

PC
6/19/62

Tanganyika

32/62

IN THE PRIVY COUNCIL

No. 24 of 1961

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

PREMCHAND NATHU & CO., LTD. (Defendant) Appellant

- and -

THE LAND OFFICER (Plaintiff) Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

68266

GIBSON & WELDON,
44, Bloomsbury Square,
W.C.1.

Appellant's Solicitors.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand,
W.C.2.

Respondent's Solicitors.

IN THE PRIVY COUNCILNo.24 of 1961ON APPEALFROM THE COURT OF APPEAL FOR EASTERN AFRICAB E T W E E NPREMCHAND NATHU & CO., LTD. (Defendant) Appellant

- and -

THE LAND OFFICER (Plaintiff) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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EASTERN AFRICA.

1.

IN THE PRIVY COUNCIL

No.24 of 1961

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

PREMCHAND NATHU & CO., LTD. (Defendant) Appellant

- and -

THE LAND OFFICER (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1.

PLAINT

In the
High Court of
Tanganyika.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA

In the District Registry at Arusha

Civil Case No.18 of 1959

THE LAND OFFICER Plaintiff

against

PREMCHAND NATHU & CO., LTD. Defendant

PLAINT

No. 1.

Plaint.

8th April, 1959.

Edmund Akenhead, Land Officer, the above-mentioned Plaintiff, states as follows:-

- 20 1. The Defendant is a Limited Company registered in Kenya and having its principal place of business in Tanganyika in Moshi. Its address for service is c/o Messrs. Reid & Edmonds, the Defendant's advocates, at Mawenzi Road, Moshi.
2. The Defendant was granted a right of occupancy (L.O. No.13014) over land known as Plot 57 Commercial and Light Industrial Plots Moshi Township. Certificate of Title No.8555 a copy of which is annexed hereto marked "A", was issued in respect thereof.
- 30 3. (i) On the 4th day of May 1957 His Excellency the Governor revoked the said right of occupancy and imposed on the Defendant an obligation to pay to him or to his authorised agents a revocation fee of Shs.435/-.
- (ii) On the 16th day of May 1957 an Application

In the
High Court of
Tanganyika.

No. 1.
Plaint.

8th April, 1959
- continued.

for recording the revocation of the said right of occupancy was registered in the Land Registry as filed document No.23792.

(iii) On the 14th day of May 1957 a letter was despatched by the Plaintiff to the Defendant by registered post informing the Defendant of His Excellency's decision.

(iv) On the 31st day of May 1957 the revocation was published in the Gazette as General Notice No.1224 of 1957. 10

(v) Copies of the instrument of revocation, the filed document, the letter and the Notice referred to in sub-paragraphs (i), (ii), (iii) and (iv) hereof respectively are annexed hereto marked "B", "C", "D" and "E" respectively.

4. Despite repeated requests that he should vacate the land, in particular a letter to the Defendant's advocates dated 25th November 1957 a copy of which is annexed hereto marked "F", the Defendant continues to occupy the said land. 20

5. The said land is public land.

6. The Defendant's occupation of the said land is unlawful, and has been unlawful since the 5th day of May 1957.

7. Despite the demand made in the letter dated 14th May 1957 a copy of which is annexed hereto marked "D" the Defendant has not paid to His Excellency the Governor or to his agents the sum of 435/- referred to in paragraph 3(i) hereof or any part thereof. 30

8. Wherefore the Plaintiff prays that this Honourable Court may be pleased :-

(i) to record a finding under Section 23(i) of the Land Ordinance that the Defendant is in illegal occupation of public land, and has been in illegal occupation of public land since 5th May, 1957;

(ii) to order the Defendant to surrender to the Plaintiff the said land within one week of the judgment in this cause; 40

(iii) to order the Defendant to pay to the Plaintiff on behalf of His Excellency the sum of Shs.435/- revocation fee, with

3.

interest thereon at 9% from the date of filing this Plaint until judgment;

(iv) to order the Defendant to pay to the Plaintiff damages at the rate of Shs. 1,100/- per month and proportionately for each part of a month from 5th May 1957 until possession is given to the Plaintiff according to (ii) above;

In the
High Court of
Tanganyika.

No. 1.
Plaint.

8th April, 1959
- continued.

(v) to grant to the Plaintiff his costs in this suit.

10

Signed: E. Akenhead
LAND OFFICER.
Plaintiff.

VERIFICATION

I, EDMUND AKENHEAD, Land Officer, do hereby certify and declare that what is stated above is true to the best of my knowledge information and belief.

Dated at Dar-es-Salaam this 8th day of April, 1959.

20

Sgd: E. Akenhead,
Land Officer,
Plaintiff.

Court Fee: Shs.500/-.

Drawn by:- Sgd: E.K.Sleigh.

E.K. SLEIGH,
Assistant Land Officer.

Presented for filing this 5/6/1959.

Sgd: J.G.Acharya.
Chief Clerk.
Arusha.

30

No. 2.

No. 2.

DEFENCE AND ANNEXURES D1 and D2.

Defence.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA

In the District Registry at Arusha

Civil Case No.18 of 1959

THE LAND OFFICER

Plaintiff

against

PREMCHAND NATHU & CO., LTD.

Defendant

In the
High Court of
Tanganyika.

DEFENCE

Premchand Nathu & Co., Limited, the Defendant above named, states as follows :-

- No. 2.
Defence
- continued.
1. That paragraph 1 of the Plaintiff is admitted.
 2. That paragraph 2 of the Plaintiff is admitted.
 3. That, with regard to paragraph 3 of the Plaintiff:
 - (1) The act of revocation by His Excellency the Governor was without good cause and unlawful.
 - (2) The Defendant was not given any notice of the application for registration of the Instrument of Revocation or any opportunity to show cause why registration should not be effected. 10
 - (3) The Defendant admits receipt of the letter dated 14th May 1957 but only after the Instrument of Revocation and Application for registration had, in fact, been registered.
 - (4) The Defendant admits publication of the revocation in the Gazette. 20
 4. That the Defendant admits paragraph 4 of the Plaintiff.
 5. That, with regard to paragraph 5 of the Plaintiff, the Defendant does not admit that the land in question is public land and states:-
 - (a) That the Defendant erected on the land a building of a value not less than the minimum stipulated in Clause 2(i) of the Certificate of Occupancy.
 - (b) That on presentation of plans of the proposed building the Township Authority, Moshi delayed consideration and passing thereof at the request of the Town Planning Officer for the reason stated in the letter from the said Authority to the Defendant dated 11th March 1953 of which a copy is annexed hereto and marked "D1". 30
 - (c) That approval for the erection of the building, when given by the Authority, was conditional on the boundaries of the plot being clearly defined, which had not been done by the Plaintiff up to that date although the Defendant paid the cash deposit 40

required for the survey to be carried out on 5th April 1952.

- (d) That by letter dated 26th January 1955, of which a copy is annexed hereto marked "D2", the Plaintiff extended the time for completion of the building on the said land to 31st July 1955, that the building was completed and that the Occupation Certificate was issued by the Township Authority on 17th September 1955.

In the
High Court of
Tanganyika.

No. 2.

Defence
- continued.

10

6. That the Defendant denies paragraph 6 of the Plaintiff.

7. That the Defendant admits paragraph 7 of the Plaintiff but states that the purported revocation was without good cause and unlawful and that the Defendant is not liable for the amount claimed.

20

8. That the Defendant denies liability for damages as claimed and states that the Plaintiff as laid discloses no facts or grounds to justify the claim. The Defendant has always been ready and willing to pay the annual ground rent and has, on demands in writing received, paid the ground rents to date including for the current year to 30.6.60.

30

9. The Defendant further states that the Plaintiff is not entitled to possession of the said land on the ground that, on or about 30th April 1958 and prior to the institution of this suit, the Defendant proposed to the Plaintiff's agent in Moshi that the Defendant should be given a new Title to and remain in possession of the said land for the remainder of the original term in exchange for the surrender by Prabhulal D. Shah, a Director of the Defendant, of the Plot No.79 (a) Block B, Zone II, situated on Kibo Road, Moshi and payment of all fees for such surrender and the issue of the new Title. In furtherance of that proposal the Defendant delivered up the Certificate of Title to that plot, the surrender was accepted and the Defendant paid Shs.1150/- being the surrender fee and fees for registration of the Deed of Surrender, which was duly signed by the Plaintiff and registered. The Plaintiff is accordingly estopped from claiming possession of the land in suit.

40

WHEREFORE the Defendant prays that this suit be dismissed with costs or for such further or other relief as to this Honourable Court may seem meet.

Sgd: P.D. Shah,
Defendant.

In the
High Court of
Tanganyika.

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

Sgd: P.D. Shah,
Director.

No. 2.

Defence
- continued.

Filed by:-
Sgd: A. Reid,
Reid & Edmonds,
Advocates for Defendant.

No. 3.

Reply to
Defence.
30th September,
1959.

No. 3.

10

REPLY TO DEFENCE

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
IN THE DISTRICT REGISTRY AT ARUSHA
Civil Case No.18 of 1959.

THE LAND OFFICER Plaintiff

versus

PREMCHAND NATHU & CO., LTD. Defendant

REPLY to the Written Statement of Defence

EDMUND AKENHEAD, Land Officer, the above named Plaintiff, states as follows :-

20

1. That, as regards paragraphs 3(1) (2) (3) and (4) of the Defence:-

(a) The revocation of the Right of Occupancy by His Excellency the Governor was for good cause and lawful in accordance with the terms and the conditions of the Right of Occupancy the subject of this suit, and with S.10 of Cap.113.

(b) It was not obligatory on the part of the Plaintiff to give notice to the Defendant of the application for registration of the Instrument of Revocation or to afford any opportunity to show cause why registration should not be effected.

30

2. That, as regards paragraph 5 (a) (b) (c) and (d) of the Defence:-

(a) The Defendant submitted different building

plans at different times to the Township Authority, Moshi for approval. After many delays and threats of revocation the last set of plans submitted by the Defendant were finally approved by the Township Authority on the 15th February 1956;

- (b) The Defendant failed to complete the buildings according to the approved plans and specifications as required under the terms and conditions of the Right of Occupancy;
- (c) The Plaintiff repeats the statement in paragraph 1(a) above and states that the said land is public land.

10

20

30

40

3. That, as regards paragraph 6 of the Defence, the Plaintiff repeats the statement in paragraph 6 of the Plaint, that the Defendant's occupation of the said land is unlawful, and has been unlawful from the 5th day of May 1957, i.e. since the said Right of Occupancy was revoked.

4. That, as regards paragraph 7 of the Defence, the Plaintiff repeats the statements in paragraph 1 (a) above.

5. That, as regards paragraph 8 of the Defence, the Plaintiff joins issue with the Defendant on the question of the Defendant's liability for damages as claimed by the Plaintiff. The Plaintiff is unaware that the Defendant has paid ground rents to date including for the current year to 30th June, 1960. If the rent is paid as alleged, the Plaintiff has done so on his own risk after having full knowledge of the fact that the Right of Occupancy for which he was paying the rent had already been revoked, hence it has no bearing on the subject matter in dispute in this case.

6. That, as regards paragraph 9 of the Defence, the Plaintiff denies that he is estopped from claiming possession of the land in suit on the grounds set out in the Defence at paragraph 9, which is not admitted, or on any other grounds.

7. The Plaintiff therefore prays that Judgment be entered for the Plaintiff with costs as prayed.

Sgd: E. Akenhead,
LAND OFFICER,
Plaintiff.

In the
High Court of
Tanganyika.

No. 3.

Reply to
Defence.

30th September,
1959

- continued.

In the
High Court of
Tanganyika.

I hereby certify that what is stated above is true to the best of my knowledge, information and belief.

Dar-es-Salaam this 30th day of September 1959.

Sgd: E. Akenhead,
LAND OFFICER,
Plaintiff.

No. 3.
Reply to
Defence.
30th September,
1959
- continued.

Presented for filing this 5th day of October,
1959.

Sgd: J.G. Acharya
Court Clerk.

10

Fees

Filing	Shs.4/-
Service	Shs.4/-
	<u>Shs.8/-</u>
1/3rd	Shs.3/-
	<u>Shs.11/-</u>

DRAWN AND FILED BY:- Sgd: E.K.Sleigh.

(E.K.SLEIGH)

ASSISTANT LAND OFFICER, DAR-ES-SALAAM.

20

To be served on:- MESSRS.REID & EDMONDS,
ADVOCATES FOR THE DEFENDANT,
P.O. BOX 59, MOSHI.

No. 4.
Proceedings.
11th May, 1960.

No. 4.

PROCEEDINGS.

11th May, 1960. Cor: Murphy, J.

Wickham for Plaintiff.
Reid for Defendant.

Agreed issues:

1. Was the revocation lawful? 30
2. Should Defendant have been given notice of application for registration of the instrument of revocation?
3. Is the land public land?
4. Is the Plaintiff estopped from claiming possession?
5. To what damages, if any, is the Plaintiff entitled?

Wickham: I concede the onus is on me and I should begin. Section 23 (3) (a) of Cap.113, which 40

places onus on Defendant, refers to "proceedings under this section" i.e. proceedings in a magistrate's Court. This case started in a Magistrate's Court but was transferred to the High Court in view of the damages claimed. Two agreed bundles of correspondence are handed in and marked Exhibits "A" and "B" and paged.

In the
High Court of
Tanganyika.

No. 4.

Proceedings.

11th May, 1960
- continued.

10 Wickham: Suit for eviction for a piece of land in Moshi - Defendant granted right of occupancy subject to certain conditions. One condition not complied with - right of occupancy therefore properly revoked - Defendants have been trespassers since revocation.

Condition set out in certificate of title attached to Plaint - paragraph 7 of Certificate - we are mainly concerned with condition (iv). Final date by which buildings were to be completed was 31.1.56.

20 Defendant notified of approval of plans on 24.9.53. Further delay then occurred. On 20.2.54 revised plans submitted. On 10.4.54 further detailed plans for part of building submitted. On 29.4.54 detailed plans for whole plot submitted. On 3.5.54 detailed plans for part of building (godown) approved.

On 20.5.54 detailed plans for whole plot approved and Defendants notified.

30 Building progressed slowly - Land Officer wrote saying building must be completed by 31.7.55 - this represented an extension of time. On 8.9.55 further extension of time requested. At this time godown was finished. No further buildings have been started.

40 Final completion date extended to 31.1.56 by letter from Land Officer (p.6 of Exhibit "B") P.7 of Exhibit "B" - further extension of time to 29.2.56 on certain conditions. P.8 of Exhibit "B" - further extension asked for by Defendants - "did not appear economical" - Court may think this is root of whole case. Defendant had in the meantime asked for alteration to plans to be approved. This done on 13.2.56 on most favourable construction to Defendants they were bound to commence within 3 months from then and complete within a reasonable time. P.10 of Exhibit "B" - letter from Land Officer dated 31.5.56 asking for reasons. Defendant did reply asking for an extension of one year, but no further extension granted.

On 4.5.57 right of occupancy revoked - formal order attached to Plaint.

In the
High Court of
Tanganyika.

PLAINTIFF'S EVIDENCE

No. 5.

EVIDENCE OF WILLIAM ANGUS SPEED

Plaintiff's
Evidence.

Wickham calls :-

P.W.1. WILLIAM ANGUS SPEED, Christian, sworn:-

No. 6.

Examined Wickham:-

W.A. Speed.
11th May, 1960.

I am a senior Land Assistant in the Department of Lands and Surveys. I am the Land Office agent in Moshi and Arusha. I know plot 57 in the Commercial and Light Industrial area in Moshi. Defendants were granted right of occupancy over this plot. Right of occupancy was revoked on 4.5.57.

10

There is now a godown on the plot - at the rear of the plot. There is no other building on that plot and no other building has been commenced. In 1958 there were discussions in my office in Moshi with a view to settlement. I do not recall agreeing that Defendants should be given a new title in exchange for the surrender of another plot (paragraph 9 of defence put to witness). The other plot was in fact

20

surrendered by Prabulal D. Shan. At that time negotiations were going on between him and my office with a view to this surrender. That is there were two lots of negotiations going on - one in connection with this case and the other in regard to Mr. Shah's Plot. The negotiations were not linked in any way in my mind. The Land Officer gave me no authority to link the two lots of negotiations.

Since I became aware of the pleading in this case I have searched my memory and my file to see if there was any connection between the two lots of negotiations. I am sure there was none.

30

Cross-
Examination.

Cross-Examined Reid:-

Mr. Verrani, the Mayor of Moshi, did take part in the discussions on the renewal of the right of occupancy. I sent a report to the Land Officer on these negotiations. The report is in my file. This is my file (put in by consent as Exhibit "1"). The report is at folio 20. It makes no mention of the surrender of the other plots. It was not part of the proposals that the other plot should be surrendered with a view to settling the matter.

40

Re-Examined: No questions.

No. 6.

EVIDENCE OF JACK SOWERBYP.W.2. JACK SOWERBY, Christian, sworn:-Examined: Wickham:-

10 I have been Town Clerk of Moshi since 1.7.56. From 1.5.47 until 30.6.56 I was Executive Officer of the Township Authority. On 5.3.53 Messrs. Gedrych and Abben submitted plans on behalf of the Defendants for erection of buildings on plot 57. These are the plans (Exhibit "C"). The plans were approved in principle on 24.9.53. The reason for the delay was that at the time the plans were submitted there was a proposed scheme by the Town Planning Officer for alterations to the roadway in front of the plot. The Town Planning Officer therefore asked for the approval of the plans to be suspended for a time.

20 On 20.2.54 Gedrych and Abben submitted revised plans, which included a godown. These are the plans (Exhibit "D"). They were approved on 4.3.54.

On 11.4.54 Gedrych and Abben submitted detailed plans for the erection of a godown at the rear of the plot. These are the plans (Exhibit "E"). They were approved on 3.5.54. On 29.4.54 they submitted detailed plans for the whole of the plot. These are the plans (Exhibit "F"). They were approved on 20.5.54.

30 The plans in February 1954 (Exhibit "D") were for approval in principle only. The detailed plans were then submitted in April (Exhibits "E" and "F") This is a normal procedure, though not done in every instance.

40 On 9.5.55 Gedrych and Abben asked for permission for Defendants to occupy the godown temporarily pending completion of the whole project. Permission was granted on 16.5.55. On 17.9.55 the Township Authority granted an occupation certificate in respect of the godown. The godown was completed about that time - otherwise the certificate would not have been granted.

On 20.12.55 Gedrych and Abben asked permission to erect the flats and shops in two stages and said they had made certain structural alterations to the plans. On 15.2.56 they were informed that this was approved - the two stages and the alterations.

In the
High Court of
Tanganyika.

Plaintiff's
Evidence.

No. 6.

J. Sowerby.

11th May, 1960.

Examination.

In the
High Court of
Tanganyika.

Plaintiff's
Evidence.

No. 6.

J. Sowerby.
11th May, 1960.

Examination
- continued.

Cross-
Examination.

These are the altered plans which were approved (Exhibit "G"). No building was erected on the plot except the godown, so far as I know. There is no other building on the plot at present.

Cross-Examined: Reid:-

The letter shown to me is the one in which notification was given to Defendants of the deferment of consideration of the first set of plans (Exhibit "2"). This is dated 11th March, 1953. I agree that this was nearly 12 months after the commencement of the certificate of occupancy, that is 4.4.52.

10

The approval of these plans was notified to Gedrych and Abben on 24 .9.53. This is my copy of the letter (Reid: I cannot trace the original) (Copy put in as Exhibit "3"). I agree this does not say that the Town Planning Officer's restriction had been withdrawn. I can produce no letter to the Defendants or their architect saying that this restriction had been withdrawn. I can't say exactly what the Town Planning Officer's scheme was. There was a proposal for the creation of another roundabout in front of the plot.

20

I have a copy of the advertisement offering the original right of occupancy. This is the original now shown to me (Exhibit "4"). I agree it says that the offer is subject to final demarcation of boundaries. I agree that any variation in the size of the plot would affect the area of the building to be erected on it.

30

I came back from leave on 11.3.53 when Exhibit "2" was signed, but the Building Inspector dealt with it.

The letter now shown to me is dated 20.5.54 (Exhibit "5") and is signed by me. I agree that in this letter we were still stipulating that the boundaries should be clearly defined before building commenced. This was to be done by the occupiers. I agree that the boundaries are on paper in the certificate of occupancy, but we expect this to be demarcated by the occupier. I agree that the boundary of the plot as shown in the plan attached to the certificate of occupancy has, according to the plan, two German beacons on it. I can't say whether these beacons are in fact there or not. These are matters dealt with by the technical officer of the Authority, now the Council.

40

The four letters now shown to me are correspondence dealing with a proposal to erect flats on the top of the godown (Exhibits "6A" - "6D").

This is the permit for the building of the godown dated 3.5.54 (Exhibit "7").

I agree I wrote to the Land Officer on 11.1.55 saying that the shops and flats had not been commenced (P.8 of Exhibit "A"). This resulted in extension being granted to 31.7.55 (P.3 of Exhibit "B").

Another letter was sent by us to the Land Officer on 11.8.55 but I was then on leave (P.10 of Exhibit "A").

I agree that the plans for the godown and for the proposed flats and shops are for entirely different buildings. The plan "F", show the godown entirely separately.

I agree that the Town Planning Officer's scheme might have involved the taking off of part of the front of the plot for the road.

As permission to occupy the godown was granted on 17.5.55 all further correspondence would refer to the front building.

Re-Examined Wickham:-

The final approval for the whole of the plans was on 20.5.54. The approval was not qualified in any way. The letter of approval is Exhibit "5". The purpose of asking for the boundaries to be defined was to assist the building inspector - in earlier cases there had been encroachments.

There were no other alterations approved except those approved on 15.2.56. We would have been willing to consider other variations if we had been asked to do so.

The Township Authority of these days was a semi-government body.

There was a delay of six months for which the action of the Town Planning Officer was responsible up to September, 1953.

In the High Court of Tanganyika.

Plaintiff's Evidence.

No. 6.

J. Sowerby.

11th May, 1960.

Cross-Examination
- continued.

Re-Examination.

In the
High Court of
Tanganyika.

No. 7.

EVIDENCE OF JACK SHEPHERD

Plaintiff's
Evidence.

P.W.3. JACK SHEPHERD, Christian, sworn:-

Examined Wickham:-

No. 7.
J. Shepherd.
11th May, 1960.
Examination.

I am the Manager of Gailey & Roberts, Moshi. (Shown the plan attached to Certificate of Occupancy attached to Plaintiff). For a period we leased a godown erected on plot 57 shown on this plan. Defendants were landlords. We became tenant on 1.4.56 and ceased to be on 30.4.58. The rent was Shs.1,100/- a month. Rent was paid to Defendants up to November, 1957. The rent for the remaining months, that is Shs.5,500/- is held by us in suspense on the instructions of the Land Office. The letter now shown to me dated 2.5.58 is from us to the Defendants explaining the position (Exhibit "H").

10

Cross-
Examination.

Cross-Examined Reid:-

I think it was a temporary tenancy while other premises of ours were being built, but I was not here at the time.

20

Re-Examined: No questions.

Close.

Defendant's
Evidence.

DEFENDANTS' EVIDENCE

No. 8.

EVIDENCE OF KARAM SINGH

No. 8.
K. Singh.
Examination.

Reid calls:-

D.W.1. KARAM SINGH, Sikh, affirmed:-

Examined Reid:-

I am a building contractor in Moshi. I was a building contractor there in 1955. I built a godown for Defendants on Plot 57. The contract price paid to me was Shs.60,000/-.

30

Cross-
Examination.

Cross-Examined Wickham:-

I built the godown at the back of the plot.

Re-Examined: No questions.

No. 9.

EVIDENCE OF PRABHULAL DEVCHAND SHAHD.W.2. PRABHULAL DEVCHAND SHAH, Hindu, affirmed:-Examined Reid:-

I am a director of Defendant Company. I dealt with all these matters. I tendered for the plot and obtained the certificate of occupancy. I was a member of the Moshi Township authority in 1954 and 1955. When I took the plot I intended to build shops and flats on it. I had previous plans prepared and submitted. I did not proceed with the shops and flats because the authority were discussing putting a roundabout in that area at the junction of Ghalla Street and Station Road. This might have affected my plot and the next plot.

In 1954 I was served with notice to complete a building. I submitted a plan for a godown with three compartments. This was passed and approved. The contract price was Shs.60,000/- which I paid to the last witness. It was duly completed. I entered into occupation and I let it to Gailey & Roberts on temporary accommodation for Shs.1,100/- a month. Before they vacated the Land Officer stepped in. The matter of the flats and shops was left pending. I did not make any final decision, as I was waiting for the Land Officer's reply as to whether we should proceed further or not. Ultimately we decided not to proceed with the shops and flats scheme, as times were changing and business was slack. The area is in the light industrial area. There are other plots in the area which do not have any provision for residential accommodation. These are plots 11 and 12.

I had an opportunity of getting another plot on Boma Road which had shops and flats on it. I elected to buy this building and carry on my business there. I paid £25,000.

I have paid land rents in respect of Plot 57 up to this year and have receipts (Wickham: we agree rents have been paid).

This is a letter dated 27.3.58 which I have received from the Land Office Agent (Exhibit "8"). This is still the position to-day. Five months rent owing by Gailey & Roberts is frozen and is still held by them.

In the
High Court of
Tanganyika.

Defendant's
Evidence.

No. 9.

P.D. Shah.

11th May, 1960.

Examination.

In the High Court of Tanganyika.

Defendant's Evidence.

No. 9.

P.D. Shah.

11th May, 1960

- continued.

Cross-Examination.

Cross-Examined Wickham:-

I don't know when it was decided not to go ahead with the roundabout scheme. I have not made any inquiries about this. I think it was in 1954 that the roundabout scheme was being discussed. I agree the letter of 8.9.55 from the architects (p.5 of Exhibit "B") shows that we were prepared to go ahead with the plans for the whole project. We intended at that time to build shops and flats. But by February 1956, as shown by a letter of 8.2.56 (P.8 of Exhibit "B") we had decided that it would be uneconomic. I agree that the only reason we finally decided not to go ahead was that business was slack.

10

I agree we were granted two extensions of time to complete the building. We were not given any more time after 31.1.56. But the matter of the roundabout was still in our minds. We were waiting for the township authority to inform us about this. We never had a letter from the authority withdrawing approval of the plans. I think they had power to do so. I agree that revised plans were approved in February 1956, but we made no attempt to start building before the end of February. There was not only one reason for our decision not to build.

20

Re-Examination.

Re-Examined Reid:-

The township authority started a bridge in about 1956 or 57 as part of the proposed roundabout scheme. The bridge was completed.

No.10.

No. 10.

30

Further Proceedings.

FURTHER PROCEEDINGS

11th May, 1960.

Reid: The issue is shown in Exhibit "F" attached to Plaintiff - paragraph 4 - letter from Land Officer says revocation was not for erecting wrong kind of building. See also P.3 of Exhibit "A" - letter dated 26.1.55 - "a building of a value of not less than Shs.60,000/-" also reference to "the building". Subsequent attitude was different - buildings required. Proved that at that date only plans finally approved were for godown.

40

Clause 5 of certificate of occupancy says "only one main building". In this connection see P.13 of Exhibit "A" - deed of variation required.

More than 6 months elapsed before certificate of occupancy was issued.

Paragraph 2 (iii) of certificate of occupancy - "plans and specifications" - no approval given of these for shops and offices. Open to question whether Township authority had power to approve plans for more than one building on the plot in view of Clause 5 of Certificate of occupancy.

In the
High Court of
Tanganyika.

No.10.

Further
Proceedings.

10 No evidence that a building permit was ever issued for the shops and offices.

11th May, 1960
- continued.

Case founded on Clause 2 (iv) - only thing that could be put up was the godown with usual out-building.

Clause 2(vi) - nothing could be erected except the godown.

Mr. Sowerby says nothing about specifications being approved - only plans.

20 Defendants were led to believe that erection of godown was compliance with the certificate of occupancy.

If a forfeiture is intended it is necessary for the landlord to serve a notice in writing specifying the breaches complained of and also demanding compensation - Section 14(1) of Conveyancing Act, 1881 - applied here by the Law of Property and Conveyancing Ordinance, Section 2(1).

30 Stephens v. Junior Army & Navy Stores (1914) 2 Ch. 516 - breach of covenant to build - no further covenant can be implied - only a single breach, not a continuing breach.

Hill and Redman's Landlord and Tenant 10th Edition, P.562, paragraph 457 - where a landlord leads tenant to believe that a covenant to build within a certain time will not be insisted on.

Bridges v. Longman referred to in Hill & Redman at P.424.

40 Marsden vs. Sambell (1880) 43 L.T. 120 - right to rescind building agreement - right must be exercised within a reasonable time or in any event not after a party has altered his position on the faith of its continuance. 31 Digest 89.

Ismail Kooverji v. Sachariades 17 EACA. 101 with regard to application of Conveyancing Act, 1881.

In the High Court of Tanganyika.

No.10.

Further Proceedings.

11th May, 1960
- continued.

Bashir v. Commissioner of Lands (1959) W.L.R.996 at P.1000 - Privy Council decision - EACA decision is at (1958) E.A.45.

Plaintiff could not lawfully determine right of occupancy.

Wickham: Certificate of occupancy Paragraph 2(1) - "buildings"; Paragraph 2(iv) - "buildings according to said plans and specifications".

Paragraph 5 - "commercial and residential purposes".

10

Building erected is a godown - cannot comply with certificate - not a main building. Main building was clearly to be shops and flats - godown was at the back of the plot - comes under the heading of "usual and necessary outbuildings".

Court must look at project as a whole.

At paragraph 4 of "F" to Plaintiff Land Officer clearly refers to shops and offices.

Not put to Mr. Sowerby that plans did not contain specifications or that approval of these for the whole project was qualified in any way. My case is that plans and specifications were finally approved.

20

"Two stages" may refer to (1) qualified and (2) final approval or (1) godown and (2) shops and offices.

Only occasion on which responsibility for delay by a township was in 1953. But Land Officer was extremely indulgent who granted two extensions.

Knew that reason for not continuing with buildings was economic - delays mostly on the part of Defendants. Delay by township in 1953 is immaterial.

30

As to notice, last letter to Defendants before revocation was Exhibit B.10. I concede no notice as required by Conveyancing Act, 1881, which applies to this country. But question is whether S.14 (1) of Act applies to a right of occupancy. Land Ordinance makes no provision for notice - provisions of this Ordinance are exhaustive in regard to right of occupancy.

40

In any event Conveyancing Act 1881 does not bind the Crown - Crown not bound unless this is expressly stated or by necessary implication - Halsbury, 3rd Edition, Vol.7, p.246.

Law of Property Act, 1925 which replaces Conveyancing Act 1881 in England, but not here, does expressly bind the Crown.

S.14 of Conveyancing Act 1881, cannot in any event apply because in this context it does not make sense. Breach of a condition in a right of occupancy could not be remedied by payments of compensation by tenant.

10 Director of Lands & Mines vs. Sohan Singh, T.L.R.(R) 631 - held by Abernethy J. that notice was necessary in special circumstances of this case. Based his decision on Canadian Pacific Railway v. The King (1931) A.C. 414 - case of a licence - principle on which case was decided is at p.432. Abernethy J. in Sohan Singh applied a general equitable principle - does not apply in this case.

Tenants never prevented from carrying out their covenants.

20 Correspondence could not have led tenant to believe that covenant to build would not be insisted on.

Defendants were never allowed to alter their position to their detriment.

As to my prayer - I concede that Paragraph (1) inappropriate - I am only asking Court to say that right of occupancy was properly revoked, that Defendants are trespassers and to order eviction. As to paragraph (iii) regulation 5 of Land (Fees) Regulations refers.

30 As to damages, it is now conceded that ground rent has been paid at Shs.435/- a year; a total of Shs.1,305/- and the amount claimed must be abated by that amount. It must also be abated by the sum of Shs.5,500/- now in hands of Gailey & Roberts since this will be paid to the Plaintiff if case goes in his favour.

Reid: I should bring to the Court's notice Mohamed Mambo v. District Commissioner, Civil Appeal No.11 of 1958.

Only damages which Plaintiff could claim would be the ground rent.

Wickham: I do not press the claim for damages strongly, but claim for mesne profits can properly be based on value of land - Government have been able to lease godown - not bad to pay compensation.

In the
High Court of
Tanganyika.

No.10.

Further
Proceedings.

11th May, 1960
- continued.

In the High Court of Tanganyika.

Having a free godown might be more of an embarrassment than an asset.

Judgment reserved.

No.10.

Sgd: R.H. Murphy, J.

Further Proceedings.

11/5/60.

11th May, 1960

- continued.

No.11.

No. 11.

Further Proceedings.

FURTHER PROCEEDINGS

8th June, 1960.

8th June, 1960.

Counsel as before.

Written Judgment delivered.

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Judgment for the Plaintiff for possession of the land within two weeks from the date of this judgment for Shs.435/- with interest at 6% per annum from the date of filing the Plaint until judgment, and for costs.

Sgd: R.H. Murphy,
8/6/60.

No.12.

No.12.

Judgment of Mr. Justice Murphy.

JUDGMENT OF MR. JUSTICE MURPHY

8th June, 1960.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT ARUSHA

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In the District Registry of Arusha

Civil Case No. 18 of 1959

THE LAND OFFICER vs. PREMCHAND NATHU & CO. LTD.

JUDGMENT

This is a claim for eviction from a plot of land in Moshi Township and for damages. The Defendants were granted a right of occupancy over the plot commencing on the 4th April, 1952. The right was subject to certain special terms and conditions which are set out in six paragraphs in the certificate of occupancy. The first paragraph deals with the payment of rent. The relevant part of paragraph 2 reads as follows :-

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"2. The Occupier undertakes:-

(i) To erect buildings on the said land of a value of not less than Shillings Sixty thousand (Shs.60,000/-).

(ii) Within a period of six months from the date of commencement of the said Right of Occupancy to submit to the Township Authority Moshi, (hereinafter called "the said Authority") such plans of the proposed buildings (including block plans showing the position of the buildings) drawings elevations and specifications thereof as will satisfy the said Authority and as will ensure compliance with the building covenant contained in sub-paragraph (i) supra. Such plans and specifications shall be submitted in triplicate.

(iii) To commence building operations within a period of three months from the date of notification in writing by the said Authority of approval of the plans and specifications, such buildings to conform to a building line decided upon and notified by the said Authority.

(iv) To complete the buildings according to the said plans and specifications so that the said buildings are ready for use and occupation within a period of twenty-four months from the date of commencement of the said Right of Occupancy".

Paragraphs 2(v) and (vi), 3 and 4 are not material to this suit.

Paragraphs 5 and 6 read as follows:-

"5. Only one main building together with the usual and necessary outbuildings shall be erected on the said land and the said main building shall be used solely for commercial and residential purposes.

6. Failure to comply with any of the terms or conditions herein contained or implied will be deemed to constitute good cause for revocation of the said Right of Occupancy".

The Defendants accepted these terms and conditions by signing the certificate of occupancy on the 27th August, 1952.

In the
High Court of
Tanganyika.

No.12.

Judgment of
Mr. Justice
Murphy.

8th June, 1960
- continued.

In the
High Court of
Tanganyika.

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Judgment of
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Murphy.

8th June, 1960
- continued.

On the 5th March, 1953, the first plans were submitted by the Defendants to the Township Authority. The principal feature of these plans consisted of shops and offices at the front of the site. The plans were approved in principle on the 24th September, 1953. The reason for the delay was that the Town Planning Officer requested that a decision on the plans be deferred pending consideration of a project for making a new road junction which might affect the boundaries of the plot.

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The plans submitted in March, 1953, were for approval in principle only and it was still necessary for the Defendants to submit detailed plans and specifications such as would satisfy the Township Authority in accordance with paragraph 2(ii) of the certificate of occupancy. On the 24th February, 1954, the Plaintiff wrote to the Defendants pointing out that this had not been done and requiring it to be done by the 30th March. In the meantime, however, on the 20th February, 1954, the Defendants submitted to the Township Authority revised plans, which again were for approval in principle only. These plans included shops and flats at the front of the site and a godown at the rear. They were approved in principle on the 4th March, 1954. On the 11th March, 1954, the Plaintiff again wrote to the Defendants extending the time for the submission of detailed plans to the 30th April, 1954, and saying that if this was not done the right of occupancy would be revoked. The Defendants complied with the requirements of this letter by submitting detailed plans for the godown on the 11th April, 1954, and detailed plans for the whole plot on the 29th April, 1954. These two sets of plans were approved on the 3rd May and 20th May, 1954, respectively.

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It is to be noted that by this time the period in which the Defendants were supposed to have completed the buildings had expired, this period being twenty-four months from the commencement of the right of occupancy. It was perhaps unwise of the Defendants to agree to this particular condition, which they might through no fault of their own be unable to fulfil, and it would have been fairer if the time limit (though not necessarily of the same length) had been made to run from the date of approval of the plans. (This was in fact done in paragraph 2 (iii) of the certificate of occupancy which specified the period in which the Defendants had to commence building operations, but not in

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paragraph 2(iv) which specified the period for completion). However, this is not really material because on the 26th January, 1955, the Land Officer wrote to the Defendants extending the time for completion to the 31st July, 1955, and indicating that the right of occupancy would be revoked if the building was not completed by that date. This represented an extension of nearly 16 months beyond the original date for completion, which was fairly generous in view of the fact that the delay for which the Township Authority was responsible in approving the first plans was only $6\frac{1}{2}$ months.

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By September, 1955, the godown at the back of the site had been completed and the Defendants had received permission from the Township Authority to occupy it. But the building of the shops and flats had not been commenced and on the 21st November, 1955, the Plaintiff granted a further extension of time to the 31st January, 1956, for completion of this building. The Defendants then submitted altered plans, which were subsequently approved by the Township Authority on the 15th February, 1956. The Defendants also asked the Plaintiff, through their architects, for an extension of six months in which to erect the building. The Plaintiff in a letter dated January, 1956, replied that this was not approved and laid down other conditions as follows:-

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"This is the second time your clients have submitted fresh plans a short while before the date of expiry of a notice served on them. However, as it appears that plans have already been submitted to the Township Authority, Moshi, I am prepared to grant your clients an extension up to the 29th February next in which time they must have their plans approved, and commence building operations. I will call for a further report during the first week of March next, and unless building operations are by then under way, I shall recommend to the Governor that the Right of Occupancy be revoked. If the report reveals that building is proceeding satisfactorily, then your clients will be granted a further short extension of time in which to complete the erection of the building".

It is to be noted that in this letter no definite time limit is fixed for the erection of the building, but there is an implication that it is to be

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completed within less than six months, since the application for an extension of six months is refused. The Defendants replied in a letter dated 8th February, 1956, of which the following are the first three paragraphs:-

"We ... regret to inform you that you seem to be under impression that we have built nothing on the plot No.57 in question we have to bring to your kind notice that we have built a store, 60' x 40' and whose we are holding an occupancy certificate and which has cost Shs.60,000 approximately. Thus we have already spent more than the sum to be spent for building covenant in front. However we have submitted our plan for shops for approval to Township Authority and regret to inform you that we have not got it back approved. This would at least require a week and thereafter a four weeks' time would be at least required for inviting tenders from building contractors.

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Moreover, it does not appear economical to us to build shops at moment on above plot because there are many empty shops in the vicinity. So it is not worthwhile spending money at moment.

Summarily, we have to say that your extension of the period up to 29th February should be further extended to at least six months so as to facilitate us to arrive at final decision".

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In the first of these paragraphs there is the suggestion, made for the first time, that the Defendants have fulfilled the condition of the right of occupancy by erecting the godown. This is one of their defences to the present action. In the second paragraph they admit that it is at least partly from considerations of economy that they have not proceeded with the erection of the shops and flats. The Plaintiff relies on this admission as showing the true reason why the shops and flats were never erected.

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On the 31st May, 1956, the Plaintiff wrote to the Defendants giving them 30 days in which to inform him of the reasons why construction of the main building had still not been put in hand. On the 4th May, 1957, the right of occupancy was revoked. I have no evidence of any further correspondence between these two dates.

It is not disputed that no building other than the godown has ever been commenced on the plot. Mr. Shah, the Defendants' director who gave evidence on their behalf, agreed in the course of his evidence that the only reason they finally decided not to go ahead was that business was slack. I have no doubt that this was the reason, though Mr. Shah also suggested that they had in mind the possibility that the road junction scheme which delayed consideration of the original plans in 1953 might after all be put into effect; he admitted, however, that they had made no enquiries about this.

The main issue in this case is whether the revocation of the right of occupancy was lawful. Under Section 10 of the Land Ordinance (Cap.113) it is not lawful for the Governor to revoke a right of occupancy save for good cause. Good cause is defined to include, inter alia, "breach of any term or condition contained or to be implied in the certificate of occupancy". The Defendants have, on the face of it, broken a condition of the certificate of occupancy by not erecting the shops and flats. However, Mr. Reid has on their behalf put forward a number of arguments which it is now necessary to consider.

The first submission made on behalf of the Defendants is that they have complied with the conditions by erecting the godown. They have led evidence that the value of this building is Shs.60,000/-, which complies with paragraph 2(i) of the certificate of occupancy. However, under paragraph 2(iii) and (iv) they were bound to commence and to complete buildings in accordance with the plans and specifications approved by the Township Authority. These included the shops and flats. In the course of his argument Mr. Reid submitted that the only plans and specifications finally approved, were those for the godown, but this is not in accordance with the evidence of Mr. Sowerby, the Authority's Executive Officer. Mr. Reid also tried to draw a distinction between "plans" and "plans and specifications". Mr. Sowerby in his evidence used only the term "plans", when speaking both of the godown and of the whole project. It was never put to him that, so far as the shops and flats were concerned, these did not include specifications. If I am being asked to find that the detailed plans submitted for the godown do include specifications but those submitted for the whole plot do not, I can only say that this distinction

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is not apparent from an examination of the plans themselves, which have been put in as exhibits, and is not borne out by the oral evidence.

In further support of this submission stress has been laid on paragraph 5 of the certificate of occupancy, under which "only one main building together with the usual and necessary outbuildings" was to be erected. But I do not see how the godown can be regarded as a main building. It is clear that the main building was to be the shops and flats in the front of the plot and, assuming that the erection of the godown was not a contravention of paragraph 5, it (the godown) can only be classified as a necessary outbuilding. I would also observe that in the Defendants' letter of the 8th February, 1956, in which they refer to the erection of the godown at a cost of Shs.60,000/- they do not contend that they are thereby released from any further obligations. 10

For these reasons I hold that the Defendants were obliged by the conditions of the right of occupancy to erect the shops and flats and this first submission must therefore fail. 20

Mr. Reid's other arguments are based on the English law of landlord and tenant, which, as it stood on the 1st January, 1922, is applied in this country by Section 2(1) of the Land (Law of Property and Conveyancing) Ordinance (Cap.114). In Director of Lands & Mines vs. Sohan Singh, 1 TLR (R) 631, (to which I shall refer again later) it was held that for all general purposes there is no distinction between a right of occupancy and a lease. Mr. Reid's main argument is that before the revocation the Defendants received no notice in accordance with Section 14(1) of the Conveyancing and Law of Property Act, 1881, but he has raised two other points with which I will deal first. First, it is submitted that a breach of a covenant to build is only a single breach and not a continuing one. Reliance is placed on the case of Stephens vs. Junior Army & Navy Stores Ltd., (1914) 2 Ch. 516. But that case is only authority for the proposition that where there are two covenants, one to build and the other to repair, and the covenant to build is waived, no further covenant to build can be implied from the covenant to repair. It is difficult to see how this can apply to the present case. It was not disputed in Stephens' case that the waiver of the covenant to build operated once for all. In that case the 30 40 50

waiver was by acceptance of rent, but although in the present case rent was accepted after the breach, it is specifically provided in Section 11 of the Land Ordinance (Cap.113) that such acceptance does not operate as a waiver of a breach of a condition in a right of occupancy. It is clear from the correspondence in the present case that there was never any waiver of the breach. The grants of extensions of time were at the most undertakings not to exercise the right of revocation provided certain further conditions were fulfilled.

Secondly, reliance is placed on the proposition that if the landlord by his conduct induces the tenant to believe that the performance of a covenant to build within a stipulated time will not be insisted on, he cannot afterwards treat the non-performance as a ground of forfeiture (Hill & Redman's Law of Landlord and Tenant, 10th Edition at p.562). But I cannot find that the Defendants in this case were induced to believe any such thing. Admittedly it was in the interest of the Plaintiff that the stipulated building should be erected on the plot by the Defendants, rather than that he should have to take the course of revoking the right of occupancy with the consequence of further delay before the plot could be developed; and it was no doubt for that reason that the extensions of time were granted. But the extensions of time were also beneficial to the Defendants and it would be illogical if they would rely on them as ground for saying that the Plaintiff was debarred from exercising the right of revocation.

I come now to what, as I understand it, is the point on which the Defendants principally rely, namely that before the revocation they did not receive a notice in accordance with Section 14(1) of the Conveyancing and Law of Property Act, 1881, (hereinafter referred to as "the Act") which reads as follows:-

"A right of re-entry or forfeiture under any proviso or stipulation in a lease, for breach of any covenant, or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a

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reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the Lessor, for the breach".

Mr. Wickham for the Plaintiff has conceded that the Defendants were not served with a notice of the kind prescribed by this sub-section. The Act is applicable to leases in this country by virtue of Section 2(1) of the Land (Law of Property and Conveyancing) Ordinance (Cap.114) which, as I have already said, applies the law in force in England on the 1st January, 1922. This, however, is qualified by Sub-sections (2) and (3) as follows:- 10

"(2) Such English law and practice shall be in force so far only as the circumstances of the Territory and its inhabitants, and the limits of Her Majesty's jurisdiction permit.

(3) When such English law or practice is inconsistent with any provision contained in any Ordinance or other legislative act or Indian Act for the time being in force in the Territory, such last mentioned provision shall prevail". 20

Rights of occupancy are granted under the Land Ordinance (Cap.113). An examination of this Ordinance shows that the law relating to them differs in certain respects from the law which governs ordinary leases. The granting and revocation of rights of occupancy are governed partly by considerations of public policy which would not be applicable to leases between subject and subject. This is shown by the preamble to the Ordinance and by the list in Section 10 of grounds which constitute good cause for revocation. (The latter includes requirement of the land by the Government for public purposes and requirement of the land for mining purposes). Under Section 4 public lands and all rights over them are to be held and administered by the Governor "for the use and common benefit, direct or indirect, of the natives of the Territory". In these circumstances cases must arise in which a breach of a condition in a right of occupancy cannot appropriately be the subject of monetary compensation and a notice under Section 14(1) of the Act would therefore be inapplicable. 30 40

It does not follow that a right of occupancy may in every case be revoked without notice. The Defendants rely on the case of Director of Lands & Mines v. Sohan Singh, to which I have already referred. That case, like the present one, concerned 50

the revocation of a right of occupancy for breach of a covenant to build. Abernethy J. held that in the circumstances of the case the Governor was not entitled to revoke without notice. It is, however, important to note that the case did not decide that Section 14(1) of the Act was applicable. This point was left undecided as is shown by the following passage in the judgment at pp.634-5:-

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10 "..... even if Section 14(1) of the Conveyancing and Law of Property Act, 1881, does not apply to certificates of occupancy issued under the Land Tenure Ordinance (now the Land Ordinance) of Tanganyika, and although no provision is made for any notice of revocation in the Land Tenure Ordinance I am by no means satisfied that the Governor can always revoke any such certificate without notice"

20 The learned Judge then went on to consider the case of Canadian Pacific Railway Company vs. The King, (1931) A.C.414, in which it was held that a licence granted by the Crown could not in the circumstances of the case be revoked without notice; and he decided that this also applied to the case which was before him. The reason for his decision, with which I respectfully agree, was that, the certificate of occupancy having been revoked because of the opinion of the Executive Officer of the Township Authority that the necessary building could not be completed within the specific time,
30 it was equitable that the occupant should have been given an opportunity of answering this opinion. The circumstances of the present case are not the same.

Mr. Reid has referred me to another case which is unreported and in which it appears to have been held by Biron Ag. J. that Section 14(1) of the Act did apply to the termination of a right of occupancy for a breach of covenant. This is Mohamed Mambo vs. The District Commissioner, Arusha, Civil Appeal No.11/1958. With very great respect, I am
40 unable to follow that decision, because it appears to me to be based on a wrong premise. The decision was given on appeal from a judgment of a Senior Resident Magistrate who, according to the Appeal Judgment, had held on the authority of Sohan Singh's case that Section 14(1) of the Act was applicable. But, as I have already said, this was not decided in Sohan Singh's case. The learned acting Judge agreed with the Senior Resident Magistrate that the section was applicable, but gave no
50 further reasons for so deciding. It seems to me,

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therefore, that this decision was based on a mis-interpretation of the ratio decidendi in Sohan Singh's case. It is to be noted also that the point was not fully considered in Mohamed Mambo's case and that the judgment is mainly concerned with the question of whether, assuming that a notice is required, an oral notice is sufficient.

I have also been referred to the Privy Council case of Bashir vs. Commissioner of Lands, (1959) 3 W.L.R. 996, but that case turned on the effect of Section 83 of the Crown Lands Ordinance, 1915, of Kenya and this section has no parallel in the Land Ordinance of Tanganyika. 10

I must hold, therefore, that Section 14(1) of the Conveyancing and Law of Property Act, 1881, does not apply to the termination of a right of occupancy for breach of a covenant or condition, since, for the reasons I have given earlier, it is not consistent with the special provisions which the Land Ordinance makes for rights of occupancy and which differ from the law relating to leases between subject and subject. For this reason I do not find it necessary to decide the other point on which Mr. Wickham relied, namely that the Act does not bind the Crown. On the question of whether, as in Sohan Singh's case, it was in any event equitable that a notice should have been given, it seems to me that in the present case the Defendants did receive ample notice that in certain circumstances the right of occupancy would be revoked. There was the notice contained in the letter of the 21st November, 1955, that it would be revoked unless the building was completed by the 31st January, 1956. This was superseded by the notice in the letter dated January, 1956, requiring the Defendants to commence building operations by the 29th February. The requirements of these notices were not complied with and, the intention to revoke having been made clear to the Defendants, I cannot see that they were prejudiced by not receiving any further notice before the revocation. 20 30 40

There are two other defences mentioned in the pleadings. One is that the approval of the plans given by the Township Authority was conditional on the boundaries of the plot being defined and that this was not done by the Plaintiff. The boundary, however, was defined in the plan annexed to the certificate of occupancy. Mr. Sowerby's evidence makes it clear that what the Township Authority 50

required was for the boundary to be demarcated before building commenced and that this was to be done by the Defendants. The other defence is that the Plaintiff is estopped from claiming possession because of an agreement entered into with the Defendants after the revocation. But this is not supported by the evidence and has not been pursued.

10 I accordingly find that the revocation was lawful and the Plaintiff is entitled to possession. There remains the question of damages. The Plaintiff is entitled to the revocation fee of Shs 435/- which is claimed in paragraph (iii) of the prayer. In paragraph (iv) damages are claimed at the rate of Shs.1,100/- per month. Evidence was adduced by the Plaintiff that the Defendants leased the go-
 20 down to Messrs. Gailey & Roberts for this amount. It has, however, been conceded by Mr. Wickham that the Defendants have continued to pay ground rent to the Plaintiff as required by the certificate of
 20 occupancy and that the damages claimed are in any event abated to this extent. Taking into account that in surrendering the land to the Plaintiff the Defendants will also have to surrender the godown, I think it will be fairer if the claim for damages under paragraph (iv) is disallowed.

30 I give judgment for the Plaintiff for possession of the land within two weeks from the date of judgment, for Shs.435/- with interest at 6% per annum from the date of filing the Plaint until judgment, and for costs.

R.H.MURPHY,
 JUDGE.

H.M. HIGH COURT OF TANGANYIKA AT DAR-ES-SALAAM.

I hereby certify this to be a true copy of the original.

Sgd: M.J.R. Coakley,
 Dy. Registrar.

19/7/1960.

In the
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 Tanganyika.

No.12.

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 Murphy.

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- continued.

In the
High Court of
Tanganyika.

No. 13.

DECREE (FOR APPEAL)

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA

IN THE DISTRICT REGISTRY AT ARUSHA

CIVIL CASE NO. 18 of 1959

Decree
(For Appeal)

THE LAND OFFICER

Plaintiff

versus

PREMCHAND NATHU & CO. LIMITED

Defendant

8th June, 1960

DECREE (For Appeal)

Claim for (a) a declaration that the Defendant is in illegal occupation of public land, being Plot No.57, Commercial and Light Industrial Plots, Moshi Township, previously held by the Defendant under Certificate of Title No.8555 revoked on 4th May 1957, (b) order for surrender of possession of the plot (c) payment of revocation fee Shs.435/- (d) damages until possession given and (e) costs of suit:

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This suit coming on this day for final disposal before the Honourable Mr. Justice R. H. Murphy in presence of W.R. Wickham, Esquire, Crown Counsel, for the Plaintiff and Alexander Reid, Esquire, Advocate for the Defendant:

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IT IS ORDERED AND DECREED:

- (1) that the Certificate of Title No.8555 was lawfully revoked for good cause;
- (2) that the Defendant do deliver up possession of the said Plot No.57 to the Plaintiff within fourteen days from this date and
- (3) that the Defendant do pay to the Plaintiff the sum of Shs.435/- and the taxed costs of the suit.

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GIVEN under my hand and the Seal of the Court at Dar-es-Salaam this Eighth day of June, 1960.

P.A. Carne,
ACTING REGISTRAR.

H.M.HIGH COURT OF TANGANYIKA AT DAR-ES-SALAAM
Signed and Issued on 18/7/60.

I hereby certify this to be a true copy of the original.

40

Sgd: P.A. Carne.

July 18, 1960.

Ag. Registrar.

No. 14.

In the Court of
Appeal for
Eastern Africa.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

AT DAR-ES-SALAAM

No.14.

CIVIL APPEAL NO.67 of 1960

Memorandum of
Appeal.

BETWEEN:- PREMCHAND NATHU & CO. LTD. Appellant

17th August,
1960.

- and -

THE LAND OFFICER Respondent

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(Appeal from a decree of Her Majesty's High Court of Tanganyika, at Moshi, (Mr. Justice R.H. Murphy) dated 8th June 1960 in Arusha District Registry Civil Case No.18 of 1959

Between:- The Land Officer Plaintiff

- and -

Premchand Nathu & Co., Ltd. Defendant)

MEMORANDUM OF APPEAL

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Premchand Nathu & Co., Ltd., the Appellant above named, appeals to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above mentioned on the following grounds, namely:

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1. The learned Judge erred in accepting oral evidence that the demarcation of the plot was to be done by the Appellant and should have held that, under Clauses 2 and 3 of the Respondent's Offer dated 18th March 1954, the survey and final demarcation of the plot was the duty of the Respondent.

2. The learned trial Judge erred in holding that the Appellant was obliged to erect shops and flats and should have held that the erection of a godown, of the required minimum value and duly approved by the Township Authority, was adequate compliance with the building covenant.

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3. The learned Judge erred in failing to direct himself that the delay in erecting a building within the stipulated period was substantially, if not wholly, due to conduct and acts, on the part of the Respondent or third parties nominated by him, beyond the control of the Appellant and that such delay was not a failure which could justify revocation of the right of occupancy.

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- continued.

4. The learned Judge erred in failing to direct himself that failure to erect a building within the stipulated period was a single and complete, and not a continuing, breach and should have held that any right of forfeiture that may have accrued was waived by subsequent conduct on the part of the Respondent in receiving rents and otherwise treating the tenancy as continuing.

5. The learned Judge erred in holding that Section 14(1) of the Conveyancing Act 1881 was not applicable in Tanganyika to termination of rights of occupancy for breach of a covenant or condition.

10

REASONS WHEREFORE the Appellant prays this Honourable Court:

(a) to set aside the decree of the lower Court,

(b) to hold that the revocation of the right of occupancy was without good cause and unlawful,

and

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(c) to award the Appellant the costs of this appeal and in the Court below.

DATED this 17th day of August 1960.

A. REID,

Advocate for Appellant.

To the Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa

And to the Attorney General, Counsel for Respondent.

The address for service of the Appellant is care
of Messrs. Reid and Edmonds, Advocates,
Mawenzi Road, (P.O. Box 59) Moshi.

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FILED this 18th day of August, 1960.

Sgd: R. McKay

Deputy Registrar of
the Court of Appeal.

No. 15.

JUDGMENTS OF THE COURT OF APPEAL - (a) GOULD, J.A.
 IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
 AT DAR-ES-SALAAM

CIVIL APPEAL NO.67 of 1960

BETWEEN:- PREMCHAND NATHU & CO. LTD. Appellant

- and -

THE LAND OFFICER Respondent

(Appeal from a Judgment and decree of H.M.
 High Court of Tanganyika at Arusha (Mr.
 Justice R.H.Murphy) dated 8th June, 1960, in

Civil Case No.18 of 1959

Between:- The Land Officer Plaintiff

- and -

Premchand Nathu & Co., Ltd. Defendant)JUDGMENTS OF THE COURT OF APPEAL - (a) GOULD, J.A.

This is an appeal from a decree of the High
 Court of Tanganyika at Arusha dated the 8th June,
 1960, whereby it was held that a Right of Occupancy
 in respect of a plot in Moshi Township had been
 lawfully revoked for good cause and the Appellant
 Company was ordered to deliver possession thereof
 to the Respondent within fourteen days.

The Certificate of Occupancy in favour of the
 Appellant was expressed to be for a term of 99
 years from the 4th April, 1952, subject to payment
 of annual rental, and to various other provisions,
 of which I will set out those relevant to the is-
 sues between the parties:-

"2. The Occupier undertakes:-

- (i) To erect buildings on the said land
 of a value of not less than Shillings
 Sixty thousand (Shs.60,000/-).
- (ii) Within a period of six months from the
 date of commencement of the said Right
 of Occupancy to submit to the Township
 Authority, Moshi, (hereinafter called
 "the said Authority") such plans of
 the proposed buildings (including
 block plans showing the position of
 the buildings) drawing elevations and
 specifications thereof as will satisfy

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the said Authority and as will ensure compliance with the building covenant contained in sub-paragraph (i) supra. Such plans and specifications shall be submitted in triplicate.

(iii) To commence building operations within a period of three months from the date of notification in writing by the said Authority of approval of the plans and specifications, such buildings to conform to a building line decided upon and notified by the said Authority.

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(iv) To complete the buildings according to the said plans and specifications so that the said buildings are ready for use and occupation within a period of twenty-four months from the date of commencement of the said Right of Occupancy.

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5. Only one main building together with the usual and necessary outbuildings shall be erected on the said land and the said main building shall be used solely for commercial and residential purposes.

6. Failure to comply with any of the terms or conditions herein contained or implied will be deemed to constitute good cause for revocation of the said Right of Occupancy".

The Certificate of Occupancy was signed by both parties. The history of the subsequent events is summarised in the judgment of the learned trial Judge from which it will be convenient to quote extensively:-

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"On the 5th March, 1953, the first plans were submitted by the Defendants to the Township Authority. The principal feature of these plans consisted of shops and offices at the front of the site. The plans were approved in principle on the 24th September, 1953. The reason for the delay was that the Town Planning Officer requested that a decision on the plans be deferred pending consideration of a project for making a new road junction which might affect the boundaries of the plot.

40

The plans submitted in March, 1953, were

for approval in principle only and it was still necessary for the Defendants to submit detailed plans and specifications such as would satisfy the Township Authority in accordance with paragraph 2(ii) of the Certificate of Occupancy. On the 24th February, 1954, the Plaintiff wrote to the Defendants pointing out that this had not been done and requiring it to be done by the 30th March. In the meantime, however, on the 20th February, 1954, the Defendants submitted to the Township Authority revised plans, which again were for approval in principle only. These plans included shops and flats at the front of the site and a godown at the rear. They were approved in principle on the 4th March, 1954. On the 11th March, 1954, the Plaintiff again wrote to the Defendants extending the time for the submission of detailed plans to the 30th April, 1954, and saying that if this was not done the right of occupancy would be revoked. The Defendants complied with the requirements of this letter by submitting detailed plans for the godown on the 11th April, 1954, and detailed plans for the whole plot on the 29th April, 1954. These two sets of plans were approved on the 3rd May and 20th May, 1954, respectively.

It is to be noted that by this time the period in which the Defendants were supposed to have completed the buildings had expired, this period being twenty-four months from the commencement of the right of occupancy. It was perhaps unwise of the Defendants to agree to this particular condition, which they might through no fault of their own be unable to fulfill, and it would have been fairer if the time limit (though not necessarily of the same length) had been made to run from the date of approval of the plans. (This was in fact done in paragraph 2(iii) of the Certificate of Occupancy which specified the period in which the Defendants had to commence building operations, but not in paragraph 2(iv) which specified the period for completion). However, this is not really material because on the 26th January, 1955, the Land Officer wrote to the Defendants extending the time for completion to the 31st July, 1955, and indicating that the right of occupancy would be revoked

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if the building was not completed by that date. This represented an extension of nearly 16 months beyond the original date for completion, which was fairly generous in view of the fact that the delay for which the Township Authority was responsible in approving the first plans was only 6½ months.

By September, 1955, the godown at the back of the site had been completed and the Defendants had received permission from the Township Authority to occupy it. But the building of the shops and flats had not been commenced and on the 21st November, 1955, the Plaintiff granted a further extension of time to the 31st January, 1956, for completion of this building. The Defendants then submitted altered plans, which were subsequently approved by the Township Authority on the 15th February, 1956. The Defendants also asked the Plaintiff, through their architects, for an extension of six months in which to erect the building. The Plaintiff in a letter dated January, 1956, replied that this was not approved and laid down other conditions as follows:-

'This is the second time your clients have submitted fresh plans a short while before the date of expiry of a notice served on them. However, as it appears that plans have already been submitted to the Township Authority, Moshi, I am prepared to grant your clients an extension up to the 29th February next in which time they must have their plans approved, and commence building operations. I will call for a further report during the first week of March next, and unless building operations are by then under way, I shall recommend to the Governor that the Right of Occupancy be revoked. If the report reveals that building is proceeding satisfactorily, then your clients will be granted a further short extension of time in which to complete the erection of the building'.

It is to be noted that in this letter no definite time limit is fixed for the erection of the building, but there is an implication that it is to be completed within less than six months, since the application for an extension

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of six months is refused. The Defendants replied in a letter dated 8th February, 1956, of which the following are the first three paragraphs:-

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'We regret to inform you that you seem to be under impression that we have built nothing on the plot No.57 in question we have to bring to your kind notice that we have built a store, 60' x 40' and whose we are holding an Occupancy Certificate and which has cost Shs.60,000 approximately. Thus we have already spent more than the sum to be spent for building covenant in front. However we have submitted our plan for shops for approval to Township Authority and regret to inform you that we have not got it back approved. This would at least require a week and thereafter a four weeks' time would be at least required for inviting tenders from building contractors.

20

Moreover, it does not appear economical to us to build shops at moment on above plot because there are many empty shops in the vicinity. So it is not worthwhile spending money at moment.

30

Summarily, we have to say that your extension of the period up to 29th February should be further extended to at least six months so as to facilitate us to arrive at final decision.'

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In the first of these paragraphs there is the suggestion, made for the first time, that the Defendants have fulfilled the condition of the right of occupancy by erecting the godown. This is one of their defences to the present action. In the second paragraph they admit that it is at least partly from considerations of economy that they have not proceeded with the erection of the shops and flats. The Plaintiff relies on this admission as showing the true reason why the shops and flats were never erected.

On the 31st May, 1956, the Plaintiff wrote to the Defendants giving them 30 days in which to inform him of the reasons why construction of the main building had still not been put in hand. On the 4th May, 1957, the right of occupancy was revoked. I have no evidence of

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any further correspondence between these two dates.

It is not disputed that no building other than the godown has ever been commenced on the plot".

The first three grounds of appeal as set out in the memorandum are as follows :-

"1. The learned Judge erred in accepting oral evidence that the demarcation of the plot was to be done by the Appellant and should have held that, under Clauses 2 and 3 of the Respondent's offer dated 18th March, 1954, the survey and final demarcation of the plot was the duty of the Respondent.

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2. The learned trial Judge erred in holding that the Appellant was obliged to erect shops and flats and should have held that the erection of a godown, of the required minimum value and duly approved by the Township Authority, was adequate compliance with the building covenant.

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3. The learned Judge erred in failing to direct himself that the delay in erecting a building within the stipulated period was substantially, if not wholly, due to conduct and acts, on the part of the Respondent or third parties nominated by (sic) him, beyond the control of the Appellant and that such delay was not a failure which could justify revocation of the right of occupancy".

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I deem it necessary to say very little with regard to these grounds; the arguments upon which they are based have been expressly or impliedly dealt with by the learned trial judge in his judgment and I see no reason to differ from his conclusions. As to Ground 1 he accepted that the boundary was sufficiently defined in the plan annexed to the Certificate of Occupancy and that the further demarcation requested by the Township Authority was for the assistance of their own building inspector. One argument presented to this Court but not touched upon in the judgment was that the Moshi Township Authority, which originally requested delay in view of the possibility of the formation of a new road junction, at no time notified the building line decided upon, as required of them by paragraph 2(iii) of the Certificate of

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Occupancy. I think this is sufficiently answered by the fact that the Township Authority, by approving plans showing the proposed buildings and their relationship to the boundaries of the plot, in effect agreed that the buildings were within their building-line requirements. Nothing turned on this point in any of the negotiations between the parties after the initial delay requested by the Town Planning Officer.

10 As to Ground 2 the learned Judge held, upon sufficient evidence, that the Appellant was obliged by the conditions of the Certificate of Occupancy to erect the shops and flats. I agree and do not propose to add anything upon this topic.

As to the argument under Ground 3, the learned Judge pointed out that the delay in approving the first plans for which the Township Authority was responsible amounted to only $6\frac{1}{2}$ months, whereas extensions up to the 31st July, 1955 (nearly 16
20 months) were granted. In fact there was at least one subsequent extension. I am satisfied there is no merit in this ground of appeal.

In its fourth ground the Appellant relied upon waiver:-

30 "4. The learned Judge erred in failing to direct himself that failure to erect a building within the stipulated period was a single and complete, and not a continuing breach and should have held that any right of forfeiture that may have accrued was waived by subsequent conduct on the part of the Respondent in receiving rents and otherwise treating the tenancy as continuing".

Under this head, the argument of the advocate for the Respondent was said by him to be "based on the various extensions of time granted after the expiration of the building period and more particularly on the Respondent having permitted or forced the Appellant to put up a godown in the belief that
40 there would be no forfeiture". I will set out the correspondence which bears upon this question.

On the 24th February, 1954, the Respondent wrote:-

"I have the honour to refer to my letter No.33150/20/AAK of the 16th March 1953, and to draw your attention to the fact that you have failed to comply with the Notice dated

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6th November, 1952, as amended by my above-quoted letter, in that although plans were submitted for approval in principle during September last, detailed drawings, as will satisfy the Township Authority, have not yet been submitted for approval.

I should be obliged if you would please let me know at your early convenience what action you are taking to ensure that satisfactory plans will be submitted to the Township Authority, and I must warn you that unless plans are submitted by the 30th March next I shall be obliged to submit the facts to Government with a recommendation that the Right of Occupancy be revoked".

10

By the time this letter was written it was obvious that the building condition could not be complied with within the time limited, which expired on the 4th April, 1954. By giving the Appellant until the 30th March, 1954, to submit the detailed drawings, the Respondent impliedly undertook, in my opinion, to extend the time limit by a period reasonably sufficient to allow of the completion of the buildings, provided the drawings were submitted as requested. Prior to this letter, however, on the 20th February, 1954, the Appellant had submitted revised plans for approval in principle - including the godown at the rear of the plot - and they were so approved on the 4th March, 1954. On the 11th March, 1954, the Respondent wrote:-

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"I have the honour to refer to the letter No.JH/317 dated 2nd March, 1954, addressed to me by Messrs. T.D. Gedrych & Peer Abben, with copy to you, and to inform you that the date by which you are required to remedy the breach of Condition 2(ii) of the above Right of Occupancy, as mentioned in the final paragraph of the Notice dated 6th November, 1952, is hereby extended to the 30th April, 1954. Please understand that this extension is final, and unless satisfactory plans have been submitted to and approved by the Township Authority, Moshi, on or before that date the Right of Occupancy will be revoked".

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The reference there is probably to detailed plans and drawings, but in the event detailed plans were all submitted by the 29th April, 1954, and were approved on the 3rd May, and the 20th May, 1954.

The Township Authority issued a building permit for the godown on the 3rd May, 1954, but the godown was not completed until September, 1955.

The letters of the 24th February and the 11th March, 1954, both referred to the plans, the submission of which was required by paragraph 2(ii) of the Certificate of Occupancy. As I have said, in my opinion, they imply an undertaking to extend the time for compliance with paragraph 2(iv) to a reasonable extent. The next letter from the Respondent, dated the 26th January, 1955, relates to that paragraph and reads:-

"I have the honour to address you on the subject of the above plot and to draw your attention to the provisions of Condition 2(iv) of the Certificate of Occupancy, which requires that you complete the erection of a building of a value of not less than Shs.60,000/- on the said plot within a period of twenty-four months from the date of commencement of the Right of Occupancy, namely the 4th April, 1952. I am informed by the Executive Officer, Township Authority, Moshi, that you have not yet completed the erection of the building on this plot, and you have therefore failed to comply with, and committed a breach of the said condition.

2. I now write to inform you that unless the building is completed in accordance with approved plans and specifications by the 31st day of July next, I shall be obliged to submit the matter to the Governor with a recommendation that the said Right of Occupancy be revoked for good cause under Section 10 of the Land Ordinance".

The advocate for the Appellant stressed the use of the singular in the word "building" where it occurs in that letter, but in the context of the correspondence, and having regard to the fact that the Township Authority was dealing with the plans and the Respondent with legal relations, I am unable to attach any importance to the point. There is no hint in the correspondence that the Appellant did not fully accept as an obligation the building of both shops and flats and the godown until its letter of the 8th February, 1956.

The letter of the 26th January, 1955, extended the time allowed until the 31st July, 1955, by which time the godown would be nearing completion,

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but nothing had been done on any other building.
On the 23rd August, 1955, the Respondent wrote:-

"I have the honour to refer to my letter
No.33150/41/AJD of 26th January, 1955, in
which you were informed that unless the build-
ing was completed in accordance with approved
plans and specifications by 31st July, 1955,
I would be obliged to submit the matter to
the Governor with a recommendation that the
Right of Occupancy be revoked for good cause
under Section 10 of the Land Ordinance. 10

2. I am informed by the Executive Officer,
Township Authority, Moshi, that although the
godown has been roofed and is nearing com-
pletion, the shops and flats included in the
plan have not been commenced. I understand
that plans for the shops and flats were ap-
proved in May 1954.

3. You will appreciate that by reason of
your failure to complete the buildings in ac-
cordance with approved plans and specifica-
tions, it is now open to His Excellency the
Governor to revoke the Right of Occupancy,
and to impose a revocation fee which may
amount to the equivalent of three years rent.
However, and without prejudice to such rights
as have already accrued to the Governor, I am
prepared to postpone further action for thirty
days from the date of this letter to enable
you to inform me of the reason why you have
failed to complete the buildings, and of what
action you are taking to remedy the breach of
your contractual obligations. 20 30

4. Please understand that in default of a
satisfactory reply within the specified time,
I shall be obliged to recommend to the Gover-
nor that the Right of Occupancy be revoked
without any further notice to you".

The reply on behalf of the Appellants was dated
the 8th September, 1955:- 40

"We have been asked by our clients to reply
to your letter 33150/44/AT of the 23rd ultimo,
and to inform you that we are in the process
of making certain alterations to the plans as
originally approved, these will take about 4
weeks to complete and after this we have to
call for tenders, therefore, some two months
must elapse before work can be started.

It is therefore requested that an extension of time for the completion of these premises be granted, bearing in mind that a building, such as the one proposed, will take about 9 months to complete from the date of starting.

Your sympathetic consideration will be appreciated."

10 This letter is a request for a substantial extension of time to complete the shops and flats. The reply by the Respondent was dated the 21st November, 1955:-

20 "I have the honour to refer to your letter No.JN/317 of 8th September, 1955, and to inform you that, without prejudice to such rights as have already accrued Governor, I am prepared to give your clients, Premchand Nathu & Co., Ltd., time to complete the buildings on the above plot according to approved plans and specifications by the 31st January, 1956.

2. Please inform your clients that, if the buildings are not completed within the specified time, I shall refer the matter to the Governor with a recommendation that he should revoke the Right of Occupancy without any further notice to them".

30 There was apparently a further request, on the 3rd January, 1955, for a six months extension, which has not been made an exhibit, but which is referred to in the following letter from the Respondent dated "January, 1956":-

40 "I have the honour to refer to your letter No.317 of the 3rd January, 1956, in which you requested an extension of six months on behalf of your clients in which to erect the building on the above plot, and to inform you that your application has not been approved. Your clients have been given various extensions of time and it now appears that they have submitted fresh building plans for approval after receiving the notice dated 21st November, 1955, requiring them to complete the erection of the building on this plot. This is the second time your clients have submitted fresh plans a short while before the date of expiry of a notice served on them. However, as it appears that plans have already been submitted to the Township Authority, Moshi, I am prepared to grant

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your clients an extension up to the 29th February next in which time they must have their plans approved, and commence building operations. I will call for a further report during the first week of March next, and unless building operations are by then under way, I shall recommend to the Governor that the Right of Occupancy be revoked. If the report reveals that building is proceeding satisfactorily, then your clients will be granted a further short extension of time in which to complete the erection of the building.

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2. Please make it quite clear to your clients that under no circumstances will any further extension be granted unless their plans are approved, and building operations commenced by the 29th February next".

There is here another implied promise that, provided the Appellant showed that it definitely was commencing operations by the first week in March, further time would be allowed. On the 15th February, 1956, revised plans were approved by the Township Authority but on the 8th February, 1956, the Appellant wrote the letter and material contents of which are set out in the passage above quoted from the judgment of the learned Judge. There is a definite change of position in that letter, and the six months extension then requested was not for the purpose of erecting the building but to enable the Appellant to decide whether it was worthwhile to spend the money. The Respondent's last letter, dated the 31st May, 1956 reads:-

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"Further to my letter No.33150/AJD of the 17th February, 1956 and with reference to your letter dated 8th February, 1956, I am informed by the Executive Officer, Township Authority, Moshi, that the building plans of the main building to be erected by you on this plot were approved on the 15th February last but that building operations have not as yet commenced. Having regard to this and to the contents of my previous letters on the subject of this plot, you will appreciate that your failure to erect the main building constitutes a breach of the terms and conditions of the Right of Occupancy and this renders your Right of Occupancy liable to revocation. However, and without prejudice to such rights as have accrued to the Governor, I am prepared to postpone further action for 30 days from the

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date of this letter to enable you to inform me of the reasons why the construction of the main building has not been put in hand and of what action you propose taking to remedy the present breach of your contractual obligations.

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2. Please understand that unless I receive a satisfactory reply to this letter by the 30th June next, I shall be obliged to consider taking further action with the view to a recommendation being made to the Governor that the Right of Occupancy be revoked".

The question is whether there is anything in this correspondence and the actions of the Respondent which amounts to a waiver of the right of the Governor to revoke the Right of Occupancy. That right arises by virtue of Section 10 of the Land Ordinance (Cap.113 of the Tanganyika Revised Laws), the relevant portion of which is as follows:-

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"10. It shall not be lawful for the Governor to revoke a Right of Occupancy granted as aforesaid save for good cause. Good cause shall include -

.....

(f) breach of any term or condition contained or to be implied in the Certificate of Occupancy or in any contract made in accordance with Section 7;"

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Wording similar to that in sub-paragraph (f) of Section 10 is incorporated in paragraph 6 of the Certificate of Occupancy and in view of these provisions nothing turns upon any possible distinction between a condition and a covenant.

It is convenient to deal at once with the question of acceptance of rent, which is referred to in ground 4 of the Memorandum of Appeal. It is conceded that rent has been paid beyond the material date but that is of no avail to the Appellant on the question of waiver. Section 11 of the Land Ordinance is as follows:-

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"11. The acceptance by or on behalf of the Governor of any rent shall not be held to operate as a waiver by the Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any contract under Section 7 or in any certificate of occupancy granted under this Ordinance".

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Although this section negatives waiver by acceptance of rent it is silent as to waiver of forfeiture by other unequivocal acts, with the consequent implication that the ordinary principles of law as to such acts are applicable. So far as waiver of forfeiture is concerned it was not disputed that the Right of Occupancy was to be regarded as a lease. The law to be applied is that provided by Section 2 of the Land (Law of Property and Conveyancing) Ordinance (Cap.114 of the Tanganyika Revised Laws) which is as follows:-

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"2. (1) Subject to the provisions of this Ordinance, the law relating to real and personal property, mortgagor and mortgagee, landlord and tenant, and trusts and trustees in force in England on the first day of January, 1922, shall apply to real and personal property, mortgages, leases and tenancies, and trusts and trustees in the Territory in like manner as it applies to real and personal property, mortgages, leases and tenancies, and trusts and trustees in England, and the English law and practice of conveyancing in force in England on the day aforesaid shall be in force in the Territory.

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(2) Such English law and practice shall be in force so far only as the circumstances of the Territory and its inhabitants, and the limits of Her Majesty's jurisdiction permit.

(3) When such English law or practice is inconsistent with any provision contained in any Ordinance or other legislative act or Indian Act for the time being in force in the Territory, such last mentioned provision shall prevail".

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Counsel for the Appellant relied strongly upon the case of Diwan Singh v. The Commissioner of Lands (1958) E.A. 367 in which a number of the English authorities on waiver were referred to. It will be of advantage to set out again the passage from Matthews v. Smallwood (1910) 1 Ch.777 at 786 which was quoted by the learned President of this Court in Diwan Singh's case at p.371:-

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"Waiver of a right of re-entry can only occur where the lessor, with knowledge of the facts upon which his right to re-enter arises does some unequivocal act recognising the continued existence of the lease. It is not

10 enough that he should do the act which recognises, or appears to recognise, the continued existence of the lease, unless, at the time when the act is done, he has knowledge of the facts under which, or from which, his right of entry arose. Therefore we get the principle that, though an act of waiver operates with regard to all known breaches, it does not operate with regard to breaches which
 20 were unknown to the lessor at the time when the act took place. It is also, I think, reasonably clear upon the cases that whether the act, coupled with the knowledge, constitutes a waiver is a question which the law decides, and therefore it is not open to a lessor who has knowledge of the breach to say 'I will treat the tenancy as existing, and I will receive the rent, or I will take advantage of my power as landlord to distrain; but I tell you that all I shall do will be without prejudice to my right to re-enter, which I intend to reserve'. This is a position which he is not entitled to take up. If, knowing of the breach, he does distrain, or does receive the rent, then by law he waives the breach, and nothing which he can say by way of protest against the law will avail him anything".

30 The judgment of the learned President then continued:-

40 "It seems that a waiver of a lessor's right to re-enter may arise from the doing by the lessor, with knowledge of the facts upon which his right to re-enter arises, of some unequivocal act recognising the continued existence of the lease, notwithstanding that the lessor's actual intention may not be to effectuate a waiver. Once the unequivocal act is done, with knowledge, the law presumes an intention to waive the forfeiture: Matthews v. Smallwood; Davenport v. R. (1877), 3 App. Cas. 115, 131, 132; Bevan v. Barnett (1897), 13 T.L.R. 310".

In that case the unequivocal act from which intention to waive a forfeiture was presumed was the approval of building plans by the agent for the lessor with full knowledge that the building condition had not been complied with and that the period allowed for building had long since expired.

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I do not find any parallel to those circumstances in the present case. I have already indicated my opinion that the Respondent's letter of the 24th February, 1954, properly construed, contained an implied undertaking to make a reasonable extension of the time allowed for building; the same applies to the letter of the 11th March, 1954. The letter of the 26th January, 1955, written when the Respondent was advised that the building had not been erected, contained a definite extension until the 31st July, 1955, which no doubt the Respondent considered reasonable in the circumstances. The Respondent's letter of the 23rd August, 1955, evoked an application for a further extension, which was granted, though not for the period requested, on the 21st November, 1955. There was another request for an extension on the 3rd January, 1956, and a further implied promise to grant time provided certain conditions were fulfilled.

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All this amounts to no more, in my opinion, than a series of implied or express agreements to extend the time limit for the building condition - some voluntarily offered by the Respondent and some entered into at the express request of the Appellant. It would be a hard rule, and particularly hard upon building lessees, if agreements of that nature necessarily involved waiver of a right of forfeiture. Landlords would be driven to insistence upon their strict legal rights. Such agreements, if made with due formality may amount to actual variations of the terms of a lease; otherwise, in my opinion, if acted upon, they would bind the landlord at least by quasi-estoppel. It may be that a right of forfeiture arose in the present case when the extension granted up to the 31st July, 1955, expired without completion of the buildings, though the Appellant, had the question then arisen, might have argued that the extension specified was not the reasonable extension that he had been impliedly promised. But even if there was a breach of the building condition at that date, I do not think that the subsequent extensions amounted to waiver of the right of forfeiture, but as mere agreements not to exercise the option to forfeit, provided certain conditions were fulfilled. The right was in fact suspended. I think that the giving of time to remedy a breach which would give rise to a forfeiture, is not an act (such as distraintment for rent) dependant upon the continued existence of the lease but an agreement with relation to the right of forfeiture which has arisen.

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The case of Doe d. Rankin v. Brindley 4 B. & Ad. 84 (110 E.R. 387) is in point. A lease contained a proviso for re-entry in case of non-repair within three months after notice. The Landlord gave the notice but before the expiry of the three months he brought an action for ejectment on other grounds. That action was withdrawn upon the making of a court order by consent, that the lessee should do the repairs by a certain date later than the expiry of the three month period. The judgments of the three members of the Court were as follows:-

"Parke J. I think there ought to be no rule.

As to the first point, the notice to repair was given on the 6th of January 1832; and the right of re-entry, in default of repair, would have accrued in three months from that time. Before the expiration of the three months, an ejectment was brought; and the lessor of the Plaintiff being unable to support that action, put an end to it by consenting to the order of Court made at the March Assizes 1832. It was the same as if the parties after the 6th of January, and before the expiration of the three months, had made an agreement between themselves, that the time for repairing should be extended to the 24th of June: it was merely a consent to postpone the time of completing the repair for the benefit of the Defendant; and on his failing to comply with the terms, the Lessor of the Plaintiff might justly insist on his right of entry, and bring a new ejectment after the expiration of the enlarged time. The receipt of rent was only an admission that the Defendant was tenant until the 25th of March, and could not operate as a waiver of the forfeiture. As to the objection founded on the Statute 11 G.4, and 1 W.4, c.70, s.36, it seems to me that that could not be taken at Nisi Prius; and if it could, the answer is, that the Landlord's right to re-enter, which is said not to have been enforced in proper time, was postponed by agreement of the parties.

Taunton J. I am of the same opinion. The order of Nisi Prius did not supersede the notice, but only enlarged the time and suspended the right of re-entry.

Patteson J. The notice to repair may be connected with the agreement at Nisi Prius in

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the first ejection. The other point is
mere matter of irregularity".

The situation there was described as a postponement of the right to re-enter by agreement of the parties, the only point of distinction being that it was an agreement made before the right had arisen. I do not think that it is of any consequence that in the present case agreements may have been made both before and after the accrual of the right. I think it would be carrying the effect of the authorities on the subject of waiver too far, to hold that the law will presume an intention in the landlord to waive, once and for all, a right of forfeiture, when the only basis for such a presumption is an agreement which itself connotes a contrary intention. It is true that the decision in Doe D. Rankin v. Brindley (supra) was questioned by James L.J. in Ex parte Newitt. In re Garrud (1880) 16 Ch.D.522 at p.531; but I think that even in that case the possibility of an effective agreement for an extension of time for completion of a building was not ruled out - as when James L.J. said, in the course of the argument, at p.528:-

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"If the day for completion had passed, and then, with the knowledge and acquiescence of the landowner, the builder finished the houses, could the landowner seize the materials? No new day being appointed for completion, how does the default continue?"

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It was part of the submission of the advocate for the Appellant that there was waiver because the Respondent had permitted the Appellant to erect a godown upon the land in the belief that there would be no forfeiture. In Matthew v. Smallwood (supra). Parker J. said at p.786:-

"The right to re-enter is a legal right which, apart from release or abandonment or waiver, will exist, and can be exercised, at any time within the period fixed by the Statutes of Limitation; and if a Defendant in an action of ejection based upon that right of re-entry alleges a release or abandonment or waiver, logically speaking the onus ought to lie on him to shew the release or the abandonment or the waiver".

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This, however, must be read in the light of the decision in Marsden v. Sambell (1880) 43 L.T.120 in which it was held that the election to forfeit must

be made before the party against whom it is claimed is allowed to alter his position on the faith of the continuance of the lease. The advocate for the Appellant relied on Marsden v. Sambell (supra), but I am unable to agree that there are any circumstances which bring the present case within the principle there laid down. It is one thing to stand by while a lessee expends money upon a property which you have allowed or caused him to think will not be forfeited; it is quite another to inform him that there will be no forfeiture provided he remedies a breach of covenant by a certain date. That was the present case. For these reasons, in my judgment there was no waiver of a right of forfeiture in the present case, but rather a waiver of strict compliance with the requirements of a condition with regard to time. It is more akin to the position which frequently arises in commercial contracts, in relation to which Denning L.J. said in Charles Rickards Ltd. v. Oppenheim (1950) 1 K.B. 616 at p.625:-

"If the Defendant, as he did, led the Plaintiffs to believe that he would not insist upon the stipulation as to time, and that if they carried out the work, he would accept it, and they did it, he could not afterwards set up the stipulation as to the time against them. Whether it be called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he evinced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on, and was in fact acted on. He cannot afterwards go back on it".

The Respondent in the present case led the Appellant to believe that he would not insist upon the stipulation as to time, but only within limit which he specified. In law there is nothing which will imply waiver of a forfeiture from the fact that a landlord merely stands by after a breach of covenant; a positive act is required. I know of no authority which indicates that he may not, without waiving the forfeiture, state that he would stand by and not exercise his option to forfeit provided the lessee did certain things by a certain time. If that promise is acted upon, and the landlord, in the words of Denning L.J. "cannot afterwards go back on it", I think that the tenant must be equally

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bound by his express or implied acceptance of the promise.

In my opinion the submission based on waiver fails. Ground 5 of the Memorandum of Appeal reads:-

"5. The learned judge erred in holding that Section 14(1) of the Conveyancing Act 1881 was not applicable in Tanganyika to termination of rights of occupancy for breach of a covenant or condition".

The learned trial Judge rejected this ground on the basis that, in his opinion, Section 14(1) of the Conveyancing Act, 1881, does not apply to the termination of a right of occupancy for breach of a covenant or condition as not being consistent with the special provisions of the Tanganyika Land Ordinance. I prefer to express no opinion upon this question but to approach this ground of appeal from the point of view of the submission by Counsel for the Respondent that the Conveyancing Act, 1881, does not bind the Crown and that therefore no notice under Section 14(1) thereof was necessary. 10 20

This is a point upon which there appears to be singularly little direct authority. The case of Bashir v. Commissioner of Lands (1960) A.C.44, on appeal from a judgment of this Court in Commissioner for Lands v. Bashir (1958) E.A.45, was relied upon. It will first be convenient to quote, rather extensively, from the judgment of the learned President of this Court. He said, at p.57:-

"Having found that S.83 of the Crown Lands Ordinance does not apply to the breach of the building condition in the Respondent's grant, it is not necessary to decide the question of whether or not, in giving relief against forfeiture for breach of lessee's covenants under S.83, a Court should be guided by the principles of English law set out in S.14 of the Conveyancing Act, 1881. However, as the question has been fully argued and may arise in future if a court is asked to relieve against forfeiture for breach of a lessee's covenant, e.g. a covenant contained in a Crown Lease executed before 1919, perhaps I should state my opinion on it". 30 40

The relevant portion of Section 83, to which the learned President refers, reads:-

"In exercising the power of granting relief

against forfeiture under this section the Court shall be guided by the principles of English law and the doctrines of equity".

The judgment continues, at p.58:-

"Hitherto it has been assumed (and it was so held in Hassanali Dedhar's case) that the principles of English law by which the Court was to be guided in granting relief were the principles set out in S.14(2) of the Conveyancing Act, 1881, that is to say that the Court might grant or refuse relief, as the Court having regard to the proceedings and conduct of the parties under the foregoing provisions of S.14 and to all the other circumstances thought fit, and might grant relief on terms as set out in the sub-section. But it has now been contended for the Appellant that, as the Conveyancing Act, 1881, does not bind the Crown in England, those principles are inapplicable here. The result of this would be that the Court could not relieve against forfeiture for breach of a lessee's covenant except in cases where relief could be granted apart from the Conveyancing Act, 1881, i.e. relief for non-payment of rent, failure to insure and rare cases of accident or surprise. The question is how are the words 'the principles of English law' to be construed. In this context they are far from plain. I am unable to believe that it was the intention of the legislature in 1915 to continue to empower the court in the main enacting part of the section to give relief on such terms as might appear just and then, by an additional paragraph in this form, so to restrict the Court's powers as to prevent it doing justice. All the above-mentioned cases in which relief could be granted apart from the Conveyancing Act, 1881, (except perhaps failure to insure) could be relieved against under the 'doctrines of equity' without invoking any of the 'principles of English law', so that the interpretation contended for would give no meaning, or next to no meaning to the words 'the principles of English law'. And, as the doctrines of equity would apply in any event, without the 1915 addition to the section, that addition, if construed as the Crown contends, would have been unnecessary. Moreover, such a restriction as is suggested would

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be repugnant to the main enacting part of the section the object of which clearly is to permit relief upon such terms as may appear just. I have no doubt that the intention was to direct that the Supreme Court in granting relief against forfeiture for breach of less-ee's covenants in Crown leases should be guided by the principles of English law as between subject and subject and the doctrines of equity, and that if the legislature had intended to exclude the operation of S.14(2) of the Conveyancing Act, 1881 (which was the main provision of English law governing relief against forfeiture for breach of covenants in leases, though not, it is true, in Crown leases) they would have said so in plain terms. To give effect to the Crown's contention would, in my view, be to offend against various canons of construction of statutes. It would be to defeat the manifest object of the legislature, to render certain words in the section nugatory, and to permit the 1915 addition, which though not in form a proviso, is somewhat similar to a proviso, to control the main enacting part of the section. I would, therefore, reject this contention".

As the learned President said, this finding did not constitute an essential part of his judgment but as the Privy Council reversed the decision of this Court in other respects, it became an essential part of the judgment of their Lordships, who said (1960 A.C. 44, 62):-

"For the reasons given in the judgment of Sir Kenneth O'Connor P. (at pp.152 and 153 of the Record) their Lordships cannot accept the argument that the second paragraph of Section 83 does not import a reference to Section 14 of the Act of 1881 because that Act did not bind the Crown in England".

This does not constitute a finding that Section 14 of the Conveyancing Act, 1881, did not bind the Crown, but only that, by reason of the wording of Section 83 of the Crown Lands Ordinance (Cap.155 of the Laws of Kenya) "the principles upon which the English Courts exercised their power of granting relief as between subject and subject under the relevant English statute law" (p.61) were to be applied, although the Crown was a party. Nevertheless the words in the passage of the judgment of the learned President above set out, "though not,

it is true, in Crown leases", with reference to Section 14(2) of the Conveyancing Act, 1881, were apparently accepted by their Lordships, as they indicated no dissent from them. Had their Lordships been of the opinion that Section 14 of the Conveyancing Act, 1881 did bind the Crown they would no doubt have said so, and there would then have been no necessity for them to consider the argument dealt with by the learned President, or to adopt his reasons for not accepting it. I think, therefore, that their Lordships may justifiably be taken as being of the opinion that, in England, the Crown was not bound.

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The general rule concerning the applicability of statutes to the Crown is so universally accepted that it is unnecessary to quote authority for it. The Crown is not bound unless it is referred to directly or by necessary implication. It is a rule particularly applicable if the prerogative or (as here) the Crown's rights or property are involved. In the Conveyancing Act, 1881, the Crown is not named directly; so far as Section 14 is concerned the only factor which could possibly give rise to a "necessary implication" is the presence of Section 14(4), which reads:-

"(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any act of parliament".

Section 146(6) of the Law of Property Act, 1925 is in identical terms, and in the notes to that subsection in HALBURY'S STATUTES OF ENGLAND (2nd Edn.) Vol.20, p.747 are references to Section 99(7) of the same Act and Section 42(i) (iii) of the Settled Land Act, 1925. Each of those subsections contains a requirement that every lease contemplated by the respective sections shall contain a condition of re-entry on non-payment of rent. In the year 1881 similar provisions were contained in Section 18(7) of the Conveyancing Act, 1881, and Section 46 of the Settled Estates Act, 1877. In the fifth edition of CHITTY'S STATUTES, a note to Section 14(4) of the Conveyancing Act, 1881, refers to a number of private Acts and also to Section 27 of the Crown Lands Act, 1829, which requires leases under the Act to contain a proviso or condition for re-entry on non-payment of rent or non-observance or non-performance of covenants (see HALSBURY'S LAWS OF ENGLAND (1st Edn.) Vol.7, p.163). The note in

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CHITTY'S STATUTES adds:- "but quaere, whether the Crown is bound by this 4th sub-section not being expressly named". WOODFALL ON LANDLORD AND TENANT (25th Edn.) in note (c) on p.1006, calls attention to Section 13 of the Coal Act, 1938, as another example, but, with specific reference to the Crown Lands Act, 1927, which repealed and replaced (inter alia) Section 27 of the Crown Lands Act, 1829, the text book states:-

"The Crown not being named in the Law of Property Act, 1925, S.146 of that Act (see infra. Chap.18, Section 6(b)), which provides for relief against forfeiture for breach of covenant, would seem not to apply to any lease under the Crown Lands Act". 10

(See note (g) p.103 and note (c) p.1006). I am, with all respect to the learned editors of the text book, rather at a loss to understand the statement that the Crown is not named in the Law of Property Act, 1925, as it is clearly named and its position defined in Section 208. It is possible that the note has been handed down from earlier editions in which the reference was to the Conveyancing Act, 1881. At the same time I think that the note indicates an opinion that the existence of Section 146(6) of the Law of Property Act, 1925, does not of itself create a necessary implication that the Crown is bound by the section. That opinion may justifiably be applied to Section 14(4) of the Conveyancing Act, 1881. 20

The decision of the Privy Council in Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58 can be referred to with advantage. One aspect of the judgment is most concisely expressed in the headnote, at p.59, as follows:-

"To hold that the Crown is bound 'by necessary implication' if it can be shown that the legislation cannot operate with reasonable efficiency unless the Crown is bound, is to whittle down the general principle and is unsupported by authority". 40

In the judgment (at p.63) the following passages relate to an argument based on statutes said to be passed "for the public good":-

"Every statute must be supposed to be 'for the public good,' at least in intention, and even when, as in the present case, it is apparent that one object of the legislature is to

promote the welfare and convenience of a large body of the King's subjects by giving extensive powers to a local authority, it cannot be said, consistently with the decided cases, that the Crown is necessarily bound by the enactment"

10 "Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the Court is asked to draw this inference, it must always be remembered
20 that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words".

I think that both of these passages are applicable to the present case. There is no question of the legislation being unable to operate with reasonable efficiency unless the Crown is bound, or of its purpose being wholly, or even in part, frustrated. The only argument which could be relied upon in support of a submission that the Crown
30 should be bound by Section 14 of the Conveyancing Act, 1881, is that such Crown leases as were governed by Section 27 of the Crown Lands Act, 1829, would contain a proviso or stipulation of the nature referred in Section 14(4) of the Conveyancing Act. This in my view is not sufficient. In every case in which the question whether the Crown is bound by a particular enactment is considered, there must be scope for the operation of the enactment against the Crown otherwise the question would
40 not arise. There is clearly room for the operation of Section 14(4) apart from the Crown Lands Act, 1829, even though the operation of Section 14(4) in relation to the other enactments mentioned in HALSBURY'S STATUTES and CHITTY'S STATUTES (detailed above) may be limited by the operation of Section 14(8) which provides that the section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent. In my judgment therefore, the Crown is not bound by
50 Section 14 of the Conveyancing Act, 1881.

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It is next necessary to ascertain the effect of this in relation to the law of Tanganyika. I have already set out Section 2 of the Land (Law of Property and Conveyancing) Ordinance which applies to the territory the general English law relating to conveyancing in force on the 1st January, 1922. It is common ground that, by virtue of that Ordinance, Section 14 of the Conveyancing Act, 1881, is in force in Tanganyika between subject and subject. It is argued for the Respondent that the same Ordinance also imports the law that Section 14 aforesaid is not binding on the Crown in England, and therefore does not bind the Crown in Tanganyika. Against this submission Counsel for the Appellant advanced two arguments. First he submitted that the position of the Crown in a trusteeship territory was different from its position in a colony. Counsel did not enlarge upon this to show why such a difference, if it exists, should extend to deprive the Crown of its prerogative or make it any less the fount of legislation. No authority was quoted and I think that I need none for rejecting the submission as one without merit. Under Article 4 of the Trusteeship Agreement (Vol.V of the Laws of Tanganyika 1947 at p.2) the Administering Authority is responsible for the peace, order and good government (inter alia) of the territory, and by Article 5 has full powers of legislation administration and jurisdiction. The administering Authority is "His Majesty" - Article 2. The jurisdiction, legislative and administrative authority has been exercised by various Orders in Council and Royal Instructions as in the case of a colony. In my view where the Crown is actually exercising under the Foreign Jurisdiction Act, 1890, full legislative authority in a territory, its traditional position with regard to that legislation is not altered by the fact that it has assumed responsibility for that legislation by agreement with an international organization.

Counsel's second argument was based upon the decision in Bashir v. Commissioner of Lands (supra) which indicated that the Crown in Kenya was bound by Section 14(2) of the Conveyancing Act, 1881. I have already quoted the relevant passages from the judgment of their Lordships of the Privy Council and of the learned President of this Court. They indicate clearly that the question depended entirely upon the interpretation of Section 83 of the Crown

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Lands Ordinance (Cap.155 of the Laws of Kenya, 1948) in the context of an Ordinance dealing specifically with Crown leases. It was held that the intention of Section 83 was to import the English law as between subject and subject, into the law of Kenya relating to Crown leases. There is no parallel in the present case. The Land (Law of Property and Conveyancing) Ordinance of Tanganyika does not deal with Crown leases but, on the contrary, is in perfectly general terms. There are no inferences to be drawn from Section 2 thereof, such as were drawn from Section 83 of the Kenya Crown Lands Ordinance. Section 2 imports a body of law which includes the law that the Crown is not bound by Section 14 of the Conveyancing Act, 1881; it follows that in my judgment the Respondent was not bound to give the notice required by Section 14(1) of that Act. I have not found it necessary to consider whether the Land (Law of Property and Conveyancing) Ordinance, itself binds the Crown in Tanganyika; the resolution of that question is not essential, in view of the opinions on the law that I have expressed.

For the reasons I have given the appeal cannot in my opinion succeed. I note however that in a letter dated the 27th March, 1958, from the Department of Lands and Surveys, it was stated to be the intention of the Government, after re-allocation of the plot, to account to the Appellant for the value of the buildings. The effect of this decision may not, therefore, be so burdensome upon the Appellant as it might seem at first sight.

I would dismiss the appeal with costs.

DATED at Dar-es-Salaam this 15th day of December, 1960.

T.J. GOULD,
JUSTICE OF APPEAL.

(b) FORBES, V-P.

I am in agreement with the judgment which has just been read, but wish to add a few words in regard to Ground 4 of the Memorandum of Appeal, as I have found it far from easy to reach a conclusion upon that ground.

Paragraph 2 of the Certificate of Occupancy, which is set out in the judgment of Gould, J.A., contains three building conditions related to time,

In the Court
of Appeal for
Eastern Africa.

No.15.

Judgments of
the Court of
Appeal.

(a) Gould, J.A.

15th December,
1960

- continued.

(b) Forbes, V-P.

15th December,
1960.

In the Court
of Appeal for
Eastern Africa.

No.15.

Judgments of
the Court of
Appeal.

(b) Forbes, V-P.

15th December,

1960

- continued.

that is to say sub-paragraph (ii), which requires the submission of plans and specifications to the Township Authority within six months from the date of commencement of the right of occupancy; sub-paragraph (iii), which requires that building operations be commenced within three months from the date of notification by the Township Authority of approval of the plans and specifications; and sub-paragraph (iv), which requires the buildings to be completed within a period of twenty-four months from the date of the commencement of the right of occupancy.

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As regards sub-paragraph (ii), the six months limitation for the submission of plans was apparently never insisted upon, and can only be regarded as having been waived. Fresh plans and specifications were submitted by the Appellants from time to time for approval, and no objection was taken by the Respondent to the approval of such plans and specifications by the Township Authority. The last of such plans and specifications were approved by the Township Authority on 15th February, 1956.

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As regards sub-paragraph (iii), I can see nothing in the correspondence or conduct of the parties which amounts to a waiver of the condition that building operations must be commenced within three months after approval of the plans and specifications by the Township Authority; and I have no doubt that the condition relates to the main building to be erected, that is the shops and flats. As I have mentioned, the last plans and specifications were approved by the Township Authority on 15th February, 1956, and the approval was notified to the Appellant's agents on the same date. In fact building operations on the shops and flats were not commenced within the three month period, or at all apparently, and it seems to me that there was therefore a clear breach of this condition which would have justified revocation of the certificate of occupancy. The certificate of occupancy was not, however, revoked on the ground of breach of this condition, but expressly on the ground of breach of condition 2(iv), and accordingly I think that the Respondent, for the purposes of this case, is restricted to reliance on the alleged breach of condition 2(iv). If there has been a waiver of that condition, then I think the appeal ought to succeed.

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So far as the law is concerned I do not think there is any doubt, and the difficulty arises from the application of the law to the facts of this

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case. The law is concisely stated in the passage from the judgment of the learned President of this Court in Diwan Singh v. The Commissioner of Lands (1958) E.A. 367 which is set out in the judgment of Gould, J.A., and which I repeat here:

"It seems that a waiver of a Lessor's right to re-enter may arise from the doing by the Lessor, with knowledge of the facts upon which his right to re-enter arises, of some unequivocal act recognising the continued existence of the lease, notwithstanding that the Lessor's actual intention may not be to effectuate a waiver. Once the unequivocal act is done, with knowledge, the law presumes an intention to waive the forfeiture: Matthews v. Smallwood: Davenport v. R. (1877) 3 App.Cas. 115, 131, 132; Bevan v. Barnett (1897), 13 T.L.R. 310".

It is also, I think, settled law that there cannot be a waiver, otherwise than by an instrument of the same nature as that by which the contract was created, before a breach has occurred (WOODFALL ON LANDLORD AND TENANT, 25th Ed., p.591; West v. Blakeway (1841) 2 Man. & G. 729, 752; 133 E.R.940, 949); though a promise may be made which is legally binding on a lessor if it is intended to be acted upon and is actually acted upon (Central London Property Trust Ltd. v. High Trees House Ltd. (1947) K.B. 130; Lyle-Miller v. A.Lewis & Co. (Westminster) Ltd. (1956) 1 ALL E.R.247). Further, I think it is settled law that merely standing by and seeing the lessee committing a breach of covenant does not operate as a waiver on the part of the Lessor (WOODFALL ON LANDLORD AND TENANT, 25th Ed., p.592; Perry v. Davis (1858) 3 C.B. (N.S.) 769; 140 E.R. 945).

Were it not for the express statutory provision, contained in Section 11 of the Land Ordinance, that acceptance of rent shall not be held to operate as a waiver by the Governor of any forfeiture accruing by reason of the breach of any covenant or condition in any certificate of occupancy granted under the Ordinance, I would have no doubt that, on the authority of Matthews v. Smallwood (1910) 1 Ch.777, the continued acceptance of rent after the right of re-entry arose must, in the circumstances of this case, have constituted a waiver of the breach of condition 2(iv), and that it was immaterial that the Respondent intended to reserve his right of re-entry. Since, however, by virtue

In the Court
of Appeal for
Eastern Africa.

No.15.

Judgments of
the Court of
Appeal.
(b) Forbes, V-P.

15th December,
1960

- continued.

In the Court
of Appeal for
Eastern Africa.

No.15.

Judgments of
the Court of
Appeal
(b) Forbes, V-P.
15th December,
1960
- continued.

of Section 11 of the Land Ordinance the acceptance of rent does not have this effect, the question is, has the Respondent done any other unequivocal act recognising the continued existence of the right of occupancy.

The Respondent's letter of 24th February, 1954, was written before a breach of Condition 2(iv) had in fact occurred and cannot, in my opinion, operate as a waiver of the prospective breach; though the implied promise in that letter not to enforce forfeiture if the buildings were completed within a reasonable time may, on the basis of the decision in Central London Property Trust Ltd. v. High Trees House Ltd. (supra) have been legally enforceable.

On 4th April, 1954, the Appellant was in breach of Condition 2(iv). On 26th January, 1955, 23rd August 1955 and 21st November, 1955, letters (the full text of which are set out in the judgment of Gould, J.A.) were written by the Respondent promising, in effect, not to enforce forfeiture of the right of occupancy if the buildings were completed within further specified periods. Was the sending of any of such letters an unequivocal act recognising the continued existence of the right of occupancy? In my opinion it was not. Each of those letters appears to me to be no more than a promise (which may well have been legally enforceable) to stand by and not take action to enforce forfeiture for a limited time. Since the continued acceptance of rent does not operate as a waiver of the breach, I cannot see that the mere promise to stand by and not enforce the forfeiture for a limited time is such an unequivocal act of recognition of the continued existence of the right of occupancy as would amount to a waiver of the breach. The position seems somewhat similar to one in which, in a territory where the ordinary rule as to waiver by receipt of rent applies, a lessor after breach refused rent, but undertook to stand by for a limited period to enable the breach to be remedied. I know of no authority covering such a situation, but it seems to me that in such case the Lessor's act would not amount to waiver of the breach.

I accordingly agree that there has not, in this case, been a waiver of the right of forfeiture which accrued on 4th April, 1954.

The appeal is dismissed with costs.

DATED at Dar-es-Salaam this 15th day of December, 1960.

A.G. FORBES,
VICE-PRESIDENT.

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(c) CRAWSHAW, J.A.

I have had the advantage of reading the judgment of the learned Justice of Appeal, with which I entirely concur.

I associate myself with his view that the extensions of time granted by the Respondent did not constitute waiver, and were no more than agreements to withhold the exercise of the right of forfeiture on conditions. The right was not lost by the Respondent allowing the Appellant to build the godown. The godown was a building ancillary to the main building to be erected, and was included in the approved plans. It was merely that, of the buildings to be erected by the Appellant, the Appellant decided to construct the godown first. At the time the godown was constructed there was no question of forfeiture provided the buildings as a whole were put up within the time allowed, of which the Appellant was well aware.

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Dated at Dar-es-Salaam this 15th day of December, 1960.

E.D.W. CRAWSHAW.
JUSTICE OF APPEAL.

DELIVERED by the Deputy Registrar, E.A.C.A., Dar-es-Salaam.

I certify that this is a true copy of the original.

Sgd:
for REGISTRAR.
11.1.61.

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H.M.COURT OF APPEAL
FOR EASTERN AFRICA.

No. 16.

ORDER DISMISSING APPEAL.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT DAR-ES-SALAAM
CIVIL APPEAL NO.67 of 1960.

BETWEEN:- PREMCHAND NATHU & CO. LTD. Appellant
- and -
THE LAND OFFICER Respondent

In the Court
of Appeal for
Eastern Africa.

No.15.

Judgments of
the Court of
Appeal.
(c) Crawshaw,
J.A.

15th December,
1960.

No.16.

Order dismissing
Appeal.

15th December,
1960.

In the Court
of Appeal for
Eastern Africa.

No.16.

Order
dismissing
Appeal.
15th December,
1960
- continued.

Appeal from a decree of Her Majesty's High
Court of Tanganyika at Moshi (R.H. Murphy,
J.) dated the Eighth day of June, 1960 in
Arusha District Registry Civil Case No.18
of 1959

Between:- The Land Officer Plaintiff
- and -
Premchand Nathu & Co. Ltd. Defendant

ORDER

THIS APPEAL coming on this 25th day of Octo- 10
ber, 1960 for hearing before Sir Alastair Forbes,
Vice President, T.J. Gould, Justice of Appeal, and
E.D.W. Crawshaw, Justice of Appeal, the Appellants
being represented by A.Reid of Messrs. Reid and
Edmonds, Advocates, Moshi, and the Respondent be-
ing represented by W.R. Wickham, Crown Counsel;
and the same was stood over for judgment and upon
the same coming up this day for judgment which was
delivered by the Deputy Registrar of this Court at
Dar-es-Salaam in the presence of Counsel for the 20
Appellant and for the Respondent.

IT IS HEREBY ORDERED that :-

- (a) The Appeal by the Appellants be dismissed.
- (b) The Respondent's costs of this appeal be paid
by the Appellants.

GIVEN under my hand and the seal of the Court
this 15th day of December, 1960.

M.J.R. Coakley,
ACTING DEPUTY REGISTRAR,
H.M. COURT OF APPEAL FOR
EASTERN AFRICA.

Issued and Signed
23/1/61

H.M. COURT OF APPEAL FOR
EASTERN AFRICA.

No. 17.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

In the Court
of Appeal for
Eastern Africa.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT DAR-ES-SALAAM

No.17.

CIVIL APPLICATION NO.5 of 1961 (P.C.)
IN THE MATTER OF AN INTENDED APPEAL TO
HER MAJESTY IN COUNCIL

Order granting
Final leave to
Appeal to Her
Majesty in
Council.

BETWEEN:- PREMCHAND NATHU & CO. LTD. Applicant

14th June, 1961.

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- and -

THE LAND OFFICER Respondent

(Intended Appeal from the Judgment and Order
of Her Majesty's Court of Appeal for Eastern
Africa at Nairobi dated 15th December, 1960,
in

Civil Appeal No.67 of 1960

Between:- Premchand Nathu & Co., Ltd. Appellant

- and -

The Land Officer Respondent)

In Chambers This 14th day of June, 1961

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Before the Honourable Mr. Justice E.J.E. Law.

ORDER

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UPON the Application presented to this Court
on the 9th day of June, 1961 by Counsel for the
above-named Applicant for final leave to appeal to
Her Majesty in Council AND UPON READING the Affi-
davit of Alexander Reid of Moshi, Advocate, sworn
on the Eighth day of June 1961 in support thereof
and the annexure marked "A" referred to therein
AND UPON HEARING Counsel for the Applicant and the
Respondent, THIS COURT DOTH ORDER that the Applica-
tion for final leave to Her Majesty in Council be
and is hereby granted AND DOTH DIRECT that the rec-
ord, including this Order, be despatched to the
Registrar of the Privy Council within 14 days from
the date of this Order AND DOTH FURTHER ORDER that
the costs of this Application do abide the result
of the Appeal.

GIVEN under my hand and the Seal of the Court
at Dar-es-Salaam the 14th day of June, 1961.

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Issued & Signed
21/6/61.

Sgd: R. MacKay
DEPUTY REGISTRAR,
H.M.COURT OF APPEAL
FOR EASTERN AFRICA.

ExhibitsE X H I B I T S

4.
Defendant
Offer of Right
of Occupancy.
18th March,
1952.

EXHIBIT 4 - OFFER OF A RIGHT OF OCCUPANCY

L.M.P.No.2118/VIII.

Land Form No.26.

DEPARTMENT OF LANDS AND MINES,
DAR-ES-SALAAM

18th March, 1952.

The Land Ordinance (Cap.113 of the Laws)

To: Messrs. Premchand Nathu & Co., Ltd.,
P.O. Box 86, Moshi.

Plot No.57, Commercial and Light Industrial Area,
Moshi Township.

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Your tender in respect of the above plot has been accepted and I am directed by His Excellency the Governor to offer to you a Right of Occupancy over the said plot subject to the terms and conditions contained herein and in the Special Conditions annexed hereto.

2. This offer is subject to the land referred to being found available on survey, the final demarcation of boundaries being determined by Government.

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3. If you accept this offer you should forthwith pay one year's rent, the premium tendered and also the amounts of such premium for unexhausted improvements (if any) and deposit on account of stamp duty and fees for survey and for preparation and registration of title deeds as may be specified in the Schedule hereto, and the balance (if any) of the amount payable over and above the fees for survey and title including stamp duty shall be paid by you on demand. Should there be any default in making any such payments, this agreement for sale of a Right of Occupancy may be forthwith annulled, in which event you will not be entitled to any refund of any sum already paid by you under this condition.

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The Schedule hereinbefore referred to:

Plot No.	Approximate area sq. ft.	Rent per annum Shs.	Premium tendered Shs.	Deposit for fees and stamp duty Shs.	Value of Buildings to be erected Shs.
57	10,872	435/-	10,000/-	484/-	60,000/-

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SPECIAL CONDITIONSExhibits

1. Term: Ninety-nine years commencing from the date of acceptance of Offer.

4.

Defendant

2. Rent shall be payable yearly in advance and shall be subject to revision by the Governor after the expiration of twenty years from the date of commencement of the Right of Occupancy (and shall also be subject to revision or further revision after the expiration of every subsequent period of twenty years throughout the term of the Right of Occupancy) provided that such revision may take place only within five years after the above-mentioned revision date(s).

Offer of Right
of Occupancy.18th March,
1952

- continued.

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3. The occupier undertakes:-

(i) To erect buildings on the plot of a value not less than that specified in the Schedule to the Offer.

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(ii) Within a period of six months from the date of commencement of the Right of Occupancy to submit to the Township Authority, Moshi, (hereinafter referred to as "the said Authority") such plans of the proposed buildings (including block plans showing the position of the buildings) drawings, elevations and specifications thereof as will satisfy the said Authority and as will ensure compliance with the building covenant contained in sub-paragraph (i) supra. Such plans and specifications shall be submitted in triplicate.

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(iii) To commence building operations within a period of three months from the date of notification by the said Authority, of approval of the plans and specifications, such buildings to conform to a building line decided upon by the said Authority.

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(iv) To complete the buildings according to the said plans and specifications so that the said buildings are ready for use and occupation within a period of twenty-four months from the date of commencement of the Right of Occupancy.

(v) At all times after the expiration of the period mentioned in the last preceding sub-paragraph to have on the land approved buildings of the type and specifications hereinbefore referred to and to maintain

Exhibits

4.

Defendant
Offer of Right
of Occupancy.
18th March,
1952
- continued.

the same in good order and repair to the satisfaction of the said Authority.

(vi) Not to erect nor commence to erect on the plot any building of any kind whatsoever except in accordance with building plans and specifications which shall have been approved by the said Authority as hereinbefore provided.

4. No transfer of the Right of Occupancy will receive consent until the foregoing covenants have been complied with except in special circumstances of which the Governor shall be the sole judge.

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5. The occupier shall not any time sub-divide the plot nor assign, sublet nor otherwise dispose of any portion of the said plot nor any of the buildings to be erected thereon without the previous consent of the Governor.

ADDITIONAL SPECIAL CONDITIONS

6. Only one main building together with such outbuildings as are commonly a usual and necessary appurtenance thereto shall be erected on the plot and the said main building shall be used solely for commercial and residential purposes.

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7. Failure to comply with any of the terms or conditions herein contained will be deemed to constitute good cause for revocation of this Right of Occupancy.

8. The Right of Occupancy is subject to the provisions of the Land Ordinance (Cap.113 of the Laws) and the regulations thereunder and any enactment in substitution therefor or amendment thereof.

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18th March, 1952.

Sgd: E.T.Haywood.
Land Officer.

Acceptance of
Right of
Occupancy.
4th April,
1952.

ACCEPTANCE OF A RIGHT OF OCCUPANCY

We, Premchand Nathu and Company Limited accept a Right of Occupancy over the plot of land referred to in the above Schedule upon the terms and conditions set out in the foregoing Offer and in the

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Special Conditions annexed hereto (which have been explained to us) at an annual rent of Shs.435/-.

Dated this 4th day of April, 1952.

Signature: Nanalal D. Shah.
for and on behalf of
PREMCHAND NATHU & CO. LTD.
Director.

Exhibits

4.

Defendant.

Acceptance of
Right of
Occupancy.

4th April, 1952
- continued.

ANNEXURE "A" TO PLAINT - CERTIFICATE OF OCCUPANCY.

10 TITLE NO.8555 L.O.No.13014
REGISTERED 12.9.52 M.P.No.33150
at 3.30 p.m. Land Registry Tanganyika.

Sgd: L.D. Jeffries.
Asst. Registrar Tanganyika
of Titles. Territory.

Stamp Duty
Shillings 212/-
paid and Revenue
Receipt No.19740
of 5.4.52.
Sgd: L.D. Jeffries.
Asst. Registrar -
General.

Annexure "A"
to Plaintiff.

Certificate of
Occupancy.

12th September,
1952.

20 The Twelfth day of September,
Nineteen hundred and fifty-two

Title No.8555

30 THIS IS TO CERTIFY that PREMCHAND NATHU AND
COMPANY LIMITED, a Limited liability Company regis-
tered in Tanganyika and having its registered off-
ice at Mombasa, Kenya Colony (hereinafter called
"the Occupier") is entitled to a Right of Occupancy
in and over the land described in the Schedule
hereto (hereinafter called "the said land") and
more particularly delineated on the plan annexed
hereto for a term of Ninety-nine years from the
Fourth day of April Nineteen hundred and fifty-two
according to the true intent and meaning of the
Land Ordinance and subject to the provisions there-
of and to any regulations made thereunder and any
enactment in substitution therefor or amendment
thereof and to the following special terms and con-
ditions, viz:-

1. The Occupier shall pay during the said term

Exhibits
Annexure "A"
to Plaintiff.
Certificate of
Occupancy.
12th September,
1952
- continued.

the rent of Shillings Four hundred and thirty-five (Shs.435/-) to be paid yearly in advance without any deduction on the Fourth day of April in each year during the said term PROVIDED ALWAYS that the said rent shall be subject to revision by the Governor after the expiration of Twenty years from the date of commencement of the said Right of Occupancy and shall also be subject to revision or further revision after the expiration of every subsequent period of Twenty years throughout the term of the said Right of Occupancy provided that such revision may take place only within five years after the above-mentioned revision dates.

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2. The Occupier undertakes:-

- (i) To erect buildings on the said land of a value of not less than Shillings Sixty thousand (Shs.60,000/-).
- (ii) Within a period of six months from the date of commencement of the said Right of Occupancy to submit to the Township Authority, Moshi, (hereinafter called "the said Authority") such plans of the proposed buildings (including block plans showing the position of the buildings) drawings elevations and specifications thereof as will satisfy the said Authority and as will ensure compliance with the building covenant contained in sub-paragraph (i) supra. Such plans and specifications shall be submitted in triplicate. 30
- (iii) To commence building operations within a period of Three months from the date of notification in writing by the said Authority of approval of the plans and specifications, such buildings to conform to a building line decided upon and notified by the said Authority.
- (iv) To complete the buildings according to the said plans and specifications so that the said buildings are ready for use and occupation within a period of Twenty-four months from the date of commencement of the said Right of Occupancy. 40
- (v) At all times after the expiration of the period mentioned in the last preceding sub-paragraph to have on the said land approved buildings of the type and specifications hereinbefore referred to and to

maintain the same in good order and repair to the satisfaction of the said Authority.

- (vi) Not to erect nor commence to erect on the said land any building of any kind whatsoever except in accordance with building plans and specifications which shall have been approved by the said Authority as hereinbefore provided.

Exhibits

Annexure "A"
to Plaint.
Certificate of
Occupancy.
12th September,
1952
- continued.

- 10 3. No transfer of the said Right of Occupancy will receive consent until the foregoing covenants have been complied with except in special circumstances of which the Governor shall be the sole judge.
- 4. The Occupier shall not at any time sub-divide the said land nor assign sublet or otherwise dispose of any portion thereof nor of any of the buildings to be erected thereon without the previous consent of the Governor.
- 20 5. Only one main building together with the usual and necessary outbuildings shall be erected on the said land and the said main building shall be used solely for commercial and residential purposes.
- 6. Failure to comply with any of the terms or conditions herein contained or implied will be deemed to constitute good cause for revocation of the said Right of Occupancy.

THE SCHEDULE HEREINBEFORE REFERRED TO:

30 ALL THAT piece or parcel of land known as Plot No.57, Commercial and Light-Industrial Plots situate in Moshi Township containing Ten thousand eight hundred and seventy two (10,872) square feet as delineated on Survey Plan No. ^{D4 87}₆₃₇₂ annexed hereto and thereon edged in red.

GIVEN under my hand and seal and by Order of the Governor the day and year first above written.

LAND OFFICER
TANGANYIKA TERRITORY.

Sgd: E.T.Haywood
LAND OFFICER.

40 The within-named PREMCHAND NATHU AND COMPANY LIMITED hereby accepts the terms and conditions

Exhibits
Annexure "A"
to Plaintiff.
Certificate of
Occupancy.
12th September,
1952
- continued.

contained in the foregoing Certificate of Occupancy.

THE COMMON SEAL of PREMCHAND
NATHU AND COMPANY LIMITED)
was affixed hereto in the
presence of: Prabhulal Dev-)
chand Shah and Narottam)
Premchand Shah who have also)
signed their names and who)
are able to read and write)
the language in which the)
within written document is)
written this 27th day of)
August 1952, in my presence:)

PREMCHAND NATHU &
CO., LTD.

Prabhulal D. Shah
Director

Narottam Premchand
Shah
Secretary.

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Stamp 2/-

Sgd: Chimanlal Patel,
NOTARY PUBLIC,
MOMBASA.

Annexure 'D1'
to Defence.

Letter,
Township
Authority
Building
Inspector to
Gedrych &
Abben.

11th March,
1953.

ANNEXURE 'D1' TO DEFENCE
LETTER, TOWNSHIP AUTHORITY BUILDING INSPECTOR TO
GEDRYCH & ABBEN.

Ref.No.T.A.16/9/13.

Messrs.T.D.Gedrych and Peer Abben,
Chartered and Registered Architects,
P.O. Box 154, Moshi.

Dear Sirs,

Your reference JN 317
Plot 57, Light Industrial Area,
Approved in Principle

With reference to your letter of the 5th in-
stant and plans of the proposed shops and flats on
the above plot, the Town Planning Officer has re-
quested that a decision be deferred pending con-
sideration of a design for the road junction in
front of this plot by the Authority, which I under-
stand may affect the plot.

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I am therefore retaining your plans and will
communicate with you again in due course.

Yours faithfully,
Sgd: W.E.Marshall
BUILDING INSPECTOR
TOWNSHIP AUTHORITY.

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WEM/SSL.

This is the letter Annexure 'D1' referred to in paragraph 5(b) in the annexed statement of defence in Civil Case No.18 of 1959, the Land Officer versus Premchand Nathu & Co., Limited.

Sgd: A. REID,
Advocate for Defendant.

Exhibits

Annexure 'D1' to Defence.
Letter, Township Authority Building Inspector to Gedrych & Abben.
11th March, 1953
- continued.

No. 3. - LETTER, TOWNSHIP AUTHORITY BUILDING INSPECTOR TO GEDRYCH & ABBEN

Defendant No.3.

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H. M. HIGH COURT OF TANGANYIKA
CIVIL CASE NO.18 of 1959
EXHIBIT NO. 3.
Put in by Defendant.

Letter, Township Authority Building Inspector to Gedrych & Abben.
24th September, 1953.

Date: 11/5/60. Sgd: R.H. Murphy, Judge.

Messrs. T.D. Gedrych & Peer Abben,
P.O. Box 154, Moshi.

T.A.16/9/20.

24th September 1953.

Dear Sirs,

20

Your Reference JN.317
Plot 57 Light Industrial Area

I have to inform you that your plans of shops and flats on the above plot has been approved in principle, subject to the building not obstructing light and ventilation of buildings on adjoining plots.

The Health Inspector also presumes that roof lighting will be given to the narrow passages shown in the flats (first floor).

30

Yours faithfully,
W.E. MARSHALL,
BUILDING INSPECTOR
TOWNSHIP AUTHORITY.

Exhibits
Plaintiff
 'B1'
 Letter, Acting
 Land Officer to
 Appellant.
 24th February,
 1954.

B.1. - LETTER, ACTING LAND OFFICER TO APPELLANT

Exhibit 'B1'
 Put in by Plaintiff.

DEPARTMENT OF LANDS
 AND SURVEYS,
 DAR-ES-SALAAM,
 TANGANYIKA.

No.33150/28/AJD.

24th February, 1954

Messrs. Premchand Nathu & Co., Ltd.,
 P.O.Box 86, Moshi.

Sirs,

L.O. No.13014 - Plot 57 Commercial and
 Light Industrial Area, Moshi Township.

10

I have the honour to refer to my letter No. 33150/20/AAK of the 16th March 1953, and to draw your attention to the fact that you have failed to comply with the Notice dated 6th November 1952, as amended by my above-quoted letter, in that although plans were submitted for approval in principle during September last, detailed drawings, as will satisfy the Township Authority, have not yet been submitted for approval.

20

2. I should be obliged if you would please let me know at your early convenience what action you are taking to ensure that satisfactory plans will be submitted to the Township Authority, and I must warn you that unless plans are submitted by the 30th March next I shall be obliged to submit the facts to Government with a recommendation that the Right of Occupancy be revoked.

I have the honour to be,
 Sirs,

30

Your obedient servant,

Sgd: A.J. DEADMAN,

For ACTING LAND OFFICER.

Copy to:-

Executive Officer,
 Township Authority, Moshi.

Reference your No.T.A.16/9/28
 Dated 16.2.54.

BG.

LETTER, ACTING LAND OFFICER TO APPELLANTExhibits

33150/32. AJD.

11th March, 1954

Messrs. Premchand Nathu & Co., Ltd.,
P.O. Box 86, Moshi.Letter,
Acting Land
Officer to
Appellant.

Sirs,

L.O. No.13014 - Plot 57 Commercial and
Light Industrial Area, Moshi Township.11th March,
1954.

10 I have the honour to refer to the letter No.
JH/317 dated 2nd March 1954, addressed to me by
Messrs. T.D. Gedrych & Peer Abben, with copy to
you, and to inform you that the date by which you
are required to remedy the breach of Condition
2(ii) of the above Right of Occupancy, as mentioned
in the final paragraph of the Notice dated 6th No-
vember 1952, is hereby extended to the 30th April
1954. Please understand that this extension is
final, and unless satisfactory plans have been
submitted to and approved by the Township Authority,
20 Moshi, on or before that date the Right of Occu-
pancy will be revoked.

I have the honour to be,
Sirs,
Your obedient servant,
(Sgd.) A.J. DEADMAN,
For ACTING LAND OFFICER.

Copy to:-

Messrs. T.D. Gedrych & Peer Abben,
P.O. Box 154, Moshi.

30 Executive Officer,
Township Authority,
Moshi.

Exhibits
Defendant
 No.7.
 Building
 Permit.
 3rd May, 1954.

No. 7. - BUILDING PERMIT

H. M. HIGH COURT OF TANGANYIKA
 CIVIL CASE NO.18 of 1959
 Exhibit No.7.
 Put in by Defendant.

Date: 11/5/60

Judge

TANGANYIKA.

T.A.FORM 2.

OFFICE OF THE TOWNSHIP AUTHORITY
 MOSHI.

Building Permit
 (The Township (Building) Rules, 1930)

10

Permission is hereby given to MESSRS. PREM-
 CHAND NATHU & CO. OF MOSHI to erect a building
 as a GO-DOWN AS PER APPROVED PLAN NO.17/54 on PLOT
 NO.57, COMM/LIGHT INDUSTRIAL AREA, MOSHI TOWN-
 SHIP in accordance with the plan attached hereto
 and with all conditions imposed by the above Rules.

3rd May, 1954.

Sgd: J. SOWERBY,
 Executive Officer.

N.B. - Your attention is invited to the Electricity 20
 Rules, 1932, which require you to notify the Dar-
 es-Salaam and District Supply Company, Limited, as
 well as the Electrical Engineer, General Post Off-
 ice, before commencing to erect a building should
 the electric wires in the street be accessible from
 any portion of such building when erected or from
 the scaffolding required during its construction.

Plaintiff

A1.
 Memo, Acting
 Land Officer
 to Township
 Authority.
 3rd May, 1954.

A1. - MEMO LAND OFFICER TO TOWNSHIP AUTHORITY

TOWNSHIP, MOSHI.

3rd May, 1954.

LAND SURVEY,
 DAR-ES-SALAAM.

Sgd: A.J. DEADMAN,
 For Ag. Land Officer.

30

33150/33.AJD.

L.O.No.13014, PLOT 57, COMMERCIAL AND LIGHT
 INDUSTRIAL AREA, MOSHI TOWNSHIP.

Reference my letter No.33150/32 A.JD dated
 11th March, 1954, addressed to Messrs. Premchand
 Nathu & Co., Ltd., with copy to you, will you
 please let me know if building plans in respect of
 the above plot have now been submitted to you for
 approval, and if they have been submitted and have
 been approved, the date on which the occupiers were
 notified of such approval. If plans have not been
 submitted may I have your recommendations please.

40

MEMO, TOWNSHIP AUTHORITY TO LANDSURVEYSExhibits

To: Landsurveys, Sgd: Executive Officer,
Dar-es-Salaam. Township Authority.
From: Township, Moshi. 6th May, 1954.
Saving No.T.A.16/9/40.

Memo,
Township
Authority to
Landsurveys.
6th May, 1954.

L.O.No.13014, Plot No.57, Commercial and
Light Industrial Area, Moshi Township.

10 Reference your Saving No.33150/33/AJD dated
3rd May, 1954, building plans have been submitted
in two stages, the first stage was approved on 3rd
May, 1954, and the occupier notified on that date.

Plans for the second stage are now in, and
are being considered by the Technical Officers.

Township.

6D - LETTER, GEDRYCH & ABBEN TO TOWNSHIP AUTHORITY

6D.

T.D.GEDRYCH & PEER ABBEN,
DIP.ARCH. A.R.I.B.A., M.A.A., D.A.L., K.S.,
CHARTERED AND REGISTERED ARCHITECTS.

Letter, Gedrych
& Abben to
Township
Authority.
18th May, 1954.

20 P.O.Box 265 P.O.Box 154 P.O.Box 6726
Phone: 314 Phone: 125 Phone: 22874
ARUSHA MOSHI NAIROBI,
TANGANYIKA TANGANYIKA. KENYA COLONY
TELEGRAMS:
GEDABB

Your Ref: MOSHI,
Our Ref: JN/317. 18th May, 1954

The Executive Officer,
Township Authority,
Moshi.

30 Dear Sir,

Go-down Plot 57Commercial & Light Industrial Area

Further to your letter T.A.16/9/30 dated 3rd
May, 1954 approving the drawings for the above (No.
17/54) please inform us if at a future date per-
mission is likely to be granted in principle to
first floor flats being built above the go-down.
The go-down as you are aware has been designed with
concrete roof of adequate strength to carry out this

Exhibits

6D.

Letter, Gedrych
& Abben to
Township
Authority.

18th May, 1954
- continued.

plan, but if permission is definitely unlikely to
be granted our client would obviously prefer to
employ a cheaper form of roofing.

Yours faithfully,
For T.D.GEDRYCH & PEER ABBEN,
Sgd: R.A. Hunt

Defendant

No.6.

Letter,
Township
Authority to
Gedrych & Abben.

19th May, 1954.

No.6. - LETTER, TOWNSHIP AUTHORITY
TO GEDRYCH & ABBEN

H. M. HIGH COURT OF TANGANYIKA
CIVIL CASE NO.18 of 1959
Exhibit No.6
Put in by Defendants

10

Date: 11/5/60 Judge

From: THE TOWNSHIP AUTHORITY,
Moshi, Northern Province.

To: Messrs.T.D.Gedrych and Peer Abben,
Chartered and Registered Architects,
P.O.Box 154, Moshi.

Ref.No.T.A.16/9/46

19th May, 1954

Dear Sirs,

20

Godown - Plot No.57, Comm/Light
Industrial Area - Moshi Township

Your reference No.JN/317 of 18th May, 1954,
would you please inform me if the foundations (as
designed by you) are of sufficient strength to
take an extra storey comprising of flats, and how
many flats do you envisage.

Sgd: J. SOWERBY,
EXECUTIVE OFFICER,
TOWNSHIP AUTHORITY.

30

No. 6C. - LETTER, GEDRYCH & ABBEN
TO TOWNSHIP AUTHORITY.

T.D. GEDRYCH & PEER ABBEN
Dip. Arch. A.R.I.B.A.
CHARTERED AND REGISTERED ARCHITECTS.

P.O.Box 265
Phone: 314
ARUSHA
TANGANYIKA.

P.O. Box 154
Phone: 125
MOSHI
TANGANYIKA.

P.O. Box 6726
Phone: 22874
NAIROBI
KENYA COLONY
TELEGRAMS:
GEDABB

Exhibits

No.6C.

Letter, Gedrych
& Abben to
Township
Authority.

20th May, 1954.

10 Your Ref:
Our Ref: JN/317

The Executive Officer,
Township Authority,
Moshi.

MOSHI,
20th May, 1954

Dear Sir,

Godown Plot No.57 Comm/Light
Industrial Area Shah Premchand Nathu.

20 In reply to your letter reference T.A.16/9/46
dated 19th May we confirm that the foundations are
of adequate strength to carry another storey.

The probable number of flats that could be
designed to give adequate light and ventilation is
two.

Yours faithfully,
For T.D.GEDRYCH & PEER ABBEN

Sgd: R.A. Hunt.

No.5 - LETTER, TOWNSHIP AUTHORITY TO GEDRYCH & ABBEN

H. M. HIGH COURT OF TANGANYIKA
CIVIL CASE NO. 18 of 1959
Exhibit No.5.

Put in by Defendants

Sgd: R.H.Murphy
Date: 11/5/60. Judge.

Defendant

No.5.

Letter,
Township
Authority to
Gedrych & Abben.

20th May, 1954.

30

From: THE TOWNSHIP AUTHORITY,
MOSHI, NORTHERN PROVINCE.

To: Messrs.T.D.Gedrych and Peer Abben,
Chartered and Registered Architects,
P.O.Box 154, Moshi.

Ref.No.T.A.16/9/48

20th May, 1954.

Exhibits
Defendant
No. 5.

Letter,
Township
Authority to
Gedrych & Abben.
20th May, 1954
- continued.

Dear Sirs,

Proposed Shops and Flats - Plot No.57,
Comm/Light Industrial Area - Moshi
Township.

Reference your JN/317 of 19th May, 1954 with plan enclosures for development of the above plot, I am to inform you that your plans are approved.

Enclosed please find:-

- (1) Approved plans
- (2) Building Permit
- (3) Progress slips.

10

Please arrange to have a test hole dug on the approximate site and to the approximate depth of the soakage pit and when completed arrange inspection by the Health Inspector.

The plot boundaries should also be clearly defined before building commences.

Sgd: J. SOWERBY,
EXECUTIVE OFFICER,
TOWNSHIP AUTHORITY.

Copy to: The Health Inspector,
Moshi.

20

No.6B.

Letter,
Township
Authority to
Gedrych & Abben.
21st May, 1954.

No.6B - LETTER, TOWNSHIP AUTHORITY
TO GEDRYCH & ABBEN.

From: The Township Authority,
Moshi, Northern Province.

To: Messrs.T.D.Gedrych and Peer Abben,
Chartered and Registered Architects,
P.O. Box 154, Moshi.

Ref: No.T.A.16/9/50.

21st May, 1954

Dear Sirs,

Plot 57, Comm/Light Industrial
Area, Moshi Township.

30

Further to your letter reference No.JN/317 dated 20th May, 1954, I find it difficult to state whether or not your proposal to construct two flats above the godown on the above plot would be approved in principle without a sketch plan showing the proposals, and would suggest your client

be informed that, if he wishes to proceed with the scheme, he should have a sketch plan prepared in order to enable the Authority to consider the scheme fully.

Sgd: J. SOWERBY
EXECUTIVE OFFICER,
TOWNSHIP AUTHORITY.

Exhibits

No.6B.

Letter,
Township
Authority to
Gedrych & Abben.
21st May, 1954
- continued.

No.A3. . - MEMO, ACTING LAND OFFICER TO
TOWNSHIP AUTHORITY

No.A3.

Memo, Acting
Land Officer
to Township
Authority.

2nd June, 1954.

10 TOWNSHIP, MOSHI. Sgd: A.J.DEADMAN
LANDSURVEY, DAR-ES-SALAAM for Ag. Land Officer
33150/35. AJD. 2nd June, 1954.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township.

Reference your Saving No.T.A.16/9/40 dated
6th May, 1954, please let me know if the building
plans in respect of the above Right of Occupancy
have now been approved and, if they have, the date
on which the occupiers were notified of such app-
roval.

20

No.A4. - MEMO, TOWNSHIP AUTHORITY TO LANDSURVEYS

No.A4.

To: LANDSURVEYS, DAR-ES-SALAAM Sgd: EXECUTIVE
From: TOWNSHIP, MOSHI. OFFICER,
Saving No.T.A.16/9/53. Township Authority.
7th June, 1954.

Memo,
Township
Authority to
Landsurveys.

7th June, 1954.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township.

Reference your Saving No.33150/35/AJD, dated
2nd June, 1954, building plans have been submitted
and the occupier notified of approval on 20th May,
1954.

30

TOWNSHIP.

Exhibits

No.A5.

Memo,
Acting Land
Officer to
Township
Authority.
25th August,
1954.

No.A5. - MEMO, ACTING LAND OFFICER TO
TOWNSHIP AUTHORITY

Township, Moshi. Sgd: A.J.DEADMAN,
Landsurvey, Dar-es-Salaam. For Land Officer.
33150/37/AJD. 25th August, 1954

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township.

Reference your Saving Telegram No.T.A.16/9/53,
dated 7th June, 1954, will you please let me know
if building operations have now commenced on the 10
above plot in accordance with the plans approved
on the 20th May, last, and if they have not, if
you recommend service of a notice.

No.A6.

Memo,
Township
Authority to
Landsurveys.
31st August,
1954.

No.A6. - MEMO, TOWNSHIP AUTHORITY TO
LANDSURVEYS.

To: Landsurveys, Dar-es-Salaam. Sgd: Executive
From: Township, Moshi. Officer,
Saving No.T.A.16/9/55. Township Authority
Date: 31/8/1954.

L.O.No.13014, Plot No.57, Commercial and Light 20
Industrial Area, Moshi Township

Your Saving No.33150/37/AJD dated 25th August,
1954, excavations for the foundations commenced
on 27th August, 1954, I would suggest a further
enquiry in a month's time.

TOWNSHIP.

No.A7.

Memo,
Landsurveys to
Township
Authority.
4th January,
1955.

No.A7. - MEMO, LANDSURVEYS TO TOWNSHIP AUTHORITY

TOWNSHIP, MOSHI. Sgd: A.J. DEADMAN,
LANDSURVEYS, DAR-ES-SALAAM For Land Officer.
33150/39/AJD. 4th January, 1955. 30

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township

With reference to your Saving No.T.A.16/9/55
of 31/8/54 please let me know if building operations
have now commenced on the above plot.

LANDSURVEY.

No.A8. - MEMO, TOWNSHIP AUTHORITY TO LANDSURVEYS

Exhibits

To: LANDSURVEYS, DAR-ES-SALAAM Sgd: Executive
From: TOWNSHIP, MOSHI. Officer
Saving No.T.A.16/9/58. Township Authority

No.A8.

Date: 11/1/1955

Memo,
Township
Authority to
Landsurveys.
11th January,
1955.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township

10 Reference your Saving No.33150/39/AJD dated
4th January, 1955, building has commenced on the
above plot. The godown at the rear of the plot is
nearing roof height but the shops and flats at
the front of the plot have not been commenced.

TOWNSHIP.

ANNEXURE D2 TO DEFENCE
LETTER, LAND OFFICER TO APPELLANT

Annexure D2 to
Defence.

Department of Lands and Surveys,
Private Bag, Dar-es-Salaam.

Letter,
Land Officer
to Appellant.

No.33150/41/AJD.

26th January, 1955.

REGISTERED.

26th January,
1955.

20 Messrs. Premchand Nathu & Co., Ltd.,
P.O.Box 86, Moshi.

Gentlemen,

L.O.No.13014 - Plot No.57, Commercial
and Light Industrial Area, Moshi Town-
ship.

30 I have the honour to address you on the sub-
ject of the above plot and to draw your attention
to the provisions of Condition 2(iv) of the Cer-
tificate of Occupancy, which requires that you
complete the erection of a building of a value of
not less than Shs.60,000/- on the said plot within
a period of twenty-four months from the date of
commencement of the Right of Occupancy, namely the
4th April, 1952. I am informed by the Executive
Officer, Township Authority, Moshi, that you have
not yet completed the erection of the building on
this plot, and you have therefore failed to comply
with, and committed a breach of the said condition.

2. I now write to inform you that unless the
building is completed in accordance with approved

Exhibits
Annexure D2
to Defence.
Letter,
Land Officer
to Appellant.
26th January,
1955
- continued.

plans and specifications by the 31st day of July next, I shall be obliged to submit the matter to the Governor with a recommendation that the said Right of Occupancy be revoked for good cause under Section 10 of the Land Ordinance.

I have the honour to be,
Gentlemen,
Your obedient servant,
Sgd: A.J.DEADMAN
For LAND OFFICER.

10

This is the letter Annexure "D2" referred to in paragraph 5(d) in the annexed statement of defence in Civil Case No.18 of 1959, the Land Officer versus Premchand Nathu & Co., Limited.

Sgd: A. PEID,
Advocate for Defendant.

No.A9.
Memo, Land
Officer to
Township
Authority.
5th August,
1955.

No.A9 .- MEMO, LAND OFFICER TO TOWNSHIP AUTHORITY
33150/42/AT. Dar-es-Salaam.
The Executive Officer, 5th August, 1955.
Township Authority,
MOSHI.
L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township

20

Reference your No.TA.16/9/58 of 11th January 1955.

Reference my letter No.33150/41/AJD of 26th January, 1955, addressed to Messrs. Premchand Nathu & Co., Ltd., P.O.Box 86, Moshi, with copy to you, please let me know if the buildings on the above plot have now been completed in accordance with approved plans and specifications. If the buildings have not been completed, may I please have your recommendations.

30

Sgd: A.T.TELLIS,
For Acting Land Officer.

MEMO, TOWNSHIP AUTHORITY TO LAND OFFICER.Exhibits

Ref.No.T.A.16/9/63.

Township Authority Office,
P.O.Box 318, Moshi.

11th August, 1955.

The Land Officer,
Department of Lands & Surveys,
Dar-es-Salaam.Memo,
Township
Authority to
Land Officer.
11th August,
1955.L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township

10 Reference your letter No.33150/42/AT of 5th August 1955, the Godown has been roofed and this part of the building is nearing completion but shops and flats included in the plan have not been commenced. In view of the fact that plans for shops and flats were approved in May, 1954, I recommend that a notice should now be served.

Sgd: EXECUTIVE OFFICER,
TOWNSHIP AUTHORITY.

LETTER, LAND OFFICER TO APPELLANT.

20 33150/44/AT 23rd August, 1955
Messrs. Premchand Nathu & Co., Ltd.,
P.O. Box 86, MOSHI.
Gentlemen,

Letter, Land
Officer to
Appellant.
23rd August,
1955.

L.O.No.13014, Plot No.57, Commercial
and Light Industrial Area, Moshi Township.

30 I have the honour to refer to my letter No. 33150/41/AJD of 26th January 1955, in which you were informed that unless the building was completed in accordance with approved plans and specifications by 31st July, 1955, I would be obliged to submit the matter to the Governor with a recommendation that the Right of Occupancy be revoked for good cause under Section 10 of the Land Ordinance.

40 2. I am informed by the Executive Officer, Township Authority, Moshi, that although the godown has been roofed and is nearing completion, the shops and flats included in the plan have not been commenced. I understand that plans for the shops and flats were approved in May 1954.

3. You will appreciate that by reason of your failure to complete the buildings in accordance

Exhibits

Letter, Land
Officer to
Appellant.

23rd August,
1955

- continued.

with approved plans and specifications, it is now open to His Excellency the Governor to revoke the Right of Occupancy, and to impose a revocation fee which may amount to the equivalent of three years rent. However, and without prejudice to such rights as have already accrued to the Governor, I am prepared to postpone further action for thirty days from the date of this letter to enable you to inform me of the reason why you have failed to complete the buildings, and of what action you are taking to remedy the breach of your contractual obligations. 10

4. Please understand that in default of a satisfactory reply within the specified time, I shall be obliged to recommend to the Governor that the Right of Occupancy be revoked without any further notice to you.

I have the honour to be,
Gentlemen,

Your obedient servant,

(Sgd.) A.T.TELLIS,
For Acting Land Officer. 20

Copy to: The Executive Officer, Township Authority, Moshi, Reference your letter No.TA.16/9/63 of 11th August, 1955. You should refuse to issue an occupation certificate for the godown. The occupation certificate should be issued only when all the buildings in accordance with approved plans have been fully completed to your satisfaction. 30

No.B5.

Letter,
Gedrych &
Abben to
Land Officer.

8th September,
1955.

B5 - LETTER, GEDRYCH & ABBEN TO LAND OFFICER

J/N/317.

8th September, 1955

The Land Officer,
Department of Lands & Mines,
Dar-es-Salaam.

Dear Sir,

L.O.No.13014, Plot No.57 Commercial and
Light Industrial Area, Moshi.
MESSRS.SHAH PREMCHAND NATHU & CO., LTD. 40

We have been asked by our clients to reply to your letter 33150/44/AT of the 23rd ultimo, and to

inform you that we are in the process of making certain alterations to the plans as originally approved, these will take about 4 weeks to complete and after this we have to call for tenders, therefore, some two months must elapse before work can be started.

10 It is therefore requested that an extension of time for the completion of these premises be granted, bearing in mind that a building, such as the one proposed, will take about 9 months to complete from the date of starting.

Your sympathetic consideration will be appreciated.

Yours faithfully,
For Gedrych, Abben & Dias,

TDG/AHG.

Sgd: T.D. GEDRYCH.

C.C.Messrs.Shah Premchand Nathu & Co., Ltd.,
Moshi.

Exhibits

No.B5.

Letter,
Gedrych &
Abben to
Land Officer.

8th September,
1955

- continued.

No.B6 - LETTER, LAND OFFICER TO GEDRYCH & ABBEN

20

Department of Lands and Surveys,
Private Bag, Dar-es-Salaam.

33150/50/JMA. REGISTERED. 21st November, 1955.

Messrs. Gedrych Abben & Dias,
P.O.Box 154, Moshi.

Gentlemen,

L.O.No.13014, Plot No.57, Commercial
and Light Industrial Area, Moshi Township

30

I have the honour to refer to your letter No. JN/317 of 8th September 1955, and to inform you that, without prejudice to such rights as have already accrued Governor, I am prepared to give your clients, Premchand Nathu & Co., Ltd., time to complete the buildings on the above plot according to approved plans and specifications by the 31st January 1956.

40

2. Please inform your clients that, if the buildings are not completed within the specified time, I shall refer the matter to the Governor with a recommendation that he should revoke the Right of Occupancy without any further notice to them.

I have the honour to be, Gentlemen,
Your obedient servant,
Sgd: A.T.TELLIS.
For Land Officer.

No.B6.

Letter, Land
Officer to
Gedrych & Abben.

21st November,
1955.

Exhibits

No.B6.
Letter, Land
Officer to
Gedrych & Abben.
21st November,
1955
- continued.

Copy to:

Messrs. Premchand Nathu & Co., Ltd.,
P.O. Box 86, Moshi.

The Executive Officer, Township Authority,
Moshi.
Ref. his No.TA.16/9/63 of 11.8.55.

No.B7.
Letter,
Acting Land
Officer to
Gedrych & Abben.
January, 1956.

No.B7 - LETTER, ACTING LAND OFFICER TO
GEDRYCH & ABBEN.

33150/AJD.

Department of Lands and Surveys,
Dar-es-Salaam.

10

REGISTERED POST.

January, 1956.

Messrs. Gedrych Abben & Dias,
P.O. Box 154, Moshi.

Gentlemen,

L.O.No.13014, Plot 57, Commercial and
Light Industrial Area, Moshi Township.

I have the honour to refer to your letter No. 317 of the 3rd January, 1956, in which you requested an extension of six months on behalf of your clients in which to erect the building on the above plot, and to inform you that your application has not been approved. Your clients have been given various extensions of time and it now appears that they have submitted fresh building plans for approval after receiving the notice dated 21st November, 1955, requiring them to complete the erection of the building on this plot. This is the second time your clients have submitted fresh plans a short while before the date of expiry of a notice served on them. However, as it appears that plans have already been submitted to the Township Authority, Moshi, I am prepared to grant your clients an extension up to the 29th February next in which time they must have their plans approved and commence building operations. I will call for a further report during the first week of March next, and unless building operations are by then under way, I shall recommend to the Governor that the Right of Occupancy be revoked. If the report reveals that building is proceeding satisfactorily, then your clients will be granted a further short extension of time in which to complete the erection of the building.

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30

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2. Please make it quite clear to your clients that under no circumstances will any further extension be granted unless their plans are approved, and building operations commenced by the 29th February next.

I have the honour to be,
Gentlemen,
Your obedient Servant,

Sgd: A.J. DEADMAN,
For Acting Land Officer.

10 /MJ.

Copy to: Messrs. Premchand Nathu & Co.,
P.O.Box 68, Moshi.
The Executive Officer, Township Authority,
Moshi.

Exhibits

No.B7.

Letter,
Acting Land
Officer to
Gedrych & Abben.
January, 1956
- continued.

No.B8 - LETTER, APPELLANT TO LAND OFFICER

8th February, 1956

The Land Officer,
Department of Lands and Surveys,
Dar-es-Salaam.

Sir,

20

Re: Extension of period for building on
Plot 57, Commercial & Light Industrial Area, Moshi Township.

No.B8.

Letter,
Appellant to
Land Officer.
8th February,
1956.

30

We refer to copy of your letter No.33150/AJD of January, 1956, addressed to Messrs. Gedrych, Abben & Dias, Moshi, and regret to inform you that you seem to be under impression that we have built nothing on the plot No.57 in question. We have to bring to your kind notice that we have built a store, 60' x 40' and whose we are holding an occupancy certificate and which has cost Shs.60,000 approximately. Thus we have already spent more than the sum to be spent for building covenant in-front. However we have submitted our plan for shops for approval to Township Authority and regret to inform you that we have not got it back approved. This would at least require a week and thereafter a four weeks' time would be at least required for inviting tenders from building contractors.

40

Moreover, it does not appear economical to us to build shops at moment on above plot because there are many empty shops in the vicinity. So it is not worthwhile spending money at moment.

Exhibits

No.B8.

Letter,
Appellant to
Land Officer.
8th February,
1956
- continued.

Summarily, we have to say that your extension of the period up to 29th February should be further extended to at least six months so as to facilitate us to arrive at final decision.

For your information, we have to let you know that we are negotiating at present with Messrs. Gailey & Roberts, Moshi, and Messrs. Kenya Bus Company, Moshi to rent them the front portion of the supposed building and if this scheme fructifies, we assure that we shall start the construction work without reasonable loss of time. 10

Awaiting your favour and thanking you in the interim, we remain,

Sir,
Yours faithfully,

For: Premchand Nathu & Co., Ltd.

A12.

No.A12 - MEMO, ACTING LAND OFFICER TO TOWNSHIP AUTHORITY

Memo,
Acting Land
Officer to
Township
Authority.
17th February,
1956.

33150/AJD

17th February, 1956

The Executive Officer,
Township Authority, Moshi. 20

L.O.No.13014, Plot No.57, Commercial and Light Industrial Area, Moshi Township

Reference my letter No.33150/AJD of January 1956, addressed to Messrs. Gedrych, Abben and Dias with copies to the Occupier and yourself. I enclose herewith a copy of a letter I have received from the Occupier in reply thereto on which I shall be obliged if you will please let me have your early comments and recommendations. 30

2. I appreciate that what we are after here is the completion of the building in accordance with approved plans and, therefore, the Occupier's paragraph (1) is superfluous. What he means exactly in paragraph (3) I do not quite understand but, no doubt, you will be able to comment from the local knowledge of the position.

Sgd: A.J. DEADMAN

For Acting Land Officer.

No.A12 - MEMO, TOWNSHIP AUTHORITY TO
LAND OFFICER

Exhibits

No.A12.

Ref.No.T.A.16/9/79. Township Authority,
The Land Officer, P.O.Box 318, Moshi.
Dept.of Lands and Surveys, 22nd February, 1956
Dar-es-Salaam.

Memo,
Township
Authority to
Land Officer.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township.

22nd February,
1956.

10 Reference your 33150/AJD of 17th February,
1956, with copy letter enclosure.

Occupation certificate in respect of the go-
down erected on the above plot was issued on 17th
September, 1955, and, at the Township Authority
meeting held on 13th February, 1956, the Authority
agreed that the main building be erected in two
stages and approved the plans on those lines.

20 The Architects, Messrs. Gedrych, Abben & Dias,
state that their clients hope to commence the first
stage of the main building "in the near future",
and in view of the fact that the main building
plans are now approved for construction in two
stages I would suggest a further enquiry in two
months time as it is hoped building operations will
have been started by then, meantime I will remind
the occupiers that they must make an early start
on construction in accordance with the approved
plans.

Sgd: Executive Officer,
Township Authority.

30 No.A13. - MEMO, ACTING LAND OFFICER TO
TOWNSHIP AUTHORITY

No.A13.

Township, Moshi Sgd: A.J. DEADMAN
Landsurvey, Dar-es-Salaam. For Ag.Land Officer.
33150/AJD 7th May, 1956.

Memo, Acting
Land Officer
to Township
Authority.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township

7th May, 1956.

40 Reference your letter No.T.A.16/9/79 of the
22nd February, 1956, will you please let me know
what is the present position regarding the develop-
ment of the above plot? When replying, will you
please let me know what exactly was agreed between
the occupier and the Township Authority regarding

Exhibits

No.A13.

Memo, Acting
Land Officer
to Township
Authority.

7th May, 1956
- continued.

the erection of the building in two stages: As mentioned to you recently in another case, agreements of this nature between yourself and occupiers should be referred to this Office first so that the occupiers may be tied down by deed of variation should it be considered expedient to do so. Furthermore, once the Township Authority has agreed to such a course with the occupier, action by me may be compromised.

LANDSURVEY.

10

BP.A14.

Memo,
Township
Authority to
Land Officer.
11th May, 1956.

BP.A14. - MEMO, TOWNSHIP AUTHORITY TO
LAND OFFICER.

From: The Township Authority,
P.O.Box 318, Moshi.

To: The Land Officer,
Department of Lands and Surveys,
Dar-es-Salaam.

11th May, 1956

Ref.No.T.A.16/9/82.

L.O.No.13014, Plot No.57, Commercial and Light
Industrial Area, Moshi Township.

20

Reference your Saving No.33150/AJD dated 7th
May, 1956.

(1) The position on the above plot is that stores at the rear are completed and, in accordance with a resolution of the Township Authority, an occupation certificate was issued in respect of them on 17th September, 1955.

(2) As a result of your 33150/50/JMA of 21st November, 1955, Messrs. Gedrych & Abben (vide their reference No.317 of 3rd January, 1956) requested a six months extension in which to complete the main building, which request was refused in your 33150/AJD of - January, 1956.

30

(3) On 20th December, 1955 Messrs. Gedrych & Abben requested permission of the Authority to erect the main building in two stages and on 15th February, when the detailed plans were approved and the Authority had agreed to the erection in two stages, the necessary permission was given.

(4) Construction on the main building has still not commenced, and Messrs. Gedrych, Abben & Dias inform me that the matter is now out of their hands. As the occupiers, Messrs. Premchand Nathu & Co.,

40

Ltd., have made no attempt to commence the main building, and appear to contend that the stores at the rear satisfy the building covenant I would suggest that you seek a definite date from them by which they must commence construction of the approved main building as in the special conditions of the offer.

10 Any further correspondence to this office in respect of the development of this plot, whether from Messrs. Gedrych, Abben & Dias or Messrs. Premchand Nathu will be passed direct to you, as I feel the occupiers have had too much latitude locally and should now be forced to develop immediately or the right of occupancy be revoked.

Sgd: EXECUTIVE OFFICER,
TOWNSHIP AUTHORITY.

Exhibits

BP.A14.

Memo,
Township
Authority to
Land Officer.

11th May, 1956
- continued.

No.B10 - LETTER, LAND OFFICER TO APPELLANT

Department of Lands and Surveys,
Private Bag, Dar-es-Salaam.
No.33150/AJD.
31st May, 1956.

No.B10.
Letter, Land
Officer to
Appellant.
31st May, 1956.

20 Messrs.Premchand Nathu & Co., Ltd.,
P.O.Box 86, Moshi.

Gentlemen,

L.O.No.13014, Plot No.57, Commercial
and Light Industrial Area, Moshi Township.

30 Further to my letter No.33150/AJD of the 17th February, 1956 and with reference to your letter dated 8th February, 1956, I am informed by the Executive Officer, Township Authority, Moshi, that the building plans of the main building to be erected by you on this plot were approved on the 15th February last but that building operations have not as yet commenced. Having regard to this and to the contents of my previous letters on the subject of this plot, you will appreciate that your failure to erect the main building constitutes a breach of the terms and conditions of the Right of Occupancy and this renders your Right of Occupancy liable to revocation. However, and without prejudice to such rights as have accrued to the Governor, I am prepared to postpone further action for 40 30 days from the date of this letter to enable you to inform me of the reasons why the construction of the main building has not been put in hand and

Exhibits

No.B10.

Letter, Land
Officer to
Appellant.

31st May, 1956
- continued.

of what action you propose taking to remedy the present breach of your contractual obligations.

2. Please understand that unless I receive a satisfactory reply to this letter by the 30th June next, I shall be obliged to consider taking further action with the view to a recommendation being made to the Governor that the Right of Occupancy be revoked.

I have the honour to be,
Gentlemen,
Your obedient servant,

10

(JC. Sgd: A.J.DEADMAN,
For Land Officer.

Annexure "B"
to Plaint.

Revocation
of Right of
Occupancy.

4th May, 1957.

ANNEXURE "B" TO PLAINT
REVOCATION OF RIGHT OF OCCUPANCY

TANGANYIKA
LAND ORDINANCE

(CAP.113 of the Laws) Title No.8555

Right of Occupancy L.O.13014 granted over Plot No. 57, Commercial and Light Industrial Plots in Moshi Township in favour of PREMCHAND NATHU AND COMPANY LIMITED.

20

WHEREAS I am satisfied that good cause exists for revocation of the Right of Occupancy above-mentioned by reason of the breach of Condition 2(iv) of that document.

NOW I, SIR EDWARD FRANCIS TWINING, G.C.M.G., M.B.E., Governor of Tanganyika acting under the powers conferred upon me by the above Ordinance do hereby revoke the said Right of Occupancy.

30

AND under Regulation 5 of the Land (Fees) Regulations I have decided that a revocation fee amounting to Shillings Four hundred and thirty-five (Shs.435/-) shall be payable in respect of the foregoing revocation.

GIVEN under my hand this 4th day of May, 1957.

SIGNED AND DELIVERED by the)
above-named Sir Edward) Sgd: E.F.TWINING,
Francis Twining Governor in) Governor.
my presence:-

40

Sgd: J.WHYTE,
District Officer,
4/5/57.

ANNEXURE "D" TO PLAINT
LETTER, LAND OFFICER TO APPELLANT

33150/88/SIS.

14th May, 1957

BY REGISTERED POST.

Premchand Nathu & Co.,
P.O.Box 86, Moshi.

Gentlemen,

L.O.No.13014, Plot No.57, Commercial
and Light Industrial Area, Moshi Township.

10 I have the honour to refer to your letter dated the 27th June, 1956, my letter No.33150/AJD of the 31st May, 1956, and to inform you that the above Right of Occupancy was revoked by His Excellency the Governor on the 4th May, 1957, by reason of your failure to comply with Condition 2(iv) of the Certificate of Occupancy. On revoking the Right of Occupancy, His Excellency imposed a revocation fee of Shs.435/-.

20 2. Will you please let me have your remittance for settlement of the revocation fee together with the duplicate Certificate of Occupancy No.8555 for cancellation?

3. The contents of your letter of the 27th June, 1956, were given consideration, but I regret that the further extension requested by you could not be approved.

I have the honour to be,
Gentlemen,
Your obedient servant,

30 (S.I.SHAH)
for Land Officer.

Copy to: The District Commissioner, Moshi.
The Land Office Agent, Moshi.
The Director of Audit, Dar-es-Salaam.

ANNEXURE "F" TO PLAINT
LETTER, LAND OFFICER TO APPELLANT'S SOLICITORS.

33150/EA.

25th November, 1957

Messrs.Reid & Edmonds, Advocates,
P.O.Box 59, Moshi.

40 Gentlemen,

Premchand Nathu & Co., Ltd.,
L.O.No.13014, Title No.8555.

I have the honour to refer to your letter

ExhibitsAnnexure "D"
to Plaintiff.Letter, Land
Officer to
Appellant.

14th May, 1957.

Annexure "F"
to Plaintiff.Letter, Land
Officer to
Appellant's
Solicitors.25th November,
1957.

Exhibits
Annexure "P"
to Plaintiff.
Letter, Land
Officer to
Appellant's
Solicitors.
25th November,
1957
- continued.

No.H/127/R of the 27th August. I apologise for the delay in replying.

2. I am directed to say that Government, having revoked this Right of Occupancy is not prepared to reconsider its decision and will require vacant possession of the land to be given up so that the Plot may be re-advertised. A premium representing the value of the improvements on the land, will be assessed and if possible agreed and will be charged on re-allocation so that Government may account to your client for the value of these improvements in accordance with Section 13(b) of the Land Ordinance. 10

3. It is not admitted that the plans originally prepared and drafted did not comply with the building covenant: at that time it is understood that there were no requirements concerning minimum shop width.

4. The revocation was not for erecting the wrong kind of building but for not completing the erection of buildings in accordance with approved plans by the stipulated date or by such later date as may have been permitted. 20

5. Will you please let me know whether the building now erected on the land has been vacated by your clients or whether it is tenanted and if so by whom and under what tenancy agreements. Your clients and any tenants, if they are in occupation of the land or any part of it, may expect early institution of proceedings under Section 23 of the Land Ordinance unless vacant possession of the property can be given to Government at an early date. 30

I have the honour to be,
Gentlemen,

Your obedient servant,

Sgd: E.AKENHEAD.

LAND OFFICER.

No.8. - LETTER, LAND OFFICE AGENT TO APPELLANT

H. M. HIGH COURT OF TANGANYIKA
 CIVIL CASE NO.18 of 1959
 Exhibit No. 8.

Put in by Defendant.

Date: 11/V/60. Sgd: R.H.Murphy,
 Judge.

Exhibits

Defendant.

No. 8.

Letter, Land
 Office Agent
 to Appellant.

27th March,
 1958.

REGISTERED POST. Department of Lands and Surveys,
 P.O.Box 97, Moshi,

10 DIVISIONS:- Lands Tanganyika.
 Surveys
 Air Survey 27th March, 1958
 Registrar-General
 Valuation

Telegraphic Address:-
 "Landsurvey"

In reply please quote No.MS/297/27.

Messrs.Premchand Nathu & Co.,
 P.O.Box 86, Moshi.

20 Dear Sirs,

L.O.No.13014, Plot No.57, Commercial
 and Light Industrial Area, Moshi Township

30 I am directed to inform you (i) that Govern-
 ment intends re-advertising the above-mentioned
 plot and the successful applicant will be required
 to pay a premium, equal to the then value of the
 building erected on the plot, for which Government
 will account to you, (ii) that Government is not
 responsible for the safe-guarding of the building
 in the meantime and (iii) that you will, if you so
 wish, be permitted to hire a watchman for the
 building lest before re-alienation the building
 should be damaged and so reduced in value.

Yours faithfully,

Sgd: W. SPEED,

Land Office Agent.