



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISCELLANEOUS CIVIL CASE NO. 246 OF 1981**

**RENT RESTRICTION TRIBUNAL .....APPLICANT**

**VERSUS**

**MAYFAIR BAKERIES LIMITED.....RESPONDENT**

**EX PARTE**

**KIRTI RAVAL**

**JUDGMENT**

March 9, 1982, **Sachdeva J & Brar Ag J** delivered the following Judgment.

The applicant has moved this court for an order of *certiorari* directing that the proceedings filed in the Rent Restriction Tribunal, sitting at Kisumu, on June 23, 1981 and the consequent injunction granted by the Tribunal on June 24, 1981 in its Kisumu Rent Restriction Case No 76 of 1981, *Kiriti Raval v Mayfair Bakeries Ltd.* be removed into this court, and there upon the same be quashed on the grounds set out in the applicant's statement. The main ground on which the applicant relies is that the proceedings before the Tribunal were misconceived and a nullity for total want of jurisdiction and/or the Tribunal acted in excess of its jurisdiction.

Mr. D N Khanna appears for the applicant, Mr. Rana, Principal State Counsel, for the Tribunal and Mr. Nowrojee for the interested party, Kirit Raval. Before we deal with the submissions of the learned advocates before us, we consider it pertinent to outline the history of the matter.

Kirti Raval, the interested party (hereinafter referred to as "Raval"), was a monthly protected tenant of the applicant, Mayfair Bakeries Ltd., in respect of a flat (or a maisonette) at the monthly rent of Kshs 552/50 in the applicant's premises on plot L.R. No. 1148/9, section XIX, Kisumu.

In his plaint filed on June 23, 1981 through his advocate Mr. Rajni K. Somaia with the Tribunal at Kisumu in its Rent Restriction Case No 76 of 1981, Raval averred, *inter alia*, that on or about June 10, 1981 the applicant had brought workmen/contractors at the plot on which his flat is situated and that those persons had commenced demolition/construction work whereby the servants' quarters attached to the suit premises had been demolished, a part of the staircase leading to the front entrance door of the suit premises had been removed and the whole of the suit plot had been fenced leaving open only a small gap in the front, that there was constantly and continuously extremely high volume of noise affecting the suit premises and its occupants by reason of which it had become virtually impossible to live in the suit premises, causing annoyance, harassment and difficulties for Raval, that he had made requests and representations to the applicant which had proved futile, and accordingly he sought an injunction ordering and restraining the applicant to remove all annoyance etc., injunction ordering and restraining the

applicant from carrying out work of demolition/construction affecting the suit premises, damages and any further relief that the Tribunal may deem fit to grant.

Concurrently with the plaint, Raval filed a chamber summons for orders that-

- “1. The Defendant Company cease causing annoyance, harassment and difficulties in any way whatsoever to the plaintiff:**
- 2. Ordering the Defendant Company to remove all C.I. sheets surrounding the suit premises:**
- 3. Ordering the Defendant Company to cease all further work of demolition/construction effecting the suit premises.**
- 4. That the costs of this application be provided for.**

The chamber summons was supported by the affidavit of Raval in which he substantially repeated the averments contained in the plaint. The application came before the Tribunal on the same day, the very short proceedings before which are as follows-

**“ 23.6.1981**

**A. Rauf (Chairman)**

**Josia (member)**

**Farjalla (member)**

**Somaia for applicant/plaintiff**

**Ex-parte:**

**Somaia: The application is based on my client’s affidavit**

**Order: Having read the affidavit we grant an interim injunction as prayed. Costs reserved. We ask the O.C.S. Kisumu to take up the complaint and prosecute the defendant/respondent under section 30 of the Rent Restriction Act if investigation so warranted.**

**(Sgd). A. RAUF**

**CHAIRMAN.”**

Consequent thereupon a formal order was drawn and we consider it necessary to set it out in full –

**“REPUBLIC OF KENYA**

**IN THE RENT RESTRICTION TRIBUNAL AT**

**KISUMU**

**RENT RESTRICTION CASE NO 76 OF 1981**

**KIRTI RAVAL.....APPLICANT/PLAINTIFF**

**Versus**

**MAYFAIR BAKERIES LIMITED....RESPONDENT/ DEFENDANT**

**BEFORE:**

**A. RAUF ESQR., CHAIRMAN**

**YUSUF FARJELLAH and**

**S. O. JOSIAH – MEMBERS**

**ORDER**

**UPON** the Application by way of Summons in Chambers filed on the 23rd day of June, 1981 and **UPON READING** the Affidavit sworn by KIRTI RAVAL, the plaintiff on the 23rd day of June, 1981 **AND UPON** hearing the Counsel for the Applicant/Plaintiff **IT IS ORDERED:**

1. **THAT** the Defendant his servant/s and/or agent/s and each and every one of them be restrained and an injunction is hereby granted restraining them and each and everyone of them until further order of this Court from:-

(a) continuing and/or carrying out any further work of demolition/construction effecting the suit premises;

(b) causing annoyance, harassment, difficulties in any way whatsoever to the Plaintiff/Applicant;

(c) blocking and/or obstructing the rear and the front entrance to the suit premises.

2. **AND** the Defendant is further ordered to remove the fending of C.I. sheets surrounding the suit premises until further order of this court.

3. **AND** it is further ordered that the Officer in Charge, Kenya Police, Kisumu to take up the complaint and prosecute the Defendant/Respondent under section 30 of the Rent Restriction Act if the investigations so warrants.

4. **AND** it is further ordered that the Summons herein together with the Affidavit of the Plaintiff above referred and the Plaint in the suit herein be served upon the Defendant for hearing on the 22nd day of September, 1981.

5. **AND** it is ordered that the costs of this Application be reserved.

**GIVEN** under my hand and Seal of Tribunal this 24th day of June, 1981.

**ISSUED** this 24th day of June, 1981.

**(Sgd). A. RAUF**

**CHAIRMAN**

**RENT RESTRICTION TRIBUNAL.”**

On July 9, 1981 the applicant applied to this court for leave to issue the order of *certiorari* to remove into the High Court and quash the above proceedings and order and asking for a stay of the Tribunal's order until the disposal of this application. The matter came up before Cotran J on July 10, 1981 who granted the applicant leave to apply for the order of *certiorari* directed to the Tribunal, stay of proceedings in the Tribunal and also stay of enforcement of its order until disposal of this application etc requiring the notice of motion to be filed within 21 days from July 10, 1981 and the costs of the application to abide the result of the application. An affidavit in support of the application for leave to issue the order of *certiorari* had

been sworn by Mr. Sadrudin Manji Gilani, the Managing Director of the applicant, on July 7, 1981 in which he deponed, *inter alia*, that the applicant was the owner of 5 maisonettes and 12 flats on L.R. 1148/9, section XIX, Kisumu, and that Raval had been let one of those maisonettes at the rent of Kshs 522/50 per month which was within the Rent Restriction Act, Cap. 296 (hereinafter referred to as “the Act”), that on August 26, 1980 the applicant had given Raval not less than 6 months notice in writing of its requirement of possession of the maisonette in Raval’s occupation to enable the reconstruction or rebuilding thereof to be carried out, that the said notice expired on February 28, 1981 after which Raval continued to remain in occupation as a statutory tenant, that no servants’ quarters were included in Raval’s tenancy and nor had he any servant residing by leave or licence of the applicant in any one of the 5 servants’ quarters to serve the 17 dwellings – occupation of which was only allowed to some at the applicant’s discretion, that possession of all of the rest of maisonettes and flats had been duly surrendered to the applicant, that on June 8, 1981 the applicant gave out a contract for demolition of the buildings on the aforesaid plot and reconstruction thereon of an international hotel complex costing Kshs 18,500,000, that the work began on June 8, 1981 but that Raval’s maisonette had been left intact, that the hoardings erected around the works did not cover Raval’s maisonette or obstruct the steps leading to the front porch or the access to the back entrance, that Raval had no rights over the vacant land in front or at the back but only a right of passage by foot in either direction, that the building activity on the plot goes on in conformity with the common law rights of a developer and that other occupants of buildings nearby were putting up with the inevitable noise, that no rent has been accepted from Raval since February 28, 1981 and proceedings for his eviction were being taken, that no other lawful authority had deemed it fit to intervene to stop the development the true position having been explained to the Police etc., that Raval obtained the orders of June 23, 1981 *ex-parte* and that while the applicant had been served with papers, it has not been served with any hearing notice for September 22, 1981 and that the applicant had not intervened in the said proceedings before the tribunal.

The applicant filed another affidavit of Mr. Gilani sworn on October 8, 1981 in which Mr. Gilani deponed, *inter alia*, that Raval left the suit flat on August 21, 1981 abandoning it without handing over its possession to the applicant, that upon checking at the site and the Municipality he found that light and water supply to the suit flat were caused to be disconnected by Raval on August 27, 1981 and that, consequently his statutory tenancy ended the moment he left, his contractual tenancy having already been terminated as at February 28, 1981, and that since the ending of his statutory tenancy Raval has no claim or right to or any interest in the possession of the suit flat.

An affidavit by Mr. Abdul Rauf, the Chairman of the Rent Tribunal was sworn and filed on Saturday, February 13, 1982, when this application was due to be heard on Monday, February 15, 1982. Mr. Khanna has complained of almost the last minute filing of this affidavit, it having come to his attention at lunch time on Saturday and he otherwise strongly criticized it. We will have occasion to say something about Mr. Rauf’s affidavit later but at the moment we will only summarize it. Mr. Rauf has endeavoured to explain the procedure adopted by the Tribunal stating that complaints under section 6 of the Act are laid some-times in writing and mostly orally by illiterate tenants and in the latter case they are reduced in writing by an officer of the Tribunal, that a letter requesting action is immediately forwarded to the officer-commanding police station nearest to the premises in question, that in most cases action is taken by the police and *status quo ante* is restored and nothing is heard about the complaints, that in the cases where subsequent steps are required parties bring the matter before the Tribunal by way of plaint or notice of motion, that in rare cases depending on the nature of nuisance and urgency of the matter, particularly where a tenant engages an advocate the complaint is initiated by injunction but normally prompt police action leaves very few cases of serious complaint by the Tribunal, and that apart from injunction, Mr. Rauf had no recollection of any other kind of interlocutory application before him as envisaged in section 4A(8) of the Act.

In support of the application Mr. Khanna argued – and we will only briefly summarise his lengthy submissions as we see them that –

- (1) The Rent Restriction Tribunal ( hereinafter referred as “the Tribunal”) established under the Act is a creature of statute and has no inherent jurisdiction.

- (2) That the Tribunal has only such jurisdiction as is expressly given to it by the legislature.
- (3) That in determining whether or not the Tribunal has jurisdiction to grant the orders that it did, it is important to look at the whole scheme of the legislation.
- (4) That if the court finds that there is no jurisdiction, the express intention of the legislature must be enforced however harsh or unreasonable or undesirable the result.
- (5) That where there is total lack of or excess of jurisdiction, *certiorari* is the proper remedy available to the aggrieved party, and that section 35(2) of the Act is no bar to the order of *certiorari*.

With all these propositions both Mr. Rana and Mr. Nowrojee, as we think, have no serious dispute, and we are also, with respect, in substantial agreement with Mr. Khanna except that we do not consider it necessary for our purposes to deal with section 35(2) or the Act. Thus in *Chogley v The East African Bakery*[1953] volume 26, K.L.R.31, the court held, as Mr. Khanna pointed out, at pages 33 and 34-

“Assuming that at the rehearing the Board finds that the tenants did commit wanton acts of waste, can the Board order them to pay the landlord a sum of money equivalent to the estimated cost of repairs, accepted by the Board, of the said acts of waste? In *Meghji Karman v Karamshi Devraj*, 20 E.A.C.A. 47 it was held that the Board has jurisdiction to hear a claim for the recovery of key-money paid contrary to section 18 of the Ordinance for the reason that “a claim for the recovery of money illegally received by a landlord under section 18 was a claim arising under the Ordinance”. The decision does not help us in the instant case. It was founded on the view taken of a particular section which is not relevant in the case before us. Section 5(1)(n) of the Ordinance reads “The Central Board .... shall have power to do all the things which it is required or empowered to do by or under the provisions of this Ordinance and in particular shall have power ..... (n) to exercise jurisdiction in all Civil matters and questions arising under this Ordinance”. The power is expressly conferred on the Board to make an order for the recovery of rent, mesne profits and service charges, but the power is not expressly conferred to make an order for the recovery of the costs of repairs. In the course of the judgment of the court in Civil Appeal No. 8/52 it was said:

‘We agree with Mr. Khanna that in testing whether a statute has conferred jurisdiction on an inferior court or a tribunal such as a Rent Control Board, the wording must be strictly construed: it must in fact be an express conferment and not a matter of implication.’

If we follow this dictum, then, as the Rent Board has not expressly been given the power to make an order for the recovery of the cost of repairs necessitated by “wanton waste”, it has no jurisdiction to make the order.

In the view we take of section 5(1)(n), in the exercise of the Board’s functions under the Ordinance several matters of a civil nature, ancillary to the discharge of its main functions, must necessarily arise. To give just one example was the notice given by a landlord legal notice? The Board has power to decide those matters or questions. Indeed it must be empowered to decide those matters or questions, “to exercise jurisdiction over them”, in order adequately to discharge its main functions, but to say that is not to say it can exercise jurisdiction to make an order for the estimated cost of repairs, when no such jurisdiction has been expressly conferred. In the argument of Mr. Khanna, for the appellant, the law administered by the Rent Board is the law relating to landlord and tenant and the law contained in the Indian Transfer of Property Act on which the Rent Ordinance has been superimposed. The Board would certainly take into account principles of law which have been enacted by the Indian Transfer of Property Act if they were applicable in a case coming before the Board. The Board would take into account, for instance, that a lessee is liable for permissive waste and must keep the property in as good a condition as he found it and must yield up the property in the same condition subject only to fair wear and tear and irresistible force. But the jurisdiction in effect to pass a decree for permissive waste cannot arise out of the Indian Transfer of Property Act, it can only arise out of the Rent Ordinance. In *Meghji Karman v*

*Karamshi Devraj*, 20 E.A.C.A 47 it was held that a claim for keymoney was a claim which expressly arose out of section 18 of the Ordinance. A claim for repairs cannot be said to arise expressly out of any section of the Ordinance.

In our opinion the view taken by the Rent Board in this matter is right.”

Again, in H.C.MISC. 336 of 1978 *Hebtulla Properties Ltd v Electro Service & Equipment Ltd.* (unreported) Simpson J. (as he then was) stated in regard to the Tribunal established under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap. 301-

“It must, however be borne in mind that the Tribunal is a creature of statute and has only such jurisdiction as has been specifically conferred upon it by the Statute.....”

Earlier, Simpson J. had expressed similar views in *Choitram v Mystery Model Hair Saloon* [1973] EA 525.

As far back as the last century, Tindal LJ had laid down in *Warburton v Loveland* [1831] 2 Dow & Cl. (H.L) at page 489-

“Where the language of an Act is clear and explicit we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature.”

Madan J (as he then was) spoke in similar vein in *Lall v Jeypee Investments Ltd.* [1972] E.A. 512 at page 516-

“I think it is recognised that each statute has to be interpreted on the basis of its own language for, as VISCOUNT SIMMONDS said in *Attorney General v Prince Ernest Augustus of Hanover* [1957] A.C. 436 at page 461 words derive their colour and content from their context; secondly, the object of the legislation is a paramount consideration.”

The same principles are also clearly enunciated at page 1 of *Maxwell on Interpretation of Statutes*, 12 edition :-

“Granted that a document which is presented to it as a statute is an authentic expression of the legislative will, the function of a court is to interpret that document ‘according to the intent of them that made it.’ From that function the court may not resile; however ambiguous or difficult of application the words of an Act of Parliament may be, the court is bound to endeavour to place some meaning upon them. In so doing it gives effect, as the judges have repeatedly declared, to the intention of Parliament, but it may only elicit that intention from the actual words of the statute.

‘If,’ said Lord Greene M.R., ‘there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used.’ If language is clear and explicit, the court must give effect to it, ‘for in that case the words of the statute speak the intention of the Legislature.’ And in so doing it must bear in mind that its function is *jus dicere*, not *jus dare*: the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament.”

It was on these principles that Election Petition No 30 of 1979 *Jahazi v Cherogony and Shariff Nassir Taib* was decided, the election court holding that having regard to the scheme of the National Assembly and Presidential Elections Act, Chapter 7, the omission of the petitioner to sign a petition personally was a fatal defect to the presentation of a valid petition to the court. Mr. Khanna also drew our attention to a string of English authorities in which it has been held that *certiorari* is available if there is lack or excess of jurisdiction on part of an inferior tribunal. Thus in *R v Postmaster General, ex-parte, Carmichael* [1928] 1 K.B. 291, Avory J. stated at page 299-

“I have, throughout the argument, certainly entertained the view that the section gives the applicant all the relief which she can require, and that she might under that appeal section have the matter determined by the medical referee, whose decision would be final as to whether she is in fact suffering from this disease. But even if that remedy is open to her, it is undoubtedly good law that if the application for a *certiorari* is made by a party aggrieved, then it ought to be granted *ex debito justitiae*, and the court has not the general discretion which it would have when the application is made by one of the public who is not personally concerned. That was decided long ago in the case of *Reg. V Surrey Justices* (1), and on that principle, even although she has the remedy by appeal in this case, I am prepared to agree that the *certiorari* should go, seeing that the application is being made by the applicant as the party aggrieved.”

In *R. v Wandsworth Justices ex-parte Read* [1942] 1 K.B 281 Viscount Caldecote observed at page 284-

“It remains to consider the argument that the remedy of *certiorari* is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this court to consider as a question of law whether the justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment’s consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an order of *certiorari* to quash his conviction, the court should be debarred from granting his application. It has been admitted by the justices that a mistake was made. This court is in a position to remedy that mistake by making an order of *certiorari* to quash the conviction, and that is the order which this court should make.”

We now turn the areas of conflict between the parties. It is Mr. Khanna’s contention that looking at the scheme of the Act as a whole the Tribunal has no jurisdiction at all in the tort of nuisance or to grant an injunction, that there is no such power under section 5 of the Act which gives very limited powers to the Tribunal, that there is no express conferment of powers to adjudicate upon torts like trespass by possible demolition of premises which have been let or private nuisance by demolition or powers to issue injunctions to stop all this, that section 6 of the Act gives a very limited power to investigate complaints, the remedy being equal to both parties and applying to minor complaints like removing obstruction etc., that section 31 of the Act is limited only to those powers expressly conferred by the Act and that it follows, therefore, that only the High Court can restrain demolition or nuisance etc., that the interested party having vacated premises occupied by him in August, 1981, his statutory tenancy – which is a personal right – was extinguished so that this court should quash the whole of the proceedings before the Tribunal. Both Mr. Rana and Mr. Nowrojee have argued to the contrary, maintaining that the Tribunal acted within its powers and jurisdiction issuing the interim injunction. With respect to Mr. Khanna, we are in substantial agreement with both Mr. Rana and Mr. Nowrojee.

As Mr. Nowrojee states, this court is being asked to quash the proceedings as well as the order, including the interested party’s plaint so that he could not trouble, the Tribunal again. But *certiorari* only controls the decision and process of the inferior tribunal and not the actions of a party so that the plaint cannot be quashed. Similarly the fact that a party has filed a claim for damages in the Tribunal does not mean that the Tribunal has assumed jurisdiction or that it will in fact grant damages. The act of a party does not confer jurisdiction or take it away and there is no prohibition upon a party in filing a bad plaint. It may be pointed out that in reply to Mr. Nowrojee, Mr. Khanna stated that he did not mind if the order of this court was directed to quashing the injunction because if the Tribunal attempted to proceed on the imaginary relationship of landlord and tenant, the landlord could take the “writ” of prohibition to stop such an action.

However, leaving aside the above matter, the issue before us is fairly and squarely whether the Tribunal had the power to issue the *ex parte* temporary injunction as it did. Section 5 of the Act gives the Tribunal power to do all things which it is required or empowered to do by or under the provisions of the Act, and then goes on to provide for the particular powers that it has. So that whatever other powers the Tribunal exercises must be under the Act. Section 6 of the Act is of vital importance and we consider it pertinent to

set it out-

Investigation of complaints by the tribunal. 37 of 1966, Sch.

“6.(1) In addition to any other powers specifically conferred on it by this Act, the tribunal may investigate any complaint relating to the tenancy of premises made to it by either a tenant or the landlord of such premises.

(2) Any tenant or any landlord making any such complaint to the tribunal shall pay such fee as may be prescribed.

(3) Nothing in this section shall preclude the tribunal from taking cognizance of any infringement of this Act or of any dispute or matter likely to lead to a dispute between a tenant and a landlord of which no complaint has been made to the tribunal under the provisions of this Act.

(4) Where a complaint has been made against a tenant or a landlord, or against the agent or servant of either of them, or where the tribunal has taken cognizance of any dispute or of any facts which are likely to lead to a dispute between a landlord and a tenant, the tribunal may order the parties or the landlord or tenant, as the case may be, to appear before the tribunal at a specified time and place for the purpose of investigating the complaint or dispute.

(5) Where the tribunal investigates any complaint or other matter under this section it may make such order in the matter, being an order which it is by this Act empowered to make, as the justice of the case may require.

Penalty for failure to comply with lawful order of the Tribunal 37 of 1966, Sch 1 of 1971, s.7 (1) Any person who fails to comply with any lawful order or decision of the tribunal after the expiration of the time allowed for an appeal therefrom, or, if an appeal has been filed, after such order or decision has been upheld, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.”

As we see it the powers of the Tribunal are not restricted to those conferred by section 5 of the Act. Section 6 confers upon it the additional powers to investigate any complaints relating to the tenancy of premises made to it by either a tenant or the landlord of such premises. The interested party was a tenant – although a statutory tenant, which matters not - when he made his complaint to the Tribunal. It may be “any” complaint. It matters not if the complaint is in tort or contract or equity or otherwise. The criterion is that the complaint must be relating to the tenancy. Here the complaint in effect is that the tenant was being harassed in the quiet enjoyment of his tenancy. Therefore, the Tribunal was empowered to investigate that complaint, and *a fortiori* under subsection (5) of section 6 it could make such order in the matter as the justice of the case may require being an order which it is empowered by the Act to make. To see what orders the Tribunal is empowered to make by the Act, we have to examine the jurisdiction provision, section 31, which provides- Jurisdiction 37 of 1966, s.8.

“31. In and for the exercise of the powers conferred upon it by this Act, a tribunal shall have the same jurisdiction and powers in civil matters as are conferred upon the High Court, and in particular (but without prejudice to the generality of the foregoing) shall have power-

(a) to administer oaths, and to order persons to attend and give evidence or to produce and give discovery and inspection of documents, in like manner as in proceedings in the High Court, and for such purpose to authorize the chairman to issue summonses to compel the attendance of persons before it; and

(b) upon the determination of any application or other proceeding, in its discretion, to order any party thereto to pay the whole or any part of the costs thereof, and either itself to fix the amount of such costs or to direct taxation thereof by the taxing officer of the High Court, either on the High

Court scale or on the subordinate court scale.”

So in and for the exercise of powers conferred upon the Tribunal by the Act – and one of the powers is to investigate any complaints relating to the tenancy – the Tribunal has the same jurisdiction and powers in Civil matters as are conferred upon the High Court, and of course, the High Court has jurisdiction, and powers, *inter alia*, to grant an interim injunction.

With respect to Mr. Khanna, we do not and cannot read in the Act that the complaints must of a “minor” nature or that the remedy must be equally available to both the landlord and the tenant or that the Tribunal could not make its orders *ex-parte*. By regulation 12 of the Rent Restriction Regulations “the procedure to be followed by the Tribunal shall, except as herein provided, be that prescribed under the Civil Procedure Act, so far as is practicable.” Under the Civil Procedure, a court has the discretion to grant an *ex-parte* injunction if the justice of the case so requires, as apparently the Tribunal has done. By virtue of sub-section (4) of section 6 the Tribunal may order the parties or the landlord or the tenant to appear before it for the purpose of investigation of the complaint or dispute. It is clearly a discretionally power not a mandatory requirement.

Perhaps we ought to explore the issue of “minor” complaints somewhat further. Mr. Khanna at first submitted that section 5 of the Act gave Tribunal very limited powers and that it could deal with minor matters like removing obstruction etc. Mr. Nowrojee contended that that was what in fact the Tribunal had purported to do. In his reply Mr. Khanna argued that the general expressions in section 5 could only relate to ancillary points but did not confer jurisdiction to pass orders like injunctions, that order of cessation is not an injunction and even that depends on whether power has been given, that stopping demolition by injunction is not the kind of action permitted by the Act, that there is no definition of complaint but that it must be something to do with the landlord and tenant and not an independent contractor, that a landlord cannot control or be held liable for an independent contractor who has been given a contract worth Kshs.18.5 millions and that one has to put up with noise in construction activities, that for example if a door is nailed and the tenant cannot get in, the Tribunal would order the landlord to remove it or otherwise it would authorize the tenant to remove it.

The words “minor matters” or “complaints” were dealt with by Simpson J. (as he then was) in an application arising from the Business Premises Rent Tribunal in Misc. H.C.C.C. 336 of 1978 *Hebtulla Properties Ltd. V Electro Service & Equipment Ltd* wherein he stated at page 9-

“In my opinion the word ‘complaint’ is referable only to minor matters such as the examples I mentioned in *Choitram v Mystery Model Hair Saloon (supra)*. I cannot accept Mr. Wekesa’s arguments that the complaint in this case is merely one of obstruction of access. It is alleged that the landlord ‘has forcibly taken possession of the tenant’s premises.’

Earlier, in *Choitram v Mystery Model Hair Saloon* [1972] 525 Simpson J had observed at page 530-

“I am of the opinion however that the term ‘complaints’ is intended to cover only complaints of a minor character.

The term investigate does not necessarily imply a hearing. Such complaints would include complaints by the tenant of the turning off of water, obstruction of access, and other acts of harassment by the landlord calling for appropriate orders for their rectification or cessation but not including payment for any injury suffered. If the legislature had intended that the tribunal should have power to award compensation in respect of such complaints it would I think have made specific provision as was done in s. 12(1) and s.13. In my opinion the power to award compensation must be express and cannot be implied.

Compensation for damage is a matter for the ordinary court on whose jurisdiction pecuniary limits have been placed. If this provision were to be interpreted as giving jurisdiction to the tribunal to award compensation it is unlimited. Indeed it exceeds the jurisdiction of the High Court since no right of appeal is given.”

The above case also arose out of the Business Premises Tribunal, and it is worth repeating that at the present we are not concerned with the powers of the Tribunal to grant a permanent injunction or damages but only with the interim order which was made. Even assuming for a moment that the Tribunal powers under the Act are limited to complaints or “obstruction of access, and other acts of harassment by the landlord calling for appropriate orders for rectification or cessation” as stated by Simpson J, what exactly had the tenant alleged against the landlord and what remedy did the Tribunal grant? As Mr. Nowrojee has very pertinently pointed out, the tenant had complained of demolition of servant’s quarters, removal of a part of staircase complete blocking of access at the back and provision of a very small access in the front, high volume of noise and annoyance etc all within the scope of the rule enunciated by Simpson J. What interim order did the Tribunal make restraining the defendant, his servant/s and or agent/s from continuing and carrying out any further work of demolition/ construction effecting the suit premises, causing annoyance, harassment, difficulties in any way whatever to the tenant, blocking the entrances, removing of fencing etc, again all within the scope of Simpson J’s judgment.

Mr. Khanna has repeatedly stressed the large international hotel project of Ksh 18.5 million upon which the applicant had embarked and for the construction of which an independent contractor had been engaged and wondered how the Tribunal could make an order against the contractor.

But it is evident that the Tribunal did not do so, and in any event, how was the Tribunal to know of all these facts which were not put before it and which could easily have been placed before it under section 5(1)(n) of the Act which provides-

“At any time, of its own motion, or for good cause shown on an application by any landlord or tenant, to reopen any proceedings in which it has given any decision, determined any question, or made any order, and to revoke, vary or amend such decision, determination or order, other than an order for the recovery of possession of premises or for the ejection of a tenant therefrom which has been executed.”

The applicant chose not to do so. Whether or not the tenant wisely remained in possession of his dwelling house is not for us to say, but he was entitled to the protection of the statute until an order of eviction was made against him or until he decided to vacate the premises himself, as he appears to have done subsequently, but even on the facts placed before us by the applicant it does not explain how it expected to get round the tenant’s dwelling house without causing injury and annoyance to the tenant in the completion of its huge project.

It is perhaps worth pointing out that in *Hebtulla’s* case (*supra*) Chesoni J refused to be drawn into the almost impossible definition of “minor complaints”. As he stated at page 7-

“Whether sub-section (4) of section 12 is limited to minor complaints only I find it unnecessary to comment on as this is not the issue before us. Suffice to say that the Act uses the word ‘any complaint’ and the only qualification is that it must be ‘relating to a controlled tenancy’.”

Mr. Khanna stated that “complaints must be such as summarily remediable by some short or court order” to quote his exact words if we have got them correctly. It is true that the Act does not specifically mention the word “injunction” but, it does speak of an “order” at many places and especially in section 6(5). What after all is an injunction? In Volume 21 of *Halsbury’s Laws of England*, (3rd edition) at page 343, an injunction is defined as-

“a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing. In the former case it is called a restrictive injunction, and in the latter, a mandatory injunction.”

Again in *Sutton & Shannon on Contracts*, 6th edition, it is stated at page 396:-

“An injunction is an order of the court granted for the purpose of restraining the doing, continuance or repetition by the person enjoined, his servants or agents, of some wrongful act

which constitutes an infringement of a legal or equitable right ...”

Again in *Kerr on Injunctions*, 6th edition it is explained at page 1-

“An injunction was under the old procedure a writ issuing by order and under seal of the Court of Chancery. A writ of injunction may be described as a judicial process whereby a party was required to do a particular thing or to refrain from doing a particular thing according to the exigency of the writ ... Under the present procedure no writ of injunction is to issue. An injunction is by judgment or order, and such judgment or order has the effect which a writ of injunction previously had ... Injunctions are either interlocutory or perpetual. Interlocutory injunctions are such as are to continue until the hearing of the cause upon the merits, or generally until further orders. Perpetual injunctions are such as form part of the decree made at the hearing upon the merits.”

In our judgment the order made by the Tribunal was upon a complaint within the ambit of section 6(1) and a consequent lawful order under section 6(5) of the Act and that furthermore, it was not an order which the Tribunal was estopped from making by section 4A (8) of the Act, which provides-

“Notwithstanding any other provision of this Act, the chairman of a tribunal acting alone shall have jurisdiction to deal with all interlocutory applications which are not of such a nature as to effect a decision in any matter which is in issue between the parties.”

In the present case, according to the record, the full Tribunal granted the interim order. With respect, we do not accept Mr. Khanna’s argument that the Tribunal cannot take interlocutory action any matter which effects the decision of a matter in issue. Such a limitation, in our view, clearly applies only to the chairman acting alone.

We will now briefly examine 3 cases which have been dealt with at considerable length by the learned advocates: (1) *Oza v Jani* (1957) EA 184, (2) *Gordhandas v Narotam* (1957) EA 223 and (3) *Chogley v The East African Bakery* (1953) 26 KLR 31. The first two are decisions of Windham CJ based on a Zanzibar decree, and the third is a decision of 3 judges of the then Supreme Court of Kenya in the exercise of its appellate civil jurisdiction from a decision of the Rent Control Board in Kenya, one of whom was Windham J. In *Oza’s* case, the plaintiff applied to the High Court claiming a perpetual injunction against his landlords to restrain them from demolishing certain premises having a common wall with his premises etc and for an interlocutory injunction pending trial. The Rent Restriction Decree applied to the premises and the landlord opposed the application on ground that the High Court had jurisdiction. Windham CJ upheld that submission, refused to grant the interlocutory injunction sought, and transferred the proceedings to the Rent Restriction Board for disposal. In the course of his judgment Windham CJ stated at page 158-

“That the board has jurisdiction to entertain and dispose of an application for an interlocutory injunction such as the present one, affecting premises to which the Decree applies, is in my view made sufficiently clear by paragraph (t) of the Decree which empowers the Board ‘to exercise jurisdiction in all civil matters on questions arising out of this Decree’ read together with paragraph (1) and paragraph (4) of section 8, which empowers the Board to investigate any dispute or any facts which are likely to lead to dispute between a landlord and a tenant.”

Section 7(1)(t) of the Zanzibar Rent Restriction Decree, cap 98, is in the following terms-

“7(1) A Rent Restriction Board shall in relation to the area for which it is established have power to do all things which it is required or empowered to do by or under the provisions of this Decree, and without prejudice to the generality of the foregoing shall have power.....

(t) to exercise jurisdiction in all civil matters on questions arising out of this Decree.”

And section 8(4) of the Zanzibar Decree is as follows-

“Where a complaint has been made against a tenant or against a landlord, or against the agent or servant of either of them, or where the Board has taken cognisance of any dispute or any facts which are likely to lead to a dispute between a landlord and a tenant, as the case may be, to appear before the Board at a time and place specified in such order for the purpose of investigating such complaint or dispute.”

In *Narotam's* case Windham CJ held that since section 7 of the Rent Restriction Decree gave the Board power to exercise jurisdiction in all civil matters arising out of the Decree, the exercise of such jurisdiction implies the power of adjudicate on the matters investigated and that a duty imposed or power granted by the legislature carried with it the power necessary for its performance and execution. The latter finding is accepted by Mr. Khanna. It may be added that the Zanzibar Decree at that time was silent as regards making of orders upon investigations of complaints. Windham CJ thus stated in this regard at page 224-

“It is contended for the appellant that since there is no provision in section 8, nor elsewhere in the Decree, specifically empowering the Board to make an order requiring either party to do anything, consequential upon its investigation of the complaint or dispute that it has been investigating, then the Board has no power to make such an order, since its powers are statutory only.

Now it is, of course, true that the Board's powers are prescribed by statute and are limited to what is so prescribed. And it is worthy of mention that specific power to make such orders as the appellant appeals against is conferred upon certain other East African legislation, as for example section 9 of the Kenya Increase of Rent (Restriction) Ordinance, 1949, whose first four sub-sections correspond almost verbatim with the four sub-sections of section 8 of Zanzibar Decree, but to which a fifth subsection was added in 1951 to provide that-

‘where the Board investigates any complaint under this section the Board may make such order in the matter as the justice of the case may require.’

But the absence of such a specific provision from the Zanzibar Decree certainly does not necessarily mean that the Board has in Zanzibar no such power.

First of all, I think such a power must be implied from paragraph (t) of section 7(1) of the Decree, which gives the Board power to-

‘exercise jurisdiction in all civil matters on questions arising out of this Decree.’

A complaint or dispute referred to the Board under section 8 and falling within the scope of that section is undoubtedly a question arising out of the Decree. And the exercise of jurisdiction in any matter necessarily presumes, it seems to me, not only the investigating of it but the giving of a judgment or making of an order upon the matter investigated.

Secondly, quite apart from section 7 of the Decree, the provisions of section 8 empowering the Board to investigate disputes and to order parties to appear before it for that purpose are themselves such, in my view, as to imply a power to implement such an investigation by making a consequential order upon it, thereby avoiding futility under the maxim.

*‘Ubi aliquid conceditur, conceditur etiam et id sine quo res ipsa non esse potest.’*

This rule of interpretation is expressed in the following words in *Halsbury's Laws of England* (2nd Edn), Vol 31, para 642, at page 501:

‘A duty imposed or a power granted by Parliament carries with it the power necessary for its performance or execution.’

The implied power must be read into the Statute in order to enable the express power, or the jurisdiction

expressly conferred, to be effectually exercised. The same rule of interpretation will be found set out in *Maxwell on the Interpretation of Statutes* (10th Edn), at page 361. It is suggested for the appellant that the object of section 8 in empowering the Board to investigate disputes is to enable them merely to give advice. It is difficult to see what useful purpose mere advice, legally unenforceable, would serve in disputes of the kind covered by section 8, and I think this suggestion has scant merit. The first and main ground of appeal therefore fails.”

Mr. Khanna has reminded us of the need to exercise caution when interpreting legislation of other territories especially when it is not identical with ours, as is the case with the Zanzibar decree, and in this regard has referred us to the following passage in the opinion of Lord Macmillan in *Commissioner of Stamps, Straits Settlements v Oei Tjong Swan & Others* [1933] AC 378 at page 389:-

“The difficulty in which the learned judges find themselves in accounting for the terms of section 73, sub-sections 2 and 3, consistently with their decision is entirely occasioned by their approach to the problem of construction which the case presents. Instead of first considering the terms of the Ordinance itself, they have at once entered upon an elaborate comparison of its provisions with those of the (Imperial) Finance Act, of 1894, and proceeded to draw inferences from the variations between the Ordinance and the Imperial statute. This is a perilous course to adopt and one which certainly does not commend itself to their Lordships.

Decisions of the Imperial Courts on statutes dealing with the same subject-matter may often be useful in the interpretation of similar provisions in colonial measures, and a comparison between similar measures of the Imperial and the Colonial Legislatures may on occasions be helpful: cf *Alcock, Ashdown & Co v Chief Revenue Authority, Bombay*.<sup>(1)</sup> But it is quite a different thing to institute a textual comparison such as has here been made and to rely on conjectures as to the intention of the draftsman in selecting some and rejecting other provisions of his presumed model.”

We have paid due heed to this, and, we think, we have earlier demonstrated upon the interpretation of our own Act that the Tribunal has such interim powers as it exercised.

Mr. Khanna also relied heavily on *Chogley's* case (*supra*) in support of his contention that the Tribunal had no power to order the interim injunction, but, we think, that *Chogley's* case is distinguishable from the instant case because, whilst the power to deal with claims for costs of repairs was not expressly given by statute, here the power to investigate complaints and make consequential order as are just in the circumstances of the case has been expressly conferred upon the Tribunal by the Act.

Both Mr. Rana and Nowrojee sought to place no reliance on the affidavit of the Chairman of the Tribunal, Mr. Rauf, and in our view quite properly so, because all that it purports to show is that the Tribunal has acted in a consistent manner previously thus showing its *bona fides*, which we have not the slightest reason to doubt. Of course, if the action were contrary to the law we would have struck it down and it would not have mattered for how long it had been practiced.

Finally, we turn to question of costs. Relying on the decision of Lord Goddard CJ in *R v Industrial Disputes Tribunal & another, ex parte American Express Co Inc* [1954] 2 All ER 764, Mr. Khanna had put forward two propositions (1) that either the advocate for the Tribunal or for the interested party should make submissions on behalf of the opposition to the application, and (2) that in any event only one set of costs should be awarded against the applicant. Lord Goddard's decision is quite short and we will quote it in full:

“The court does not like having to give two sets of costs in these cases. It seems to us that if the Minister is satisfied that the trade union is going to be represented, or if the trade union is satisfied that the Minister is going to argue the case, as he generally has done, then the trade union need not be represented. It is desirable to say that the opinion of the court is that in future in matters of this sort not more than one set of costs will be granted. The Minister may in some cases wish to be represented, even if he appears as *amicus curiae*, but I do not think we ought to put on

employers the burden of paying two sets of costs. In this case, as we have not given special directions and both the Minister and the union were properly served because it was sought to prevent them from continuing with the proceedings, they will have their costs, but we do not think we ought to order it in the future. The mere fact that parties are served does not make it necessary for them to appear. I have no doubt that both the union and the minister ought to be served. But as a general rule they may be able to settle which of the two is going to argue the matter and whether the Minister is content to rely on counsel for the union. It is very seldom that we have found it necessary to hear both counsel for the Minister and for the union. I want it noted that in the future the court will consider very carefully whether or not they will give more than one set of costs.”

We over-ruled the first proposition during the course of the hearing when we indicated that we would allow both the advocates, for the Tribunal and for the interested party, to address us. Both are necessary parties to the application and there is no reason why either should be deprived of its right to address the court in a matter in which each is obviously deeply concerned and interested and against whom costs are sought jointly and severally. Again, with respect to Lord Goddard, we do not agree that there should be one set of costs against the applicant. Both the Tribunal and interested party have had to obtain legal advice separately and as successful parties, there is no reason why should they be deprived of their costs. In the instant case there is only one applicant and consequently entitled to only one set of costs if successful but the position might well be reversed.

In the net result we dismiss the applicant’s application and motion with costs to be paid to both the Tribunal and the interested party separately.

**Dated and delivered at Nairobi this 9th March , 1982.**

**S.K SACHDEVA**

**P.S BRAR**

**JUDGE**

**AG.JUDGE**