IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Madan, Miller & Potter JJA)

CIVIL APPEAL NO. 57 OF 1981

Between

NGOBIT ESTATE LTD.....PLAINTIFF

AND

VIOLET MABEL CARNEGIE.....RESPONDENT

JUDGMENT

The two appellants above named (hereafter respectively referred to as Ngobit and Gatarakwa) are seeking an order by this court which will cancel an interlocutory injunction granted by the High Court to the two respondents above named (hereafter jointly referred to as the plaintiffs). Ngobit has an authorised and issued share capital of Kshs 800,000 divided into 40,000 ordinary shares of Kshs 20 each. On April 25, 1978, the mother of the first-named plaintiff, described as Honourable Mrs Violet Mabel Carnegie (hereafter referred to as the deceased), the plaintiffs and a limited liability company - Queensway Nominees (EA) Limited (hereafter jointly referred to as the vendors) - were the registered owners of the Ngobit shares to the extent of their respective holding therein by each of them. Also at that time Ngobit was the registered proprietor, and still is, of three parcels of agricultural land being Land Reference Numbers 9484, 2616 and 2621.

On April 25, 1978, the vendors entered into an agreement of sale in writing with Gatarakwa as the purchaser (hereafter referred to as the agreement) whereby for the consideration therein mentioned, the vendors jointly agreed to sell and Gatarakwa to purchase all the vendors' aforesaid Ngobit shares which were duly transferred to Gatarakwa in consequence whereof it became the owner and assumed control of Ngobit; secondly, Gatarakwa agreed to procure Ngobit to execute a lease to the plaintiffs for their joint lives and the deceased and the life of the survivor of them of 4,000 acres approximately being a portion of the agricultural land owned by Ngobit more particularly delineated and described on a plan annexed to the agreement and thereon bordered yellow, at the agreed yearly rent of Kshs 48,000 (revisable) to be held by the plaintiffs and the deceased for a term commencing on the first day of January one thousand nine hundred and seventy eight and expiring on the day of the date of the death of the last survivor of them, such lease to be in the form and on terms to be mutually agreed by the parties or, in default of such agreement, by arbitration in accordance with the Arbitration Act. The portion which was agreed to be leased to the plaintiffs was surveyed whereupon it came to be known as Land Reference Number 9424/3 comprising 1648.7 hectares or thereabouts.

The deceased having died before the lease could be completed in her lifetime, it was drawn up in the names of the two surviving plaintiffs. This draft lease was approved by the parties on April 20, 1978, on which day the agreement between the parties was stated to be also executed though it bears the date April

Ngobit and Gatarakwa refused to execute the lease. The plaintiffs filed a suit against them both on April 28, 1981, their plaint containing averments as to the making of the agreement between the parties with its terms as aforesaid, the transfer of the entire Ngobit shares to Gatarakwa, the payment of the annual rent at the agreed rate which Ngobit and Gatarakwa accepted for the period of January 1, 1978 to June 30, 1981; the approval of the terms of the lease on behalf of Gatarakwa on April 20, 1978; in addition, that on November 18, 1978, three of Ngobit's directors on its behalf signed an application for Land Control Board consent to the lease of the premises to the plaintiffs which they had occupied from January 1, 1978; that consent to the lease was given on June 19, 1979; that in reliance upon the agreements of Ngobit and Gatarakwa, the plaintiffs had carried out extensive development and expended large sums of money on the premises; that in April 1981, employees of Ngobit and Gatarakwa, in the course of such employment, alternatively as their agents, trespassed on the premises for the purpose of subdividing the premises and settling landless members of Gatarakwa on the premises; that Ngobit and Gatarakwa threatened, unless restrained, to continue such trespass, to evict the plaintiffs and to settle landless members of Gatarakwa on the premises.

The plaintiffs prayed, *inter alia*, for (a) an order for specific performance by Ngobit of the agreement for lease and the execution of the lease (b) an order for specific performance by Gatarakwa to procure execution of the lease by Ngobit (c) an injunction to restrain Ngobit and Gatarakwa jointly and severally by their officers, servants or agents from:

1. Interfering with the plaintiffs' quiet possession of the premises;
2. Trespassing on the premises;
3. Attempting to settle Gatarakwa's landless members on the premises.

In their long statement of defence and counterclaim which Ngobit and Gatarakwa jointly filed for themselves, among their other defences, they raised the defence that the agreement to procure and execute the lease constituted, to the extent of the alleged lease, a controlled transaction within the meaning of the Land Control Act (Cap 302) and consequently became void for all purposes for failure to apply for consent of the Land Control Board within the prescribed period; in the alternative that consent of the Land Control Board not being applied for within three months of April 30, 1978, Gatarakwa ceased to be bound to perform any obligation the performance of which constituted entering by any person into a controlled transaction.

Together with the filing of their plaint in court on April 28, 1981, the plaintiffs on the same day applied for an injunction in the terms of the prayers in their plaint, hereinbefore reproduced. In her affidavit in support of the injunction application, the second plaintiff deponed, *inter alia*, that consent to the application dated November 18, 1978 was given by the Land Control Board at its meeting held on June 19, 1979 which was attended by a director of Ngobit, the parties' lawyer, Mr Spence, and the second plaintiff; that unless an injunction was issued immediately, the land would be allocated to the landless members of Gatarakwa who would then move on to the plaintiffs' land. Such action would cause irreparable harm to the land, the improvements made by the plaintiff and their livestock. The removal of such trespassers would prove very difficult.

Cotran J made an *ex parte* order granting a temporary injunction. Later, after hearing the parties, Sachdeva J made an order for the injunction to remain alive until the hearing and determination of the suit.

Ngobit and Gatarakwa have appealed. They say in their memorandum of appeal that the learned judge erred in all the following holdings (paraphrased), affirmatively or negatively, as the case may be, ie the agreement and/or lease had become void and of no effect under the provisions of the Land Control Act and the plaintiffs were parties to the agreements of April 20, 1978 and April 25, 1978; that the application for consent of the Land Control Board was not made in time; that a new lease agreement was not entered into on June 19, 1971 by reason of appearance by the parties before the Land Control Board; that Section 8 of the Land Control Act had no application to this case; that the Statute Law (Repeal and Miscellaneous

Amendments) Act, 1980 (No 13 of 1980) had no relevance and/or application to this case, the said Act not being of retroactive effect; that the plaintiffs had not shown a *prima facie* case with a probability of success when clearly the agreement for the lease sued on was void, illegal and of no effect; consequently the plaint did not disclose a *prima facie* case with any probability of success; that the plaintiffs, by entering into an agreement with Gatarakwa under which Gatarakwa would secure execution of a lease of agricultural land, became parties to a controlled transaction.

The reference to the Statute Law (Repeal and Amendments) Act, 1980, arises out of the learned judge's observation in his ruling that it added a new proviso to Section 8 of the Land Control Act giving the High Court, for the first time, power to extend time for the giving of the board's consent, though extension of time in this case would not serve any purpose as the board had already given consent to the transaction and mere re-affirmation of it for technical reasons would serve no useful purpose. Act No 13 of 1980 came into force on December 24, 1980. An amendment or change in the law can have retroactive effect. The law to be applied was as it existed on the date of the controlled transaction, whatever that date was. The learned judge did not grant an extension of time, but he seems to have allowed himself to be influenced by the change in the law made in 1980 and if it induced him to continue the injunction, he erred. The amendment to Section 8 had no bearing on the case before him although the court is now empowered by the amendment to extend the period of six months now provided even though it may have already expired.

The learned judge held that the first agreement for sale was executed on April 25, 1978 when the draft lease was also approved; that the first note or memorandum signed on behalf of Ngobit recording the agreement for the lease was the application for consent of the board dated November 18, 1978 and this application was forwarded to the Commissioner of Lands on January 2, 1979, who in turn forwarded it to the Land Control Board on January 26, 1979. A letter was received from the board on March 28, 1979. The application was not approved on April 17, nor again on May 15 because Ngobit did not attend. The application came on again on June 19, 1979 when Mr Spence attended on behalf of Ngobit as well as the plaintiffs, as also a director of Ngobit and the second plaintiff. The director on behalf of Ngobit and the second plaintiff on behalf of the plaintiffs indicated to the board that they were in full agreement with the terms of lease. The board's consent was then given to the lease.

It was common ground, said the learned judge, and rightly so, that the lease in the instant case being of agricultural land was a controlled transaction which was void for all purposes unless the board gave consent in respect of the transaction in accordance with Section 6(2) of the Act.

At the material time in this case, the relevant sections of the Land Control Act were:

> "6.(1) Each of the following transactions –
>
> > (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
> > (b) …
> > (c) …
> > is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.
>
> (2) An agreement to be party to a controlled transaction becomes void for all purposes –
>
> > (a) at the expiration of three months after the making of the agreement, if the application for the appropriate land control board's consent has not been made within that time; or
> > (b) If an application for the appropriate land control board consent has been made and consent has been refused –
> >
> > > i) at the end of thirty days from the date of refusal; or
> > > ii) where a party has appealed under Section 11 against the refusal of the consent,

on the dismissal of the appeal; or
iii) where a party has appealed under Section 13 against the dismissal of the appeal, on the dismissal of that appeal.

7 ...

8. An application for consent in respect of a controlled transaction shall be made to the appropriate Land Control Board and the board, acting in its absolute discretion, shall either give or refuse its consent in respect of the transaction and subject to right of appeal conferred by Section 11, the decision of a Land Control Board shall be final and conclusive and shall not be questioned in any court.

9(1) …
(2) Where an application for consent in respect of a controlled transaction is made to a Land Control Board and the board does not determine the application within a period of three months after the application is made, the application shall be deemed to have been refused at the expiry of that period."

I am in agreement with the learned judge that the agreement for sale was executed on April 25, 1978 when the draft lease was also approved, though he referred to it as the first agreement. It was also the agreement for the lease. No application was made at all within three months for consent of the Land Control Board in respect of this agreement which provided, to repeat, that Gatarakwa would procure Ngobit to execute a lease of 4000 acres of agricultural land in favour of the plaintiffs. This agreement whereby the plaintiffs and Gatarakwa were to be a party to a controlled transaction, became void for all purposes on July 25, 1978 under Section 6(2) on account of failure to apply for consent of the Land Control Board within three months after the making of the agreement. It irrevocably killed the part of the agreement relating to grant of a lease of 4,000 acres to the plaintiffs by Ngobit at the behest of Gatarakwa. That was the end of the matter because the agreement of April 25 was the only effective agreement between the parties.

The learned judge said that he found force in the argument put to him by Mr Fraser who appeared before him on behalf of the plaintiffs, as it has been put to us also by Mr Couldrey who appeared on behalf of the plaintiffs before us, that the first agreement was between Gatarakwa and the plaintiffs; that Gatarakwa itself had not entered into any lease but had entered into an obligation to procure execution of a lease by Ngobit ie entering into an agreement to lease; and that, therefore, Ngobit did not become a party to a controlled transaction until it entered into the further agreement for the lease on November 18, 1978 which was the application for consent of the Land Control Board made within three months after the making of the agreement.

I will assume, as the learned judge seems to have thought, that the application for consent of the board was the first note or memorandum signed on behalf of Ngobit recording the agreement for the lease. The basic fallacy of this argument is that it loses sight of the fact that the agreement on April 25 was a valid agreement whereby the plaintiffs became party to a controlled transaction. As already stated, that agreement became void for all purposes on July 25, 1978. Be that as it may, the application dated November 18, 1978 was forwarded to the Commissioner of Lands on behalf of the board for consent on January 2, 1979. The board did not determine it within a period of three months after the application was made ie on April 2, 1979 and it was deemed to have been refused at the expiry of that period under Section 9(2). If it is argued, which would be an untenable argument, that the application was not forwarded to the board until January 26, 1979, when the Commissioner of Lands sent it to the board, then, for the same reason, it was deemed to have been refused on April 26, 1979, at the expiry of the period of three months. No appeal was lodged.

The learned judge seemed to think that an application is not taken to have been made to the court unless it has been filed in the court's registry. An application is not made until it is orally argued: *Maluki v Oriental Fire and General Insurance* [1973] EA 162.

The learned judge said the application dated November 18, 1978 contained all the essential terms of the lease to which the board gave consent on June 19, 1979; that even if the earlier agreement, presumably the agreement of November 18, 1978, had become void or unenforceable, *prima facie* "a new agreement" for lease had been entered into between the plaintiffs and Ngobit on that date, ie as I understand it, on June 19, 1979. With respect, this is fallacious reasoning.

Even if it is ignored that the plaintiffs entered into an agreement to become party to a controlled transaction on April 25, 1978, the application dated November 18, 1978 also became a dead letter on April 2, 1979 under Section 9(2) or, if reasoning is twisted, on April 26, 1979. The board had become *functus officio* in respect of it. A fresh application in respect of "a new agreement" for a lease, plausibly presumed to have come into being on the spur of the moment on June 19, 1978 when the parties appeared before the board, though only for the purpose of sponsoring their application dated November 18, 1978, if it could be made again in respect of a transaction in respect of which the board's consent was deemed to have been already refused, it had to be made in writing: Regulation 2(1) of the Land Control Regulations. See also *Ethan Karuri v Mabuti Gituru and Others* CA 25 of 1980 (unreported). However, there was no "new agreement" between the parties for the plaintiffs sought and obtained consent in respect of the agreement of November 18, which was their case in paragraph 8 of their plaint.

The learned judge said that under Section 8, the decision of the board given on June 19, 1979, closed the chapter forever because its decision is final and conclusive and cannot be questioned in any court. Yes, if the board, upon an application made to it in the form required by statute, in fact gives its decision in respect of a controlled transaction. Again, on June 19, 1979, there was no application before the board to which it could give consent.

The learned judge must be overruled, though because of the primacy of law, the hands of the court are tied.

Mr Couldrey reminded us of our decision in *Lifico Trust Registered and Others v TM Patel* Civil Appeal No 18 of 1979 (unreported). That case is distinguishable. We refused to discharge an injunction order of the High Court as to whether Section 6 precluded a party from seeking to enforce an equitable trust relating to land subject to the Act. Leave alone *prima facie* a probability of success, there is *prima facie* not a possibility that the plaintiffs could succeed in their suit to obtain specific performance of the lease.

I would allow the appeal with costs to the appellants. I would make an order discharging the injunction granted by the High Court and substitute therefor an order dismissing the plaintiff's application in respect thereof with costs.

As Miller and Potter JJA agree, it is so ordered.

This case once again demonstrates the tyranny which the draconian provisions of the Land Control Act could inflict upon an innocent party. In *Leonard Njonjo Kariuki v Njoroge Kariuki alias Benson Njono*, Civil Appeal No 26 of 1979 (unreported) we said that it vividly illustrated the injustice which so often flowed from the operation of the Land Control Act. I doubt very much that the plaintiffs would have agreed to sell their farm but for the lure of the lease together with the purchase price.

Equity will no longer stand aside and weep. The 1980 Amendment Act has taken a great deal of harshness out of the Land Control Act.

Potter JA. I agree with the orders proposed by Madan JA. I need not repeat the facts of the case which are fully set out in his judgment.

The case of the respondent plaintiffs unhappily founders on the merciless rock of the Land Control Act. In the appeals which come before this court in which the Land Control Act is involved, it is invariably the case that the Act is not being relied upon by a party in order to fulfill the intended purposes of the Act but by a vendor of an interest in land in order to deprive the purchaser of the benefit of his contract.

However, the function of the judiciary is to interpret the statute law, not to make it. Where the meaning of a statute is plain and unambiguous, no question of interpretation or construction arises. It is the duty of the judges to apply such a law as it stands. To do otherwise would be to usurp the legislative functions of Parliament.

The harshness of the Act has been ameliorated by amendments which came into effect on December 24, 1980 (Act No 13 of 1980). In this case, however, there is no escaping the application and effect of the Act as it was before the amendments took effect.

The agreement of April 25, 1981, in so far as it provided for the securing of the execution of a lease in favour of the respondents, was clearly a "controlled transaction" to which the Act applied. The transaction was the lease of agricultural land. It matters not, for the purposes of the Act, whether the parties to the agreement for the transaction are all the same as the parties to the lease. In this case, Gatarakwa Farmers Company Limited (hereinafter referred to as "Gatarakwa"), who had purchased all the shares in Ngobit Estates Limited (hereinafter referred to as "Ngobit"), were to procure Ngobit, their wholly owned subsidiary, to execute the lease. There was an enforceable contract between the respondents and Gatarakwa for the execution of the lease by Ngobit, a controlled transaction.

In some cases concerning the Act which come before this court, the parties to the controlled transaction, although aware of the Act, are careless about the tight timetable imposed by the Act (as it was before amendment) and the harsh consequences of failing to meet that timetable. And this seems to be so even where advocates are employed.

Section 6(2)(A) of the Act, as it was in force in 1978, allowed a period of three months in which an agreement to be a party to a controlled transaction had to be submitted to the appropriate land control board for its consent; otherwise the agreement became void for all purposes. Application to the land control board was not made until November 18, 1978, some seven months after the making of the agreement. The agreement had become void on July 25, 1978.

That would be the end of the matter, since an interim injunction is not granted in favour of a party who has no prospect of success in the suit, were it not for the submission made on behalf of the respondents that the first agreement made between them as proposed lessee and Ngobit as proposed lessor was contained in the application made to the land control board on November 18, 1978.

The learned judge who granted the interim injunction thought this argument had some force. With considerable regret, in view of the consequences, I have to disagree. The controlled transaction agreed to on April 25, 1978 was the same transaction that was submitted to the board for its consent on November 18, 1978, namely, a lease to be granted by Ngobit in favour of the respondents. In my opinion, it is totally unrealistic and would be nothing but a convenient fiction to say that a new agreement was entered into by the parties to the application made on November 18, 1978. All that was being done was to make the necessary application, but far too late, for consent to the transaction agreed to on April 25, 1978.

If I were wrong about that, the respondents would still be faced with the fact that the consent of the board, which was ultimately given on June 19, 1980, was not given within three months of the date of the application (November 18, 1978) as required by Section 9(2) of the Act as in force in 1978. By virtue of that provision, the application is deemed to have been refused on February 18, 1980. The subsequent granting by the board was of no effect.

The amendments to the Act, which came into effect on December 24, 1980, would probably have met the respondent's difficulties, if they had been in effect in 1978.

The relevant amendments to the Act:

1) Allowed the parties to a controlled transaction a period of six months, instead of three months, within which to apply for consent of the land control board, and empowered the High Court (for the first time) to extend that period, and even if the application was made after the period of six months had expired; and

2) Repealed the provision that a land control board shall be deemed to have refused its consent to an application if no determination of the application is made by the board within three months of the date of the application.

This gives rise to the question as to whether the amendments could have retrospective effect. Again, with regret, I am compelled to the conclusion that they could not. The amendments are not expressed to have retrospective effect, nor are they retrospective in effect by the necessary intendment of the amending provisions. If they were impliedly retrospective in effect, they would have to take effect upon the coming into operation of the Act on December 12, 1967, since there is no intermediate date between that date and December 24, 1980 (the date of commencement of the amending Act) which would qualify the consideration. It is to my mind inconceivable that parliament intended that all controlled transactions that had become void, by reason of failure to apply for or obtain consent within the stipulated time, since the passing of the Act in 1967 should become capable, somehow, of being restored to life, regardless of the consequences. Nor could there be any possible justification for construing the amendments as having retrospective effect in some cases and not in others.

It has been further suggested that the relevant agreement and application for consent can be spelled out of the appearance before the land control board of the parties to the proposed lease on June 19, 1979. I do not think that this argument can be seriously entertained. The same parties were clearly attending the postponed hearing of the application made in due form, although not in due time, on November 18, 1978. No fresh application in due form was made on June 19, 1979, nor is there any evidence of any fresh agreement.

For these reasons, I must agree with the orders proposed.

Miller JA. The background to this case and the ensuing litigation leading up to this appeal have been fully set out in the judgment of Madan JA and it is not necessary for me to cover so much ground as has been so carefully covered by him. I would therefore only make the following observations which have influenced my opinion in judgment.

Of the eight grounds of appeal, the eighth ground is to me the most relevant; it is also comprehensive; viz:

> "The learned judge erred in law and in fact in his interpretation of the Land Control Act and in particular failed to appreciate it is the transaction declared void by statute and that the plaintiffs by entering into an agreement with the second defendant under which the second defendant would secure execution of a lease of agricultural land in their favour thereby became parties to a controlled transaction and it was the very thing and the very evil aimed against by the letter and spirit of the statute."

The Land Control Act (Cap 302) No 34 of 1967 was specifically enacted to "Control Dealings in Agricultural Land;" and applies to the facts and circumstances of this case. The provisions of the Act may well be seen to be somewhat restrictive, but the effect of the words used does not, as a question of law, create ambiguity. (See *Croxford v Universal Insurance Co* [1936] 2 KB 253 at page 280) viz: "where the words of an Act of Parliament are clear, there is no room for applying any of those principles of construction, which are merely presumptions in case of ambiguity."

If at all a question of construction does arise, I think the solution should follow this dictum in the case of *Direct United States Cable Company v Anglo American Telegraph Company* [1876-7] 1 AC 394 at page 412. Viz:

> "The tribunal that has to construe an Act of the Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand those words it is material to inquire what is the subject matter with respect to which they are used, and the object in view."

In the present case, the subject matter of litigation is agricultural land. It is only left to be seen whether or not and if so, in what manner the provisions of the Act apply.

Section 6(1) of the following transactions, that is to say:

> "a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
>
> b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and use of Land (Planning) Regulations, 1961 for the time being apply;
>
> c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act."

It cannot be denied by either side to this litigation that it was known and appreciated by both sets of the parties that they were dealing with agricultural land at the very outset of their coming together to negotiate interests in the land. A "dealing" with any agricultural land within a land control area is of itself a class of activity contemplated by the Act with respect to such land by Section 6(1) (a) above. When therefore the parties approved the draft lease agreement and executed it on April 25, 1978, the agreement and the parties thereto become subject to the controlling provisions of the Act for purposes of the furtherance and would-be fulfillment of the agreement. Even though prospective entitlements and liabilities as between the parties on either side may have been envisaged or even decided upon as between themselves, it is the agreement which has been shown to be directed to the intended future use of the land vis-avis the object of the Act, which was then a matter of statutory concern. Indeed, the Act as it were, reaches out to the source of the agreement; for Section 6(2) provides:

> "An agreement to be a party to a controlled transaction becomes void for all purposes –
>
> a) at the expiration of three months after the making of the agreement, if application for the appropriate land control board's consent has not been made within that time; or
>
> b) if application for the appropriate land control board's consent has been made and consent has been refused –
>
> i) at the end of thirty days from the date of the refusal; or
>
> ii) where a party has appealed under Section 11 of this Act against the refusal of consent, on the dismissal of the appeal; or
>
> iii) where a party has appealed under Section 13 of this Act against the dismissal of the appeal, on the dismissal of the appeal, on the dismissal of that appeal."

There was no application made for the consent of the relevant land control board with respect to the executed agreement of April 25, 1978, let alone perhaps notice of intention to be party thereto. That agreement accordingly became void for all purposes on July 25, 1978. Even if an application had been made to the board the peculiar provisions of Section 9(2) of the Act became operative in the interim ie

> "Where an application for consent in respect of a controlled transaction is made to a land control board, and the board does not determine the application within a period of three months after the application is made, the application shall be deemed to have been refused."

I have referred to this sub-section 9(2) as being peculiar as I have no doubt that notwithstanding the

authority still vested in a land control board under the Act as appear in the Statute Law (Repeal and Miscellaneous Amendments) Act, No 13 of 1980. It is obvious that the injunction application in the High Court and the extension of its grant now appealed from were treated with regard to the latter provisions of the Act No 13 of 1980.

The Act applicable to the case was the Land Control Act No 34 of 1967. I think that the closing remarks of the judgment of Lindley, LJ in *Young v Corporation of Leamington* (1882) 8 QBD at page 579 are somewhat appropriate to this case ie

> "It may be said that this is a hard and narrow view of the law; but my answer is that Parliament (has) thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute, because it may lead to apparent hardship."

I would myself allow this appeal and I agree with the judgment of Madan JA and the orders he has proposed.

Dated and delivered at Nairobi this 23rd day of April, 1982.

C.B MADAN

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JUDGE OF APPEAL

C.H.E MILLER

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR