

Keren Kayemeth Leisrael Limited - - - - Appellant

v.

Members of the Arab Mazareeb Tribe and the
villagers of Ma'loul - - - - Respondents

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 24TH JUNE, 1943

Present at the Hearing:

LORD MACMILLAN
LORD PORTER
LORD CLAUSON
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[Delivered by LORD CLAUSON]

The appellants in this matter are the Jewish National Fund under their registered name of Keren Kayemeth Leisrael Limited. The respondents are first the members of the Arab Mazareeb Tribe appearing by their Mukhtar or headman, and secondly the inhabitants of the Village of Ma'loul appearing by their Mukhtar or headman and certain Village Elders. The appellants are registered and beneficial owners of a tract of land near Nazareth delineated on a plan which is before the Board: the respondents claim to have established a practice of the Tribe and of the inhabitants of the Village of grazing over this tract of land. The Tribe also claimed to have established a practice of beneficial occupation of the tract by pitching tents and otherwise inhabiting it. This latter claim of the Tribe has been repelled by the Supreme Court of Palestine and no appeal has been taken against this part of the Court's order. The question in dispute before their Lordships is accordingly confined to the matter of grazing.

By the Protection of Cultivators Ordinance No. 37 of 1933 the Legislative Authority of Palestine made provision for protecting from eviction under circumstances set out in the Ordinance "Statutory tenants", an expression defined as meaning "any person family or tribe occupying and cultivating a holding otherwise than as the owner thereof". With the general provisions of this Ordinance their Lordships are not concerned, save, of course, in so far as the wording of those provisions may throw light on the construction of the particular provision upon which the present appeal turns. That provision appears in sections 18 and 19 of the Ordinance, of which the material words are as follows:—

S. 18 (1) No Court or Judge or execution officer shall make an order for the eviction of a person who has exercised by himself or his agent habitually at the appropriate seasons for not less than five consecutive years within a period of not more than seven years prior to the date when application is made for any such order a practice of grazing or watering animals or the cutting of wood or reeds or other beneficial occupation of similar character on the land whether by right custom usage or sufferance, unless the landlord satisfies the Court or Judge or execution officer that the High Commissioner is satisfied that provision of equal value has been secured towards the livelihood of such person.

S. 19. (1) Any dispute

(a) as to whether any person has exercised continuously any practice of grazing or watering animals or cutting wood or reeds or other beneficial occupation of a similar character by right custom usage or sufferance, shall be referred to a Special Commission to be appointed by the High Commissioner.

(2) . . .

The decision of such Commission shall be final and no appeal shall lie therefrom:

Provided that an appeal therefrom on a point of law shall lie to the Land Court by leave of that Court by case stated. . . .

(3) Where in any proceedings between any parties before any Court it appears that any question material in such proceedings has been decided as between such parties . . . under the provisions of this section such questions shall be deemed to be *res judicata*

It should be added that the Interpretation Ordinance, 1929, provides by section 3 that in every Ordinance, unless the context otherwise requires "person" includes any company or association or body of persons corporate or unincorporate.

In February, 1937, the Tribe and the Village gave notice to the Assistant District Commissioner for the locality that they respectively claimed grazing and watering interests and on the 2nd March, 1937, a Special Commission sat to decide the dispute thus raised. A considerable body of evidence was taken on that day and on the 19th March following. On the 23rd March, 1937, the Commission made their findings, the material parts of which are as follows:—

"The claim of Arab Mazareeb and Malul is for grazing rights. . . . This claim is disputed by the Jewish National Fund. . . . The Commission are not concerned with legal rights but with facts. On the facts which have been proved to the satisfaction of the Commission there is no doubt that both Arab Mazareeb and Malul people have been in the habit of grazing their animals in the disputed area (as shown on the map, and as known as the King George V Jubilee Forest) since 1921 and possibly before

"The Commission therefore find that the inhabitants of Malul and Arab Mazareeb have exercised continuously for a period of more than five consecutive years within a period of seven years prior to the date of the submission of their present claims a practice of grazing by custom and usage within the land known as the Jubilee Forest, Nazareth sub-district."

The present appellants on the 10th July, 1937, obtained an order from the Land Court at Nablus requiring the Special Commission to state a special case. In obedience to that order a special case was stated and came on for hearing before the Land Court of Haifa (Appellate Capacity). That Court on the 19th January, 1939, made an order for the return of the special case to the Special Commission for amendment. From this decision of the Court of Haifa appeal was brought to the Supreme Court of Palestine by the present appellants, and in the course of the appeal certain points of law were submitted to the Court on behalf of the appellants: it is now necessary to quote the first only of those points: it was as follows:—

"Whether it was competent for the Special Commission to hear and determine in favour of the respondents claims made under sections 18 (1) and 19 (1) (d) of the Cultivators (Protection) Ordinance by and in the name of indefinite and fluctuating bodies of persons, viz. a tribe and inhabitants of a village".

On the 30th March, 1939, the Supreme Court set aside the judgment of the Court of Haifa and returned the case to that Court to dispose of the points of law raised by the present appellants. The matter was accordingly brought before the Court of Haifa which on the 30th November, 1939, dismissed the Appeal. In regard to the point of law quoted above, the observations of the learned Judges (Sherwell and Evans JJ.) are as follows:—

"The appellant then objects that such practices [i.e. grazing] cannot be said to be exercised by a fluctuating body of persons such as the inhabitants of Malul, or the members of the Arab Mazareeb tribe. The fact that the number of persons interested fluctuates seems to us immaterial. The same might be said of the shareholders of a company: provided the individuals form a legal person or what has locally been regarded as a legal entity and are ascertainable, we think the claim can be made on their behalf. We have not been told that this is an indefinite section of the Mazareeb tribe. It is too late now for the appellant to argue that the inhabitants of a village, or members of a family or tribe have not in Palestine been treated as forming a legal entity enjoying rights of tenancy or use of land."

After referring to a number of decisions in the Palestine Courts in support of this proposition their Lordships add:

" This case was not brought in a Court of Law but before a Special Commission intended to deal in the claims of peasants, and was we think properly brought."

The Court of Haifa accordingly, after dealing with the other points of law brought before them, to which their Lordships do not find it necessary to advert, on the 30th November, 1939, dismissed the appeal.

The present appellants presented an appeal to the Supreme Court of Palestine from this decision of the Court of Haifa. The appeal came before Trusted C.J., Rose J. and Khayat J. who on the 15th February, 1940, varied the finding of the Special Commission in favour of the present appellants in regard to certain matters which are no longer material and otherwise dismissed the appeal. In delivering the judgment of the Court, Trusted C.J. relied on the Interpretation Ordinance as justifying the inclusion in the word " person " as used in s. 18 (1) of the Protection of Cultivators Ordinance of a body unincorporate, and held that having regard to local circumstances each of the claiming bodies, viz., the Arab Mazareeb Tribe and the Villagers of Malul were " persons " within the section.

Their Lordships have had the assistance of a very candid and lucid argument from Counsel for the appellants, who ultimately, and, in their Lordships' judgment, quite rightly, conceded that the acceptance of their contention on the point of law quoted above was essential if the appellants were to succeed in the present appeal. It was strenuously argued, as it had been argued before the Supreme Court, that the fact that in section 2 of the Ordinance, in the definition of " Statutory Tenant " the words " family or tribe " were added to the word person, showed that the wide definition of " person " in the Interpretation Ordinance was not treated as applicable, and that " person " must be given an individual meaning. As was pointed out by Trusted C.J. in the Supreme Court, whatever may be said as to the meaning of " person " in section 2 of the Ordinance it seems impossible to exclude the Interpretation Act in construing the term person as used in s. 19 (1) in the definition of " Landlord " since it could hardly be contended that the term must be confined to an individual. Feeling no doubt the difficulty of combating this argument, Counsel for the appellants argued that the context in which the word " person " occurs in section 18 (1) excludes the Interpretation Act; they pointed to the mention of the person exercising the practice claimed " by himself or his agent " and to the reference to the " livelihood of such person ", and suggested that these expressions, while appropriate in the case of individuals claiming as such, were not appropriate to, and excluded the case of, a fluctuating body of persons claiming for the benefit of such individuals as might from time to time constitute the fluctuating body.

Their Lordships see no reason to doubt that the Court at Haifa and the Supreme Court came to a correct conclusion upon the point at issue: and for the reasons forcibly put by Sherwell and Evans JJ. in the former court and accepted as correct by Trusted C.J. in delivering the judgment of the Supreme Court, they are satisfied that upon the true interpretation of the relevant legislation the Special Commission is charged with the duty of dealing in appropriate cases with the position not only of any individual who claims and proves his right to protection in regard to the matters in question but also of such fluctuating bodies of persons as the members of a tribe or the inhabitants of a village. The Courts below, in their Lordships' opinion, were fully justified in paying regard, on a matter of construction of the relevant legislation, to the peculiar local social conditions which involve the recognition as legal entities of such fluctuating bodies as those in question.

Their Lordships will humbly advise His Majesty to dismiss the appeal. As the appeal is *ex parte* there will be no order as to costs.

In the Privy Council

KEREN KAYEMETH LEISRAEL LIMITED

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MEMBERS OF THE ARAB MAZAREEB
TRIBE and the Villagers of Ma'loul

DELIVERED BY LORD CLAUSON

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