



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 110 OF 1978
NAIROBI HOUSING DEVELOPMENT LTD.....LANDLORD
VERSUS
HIGHRIDGE CORNER BAR LTD.....SUB-TENANT
JUDGMENT

This appeal concerns the powers and duties of one of Kenya’s creatures of statute. That is to say, the tribunal created by section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (“the Act”), which I shall refer to as “the tribunal”.

The Act limits the landlord’s right in the case of certain tenancies (described and defined as “controlled tenancies”) to determine those tenancies or to alter their terms (section 4). In order to give effect to these restrictions the tenants of controlled tenancies whose landlord serves notice that he wishes to determine or vary the terms of their tenancies are given the right to apply to the tribunal (section 6 (1)) if they oppose the landlord’s notice.

In this appeal the position of such tenants falls to be considered, in full, in attempting to resolve the point in issue between these parties, namely “what of the unlawful or allegedly unlawful sub-tenants?”

On 12th November 1977 the appellant in this case served notice on his tenant to determine his tenancy of land reference No 209/5802, 3rd Avenue, Parklands, pursuant to the Act. It is necessary to set out the heading and the addressee of the notice in order fully to give effect to the arguments of the parties; it is as follows:

Landlord’s Notice to Terminate or Alter Terms of Tenancy (sections 4(2) and 5(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act) to eg Lalani of post office box No 49985 being tenant of premises known as land reference No 209/5802 3rd Avenue, Parklands, Nairobi.

Messrs Highridge Corner Bar Ltd of Post Office Box No 49985, Nairobi, being unlawful sub-tenant of premises known as land reference No 209/5802 3rd Avenue, Parklands, Nairobi.

[There follows the grounds upon which the landlord (this appellant) seeks to determine tenancy and which includes “sub-letting ... (to the respondent) without our consent to writing”.]

4. This notice is given under the provisions of section 4(2) and 5(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.

It was common ground that both the tenant and the sub-tenant (the respondent to this appeal) served notices on the tribunal pursuant to section 6 of the Act, and within the time limited, requesting the tribunal to determine the matter; and it is the powers and duties of the tribunal under such reference that have to be considered here. But before proceeding so to do it is necessary to state that only the sub-tenant's request for a reference was considered by the tribunal and, in the course of that hearing, Mr Khanna for the landlord (who also appeared before us) took a preliminary objection to the jurisdiction; this was considered and rejected by the tribunal in its ruling that "the reference before us is proper and in accordance with the provisions of [the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act]".

Mr Khanna's objection was (and still is) that the tribunal had no jurisdiction to deal with matters where there was no relationship of landlord and tenant, so that an illegal sub-tenant had no right to take out a reference.

Mr Khanna argued in the course of his submission that if the sub-tenant was referred to as "unlawful", he had no *locus standi* before the tribunal. That of course immediately poses the question "how is it to be decided if any particularly sub-letting is unlawful?"; but that, says Mr Khanna, may be a matter for the Court but not for this tribunal, a creature circumscribed and closely confined by the statute creating it, and whose powers can only be found within the statute. With that preamble, he embarked upon an exercise in jurisprudence to demonstrate his central theme that resolution of the allegedly unlawful sub-tenant's problems fall outside the powers given to the tribunal by the Act. He started with section 12(1) (a) of the Act, which gives the tribunal power to determine whether or not any tenancy is a controlled tenancy within the meaning of the Act. That, says Mr Khanna, is the limit of the tribunal's power, and the expression "controlled tenancy" does not include a sub-tenancy.

It is true that, in the definition section of the Act, the words "controlled tenancy" do not expressly include a reference to a sub-tenancy; but those words define a certain type of tenancy and the definition of "tenancy" includes sub-tenancies, and so that they must be imported into the definition of "controlled tenancy".

Mr Rayani drew our attention to section 5 of the Act and its provisions relating to sub-tenancies and its provision for the Act to apply to subtenants.

It seems clear to me after reading that section that, without going outside the framework of the Act, a sub-tenant has a right to refer to the tribunal any notice served upon him by the superior landlord or his own landlords. But then what of the sub-tenant who is alleged to be unlawful? Section 5(1) of the Act provides that termination of his own landlord's tenancy does not automatically determine the sub-tenant's interest, although I would agree that section 5(1) must of course be construed as implying only a lawful sub-letting, that is to say, one which was lawful from the outset, or which (by the date of the hearing) has become lawful by the agreement of (or waiver by) the head landlord of any breach which originally rendered it unlawful.

Then, who is to enquire into the illegality? Not the tribunal, says Mr Khanna. You cannot invest the tribunal with any power or duty not specifically ascribed to it. And so it has to be considered whether the tribunal has a power to enquire into its own jurisdiction and if so, whether, that power extends to investigating the question of any illegality of the sub-tenant referring his sub-tenancy to the tribunal.

Mr Khanna took us through a series of decisions both from England and India to show the character of such tribunals and the limits on their powers. I would respectfully not disagree with his basic underlying proposition that a judicial or quasi-judicial tribunal, such as this one, has no inherent powers; but of course if it is given powers and duties then, in so far as it is always subject to the rules of natural justice, so also must a tribunal have power to regulate its own business and enquire into its own jurisdiction. The problem which has exercised the minds of those anxious and experienced lawyers trying to stem the tide of ministerial or extra-judicial legislation has recently been considered in England and the judgments of Caulfield J and Lord Widger CJ in *R v Croydon and South West London Rent Tribunal, ex parte Ryzewska* [1977] WLR 389 are particularly relevant and persuasive on the point before us.

Mr Khanna had previously taken us through a whole series of English cases, including *Heptulla Bros Ltd v Thakore* [1956] 1 WLR 289, which was in fact an appeal to the Privy Council from a decision of the old Nairobi Rent Control Board and, as I understand it, the relevance of this particular case lied largely in the advice of Lord Keith where he quoted and approved (at page 296) the judgment of Lord Esher MR in *R v Commissioners for special purposes of the Income Tax* (1888) 21 QBD 313, 319, to the effect that one must have regard to the powers given to any particular tribunal to see, firstly, if it has power to determine facts which give it jurisdiction, and then whether there is an appeal from such determination.

The Privy Council held in *Heptulla's* case that the old Nairobi Rent Control Board could not make a finding on the relationship of landlord and tenant which would subsequently give rise to a plea of *res judicata*.

But neither of these cases attempts to deal with the central problem here: that is to say, how does an inferior tribunal, such as this one, proceed when its own jurisdiction is challenged?

In the *Croydon Rent Tribunal* case, we have the benefit of a judgment based on an Act of Parliament which gives the parties parallel rights on certain issues, that is to say to apply to the local county court for a decision whether any particular type of tenancy comes within the Act; and that is just the problem, underlined here by Mr Khanna when he said that an under-tenant's proper remedy is to apply to the High Court for a declaratory order.

In the *Croydon Rent Tribunal* case Caulfield J says ([1977] 2 WLR at page 392):

In my judgment, the question of jurisdiction for inferior tribunals, on the authorities, is this. Every inferior tribunal, before it determines the main question, has always got the duty to enquire and decide whether or not it has jurisdiction to determine the main question.

Lord Widgery CJ gave a short concurring judgment. Emphasising the difficulties the Courts have had in rationalising rules for tribunals, he said (at page 393):

“... if, when the matter comes before the rent tribunal, an issue on jurisdiction is raised, the tribunal may be perfectly entitled to say: “In view of the particular circumstances we will decide the question of jurisdiction now and leave it to any dissatisfied party to question our jurisdiction by application to the county court later, if need be”. I respectfully welcome the rationalisation of those problems which is to be found in Caulfield J's judgment with which I agree...”

It would be harder to find any more persuasive and relevant authority on the point before us. The creature of statute which we are considering has its elder sibling in the United Kingdom, and English lawyers are no less energetic in their efforts to contain these quasi-judicial bodies, then Mr Khanna and those who share his view of the supremacy of the Courts over those other, proliferating, bodies.

Having also relied upon the *Croydon Rent Tribunal* case in support of his argument to uphold the status of the sub-tenant, Mr Rayani then drew our attention to *Gurnam Singh v Jagat Singh & Sons Ltd* (unreported) in the Kenya Court of Appeal. While not dealing directly with those problems this decision contains *dicta* of Sir James Wicks CJ and Madan JA with which I would respectfully agree. It is noteworthy that the problem before them also centred on the question whether or not a tenancy was a “controlled tenancy” within the meaning of section 2(1) of the Act. In his judgment Madan JA says:

If an objection is taken, a tribunal ought to determine first (after holding a proper enquiry) whether it has provision to entertain the proceedings before it.

And in his judgment Sir James Wicks CJ says:

... every tribunal has an inherent power to determine its own jurisdiction ... The tribunal's jurisdiction to determine whether or not a tenancy is a “controlled tenancy” is specifically provided for in the Act itself [he was referring to section 12(1) of the Act, which he quoted].

It is just necessary to observe, as Mr Rayani pointed out, that the landlord here addressed this notice additionally to the sub-tenant, and also served it on him; he even took pains to ensure that the notice was headed with a reference, not only to section 4(2), but also to section 5(2) of the Act (which deals with sub-tenancies) and he then concluded his notice with the statement: “This notice is given under the provisions of sections 4(2) and 5(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act”. That in my view was not only as Mr Khanna says *ex abundanti cautela*, but proper. The wording of section 12(1) (a) of the Act does not exclude the consideration by the tribunal of the reference simply because a sub-tenancy, whether legal or allegedly illegal (or otherwise), is in issue. It is proper for the tribunal to consider its own jurisdiction and, to do so, it must have the power to consider the subtenants’ reference, and thus whether it is in fact the reference of a subtenant entitled to protection under the Act or whether the circumstances of the alleged illegality are such that he cannot be a sub-tenant at law (and so not entitled to the benefits of a controlled tenancy under the Act) when the tribunal would properly so declare.

For these reasons I agree with the view expressed by the tribunal that the reference is proper and, in my judgment therefore, this appeal must be dismissed and the matter remitted to the tribunal with a direction to proceed with the reference.

Platt J. I have had the advantage of reading the draft judgment of Scriven J, in which the facts are generally set out. I agree with his conclusions, and only wish to emphasise a few points since the record is being remitted to the tribunal and out of deference to counsel.

The appeal is from an order, dismissing an objection *in limine*, that the Business Premises Rent Tribunal had no jurisdiction to entertain the reference of the respondent sub-tenant.

The appellant landlord leased property, known as land reference No 209/5802 at 3rd Avenue, Parklands, Nairobi, to Mr EG Lalani. The latter had in turn sub-let to the sub-tenant. The landlord considered this sub-letting unlawful for three reasons, which the landlord set out in its notice to quit, given under section 4(2) and (5(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (“the Act”). It is clear that the main provision of the Act under which a landlord must serve a notice to quit is section 4(2). Section 5(2) of the Act provides:

Where a landlord gives a tenancy notice to his tenant, he may at the same time give a similar notice to any person to whom the tenant has sub-let the whole or any part of the premises concerned, and thereupon the provisions of this Act shall apply to the sub-tenant, and his sub-tenancy as if he was the tenant of such landlord.

In this case, the landlord served the notice to quit upon the tenant, and also a notice in the same terms upon the sub-tenant, stating that this was done under section 5(2) of the Act. The reasons for the landlord acting in this way are not difficult to imagine. The landlord complained that:

- (a) In breach of your tenancy agreement you have without our consent in writing changed the user of the premises from the authorised user of a butchery to that of a bar;
- (b) in further breach of your tenancy agreement you have sub-let those premises to Highridge Corner Bar Ltd without our consent in writing; and
- (c) you have carried out unauthorised alterations to the premises without consent.

If those complaints were justified, the activities of the tenant would be gravely prejudicial to the interests of the landlord; and it is clear that the tenant was being told so, as well as the sub-tenant (who may, or may not, have been aware of the unlawful change of user, and lack of consent to the sub-letting and to the alterations). It was also prejudicial to the subtenant; his position was plainly characterised as unlawful in that part of the notice addressed to him. Obviously the landlord wished to regularise his position by terminating the tenancy of both the tenant and that of the sub-tenant for, as Scriven J has noticed, under section 5(1) of the Act, the sub-tenancy does not automatically determine on the termination of the

tenancy granted to the tenant. It seems to have been accepted that there was a *de facto* sub-tenancy between the tenant and the sub-tenant, although (as Mr Khanna explained) it was an unlawful agreement in his view, and therefore the sub-tenant was no better than a trespasser. On the part of the sub-tenant, Mr Rayani considered that this relationship was lawful, and he insinuated that (in his view) the breaches complained of were not well founded, for they may have been waived or wrongly refused. This part of the case has not yet been investigated, for this appeal has had the effect of truncating the proceedings of the tribunal, which might have examined the merits of the rival claims if it had been allowed to continue.

The problem giving rise to this appeal may now be described. Pursuant to the notice served upon the sub-tenant under section 5(2) of the Act, the sub-tenant acted by referring this matter to the tribunal under section 6(1) of the Act. Paragraph 3 of the notice had stated:

We require you within one month of the receipt of this notice to notify us in writing whether or not you agree to comply with the notice as from that date.

The sub-tenant did not agree and referred this matter. It seems that the sub-tenant did so on the strength of the notice served on it under section 5(2) of the Act, in which (as has been seen) the landlord may give a similar notice to a sub-tenant and, thereupon, the provisions of the Act apply to the sub-tenant and his sub-tenancy as if he was the tenant. So having got this notice, this sub-tenant thought that sections 5 and 6 of the Act applied to his case, and he operated the terms of section 6(1) and referred the matter to the tribunal. Apparently, the tenant referred the matter to the tribunal at some time after the reference of the sub-tenant, but this does not affect this case because the references were not consolidated. When the parties came before the tribunal, Mr Khanna objected that the tribunal had no jurisdiction to hear the references of an “unlawful” sub-tenant. The provisions of the Act, in his view, always postulate a lawful subtenancy and, therefore, this sub-tenant was not “a receiving party” within the meaning of the Act and therefore could not refer the matter.

The tribunal answered the problems in this way. First, it observed that it was not clear whether the sub-tenancy was unlawful. There was no evidence to that effect. Secondly, the landlord had chosen to serve a notice on the unlawful sub-tenant. The sub-tenant became a receiving party and, as such entitled to file a reference. The principle of the decision is contained in the following passage:

It seems to us that once a landlord has given a notice to any person to whom the tenant has sub-let the premises, whether legally or illegally he cannot then turn round and say that such person is not entitled to file a reference to the tribunal.

If this was not allowed, then the landlord could come before the tribunal, or the High Court, and claim an order for possession since the notice was not opposed.

Mr Khanna has developed similar arguments before this Court. There is no doubt that much of what Mr Khanna asserts is well founded. No doubt the giving of a notice to quit to an unlawful tenant as a trespasser or a wrongful occupier, does not convert that person into a lawful occupier or sub-tenant (ground (ii)). But the problem here is not precisely one of allowing an admittedly unlawful occupier to usurp the powers of the Act and pose as a receiving party and file a reference (see grounds (iii), (vi) and (vii)). The divergence of views begins with the assumption in ground (v) that the sub-tenant never claimed to be a lawful sub-tenant. As far as I understood Mr Rayani’s argument, it was that the sub-tenant did claim to be a lawful tenant. That must also be the fair conclusion from the subtenants reference. There is certainly no admission there that the sub-tenant is an unlawful tenant. The situation before the tribunal was, then, that the reference filed before it, was by a sub-tenant who claimed the protection of the Act as a lawful sub-tenant, although the notice to him by the landlord, dubbed him an unlawful sub-tenant in breach of three specific matters. This nomenclature was opposed. The precise problem before the tribunal was in what way to determine the dispute whether the sub-tenancy was lawful or unlawful on a preliminary objection. This problem was intensified by being confined to a construction of the Act proposed by Mr Khanna, before any evidence was led to determine the fact of the lawfulness or otherwise of the sub-tenancy.

The specific questions raised in this appeal on the construction of the Act, involve the following propositions. First, the Act provides protection for lawful tenants and sub-tenants; and, conversely, it does not apply to unlawful occupiers or trespassers. Secondly, the tribunal has power under section 12(1) (a) of the Act, to determine whether lawful tenancies are controlled or not, but not the status of the tenancy itself. Thirdly, if the status of the tenancy is in dispute, that must be the subject of a declaration by the High Court. Fourthly, the passage I have quoted above as stating the principle on which the tribunal acted, is said to be a misdirection. Similarly, it was a misdirection to hold that, unless the unlawful subtenant referred the matter to the tribunal after getting the notice, the matter would go unopposed. This covers the grounds of appeal up to ground (ix).

As far as I understand the matter, the last two grounds will be the subject of enquiries when the matter is referred back to the tribunal. Mr Khanna agreed, I think, at the end of the argument that the first test was whether the tribunal had power under the Act to decide the preliminary issues. If it did not, then the appeal must be allowed. On the other hand, if it did, then the case must be referred back to the tribunal to discover whether the tenancy was lawful. So, in addition to the specific questions of construction to be answered there is the general question of what powers the Act has reposed in the tribunal, to find the facts upon which its jurisdiction is based.

On this general question, Mr Khanna referred us to the Privy Council decision in *Heptulla Bros Ltd v Thakore* [1956] 1 WLR 286. There, one of the questions was whether the Central Rent Control Board at Nairobi, acting under the Increase of Rent (Restriction) Ordinance 1949 of Kenya (as amended by the Increase of Rent (Restriction) (Amendment No 2) Ordinance of 1951) had the power to determine finally the facts upon which its jurisdiction rested, so as to preclude the High Court from determining the same issue, by virtue of the doctrine of *res judicata*. The High Court held that this doctrine did not apply. Lord Keith delivered the opinion of the Board on an appeal from the High Court's decision. Under that legislation, it was found that the Rent Control Board had jurisdiction only on the issues arising between landlord and tenant. (At that time business premises fell within the purview of the Rent Control Board). The Ordinance applied only to let premises. It was submitted, however, for the defendant that the Rent Control Board had committed to it by the Ordinance, whether expressly or impliedly, the power to determine conclusively (subject to any right to appeal) the question of its own jurisdiction. This submission was based on the terms of section 5(1) (n) of the Ordinance 1949 which reads as follows:

[The board] shall have power to do all things which it is required or empowered to do by or under the provisions of the Ordinance, and in particular shall have power ... to exercise jurisdiction in all civil matters and questions under this Ordinance.

The following passage (at page 296) is crucial:

In their Lordships' view, this provision does not have the meaning or effect for which the defendants contend. It does no more than confirm the competence of the board to deal with all civil matters and questions arising under the Ordinance. The board have in any particular case to be satisfied that a relationship of landlord and tenant does exist as a preliminary to bringing the Ordinance into operation, but that is a function merely incidental to the application of any section of the Ordinance that is invoked, and not a power conferred by any section of the Ordinance.

Their Lordships approved the judgment of Lord Esher MR, as Scriven J has noted, and decided that the Rent Control Board of Nairobi was such a tribunal to which the Legislature had said in effect:

If a certain state of fact exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they acted without jurisdiction.

Accordingly, in their Lordships' opinion, the question of the relationship of landlord and tenant could not be made *res judicata* by a finding of the Rent Control Board, if a superior court decided that the facts

constituting that relationship did not exist. Such a finding could be nothing more than a collateral finding which could not raise a plea of *res judicata*.

Following this analysis, it will be apparent that the opening words of section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act are identical with section 5(1) of the 1949 Ordinance. It would seem that from the terms of section 12(1)(a) of the Act where the tribunal is given power to determine whether or not any tenancy is a controlled tenancy, what the tribunal must start with is a tenancy, as defined in the Act. That definition includes a sub-tenancy; so, where the tribunal has shown to it that a sub-tenancy is in existence, it will have power to decide whether it is a controlled tenancy. It will have to be satisfied that the relationship of landlord and tenant (including a subtenant) exists as a preliminary to bring the Act into operation. That is, in the words of Lord Keith, a function merely incidental to the application of any particular section and not a power conferred by any section of the Act. It would seem that this function was described by Caulfield J in *R v Croydon and South West London Rent Tribunal* [1977] 2 WLR 389 as being the duty of every inferior tribunal first to enquire and decide whether or not it has jurisdiction to determine the main questions. Much the same language was used by Madan JA in *Gurnam Singh v Jagat Singh & Sons Ltd* (unreported), as Scriven J has noted. Thus far, then, I would agree with Mr Khanna that the business premises tribunal as at present constituted is not one of that class of tribunals which has entrusted to it jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, finding that it does exist, to proceed further or do something more. It is of a similar type to its predecessor the old Rent Control Board.

I would agree, with respect with Mr Khanna's first point on the construction of the Act, that the Act provides protection for tenants and sub-tenants properly so called at law. Secondly, I agree that the tribunal has no power by the Act to determine finally the issue whether a particular tenancy or sub-tenancy is lawful. That is the province of the High Court, which is a Court of unlimited jurisdiction. But I find it difficult to follow to the next step. Because a tribunal does not have statutory power to decide its jurisdiction finally, it does not follow that it should not properly apply the statute by requiring the basic tenancy to be shown to exist. The question is to what degree this said tenancy is shown to exist? The tribunal can hear this matter itself; and it can decline to entertain the proceedings and allow the parties to seek a declaration. As far as I have understood the inclination of this Court, it is that it is not anxious to usurp the functions of the tribunal. I can see no reason in principle why the tribunal should not declare, if it thinks fit, that it will decide itself whether there is a tenancy at all and, if so, whether it is controlled. To my mind, that is exactly what Lord Keith meant when he said that the old board (now the tribunal) had in any particular case to be satisfied that a relationship of landlord and tenant existed as a preliminary to bringing the Ordinance, (now the Act) into existence. I agree that this goes a step further than was necessary for the Court of Appeal to decide in *Gurnam Singh v Jagat Singh & Sons Ltd* referred to above, but it is not out of line with the *Croydon* case. I need not repeat Lord Widgery CJ's statement set out by Scriven J.

In the circumstances of this particular appeal, the ultimate question to be answered is whether the tribunal was wrong to admit the reference at the stage it did? This narrow aspect of the appeal must be emphasised. What the tribunal was saying, in effect, was that a reference was made by a subtenant, who considered himself a lawful sub-tenant, against a notice which described him as an unlawful sub-tenant. It could not say whether or not the objection to the reference was well founded until it heard the dispute. I gather that, if the sub-tenancy had been shown to be unlawful, the reference would not then have been allowed to continue, although Mr Rayani was doubtful on this point. The service of the notice did not make the sub-tenancy any more or less lawful or unlawful. What it did was to allow the sub-tenant a basis from which to object by reference. When the tribunal said that the reference was proper, it did not finally determine that question. It meant, as I understand the ruling, that the tenant had been empowered by section 5(2) of the Act to respond by referring the matter to the tribunal. In other words, neither the sub-tenant nor the tribunal was bound by the description of the sub-tenant in the landlord's notice, which was the very issue before the tribunal; the tribunal was entitled to respect the reference and then to enquire further whether it had jurisdiction. In my view that is right. If there exists a *de facto* sub-tenancy, the quality of which, lawful or unlawful, is in issue, and the landlord issues a notice to the sub-tenant section 5(2) of the Act, in the terms of section 4(2) of the Act, calling upon the sub-tenant to notify the landlord whether he objects to vacating the premises by a certain date because the sub-tenancy is unlawful, that

landlord cannot be heard to object if the sub-tenant, considering himself a lawful sub-tenant and therefore a lawful receiving party, refers the matter to the tribunal. I agree that it is premature to decide at this stage whether or not the reference is, or is not, good. Therefore the matter must be remitted to the tribunal to continue with the hearing of the reference and any objections still outstanding. When it has had the facts of the alleged sub-tenancy shown to it, it will then be able to decide whether or not on the whole it has jurisdiction to hear the reference. Either party may yet succeed on this preliminary issue, and no doubt the other authorities put before us, will be considered in due course.

The appeal will therefore be dismissed as Scriven J has proposed and the record will be remitted to the tribunal with the direction to proceed with the reference. The sub-tenant will have the costs of this appeal.

Order accordingly.

Dated and delivered at Nairobi this 23rd day of March 1979.

H.G PLATT

JUDGE

SCRIVEN

JUDGE