break up the concrete and look at the particles.

Q. The extent to which it breaks up would also depend on a number of other factors, such as how long it has been laid? A. Yes. 20

Q. So taking it all round, these field tests are pretty rough and ready? A. They are rough and ready, but you have no other means, have you?

Q. Let us suppose that whilst you were away down at the other end of Part 'A' some weak concrete was mixed and that could be covered up and hidden from you by running in a second mix on top of it of better quality? A. Yes, it is possible, but I would easily detect that by the joints of the material. 30

Q. When you go along to look at the foundations if the foundations are being done, you only see the top don't you? The sides are masked by a trench so you only see the top. And again in the case of the concrete floor you would only see the surface until such time as the shuttering round the edges was put in? A. The floors were cast and there was precast in the floor in the joints and one looks at the end and tested from the ends.

Q. What I am putting to you quite simply is this, it would be possible for a contractor to put in a 40

weaker mix than the specification required and then to camouflage that from the Clerk of Works. The Clerk of Works might find it and might not?
 A. Yes, it is possible but highly improbable.

Once or twice I think you said in your evidence— in— chief you did find concrete which you thought was not up to standard before it went in the work? A. I discovered the mix was not right.

10 Q. Isn't it a fair assumption that if you hadn't been there and hadn't seen it you wouldn't have known? A. It didn't go in, I didn't have set times.

JUDGE: I think the suggestion there is that if you didn't happen to arrive on the site when one of these weak mixes was prepared that would have gone in, and you wouldn't know about it?
 A. I think I would. It would have been soft and I should have noticed.

20 MR. MACKIE-ROBERTSON: You might have noticed it. But on the other hand it might have been covered up and you wouldn't notice it? There is always that possibility? A. There is a possibility.

Q. The mix was the same, wasn't it, for both the concrete foundations and the concrete floor? 1:3:6? A. Yes.

Q. Do you know Mr. Newlyn? A. I have only met him recently.

30 Q. He has told us that there is no reason why one should not get almost complete accuracy in a straightforward mix like 1:3:6. Is that correct? A. Yes.

Q. Mr. Newlyn said one might allow $\frac{3}{4}$ per cent out each way, is that fair? A. I think it might be a little higher.

Q. What would you say? A. I should say perhaps $33 \frac{1}{3}$ per cent.

Q. Taking the 1:3:6 mixture, what would be the

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone
 Cross-examination continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

weakest proportions you think that might reach?

JUDGE: Provided the job were being done honestly and nothing more than a human mistake coming into it? A. It shouldn't go weaker than a 1:4:8. Allowing for all that could happen.

MR. MACKIE-ROBERTSON: I imagine from the evidence you have given already that you would maintain that from your knowledge of the job it didn't go any further? A. I should say it did not.

JUDGE: There is just one point I would like to ask you. You said at the beginning of your evidence that at the time the foundations were being dug the site was waterlogged? A. It was heavy rains when the beds were being dug and it was waterlogged. 10

Q. When the foundations were being put in, the concrete foundations, were the trenches dry?
A. Not absolutely dry.

Q. How much water? A. It kept seeping in from the black cotton soil and had to be taken out. The ground was waterlogged and it was running back in. 20

Q. Was there any appreciable amount of water in the excavations? A. I should think 3" - 4", up to 6" in some places.

Q. And was concrete put into water? A. Not actually into the water. The water was baled out.

Q. The concrete was put in when it was dry?
A. When it was damp.

Q. That would not affect the concrete in any way?
A. If the water went on trickling it might. 30

Would it have had any appreciable effect? A. It shouldn't do, but it might have done.

Q. Would I be correct if I assumed that any effect would only be on the outer edges of the concrete? A. It wouldn't penetrate very far.

3rd July, 1957

10.30 a.m.

Witness continues evidence on same oath

Cross-examination of MR.STONE by MR. MACKIE-

ROBERTSON

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10 Q. The last questions I asked you were about the figures in respect of the mixtures of concrete. I presume that you would agree that there should be only a similarly small variation in the mixture of mortar? A. I think that should be the same. No greater variation.

Q. The mortar was 1:4 below ground and 1:6 above ground? A. Yes.

Q. Taking the mortar below ground, 1:4. A variation on that would be 1:5? A. 1:5 or 1:5½.

Q. In the case of the mortar above-ground - 1:6. How much tolerance would you anticipate there? A. 1:7 to 1:7½.

20 Q. Since you left this job I have no doubt that you have heard quite a bit about P.W.D. tests? A. I have heard something about it but I have not had anything given to me and I have not read anything.

Q. You have not seen any of the P.W.D. reports? A. No.

Q. Let me refer you to some. (Exhibits 65 and 66 shown to witness). A. I see the same ratio but I don't know to what that refers.

30 Q. Unfortunately, we have not had evidence as to that. Generally speaking that report is not too bad? A. It is reasonable.

Q. That is No.65. Please turn to 66. A. 1:3:5.4

Q. Have you read the whole of that? Some are quite good and some are on the high side? A. I wonder where they came from.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. That again we don't know. Please look at Exhibit 'C'. Assuming for argument's sake these have in fact been properly taken from Part B of Ofafa Estate, do you find these figures surprising? A. Yes, they are rather.

Q. Very low in cement content? A. Yes.

Q. In fact, much lower than you would have been prepared to pass had you seen such mortar being laid and realised its content? A. Certainly.

Q. Would you turn to Exhibit 'A'. You will find that the samples shown there are from Part 'B' and the analysis results are shown on the last page. Sheet 7. We are concerned with the first 20. Having regard to this much, these are the analysis by the P.W.D. Looking at these figures again there are some which are very low in cement content? A. A high proportion of sand.

10

Q. If we take the two mortar screeds shown there at 2B and 8B. The results shown there are 1:4:8 and 1:4. Which is very good? A. Not too bad.

20

Q. 1:4 is the specification. But compared with that some of the analyses of the mortar are extremely far out. 15, for instance, is that a screed? Mortar that is. According to the index, so to speak, in the front, No.15 is mortar from the plinth walling, No.37. Room 80. That mortar from the plinth walling should be 1:4 and in fact it was 1:15. A. Yes.

Q. Again, you wouldn't have passed that, would you? A. I wouldn't have allowed that.

30

Q. Take No.18 as an extreme example. That is showing an analysis of 1:52 or 1:36. That is quite ridiculous, isn't it? A. That is very, very low.

Q. And even without such an extreme example, the average of 1:24 etc. These are all unpardonable deviations from the specification. Do you agree? A. They are excessive, according to this.

Q. Assuming that these figures are correct?

A. Assuming.

In the Supreme
Court of Kenya

Q. And not only very serious divergencies, but divergencies for which there could be no proper excuse? A. I do not think there is anything that would cause that divergence.

Plaintiff's
Evidence

No.13

Q. You certainly wouldn't have tolerated it?

A. No.

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10

Q. Before the concrete foundations were laid and you had to do your excavations what sort of bottom did you expose? A. We exposed a bouldery rock formation. That is as soon as we touched hard, it was bouldery rocks. Similar to a large sized ballast.

Q. I think it has been described as a gravel bed? A. I do not agree with that.

Q. Anyhow, it wasn't solid rock? A. It was not rock that was in one piece. It was small pieces.

20

Q. Was it hard rock, or medium rock, or soft? A. Hard, I should say. I do not think you could break it with a hammer.

Q. Was that general throughout the whole of the area or were there places where you came to a different substrata. A. It was general.

Q. No murrum? A. Yes, very small quantities. A greyish murrum.

30

Q. Having completed the excavations over the area of the block, the trenches for the foundations were then dug down into this bouldery substratum? A. Yes.

Q. If you are making a trench in material such as that it would be rather difficult to achieve a levelling off at the bottom of the trench? A. It would be difficult to obtain a very fine surface.

40

Q. Would you tell My Lord whether you were satisfied that the contractor achieved the best bottom that he could? A. He did, by cleaning out those boulders.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. Before the concrete was run, you have told us that these trenches were approved by yourself and, I think, Mr. Tanner? A. Yes, First I examined them and went over them with a pick or crowbar and tested them.

Q. Was there ever any written approval given? A. No written approval on any of the foundations.

JUDGE: You say that Tanner approved after you? A. Yes, My Lord.

MR. MACKIE-ROBERTSON: Then, with such authority, the contractor went ahead and poured the foundations? A. Cast the concrete. 10

Q. How long does it take to cast the concrete foundations in the average sized block that you were making? A. They vary in size. They are not all the same.

Q. Several weeks? A. On average for a medium sized block it would take me 7 days.

Q. Was the concrete of each block cast as one continuous foundation or did you do it room by room? A. He started at the one end of the building and carried right through to the other end of the building. 20

Q. Working round? A. Yes.

Q. So that it was really a week's job? A. In some cases it was more.

Q. Sometimes more and sometimes less? A. Yes.

Q. In the course of casting that concrete foundation over the week there must have been hundreds of batches of different mixes of concrete? A. A number of batches each day. 30

Q. And although you were having a bit of trouble with water lying in the trenches I suppose you satisfied yourself that the trenches were in fact dried out sufficiently before you allowed him to cast? A. Yes. I used to watch to see if there was any excess water accumulated in the trench and if it was it was baled out.

Q. In fact, a man of your experience wouldn't

have allowed the contractor to cast his concrete if the conditions of the trench were such that the concrete was going to be spoilt?

A. Certainly not, I wouldn't have allowed him to deposit it into the water. It would disintegrate.

10 Q. We may take it that such a mixture as may have been left in the trenches was not sufficiently serious to make any difference to the concrete? A. It may have made a little.

Q. No significant damage? A. Nothing that would show figures like this. It may wash a little cement out.

Q. Then you don't think it could be serious enough to have any material effect on the buildings? A. I don't know.

20 Q. Having cast the concrete foundations and built the walling up to plinth level, the hard core for the filling was, if I understand you correctly, broken up outside the actual area of the building? A. It was broken up on the site near the wall. Near the external foundation wall. It was tipped adjacent to that and broken up and then thrown into the foundation.

Q. In breaking up the hard core if you were breaking up a large boulder I suppose you were left with a number of small boulders and a lot of little stuff? A. Yes, it was thrown in.

30 Q. Was -- so that the fragmentation from the breaking up of the hard core all went into the filling? A. A certain amount was dropped between the wall outside. There was a gap between the wall.

Q. You would only lose a little? A. Quite a bit. It was 6".

40 Q. Wouldn't you agree with me that the correct thing, the proper thing to do, would be to put in the whole thing, the largish boulders and also the small bits? A. Yes, but there wasn't sufficient to fill the voids.

Q. There was something to help fill the voids?
A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. Don't you think a good building contractor doing a good job on this specification would have added some small rubble in order to make a thorough job of his back filling? A. I approached him about that and he pointed out that it was not included in the specification.

Q. He refused? A. He didn't actually refuse. He said he wasn't going to.

Q. From some of the samples which have been examined, I think references are made to murrum sticking to the samples. 2A, for example, in Exhibit 'A'. Part of the concrete floor of block 25 is described on Page 2 as a "piece of concrete with some soft stone sticking to one side. The soft stone appears to be pieces of murrum". Do you agree he might have used murrum in some places? A. He might have done that. It wouldn't make very much difference.

10

Q. When this hard core was put in was it just dumped in? A. After they had broken it the Africans picked it up and dropped it. The boy was inside and he was placing the stones in position with another boy who continued breaking them afterwards when they were in.

20

Q. Was it a form of hand packing? A. Similar.

Q. But not quite as good? A. No.

Q. And this you saw was all being dumped on a good hard bottom? A. Yes. As a matter of fact some of the small boulder ballast I let him level off in the bottom of the foundations. It was hard material. He spread that in and then put the hard core on top of it.

30

Q. There was very little likelihood of your hard core settling down? A. No, I don't think so.

Q. Not as if there had been black cotton soil. If there had been black cotton left it might? A. Yes.

Q. The specification required this to be in 6" layers, each layer consolidated? Correct? A. Yes.

40

Q. You did say in your evidence that there had

been no appreciable compaction. But you also said that there appeared to have been subsequent settlement of the hard core which accounted for the hollow sound? A. Yes, I think that probably that movement of the ground at the side or water, wheelbarrows going over it that these boulders moved a little.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10

Q. Movement at the ground at the side wouldn't affect it surely? A. Lorries were run at the side.

Q. But you are down on to a rock bottom and the lorries are running about the top. A. They vibrated.

Q. You think so? A. Yes.

Q. And boys with wheelbarrows you say?
A. When they were wheeling some of this material to dump it into the foundation.

20

JUDGE: That would have taken place before the concrete was laid on top of it? A. Yes, it was.

MR. MACKIE ROBERTSON: The settlement you speak of must have taken place after the concrete had been put in? A. It did, in my opinion.

30

Q. What I would like to suggest is that anything more than a very half-hearted attempt at compaction ought to have achieved just as good results as this settlement? A. We tried to overcome this by putting this small soft material on the top and using rollers to crush it so that it would be hard.

JUDGE: Rollers were used on the surface were they? A. Ordinary hand rollers.

MR. MACKIE ROBERTSON: Hand rollers were used on the soft material on the surface? A. Yes.

Q. But not for the consolidation of the 6" layers? A. No.

40

Q. You say that you think this settlement has been caused by the rumble of passing traffic since the concrete was laid. That sort of thing? A. Slight settlement due to the boulders moving a little on each other.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. That is a very slight and indirect vibration?
A. Yes.

Q. What I find difficulty in understanding is why a serious attempt at ramming the stone didn't achieve the same result? A. It was rammed and it did not make any appreciable difference. In fact, when you rammed one section a section adjacent to it would lift.

Q. If it were done in 6" layers, surely it shouldn't have been difficult to achieve a fairly solid uniform base? A. We did not achieve that result. 10

Q. Do you not consider that perhaps it was due to lack of effort on the part of the rammers? A. No, I watched on many occasions.

Q. But you have been a long time in this country. Probably longer than anyone here in Court, and you know what these African boys are like, they won't work well while you are away? A. Yes.

Q. Had there been a mechanical rammer, you think a much better result would have been achieved? 20
A. I often thought it would be a good idea to get something mechanical. I couldn't think of anything that could work in such a confined space. The only thing I could think of was one of those jumpers that works on compressed air.

Q. Having got up to that level, the next step was to cast the concrete slab? A. Yes.

Q. Did the damp course go in before that or after? 30
A. After.

Q. The concrete slab was cast in one homogenous block? A. No. It had joints. You could not cast it in one portion from one end of the building to the other.

Q. What size blocks? A. At least equal to a dwellinghouse.

Q. How long would that take to cast? A. He would start and I think he could complete one in a day.

JUDGE: You say that one section was cast without joints? A. One section covering the area of two rooms and a verandah. 40

MR. MACKIE ROBERTSON: Here again this would involve dozens of batches of different concrete mixes?

In the Supreme Court of Kenya

JUDGE: You say it would take about a day to cast that? A. Yes.

Plaintiff's Evidence

JUDGE: And would involve a number of mixed batches of concrete? A. Yes.

No.13

MR. MACKIE ROBERTSON: The whole job would take on an average what, about a week? A. A block contained in some cases 20 rooms. 10 days.

Evidence of Thomas Henry Stone
Cross-examination continued

10

Q. Quite a long operation? A. Yes.

Q. An operation which you inspected from time to time? A. Yes, every day.

Q. Naturally you weren't standing watching it the whole day? A. I could not, Sir. Impossible.

20

Q. Whilst we are on the concrete slab the rendering of the edge of this slab is claimed as an extra? A. It was done after the wall in some cases, Sir.

30

Q. Would you look at the first plan of Exhibit 1? 3183/AH/2/14. In the bottom right hand corner of that drawing there is a sectional diagram. In that section you can see the concrete slab. If you look at the right hand edge of the concrete slab there are the words "cement rendered". Wouldn't you interpret that as an instruction that the outside edges of the slab required to be cemented? A. According to the drawing it is so.

Q. If that is so, I suggest that the work of rendering the edges was part of the contract and does not merit a claim for an extra?

A. According to the drawing it does, but I don't think it mentions that in the specification.

Q. No, I agree. A. I wonder if that has been added since or if that was added to the contractor's drawing.

40

Q. Surely it is part of the original blue print. We have got one of the signed copies

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

here. There is the original contract itself, Mr. Stone, and it is shown there? A. Yes.

Q. Then having cast this concrete slab, the next step I imagine would be the damp course? A. Yes, that is so. He would prepare for the damp course.

JUDGE: The damp course covered the entire area of the floor? A. Not the entire area of the floor, only that portion underneath the wall.

MR. MACKIE ROBERTSON: I think you told us yesterday that the damp course felt had to be fitted with bitumen? A. Yes.

10

Q. Wouldn't the more correct procedure be to put down a layer of bitumen on top of the screed and then put in the bitumen? A. That was done. I insisted on that. You paint the concrete first and then later

Q. It is suggested in Mr. Wevill's report that in some places the damp course wasn't set in bitumen. But as far as you are concerned A. On the sections I saw it was done.

20

Q. According to the instructions that you gave the contractors that should be done? A. Yes.

Q. Was bitumen in easy supply at the time? There was no difficulty? A. As far as I know it was. I hadn't raised the issue with the contractor and he didn't report to me that he couldn't get it.

Q. In carrying on and building the walls, we come to this question of the hoop iron reinforcement which you said yesterday you didn't think very much of. A. No.

30

Q. You said yesterday that it was required by the specification to be laid in the centre?
A. I don't think it says anything at all.

Q. Just what I was going to put to you. The specification only requires it to be laid every alternate course? A. Yes.

Q. And as a matter of good building practice you say it should be put about 2" from the outside?
A. $\frac{3}{4}$ ".

Q. Where it would form a strengthening element?

A. Yes. It helps the tension of the mortar.

In the Supreme
Court of Kenya

Q. And accordingly I suggest that it was the duty of the contractor to comply with good building practice and to put his hoop iron reinforcement in that position? A. Yes, I do not agree with hoop iron so it was indifferent to me where it was put.

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10

Q. The general conditions of the contract laid down that all materials should be done in a workmanlike manner? He was required to do the job? A. Exactly, and it is the custom in Africa to put it in the centre.

Q. So, in effect, you say that good building practice in this particular matter isn't followed in East Africa? A. I wouldn't say so. It is not done. This is a particular case.

20

JUDGE: Would it make any difference so far as this case is concerned, assuming that this witness' evidence is accepted. He seemed quite aware that it was being done and approved of it being done.

MR.MACKIE ROBERTSON: Leaving the hoop iron, the mortar in the superstructure walling should be 1:6? You have been down to the site recently? A. About 6 weeks ago.

Q. Did you go up to any of the walls and test the mortar with your finger? A. No, I went to see the roofs.

30

Q. Would it surprise you to know that in some places if you rub the mortar with your thumb or finger it falls away like dust? A. It would surprise me.

40

Q. You say that it would surprise you from the basis of your own supervision of the contract. But if the analysis figures which I put to you this morning are correct then it isn't surprising? A. I want to go into this question of mixes. The testing of cement is a difficult and detailed matter. It depends who does it.

Q. If these analysis figures are correct then

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

it isn't altogether surprising that you could go up and rub the mortar away with your finger?

A. If the figures are correct one could anticipate doing that.

Q. In putting up these walls you say that the stone used was Nairobi grey stone? A. Yes, in some places it is called blue stone.

JUDGE: I am sorry. Is the grey stone the same thing as the blue stone? A. It is from the same strata but it varies in colour. The blue is a very nicely finished stone, the grey is also very good. 10

MR.MACKIE ROBERTSON: From the point of view of its value as a good stone? A. The blue stone is better.

Q. I think it is a little harder? A. I wouldn't like to say that.

Q. According to the specification this stone was to be quarried, dressed and the corners were to be square and regular. You have told us the difficulties which the contractor had about the stone because of the emergency and that the stone wasn't as good as the sample? A. It was not. 20

Q. Taking the general run of the stone actually delivered and used, would you say that it had corners square and regular? A. The corners were not square and regular.

Q. In fact it wasn't even up to the standard that prevailed in June, 1954 when the contract was signed? A. It was not. It deteriorated. 30

Q. If these rooms were built of this stone which you know of and saw, and if it had been built with a proper 1:6 mortar, would you consider it likely that a driving rain against the wall would penetrate? A. I think it would penetrate through the stone. The water would go through. The grey stone. It doesn't go through it like sugar, but it shows a moisture.

Q. The stone absorbs the moisture and the inside walls would show a damp patch? A. Yes. 40

Q. But it wouldn't penetrate to form a mist?

A. It might form a mist later if there was some heat and it evaporated.

Q. And any question of the driving rain seeping through the wall would be very seriously aggravated if the mortar mix were weaker than 1:6? A. It would have an effect on it. If it was one of these very, very low ones the water penetrating the joint would make it disintegrate.

10 Q. Then the building of each cook-house. There were, you told us yesterday, to be some shelves

JUDGE: Can I interrupt. Once the mortar or cement is set does the penetration of the rain or moisture reduce the cement content or once it is set.....? A. It is impervious, but if it is an inferior mix and there is a preponderance of sand it might.

20 JUDGE: Would there be an actual reduction of the cement content? A. Yes.

JUDGE: But it would have to be a bad mix in the first instance? A. Yes.

MR. MACKIE ROBERTSON: That effect would happen on the mix as specified for this contract? A. A 1:4 mix I do not think would disintegrate. It would.....

Q. Or 1:6? A. It is doubtful. It is very weak, but it might. It might if it were 1:9, but if it were 1:5½ I don't think it would.

30 Q. Although you say 1:6 is a weak mix, it is not uncommonly bad? A. No, it is used, but it is not a good thing.

Q. It was more important than ever that the specification should be adhered to? A. True.

40 Q. Coming to the question of the shelves in the kitchen, would you look again at the first plan? In the floor plan in the left hand corner in the middle of that floor plan there is a description "2 No.10" shelves", which means 2 shelves. A. Could we refer back to the specification?

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone Cross-examination continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone Cross-examination continued

Q. Just one minute. On reading the plan that indicates to you as a building man that there are to be two shelves in that cookhouse, and it is common practice that where you show the detail in one place, you don't repeat it in every house. On the plan that would be 2 shelves in every cookhouse? A. Yes.

Q. Now you want to refer to the specification. Page 9, number 44. A. A dwelling unit has two rooms.

10

Q. Do you agree with me that the answer to this question - one shelf or two shelves depends upon the interpretation of the words dwelling-unit? A. Yes.

Q. Having got the wall plate level, the roof trusses were the next item, I think. Were they formed in accordance with the specification or was there a slight variation? A. There was a slight variation in this respect in that the timbers were not framed - they were not recessed one into the other. We discussed when the sample truss was being prepared. I explained that. If we had recessed the timbers it would have weakened the truss and it was ultimately decided that it should be completed and placed on top.

20

Q. The object of framing joints in a truss, never mind what the size, the principle behind framing is to give it strength? A. Providing the joints are in proportion. You must amplify that.

Q. You have thought that in this particular case instead of giving it strength it would weaken it? A. Yes.

30

Q. And so to avoid that weakening you say it was agreed that they should be lapped and spiked. The object of that change was to give it strength? A. Yes. To give added strength to the timber.

Q. If you were going to give it the strength, I suggest that a good job would have provided for your spiking to be clenched so that it should be firm? A. No, I don't agree with you. The theory of joints is one of driving nails into the timber. Considerable tests have been made out. Providing you put the right number of nails in and don't overdo it or underdo it.

40

Q. You don't think the clenching of the nails was necessary? A. I don't personally.

In the Supreme Court of Kenya

Q. Do you agree it wouldn't do any harm?
A. It wouldn't do any harm.

Plaintiff's Evidence

Q. Do you agree it would have added a little bit of strength to the joint? A. No. What it might have done in case of shrinkage.....

No.13

Q. It creates resistance against any deterioration or opening of the joints? A. Yes.

Evidence of Thomas Henry Stone Cross-examination continued

10 Q. When you came to the roof, there was this question of the extra batten. Do you know when the matter was referred to the City Engineer by the architect? A. I do not know that. I definitely remember bringing the architect down to the site, and I had the contractor put up a section of the timber roof framing at the eaves, and I had already drawn out a plan showing the position. The architect wished to obtain a finish so that the fascia board would be as near
20 as possible with the inside of the lintel.

Q. When you say the architect, of whom are you speaking? A. Mr. Tanner.

30 Q. Would you have a look at Exhibit 21. That is the contractor putting forward a claim for this extra, and the next letter, Exhibit 22 is a reply from the City Engineer, Mr. Bridge. He says: "I am not....detailed drawings". In that Mr. Bridger was rejecting the claim for an extra. A. That is true, but I think you will find that if we count the battens on the site.....I am not sure what I am saying. I think there was an additional one which made it 11.

Q. Wasn't that additional one put on for fixing the fascia board? A. The additional one was.

40 Q. And according to the plan, the board was supposed to be fixed to the ends of the rafters? A. But that could not obtain in practice and it was brought to the notice of Mr. Tanner.

Q. Did he issue any variation order? A. No, he did not.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. Were the lintels ever rendered on this job?
A. They were cast on the floor first.

Q. Didn't you say yesterday they were cast in situ?
A. The main beams were cast in situ.

Q. The door lintels and the window lintels were pre-cast?
A. Yes. When the moulds were stripped off they received a brushing of cement wash over the faces. Trowelled over.

Q. The specification in Clause 57 on page 11, describes the lintels. (Reads) What you describe wouldn't be complying with that?
A. Not exactly, but it was rendered. 10

Q. You are sure of that?
A. I am sure. I saw it done with a steel trowel.

Q. Was it done throughout the whole job?
A. It was done. When I saw the mould I noticed some little open holes and slight irregularities.

Q. Let us look at your report, Exhibit 23. In several places in that report you use the word 'badly'. In the ablution block you say: "Plasterfallen away and needs repair", Room 361: "Door has dropped badly", and in 368: "Dropped badly". All these things do not indicate a very high standard.
A. You get this sort of thing. The work, after a time, due to the timber in this country, it warps and changes and it causes this sort of thing. I would not put it down to bad workmanship. I would put it down to the material which is used. 20

Q. Was the material bad?
A. It wasn't - when it arrived on site to all intents and purposes in appearance it looked very good but it was probably not. 30

Q. But if it weren't good material it shouldn't have been used, should it?
A. That is true.

Q. You see, you use the word "badly". You emphasise it.
A. When I say it dropped badly, it is probably right. It dropped so much you couldn't close the window.

Q. Let us turn to Exhibit 32, which is a report written by Mr. Goodwin. That deals with: "Floor 40

defects found yesterday.....taking over".
Assuming that Mr. Goodwin is correct in the list
of defects he sent out, I again suggest to you
that the floors were not very good? A. It
depends on the nature of the crack. Is it a
hair crack or what?

Q. He wouldn't talk about hair cracks in a re-
port, would he? A. I don't know.

10 Q. He listed about 20 complaints of cracks on
the floor? A. Yes, I have had them.

Q. I suggest, looking at that report, it does-
n't indicate good workmanship. There is some-
thing wrong? A. I just expressed my opinion
about the compaction of the filling. That has
something to do with it. You wouldn't expect
that straight away before the houses have been
taken over. If there is any settlement it will
crack.

20 Q. Which would be settlement over a period of
a month? A. A month or six weeks.

Q. You think there might, in fact, have been
settlement of the hard core filling in that
period? A. I think so.

Q. You gave evidence yesterday about the valley
boards and I think you said the plan didn't pro-
vide for valley rafters. Is that correct?
A. Yes.

30 Q. If you would turn to the specification which
you are referring to, the valley rafters are
provided for? A. Yes, provided for, but not
in my opinion in a satisfactory way.

Q. "Down each side.... valley boards"? A. Yes.
These rafters projected and there was nothing
underneath to take the ends of the rafters and
keep them in position. They were flying in mid-
air. They could move about. They could twist
up or twist down. We put in a valley rafter to
secure the ends of the rafter to keep that firm
and in position.

40 Q. Is that what the specification means: "...
on top of valley rafter?" A. It doesn't say
what size.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone.
Cross-
examination
continued

Q. I suggest to you that where a valley rafter is referred to without a size, it would have to be a size to fit the building referred to?

A. I would say so. I spoke to the architect and he said: "Have the valley rafter put up". I think it was 6 x 2, I am not certain, and two 6 x 1 valley boards on each side in place of the two 9 x 1 valley boards.

Q. I think you said yesterday that that was done at no extra charge because the rafters were slightly smaller. A. It was anticipated that there would be no extra charge if it was possible, but we were not sure.

10

Q. In point of fact I suggest to you that the matter was covered all the time. It was not an extra at all because it was there in the specification but the size was not mentioned?

A. I agree.

Q. How many hours a day were you putting in?

A. 8 hours.

20

Q. You were there 30 per cent of the time, which would be 2 hours? A. Nearly 3.

Q. How old are you? A. 69.

Q. I suggest to you that for a man of your age, though you have a long way ahead of you yet, to cope with three different supervision jobs at the one time was a bit more than you could cope with?

A. I don't agree, I was fit. I got about. There were no complaints?

MR. O'DONOVAN: From your employers. A. From my employers.

30

MR. MACKIE ROBERTSON: Parts A and B, the two jobs, were alongside each other? A. Adjacent.

Q. And the Patella maintenance job was $\frac{1}{2}$ mile away? A. Yes. $\frac{1}{2}$ mile. I was using my motor car round the whole site.

Q. You had quite an area to cover? A. The whole thing was 32 acres.

JUDGE: All three jobs? A. Yes.

MR. MACKIE ROBERTSON: You had to do all this yourself except for one African assistant who you couldn't rely on? A. Yes.

In the Supreme
Court of Kenya

Q. When you were giving evidence in the Commission of Inquiry, didn't you indicate there that you had rather too much on your shoulders?

Plaintiff's
Evidence

A. I think the commissioner tried to indicate that to me. I had a lot to do.

No.13

Q. Even for a younger man it was a big job?

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10

A. Yes, and what made it more difficult was writing up all the reports.

JUDGE: You don't think it was too much for you? A. It did not tax me. I was tired but it didn't tax me.

MR. MACKIE ROBERTSON: In the Commission I think it was said that you tried to make two visits a day. You were asked how often you were there and you said: "Well, I tried to make two visits a day. One in the afternoon".

20

A. Yes.

Q. In the same way as you had a lot of work to cover when these inspections were made, it is not like carrying out a detailed inspection of one dwellinghouse. It was a fairly big job?

A. It was a big job.

Q. The list of defects which you made out on these inspections in conjunction with the building inspectors and people, these were a list of patent defects, defects which you could see?

30

A. Yes, one could observe.

Q. Things on the surface? A. Yes.

Q. If you had come to a batch of mortar which was 1:15 for instance, you wouldn't have been able to see that? A. Not if it was at the back of the walling. If it was underneath you couldn't see that. You would have to spend the whole of your time looking at every joint.

40

Q. So that at these inspections there was really no check up at all on mortar or concrete mixes unless you saw something falling away?

A. I did stay there to see mixes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. I appreciate that. We have got that recorded. What I am speaking of now are those visits of inspection. The inspections prior to handing over. On these inspections you walked round the block, you poked your nose into each room, and provided it looked all right you went on to the next one?

A. Building inspectors poked into the mortar, checked the floors for soundings, examined the timber and joints and things you would expect them to look for. They knew where to look for trouble. I consider they made a very good examination. 10

Q. But, as you said before, it would have been impossible to look at everything? A. Yes.

Q. You told us yesterday that after Mr. Mould's arrival on the scene and taking over the contract he was very strict? A. Yes, he was.

Q. He was insisting on a strict compliance of the specification? A. I think more than the specification. 20

Q. Would you tell My Lord in what respects you think that Mr. Mould was demanding more than what he was entitled to? A. In the decorating particularly. In the finishes to the openings. He had these all plastered up and there is nothing mentioned about plastering in the specification.

Q. Which openings do you mean? A. Kitchen openings.

Q. You mean the doorway? A. The opening leading from the room into the kitchen. 30

Q. An internal one? A. Yes.

Q. Anything else? A. The dressing of the walls.

Q. It depends does it not upon ones individual interpretation of the word dressing? A. Yes.

Q. The contract required the internal walls to be dressed off to a fair face and Mr. Mould was looking for a somewhat fairer face? A. Exactly.

Q. Anything else? A. With regard to tiles and

to blemishes on the tiles. Small specks of distemper. He was entitled to but it was a little fastidious.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10 Q. There is one complaint with respect to the laying of the tiles on the roof. The specification required them to be set with coloured cement the same colour as the tiles, and there is a complaint that in some places they were set in plain cement and colour washed afterwards? A. I cannot remember that. I didn't climb up to look so I could not verify that.

Q. It could have happened? A. It could have happened.

Q. It isn't so satisfactory as mixing it?
A. No.

Q. Then the chamfering of the windows you say was not done on the outside? A. Not to my knowledge, just chisel dressed.

20 Q. The specification in fact says: "Allow for chamfering"? A. Yes.

Q. To you - a man with your experience, that means to cut it away to slope? A. Yes.

Q. In point of fact we know that the contractor, instead of doing that put in a slight filling of cement? A. Yes.

Q. That lies up against the wooden frame of the window doesn't it? A. Yes.

30 Q. And perhaps particularly in this country, a wooden frame shrinks and expands from time to time, so that you would develop a slight gap between the wooden frame, and it isn't really such a satisfactory job as a proper chamfering?
A. If you are referring to any drift of water under the frame, I don't think you would find any difference between the chamfer and the cement.

40 Q. Consider this. It has already been described by one witness that he saw some totos banging away with a bit of metal and knocking out the cement. That is one risk that there is

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

with this sort of house which you wouldn't get with a chamfer? A. A plain chamfer would still be a plain chamfer.

Q. For the purposes of this specification a chamfer would be better than the cement? A. It would stand up to harder wear.

Q. What do you understand by the phrase "a metal cramp"? A. It can be an ordinary bent angle bracket.

Q. What sort of metal is it made of? A. Unless it is specified it can be any thickness. 10

Q. Is there any recognised standard in the trade? A. One would expect a reasonably stout piece of material to be bent to form.

Q. And it should be strong enough to hold door frames, etc. in position? A. Yes.

Q. Strong enough to resist any normal movement in the wood itself? A. Yes.

Q. So that if door frames and window frames have pulled away from the wall, it indicates that the wood was not seasoned and the cramps were not strong? A. As you have just said, there are some very hard cases down there, and they bang about 20

Q. Short of anyone attacking it with hob-nailed boots, the pulling away indicates that the cramp has not done its job?

JUDGE: That is if the door has not been subjected to rough treatment.

MR. MACKIE ROBERTSON: In the ablution doors, I think you said they were reinforced by a bolt going through from one frame to another? A. Yes. I don't know whether that was put in afterwards. I went down and saw a bolt. 30

Q. Did you also notice when you went down about six weeks ago that the plaster round the door frames didn't seem to be standing up very well? A. It had broken away, but I attributed that to someone putting the bolts in afterwards.

Q. The idea of having the bolts was quite a good idea? A. Yes, If it had been put in before the plaster.

In the Supreme
Court of Kenya

Q. And if it was a good plaster it should stick? A. Yes.

Plaintiff's
Evidence

Q. Did you notice on your visit that as you walked past the ablution blocks a large number of doors were standing open? A. I don't remember.

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

10 Q. Did you test the self-closing aspect of the doors? A. When I was there I didn't go down with the set intention of testing the doors, but I can fully remember that there was a spring put at the back of the door.

JUDGE: Is this when you were on the site recently? A. No, when I was Clerk of Works.

20 MR. MACKIE ROBERTSON: I suggest that in spite of the spring and in spite of the instructions, a very large number of them are not, in fact, self closing? A. They might not be. I cannot say until I go there again. I will go and see it.

Q. Just before we rise. You will remember telling us yesterday about the hinges used on the doors, and you said that the ones used were all drilled for screw holes. Would it not be quite a simple matter to open up one of these holes so that a bolt could go through? A. It could have been done, but I didn't quite see what was the object of the bolt.

30 Q. Never mind the object, it was there in the specification. A. I look at things from another angle, and I couldn't see why a screw wasn't just as good as a bolt.

Q. The point is this, could the bolt have been done? A. It could have been done at extra expense.

ADJOURNED FOR COURT TO VIEW THE SITE.

In the Supreme
Court of Kenya

10.30 a.m. 4th July, 1957, resumed.

All present as before.

Plaintiff's
Evidence

MR. THOMAS HENRY STONE:

No.13

Cross-examination by Mr.Mackie-Robertson: (continued)

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

Q. Now, Mr. Stone, you visited the site of this contract yesterday afternoon with the court?

A. Yes.

Q. The buildings we saw were the buildings which were put up by the Plaintiff under your supervision as Clerk of Works? A. Yes.

10

Q. And whilst you were there yesterday afternoon you tested the mortar in the super-structure wall at a number of places? A. Yes.

Q. And so did Mr. Mould? A. Yes.

Q. Now in some of those buildings where the tests were made either by you or Mr. Mould, the mortar appeared to be very sub-standard? A. No, I do not. I should say it would be below 1 in 6. Those were just small sections. Not the majority of tests.

20

Q. In some places you think the mortar was up to specification? A. Yes.

Q. And in the minority of the places tested it was below specification? A. It was below 1 in 6, but I would not say how much.

Q. In some places there was evidence of re-pointing having been done since the job was completed? A. Yes, there was new pointing on one particular block, I saw that fresh mortar.

Q. The re-pointing was very obvious where it had taken place - over-painting, whitewash, limewash? A. On the external wall, yes, it was there, I saw it.

30

Q. But was it possible to say whether the re-pointing had been done on other walls which had not been lime-washed? A. I did not see any.

Q. It would be much more difficult to see?
 A. I should think it would be more difficult.

In the Supreme
 Court of Kenya

Q. Now, did you notice the mortar splay which had been put round the windows instead of chamfering?

Plaintiff's
 Evidence

A. I saw the mortar on the windows - the shutters to shut the windows, - and I also saw the mortar to the louvre windows.

No.13

JUDGE:

Evidence of
 Thomas Henry
 Stone
 Cross-
 examination
 continued

Q. That is the mortar on the sills? A.Yes.

10 Q. And did you see at one particular window that mortar had been lifted off the sill? A. Only at the louvre window, not on the main shutter.

Q. Now, let us come to the hole in the floor, Mr. Stone. Did you accompany the court into one room where a hole had been dug in the floor? A. Yes.

Q. Through the concrete right down into the hard core? A. Yes.

20 Q. But I think we were unable to see the foundations because of the water lying in the bottom?
 A. That is so.

JUDGE:

Q. The depth of that water? A. I did not try the depth.

Q. Can you hazard an estimate? A. I would not like to hazard.

Q. There was certainly several inches of water? A. Oh yes, there was more than 9 ins., or perhaps a foot.

30 Q. In the first place, Mr. Stone, was there any evidence that that hole had been tampered with, that the concrete floor slab had been altered in any way from the original floor slab, or that the rock fill had been altered? A. I think the rock fill had been disturbed, that it had been moved. I think it has been pulled about. I saw that it has been disturbed.

Q. Would you agree that the hard core fill was the

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Cross-
examination
continued

original hard core fill? A. Well, it is very difficult to commit myself to that, but I should say it is similar to what I saw going into the building.

Q. And you will agree, Mr. Stone, that it was comprised of rocks or boulders of considerable size? A. In length, but I did not notice anything more than 9 ins. in depth.

Q. And there was practically no evidence at all of any small, broken, stone? A. Very little. 10

Q. And allowing, Mr. Stone, for the necessary disturbance which would arise in taking out such stones as had been taken out, there was no evidence of layers in the back fill? A. That is my reason for saying it looked as though it had been disturbed.

Q. As we saw it, it looked as if the stones had just been dropped or placed in position, one on top of the other, until the whole depth had been filled up, allowing for your view that it appeared to have been disturbed? A. It looked as though it had been tampered with. 20

Q. I suggest, Mr. Stone, that using hard core of that nature ramming would be a virtual impossibility? A. Very difficult.

MR. MACKIE-ROBERTSON:

In this connection, My Lord, I would say that we have agreed on both sides to dig a further three holes and after Mr. Stone has given his evidence he is going down there as a representative of the Council. Mr. Stone will choose three separate rooms. 30

Q. Now, Mr. Stone, in your evidence-in-chief you referred to a report which you had made concerning the depths of the foundations? A. Yes.

Q. Would you look at that and see if that is the report about which you were speaking (BEFORE THE WITNESS)? A. Yes, that is my writing.

Q. Now, on one or two of those pages there are some comments in pencil which I do not think are in your handwriting? A. No. 40

Q. Do you know whose handwriting they are?
 A. I would not know the handwriting.

In The Supreme
 Court of Kenya

Q. Now, the key to the depths which you have shown there is indicated by coloured crayon?
 A. Yes; but I do not know whether I put the coloured crayon. I am not too sure about that. No, I think I only marked the depths in feet.

Plaintiff's
 Evidence

No.13

Q. On the bottom of that first page there is a....?
 A. There is a key here.

Evidence of
 Thomas Henry
 Stone
 Cross-
 examination
 continued

10 Q. Is that done by you? A. No.

Q. Well now, would you look through the different pages and tell me if in some instances you have not reported a depth of three courses, or 3 ft?
 A. I put the number of courses alongside.

20 Q. And in some instances it is three? A. The numbering of the courses are marked there and a section of the courses as well, - "1,2,3,4". I marked the total number of courses, in every case, I think. I think so, yes.

Q. Taking page 4 as an example, you have shown both the blocks demonstrated on page 4 as being three courses in depth?
 A. Yes.

Q. And there is a pencilled comment on the side. What does it say?
 A. "Contractor claims more than three courses - dug hole - proved four courses".

30 Q. Now, wasn't there some argument between yourself and Mr. Goodwin at one time about the depths of the courses?
 A. He spoke to me about it.

Q. And he produced figures which were different from yours?
 A. Yes; and there may be one other I think he spoke about, I am not sure.

Q. Isn't there another sheet where you are also showing three courses, filled in in red?
 A. It does not mention the courses on this one.

40 Q. What depth are you showing on that plan there, page 3?
 A. There is various depths, from 3 to 4 ft.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone Cross-examination continued

Q. And there is a note on that sheet to what effect? A. "Contractor claims 2 ft more - mistake in Mr. Stone's pen - four units only affected". I do not quite follow that remark, as to where it applies.

Q. Anyhow, you had this disagreement with Mr. Goodwin on the question of your figures, some of which you disagreed? A. Yes, he spoke to me.

Q. And on that occasion I think that you stuck to your guns and said those were the figures that you had there and those you believed to be correct? A. I said I believed to be correct; but I think I also amplified it and said it would be necessary to prove the figures, which I understood he did afterwards.

10

Q. To the best of your knowledge and belief, Mr. Stone, are the figures which you have given there correct? A. To the best of my knowledge and belief. I may have made a mistake and I was not aware.

20

Q. We can all make mistakes, Mr. Stone; but you did not fill these figures in from guesswork? A. No, I kept a book and I recorded those on my visit and then I compiled this from that.

Q. So that that report of yours comprised your actual observations of the work? A. Yes.

(REPORT PUT IN AS EX. D.)

Re-examined by Mr. O'Donovan.

Re-examination

Q. I think you said, Mr. Stone, that with regard to the depth of these foundations, it should be necessary to dig holes? A. Yes, I did say that. That was after I had been told about a query by the contractor, Mr. Goodwin, the contractor queried Mr. Goodwin and then I said it would be necessary to dig holes to prove them.

30

Q. Do you dispute the results of the digging of the holes? A. I would not dispute, but I did not actually see them.

Q. The points on which I wish to ask you questions are rather disjointed - first of all, you

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were given a lot of figures showing the result of an analysis of mortar and concrete?

A. Yes, yesterday.

Q. And I think you agree that on the whole the main ones you were given showed a very poor mixture? A. A considerable number showed a poor mixture.

Q. Are those results in any way representative of the class of this work as a whole? A. I do not think so, no.

Q. Is it possible for somebody with experience to select the bad patches in an extensive work of this sort? A. I answered you this question. If I was put in charge as a supervising officer, selected for the Council and paid by them, I should look for the worst places and I dare say find the worst places, with my knife, going about, not taking the good ones, taking the bad ones.

Q. What would you say about the possibility of that having been done to produce the results I have just talked about? A. I would not like to suggest - I think it was done.

JUDGE:

Q. You are not suggesting that there was any...? A. Deliberate intention of finding the worst.

Q. I was not putting it as high as that - there was no deliberate intent to mislead, but it would be perfectly natural for anyone looking for defects to go over the worst places? A. Exactly. I am not suggesting it was dishonest.

Q. If you went over the work in the new City Hall Extension over the road, do you think you could find bad spots there? A. If I looked for them, yes.

Q. Now, you say it is possible to tell whether re-pointing has been done? A. It is possible to locate fresh pointing.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone
Re-examination continued

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In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

Q. Even if painted over? A. Yes. If you re-paint over it you can just chip the fresh paint off and you will see the new pointing.

Q. And on the whole, as a general comment, what would you say as to the character of the mortar you tested yesterday? A. I should say that is a reasonable quality, and 1 in 6 that I tried with a screwdriver and a knife.

Q. Did you see any mortar in the external walls which you would have condemned? A. There was one place where we were looking for the Ruberoid there was a place that was definitely a weak place, in one spot only. 10

Q. Would you have condemned anything else had you noticed it, any other of the mortar in the external walls? A. I would not have condemned any other part; but there is a chance of that being some mortar that was left to dry and used up instead of using fresh.

JUDGE:

20

Q. What you were saying is that when the mortar had partly dried it would lose strength, it would not have its proper strength?

A. When it is exceedingly dry and left too long.

Q. And that would not be as good as it should be? A. No.

Q. The mix need not necessarily be wrong, the original mix? A. No.

Q. But, in fact, the mortar was poor, it should not have been used? A. That is right. 30

Q. Will you look at the plan showing the layout of the block, where it was agreed that the re-pointing had been redone by the City Council (37)? A. Yes; and they did not finish redecorating.

Q. What have you to say about a comparison of the mortar used by them and that used by the contractor? A. The mortar that I tested was infinitely superior to that which was on building 37. 40

Q. The re-pointing mortar? A. Yes.

In the Supreme Court of Kenya

Q. The contractor's was infinitely superior?
A. Yes.

Plaintiff's Evidence

JUDGE:

No.13

Q. This mix 1 to 2, can you tell me, for the record, how hard that ought to be when tested with a screwdriver?

Evidence of Thomas Henry Stone
Re-examination continued

10

A. I should say it would require considerable pressure to force the screwdriver through the joints - as a matter of fact, it would require an increased pressure the further you went in. You would not require an excessive to start with but once you broke through the little pointing core, the external face of that, you should be able to exercise quite considerable pressure before you got the screwdriver through.

20

Q. Your screwdriver would go through with the exercise of considerable pressure?

A. Yes, pressure that one man could exert.

Q. You would not expect it to resist the screwdriver entirely? A. No.

Q. What strength mixture would you expect before you would fail to get the screwdriver in at all? A. 1 in 3, or 1 in 2.

30

Q. Did you say that a screwdriver would enter as a result of abrasion - would penetrate by reason of abrasion? A. Yes, the action of turning the screwdriver, you would grind a way.

Q. You would have to grind your way through - drill your way through, almost? A. Yes.

Q. One would not be able simply to insert the screwdriver without drilling? A. No, I do not think one could place it there and push, it would not go in.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

JUDGE:

Q. Was there any place yesterday, that you came across, where it could be pushed in without a drilling action? A. I did not find a place.

Q. Did you see any $\frac{1}{8}$ in. hoop iron used for bonding the walls yesterday? A. No, the least dimension hoop iron that I found was $\frac{5}{8}$ ". Any other places it was $\frac{3}{4}$.

Q. Is it proper hoop iron that you saw yesterday? 10
A. Yes.

Q. The kind that you approve? A. Yes; and when one tries to bend it it withstood a considerable number of turns - in fact, I did not break it.

Q. Do you recollect you were shown one place, I think it is the office block, where hoop iron had been inserted towards the bottom every alternate row, and then there was one place on that office block where it had been inserted one course - in other words, there was an interval of three courses instead of two? A. Yes, 38B. 20

Q. Were you shown or did you observe any other example of that on any other block, of hoop iron having been missed out? A. I examined several and I saw the hoop iron extending; and then in another place there was not any hoop iron and I tried to dig out the mortar but it was too hard.

Q. Apart from that one spot on that one building, did you observe any other place? A. I did not see any other place where the iron was missing. 30

Q. Did you observe any place where the damp course had been omitted? A. No, I did not.

Q. Was the damp course which you saw the type you had approved? A. Yes, it was. Answering your previous question - at least extending it - one place where we thought there was no bituminous damp-proof course, we did find it eventually, after scraping the mortar away.

Q. How are floors laid, are they laid in layers, the concrete on the floors? A. No, the concrete is deposited as one homogenous mass. I exclude the screeding.

Q. And how are the concrete foundations, not layers? A. No, they are cast as for the floors; in mass. That is in solid section groups, not laid in sections one above the other.

10 Q. So would a dishonest contractor be able to cover up the kind of quality of cement used in the foundations or on a concrete floor?

A. I cannot see how he can do that, if he laid an inferior quality concrete in a trench and then put a harder mix of the stronger section above it, one could see that, unless it was done before it completely set. It would not be homogenous, you could knock it off. In other words, there would be a joint between.

20

Q. In how many blocks, yesterday, in how many buildings did you see mortar splayed or fillet coming away from the windowsill? A. One. That was in the kitchen.

Q. Was the mortar good quality? A. Well, I did not handle the mortar.

Q. Was this method of chamfering visible to the architect and yourself when the works were being built? A. Yes, we saw it being done.

30 Q. Both of you, Mr. Tanner and yourself?

A. Yes.

Q. Do you think Mr. Mould must have observed it? A. I think he could have done. I think the windows were in a stage of construction when he entered the site.

Q. Is it easy to tell, even after they have been made? A. I should think it would be.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

Evidence of Thomas Henry Stone Re-examination continued

Q. Now, all the floors which we saw yesterday in several blocks, are they the original floors, or are they patched up or re-floored? A. I consider they were the original floors, even in the lavatory blocks, where there was a crack.

Q. Are those floors, in your opinion, satisfactory? A. Yes. There they had slight crazing but they were satisfactory floors.

Q. Are they as satisfactory as you get with this type of filling underneath? A. Yes.

10

Q. What have you to say to the suggestion that as this is the wet season, you would not notice cracks on the floor, or that they would close? A. I do not quite follow that.

Q. You have said you have a lot of experience of black cotton soil? A. I have, yes.

Q. What happens to black cotton soil when it gets wet? A. It bulks and exerts great pressure.

Q. And what does it do to a building on top of it? A. It lifts and cracks the walls.

20

Q. What have you to say to the suggestion that there are no very serious visible cracks in the floor or the walls because it is now the wet season? (NO ANSWER).

JUDGE:

Q. I think the point is this - if there are cracks in the wall, would they be more visible in the wet or the dry season? A. They would be more visible in the dry season.

30

Q. Would you explain that? A. In the wet season the floor, once a crack appears, a crack is always there. Now, in the wet season it will open, in the dry season close.

Q. Is your last answer correct then? His Lordship asked you whether it would be more visible in the wet season or dry season? A. In the wet season. I want to correct that answer.

JUDGE:

Q. It would be more visible in the wet season?
A. Yes.

Q. And the reason for that being? A. If you had a piece of paper.....

10 Q. Take the wall first of all. You say the cracks would be more visible in the wet season in the walls? A. Yes.

20 Q. And the reason for that being? A. That any black cotton soil will try to lift the wall, if any movement had taken place. This is assuming that the building is on black cotton soil. Now in the dry season shrinkage would take place and a crack in the wall would come together. The black cotton soil would resist, it would decrease in height. The swelling would go down due to the dryness and the cracks would close up.

30 Q. Now, what about the floors? A. If there had been any black cotton soil underneath to any great extent, the floors would have completely cracked right across and opened. There would be a distinct difference between the two layers where the crack takes place. I have experienced that in this country. Unfortunately, I did not excavate sufficient black cotton soil in the Railway houses and they lifted inches.

Q. Again do you say that they would tend to be more visible in the wet weather than in dry?
A. Yes.

Q. If there had been a crack caused by the hard core filling subsiding to some extent and

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

JUDGE: (continued)

again assuming there was black cotton soil below, yet in wet weather it would tend to lift it back? A. Yes. If there was black cotton soil underneath. Mind, an inch or so would not affect. It would require a certain depth.

Q. What sort of depth of black cotton would begin to have effect. A. You require at least 6 ins. - between 4 and 6.

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Q. Did you observe any cracks in the floors yesterday which were attributable to the movement of the filling underneath? A. I agree there is a slight subsidence in the filling, 1/16 to 1/8 drop.

Q. Did you see any cracks occasioned by that?
A. Yes.

Q. Did you observe any cracks yesterday which had not been repaired and were attributable to that? A. I think I did see some cracks, but of course there was crazing in the concrete as well, but I saw one or two cracks.

20

Q. In which blocks? A. Yesterday I did not take particular note.

Q. Anyway, you saw one or two? A. Yes.

Q. Not a substantial number? A. Not a substantial number, just one or two. For instance, I think I saw a crack on the ablution block.

Q. Now, with the movement of black cotton soil, between dry weather conditions and wet weather, would a crack, once created, ever close up sufficiently to be invisible? A. I do not think so. You would always see it.

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Q. Is it visible even under the best circumstances? A. Yes.

Q. You say that building inspectors who examined buildings room by room before taking them over, knew where to look for trouble? A. Of course they do, they are used to it.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

Q. And how do they test floors? A. They produce an ebony rod and if you bounce that on the floor it will give a noise. If it has a hollow it will distinctly ring and an ebony rod will jump up.

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

10 Q. Did they use that? A. Yes.

Q. Did they test all the floors? A. Yes.

Q. And any that were hollow, what happened?
A. Well, there was a mark put on the floor.
It had to be cut, examined and repaired.

Q. Was that done? A. Yes, in many cases.

Q. Was any hollow which was detected not done?
A. Not to my knowledge. All that were examined and marked we had them repaired.

JUDGE:

20 Q. I think I did understand you right, that you said that if any cracks caused by subsidence of the hard core filling would have appeared within a few weeks, shortly after the laying of the concrete? A. It takes, say, 28 days for the concrete to become hard. Well, after that you get this settlement.

30 Q. What I am getting at - would you get cracks appearing, say, a year or more after that?
A. Yes, it can go on.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

JUDGE: (continued)

- Q. It can go on? A. Yes.
- Q. It means that the cracks would not necessarily appear only before inspection? A. No. Cracks would appear almost from the time the concrete is laid, say 20 minutes after it is examined the concrete begins to become hard, but it becomes set, but if subsidence takes place in that time the concrete will crack; or if someone happens to walk over the floor say 24 hours after it has been laid and there is a slight movement in the filling, that will crack it. 10
- Q. If, in fact, subsidence takes place after the inspection, the crack may appear later, too? A. Yes, I have seen that. If one takes buildings alongside the Durham Road, where there is heavy traffic.
- Q. That does not apply to this estate? A. It does along Durham Road, not in the interior of the estate, where we were. 20
- Q. Would you expect the floors to crack any further now? A. Well, I should not think so, not inside, only on the right side where there is traffic.
- Q. You would expect it there? A. Yes; but not inside the estate.
- Q. Did you see any signs of settlement of the foundations yesterday? A. No.
- Q. Or any waviness of the roof or tiles? A. No. The first thing I would look for is uneven facia line. 30

Q. And was there any indication? A. No.

In the Supreme
Court of Kenya

Q. Did you observe any opening of the timbers
in the roof trusses or elsewhere? A. No, I
did not.

Plaintiff's
Evidence

No.13

Q. Now, the filling in the floor, the bould-
ers which you saw you say were up to 9 ins.
in depth? A. Yes.

Evidence of
Thomas Henry
Stone
Re-examination
continued

Q. You think that was the maximum, do you?
A. Of course, they should have been six;
but I cannot see how one can see every block
that goes in.

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Q. Did Mr. Tanner see that? A. Yes. Not
necessarily those buildings we saw yesterday.

JUDGE:

Q. He saw the type of filling going in?
A. Yes.

Q. Did he approve of it? A. Yes.

Q. Is it composed of a very hard rock?
A. It is not as hard as the greystone.

20

Q. Could you break it with a hammer?
A. You can break it.

Q. Is it so fragile that with ramming it
would produce very small broken chips?
A. Well, I never saw it produce small lumps.
It did not disintegrate into powder.

Q. Now, the block to which you referred,
where the hole had been dug, the room which
you entered where the floor had been taken
up? A. Yes.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

Q. Do you recollect Mr. Mould making some ob-
servation there about the absence of a foundation?

A. Yes, that was where the kitchen stack butts
into the room. Now, I brought that up when the
foundations were being constructed.

JUDGE:

Q. You say you brought that up in the course of
construction? A. Yes. But could I put
it this way. I always examined the plans
very carefully, and I examined the plan to
see if there was any foundation shown under
the stacks to the kitchen and I could not
see anything marked on the plan. It was not
clear. So I referred it to the architect
and I asked him what did he propose to do
about the foundations for the stacks. He
said: "No, we won't put that in". I even
prepared a small scale sketch of what I
wanted done and he said we would not provide
a foundation, we would build a kitchen
breast on the concrete floor.

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Q. Presumably in the interests of economy?

A. Exactly. I would say part of the stack was
on the internal walls.

Q. Do I understand you correctly, that you did
not support the claim of the extra kitchen
shelves? A. I could not support the claim of
the extra kitchen shelves.

Q. And you did not support the claim in respect
of the blasting outside the foundations - the
running round the edge of the floor slaps?

A. No, I did not, because that has been already
marked on the plan.

30

Q. Are there any other of the extras claimed
that you disagree with? A. None.

Q. Mr. Wevill, in his report, when he speaks of poor mortar, has this to say: "Mortar varies.....remixed". Do you or do you not agree that poor mixing, allowing mortar to stand too long, or re-mixing are possible explanations for the very bad analyses?
 A. It could be. That could happen.

In the Supreme Court of Kenya

Plaintiff's Evidence

No.13

JUDGE:

Evidence of Thomas Henry Stone
 Re-examination continued

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Q. There is a difference here, I think, between analysis, which shows the actual cement content and the question of the strength of the mixture afterwards - between mixing or allowing it to stand too long. Would that actually affect the cement content on analysis? A. I think it would be affected, the analysis. I think you get a weaker result.

Q. It clearly would affect the strength of the finished article? A. Yes.

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Q. But you think it would tend to show a reduced cement content on analysis?
 A. Yes, I think it would.

Q. I think you said over-trowelling causes excessive cement on the top of screed?
 A. It can destroy cement. It pulls it to the surface.

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Q. Would you say, then, that the way this cement is treated or handled can affect the proportions of the mixture? A. Yes.
 Before the initial set takes place, you alter the composition if you draw the cement by working it. You destroy the strength of it.

In the Supreme
Court of Kenya

Plaintiff's
Evidence

No.13

Evidence of
Thomas Henry
Stone
Re-examination
continued

JUDGE:

Q. What is the effect of excessive water?
A. That is very detrimental. Unless you get the required amount of water, the tests have shown that if you add too much the strength of the concrete or mortar will go down.

Q. Could the causes to which I have referred - poor mixing, allowing it to stand too long, re-mixing - could that happen innocently?

A. Yes, I think so. As a matter of fact, it is one of the things you look for. If I find it I kick it off the board.

10

CLOSE OF CASE FOR THE PLAINTIFF

MR. O'DONOVAN:

I close, subject only to putting in by consent results of fresh analyses of mortar and concrete.

MR. SCHERMBRUCKER:

The samples are being taken by arrangement of both parties.

MR. SCHERMBRUCKER: - OPENING ADDRESS.

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