

7/29

IN THE PRIVY COUNCIL

No. 36 of 1975

ON APPEAL
FROM THE SUPREME COURT OF MAURITIUS

BETWEEN :

AHMAD GOOLAM DUSTAGHEER

Appellant
(Defendant)

- and -

THE MUNICIPAL CORPORATION
OF PORT-LOUIS

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

GERSTEN & CO.
21 Goodge Street,
London, W1P 1FD

SLAUGHTER & MAY,
35 Basinghall Street,
London, EC2V 5DB

Solicitors for the Appellant

Solicitors for the Respondent

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

AHMAD GOOLAM DUSTAGHEER

Appellant
(Defendant)

- and -

THE MUNICIPAL CORPORATION
OF PORT-LOUIS

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

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Exhibits AB and AB1 to AB8 -
 Nine photographs of the building
 in question Registered in Reg.
 A392 Nos. 1216 to 1224 respectively

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N

AHMAD GOOLAM DUSTAGHEER

Appellant
(Defendant)

- and -

THE MUNICIPAL CORPORATION OF
PORT-LOUIS

Respondent
(Plaintiff)

10

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

MAURITIUS - IN THE SUPREME COURT

In the matter of:

THE MUNICIPAL CORPORATION OF THE
CITY OF PORT-LOUIS

Plaintiff

versus

AHMAD GOOLAM DUSTAGHEER, of No.49
Lord Kitchner Street, Port-Louis Defendant

In the
Supreme Court
of Mauritius

No.1
Statement
of Claim

19th February
1969

20

1. On the 24th day of January, 1964, the Defendant was granted a Building permit, No.502, for the erection of a building consisting of a ground floor, and a first floor at No.49 Lord Kitchner Street, Port-Louis, as per drawing which the defendant submitted at the time of the application for such permit.

2. The defendant did, contrary to such permit, which was delivered to him and in breach

In the
Supreme Court
of Mauritius

No.1
Statement
of Claim

19th February
1969 -
continued

of the law, cause three storeys to be added to the above building.

3. The defendant being subsequently prosecuted before the District Court of Port-Louis for breach of s.20(2) of the Building Ordinance, Cap.263, viz: for having failed to comply with the plan upon which a building permit was granted to him by the building authority, pleaded guilty to the said prosecution and was fined Rs 100 plus costs on the 9th of August, 1968.

10

4. The defendant was subsequently invited by the Works Committee of the Plaintiff Corporation to supply a certificate from a qualified and registered engineer regarding the structural soundness of the said building.

5. In spite of repeated requests from the said Works Committee to the above effect, the defendant failed to produce such certificate.

6. The Defendant was summoned on the 19th day of February 1969 to cause the three storeys which had been built by him contrary to the plan contained in his building permit to be pulled down. The defendant was warned in the said summons, a copy whereof is herewith annexed, that should he fail to comply with such pulling down order, the Plaintiff Corporation would, in the exercise of its powers under s.20(2) of The Building Ordinance, Cap.263, cause the said storeys to be pulled down and removed at the Defendant's costs.

20

30

7. The Defendant having failed to comply with the aforesaid summons, the Plaintiff Corporation did, in the exercise of the powers conferred upon it by section 20(2) of the Building Ordinance, Cap.263, cause the said three storeys to be pulled down.

8. The costs of the works for the pulling down of the said three storeys amount to the sum of Rs 20,925.77 as per particulars herewith annexed.

40

9. The Plaintiff Corporation avers that the defendant is bound in law to make good the said costs and pay the same to the plaintiff, for such pulling down.

10. The Plaintiff Corporation therefore prays from this Honourable Court for a judgment

condemning and ordering the defendant to pay to the Plaintiff Corporation the aforesaid sum of Rs 20,925.77 with interest and costs.

In the
Supreme Court
of Mauritius

No.1
Statement
of Claim

19th February
1969 -
continued

10

YOU, the abovenamed and styled defendant are hereby required, called upon and summoned to cause an appearance to be entered for you in the Supreme Court of Mauritius by filing in the Registry thereof, within five days from service hereof upon you, a statement of Defence, in answer to the present Statement of Claim.

ISSUED by the Plaintiff Corporation who elects its legal domicile in the office of the undersigned attorney at law situate at No.50 Sir William Newton Street, Port-Louis.

Under all legal reservations.

Dated at Port-Louis, this 17th day of August, 1970.

(Sd.) S.Veersamy

20

of 50 Sir William Newton Street, Plaintiff Corporation's Atty.

To: The Defendant abovenamed and styled of Port-Louis, No.49 Lord Kitchner Street.

30

NB: If the requirements and exigencies of this Statement of Claim be satisfied and the sum above claimed paid to the Plaintiff Corporation, and the costs thereof, valued at the sum of Rs 1000 (subject however to taxation) be paid to the Attorney abovenamed within four days from service hereof upon you, all further proceedings will be stayed.

Personal service by usher Gombault on the 18th August, 1970.

Reg DH 374 No. 3237

INSURANCE & OTHERS

40

Insurance from 16th June to 16th September 1969	702.80
Insurance from 17th September to 16th December, 1969	702.80
Insurance from 17th December to 16th March, 1970	702.80

In the
Supreme Court
of Mauritius

No. 1
Statement
of Claim

19th February
1969 -
continued

Insurance from 17th March to 31st March, 1970	151.80
Payment to C.E.B. for Displ. of L.V. lines	635.00
Claims from DH at law Veerasamy	100.00
First claim from the Municipality	4,365.71
	<u>7,360.91</u>

WAGES

Up to 13. 7.69	309.62	10
20. 7.69	244.41	
27. 7.69	392.29	
3. 8.69	340.68	
12. 8.69	402.81	
26. 8.69	644.91	
13. 8.69	910.14	
9.11.69	477.03	
16.11.69	277.54	
23.11.69	332.20	
30.11.69	291.87	20
7.12.69	358.20	
13.12.69	272.04	
20.12.69	322.13	
27.12.69	226.64	
3. 1.70	312.05	
10. 1.70	308.05	
17. 1.70	332.30	
24. 1.70	215.73	
31. 1.70	270.35	
14. 2.70	604.89	30
21. 2.70	20.40	
1. 3.70	476.48	
15. 3.70	882.02	
24. 3.70	393.02	

28. 3.70 152.80
 18. 4.70 227.20 Rs 9,997.80

In the
 Supreme Court
 of Mauritius

No.1
 Statement
 of Claim

19th February
 1969 -
 continued

	<u>TRANSPORT</u>		<u>MATERIALS</u>	
	Week ending 13.7.69	2.50	1 hacksaw frame	9.00
	" 20.7.69	69.80	82 Saw blades	123.00
	" 27.7.69	80.98	10 masar steel points	20.00
	" 3.8.69	44.26	2 bass brooms	17.00
10	" 10.8.69	54.20	2 handles for bass brooms	1.50
	" 17.8.69	49.30	5 handles for sledge hammer	7.50
	" 23.8.69	34.00	16 lbs of rope 1"	13.60
	" 30.8.69	44.90	71 lbs abacca rope	213.00
	" 6.9.69	3.50	1 glass pane 24 1/8" x 21" x 1/4" *	10.00
20	" 27.9.69	81.50	3/4 gall. of bituseal	12.00
	" 4.10.69	56.43	5 gall. of diesel*	7.75
	" 11.10.69	38.70	13 1/2 of nails 1"x3"	10.80
	" 18.10.69	34.00	48 ft of battens 2"x 1"	<u>21.60</u>
				466.75
	" 25.10.69	40.90		
	" 31.10.69	75.00		
	" 8.11.69	119.70	* Jewellery Makoon	
30	" 15.11.69	93.30	* Compressor	
	" 23.11.69	47.00		
	" 29.11.69	123.59		
	" 6.12.69	50.00	Demolition of Dustagheer buildings	
	" 13.12.69	60.03	Cost incurred for extra duty performed by members of the special constabulary	

In the Supreme Court of Mauritius	Week ending	31.12.69	24.00			
	"	20.12.69	75.40			
No.1	"	27.12.69	47.50			
Statement of Claim	"	10. 1.70	62.75	Month of August	Rs 150.00	
	"	20. 1.70	92.97	" September	150.00	
19th February 1969 - continued	"	31. 1.70	61.40	" October	162.00	
	"	7. 2.70	38.00	" November	144.00	
	"	14. 2.70	15.00	" December	156.00	
	"	28. 2.70	8.00	" January	144.00	
	"	14. 3.70	31.70	" February	126.00	10
	"	28. 3.70	17.00	" March	361.00	
	"	21. 3.70	30.00			
			<u>1,707.31</u>		<u>1,393.00</u>	

LABOUR FORCE MATERIALS & TRANSPORT

17.3	41.08	Day & Night Keepers from 17.3 to	2.4	269.92	
18.3	6.60	"	3.4 to 16.4	133.08	
19.3	6.60	"	17.4 to 24.4	58.34	
20.3	6.60	"	25.4 to 1.5	86.44	
21.3.	28.37		(II)	<u>547.78</u>	20
22.3	52.37				
24.3	72.07	Transport	17.3. to 2.4	35.00	
25.3	77.02	"	3.4 to 5.4	107.45	
26.3	41.40	"	6.4 to 19.4	100.15	
27.3	6.60	"	21.4 to 26.4	<u>12.25</u>	
28.3	6.60		(III)	<u>254.85</u>	
29.3	31.60				
31.3	66.36				
1.4	76.92	Insurance	(IV)	Rs 729.00	
2.4	6.60				30
3.4	68.10				
4.4	61.50				
5.4	87.50	By adding (I) to (IV) Total		Rs 3,664.96	

	7.4.	77.00
	8.4	77.00
	9.4.	85.20
	10.4	85.20
	11.4	100.72
	12.4	105.72
	14.4	52.00
	15.4	52.00
	16.4	57.00
10	17.4	53.00
	18.4	53.00
	19.4	53.00
	21.4	60.60
	22.4	60.60
	23.4	60.60
	24.4	60.60
	25.4	65.80
	26.4	65.80
	27.4	
20	28.4	49.40
	29.4	54.40
	30.4	60.80
	<u>Rs 2,133.33 (I)</u>	

In the
Supreme Court
of Mauritius

No.1
Statement
of Claim

19th February
1969 -
continued

MATERIALS

	<u>No.</u>	<u>Drawn on</u>	<u>Received on</u>	<u>Details</u>	<u>Price</u>
	36777	24.3.69	27.3.69	two bottles of petroleum	.56
	37351	27.3.69	27.3.69	do	.56
	37352	27.3.69	3.4.69	do	.56
30	37315	26.3.69	1.4.69	do	.56
	A 99	16.4.69		do	.56
	A 100	16.4.69		do	.56
	A 893	21.4.69	24.4.69	do	.56
	A 233	8.4.69	10.4.69	Four bottles of petroleum	1.12
	A 246	10.4.69	16.4.69	do	1.12

<u>In the Supreme Court of Mauritius</u>	<u>No.</u>	<u>Drawn on</u>	<u>Received on</u>	<u>Details</u>	<u>Price</u>	
No.1 Statement of Claim 19th February 1969 - continued	A1429	30.4.69	19.5.69	Four bottles of petroleum	1.12	
	A 206	4.4.69	5.4.69	two lbs of nails 2"	1.10	
				2 x 16 Sleepers 1 1/2"	51.20	
	36606		17.3.69	133'3" gurgan plants	133.25	
	A 66	14.4.69	9.4.69	three sledge hammers 12lbs each	90.00	10
				three handles for sledge hammers	4.50	
				19 kgs abecca rope	95.00	
	A 921	23.4.69	23.4.69	21bs nails 2 1/2"	1.10	
	35870	14.3.69	17.3.69	44 ft posts 4" x 4"	52.80	
				171 ft batten 2 1/2" x 1"	136.80	20
				six cor.iron sheets of 8"	84.00	
				two lbs washers 1/4"	4.00	
	A 213	7.4.69	7.4.69	two lbs nails 2 1/2"	1.10	
				two lbs of nails 3"	1.10	
	A 815	14.4.69	16.4.69	six small raffian baskets	19.50	30
			six saw blades	7.50		
			two handles for hoes	.75		
35870	14.3.69	17.3.69	Demolition posts	9.67		
				<u>Rs 700.75</u>		

Registered No. A 374 No. 2757

.....

In the
Supreme Court
of Mauritius

No.1
Statement
of Claim
19th February
1969 -
continued

your building permit, i.e. the three storeys mentioned in para. 20.above.

70. You are hereby ordered to cause such pulling down operations to start forthwith and to be completed and terminated within fifteen (15) days from the date of service of this order.

80. Should you fail to comply with the present order, the authority shall in the exercise of its powers under section 20(2) of the Building Ordinance Lane Cap.263 cause the aforesaid part of the said building i.e. the three storeys mentioned in para.20 above, to be pulled down and removed at your own costs.

10

Dated at Port-Louis this 19th day of February, 1969.

(Sd.) Illegible

Authority

To The Defendant abovenamed and styled.

Service personal by usher Furlong on 24.2.1969

20

Registered in Reg.DH 369 No. 3405

No.2
Statement
of Defence
9th March
1971

No. 2

STATEMENT OF DEFENCE

10. The Defendant admits para.1 of the Statement of Claim.

20. The Defendant denies para.2 of the Statement of Claim and avers that before adding the three storeys to the building, he submitted a plan to the plaintiff, and on being informed that the plan was approved, paid for the building permit which was to be sent to him later through the post office.

30

30. The Defendant denies para.3 of the Statement of Claim in its form and tenor, and avers that in Court the money he paid for the building permit referred to in para.2 above was reimbursed to him and he was then prevailed upon to change his plea of not guilty to one

of guilty.

40. In answer to paras. 4 and 5 of the Statement of Claim the defendant avers that he did submit a certificate of Mr. McGregor.

50. The defendant admits paras. 6 and 7 of the Statement of Claim and avers that he was not bound to comply with the summons and that he objected to the action of the plaintiff.

10 60. The defendant denies paras. 8 and 9 of the Statement of Claim.

70. The defendant therefore moves that plaintiff's action be dismissed with costs.

Under all legal reservations.

Dated at Port-Louis this 9th day of March, 1971.

(Sd.) A.K.A. Rajah

Of Sir William Newton Street, Port-Louis
Defendant's Attorney.

20 To The Municipal Corporation of The City of Port-Louis at the domicile by it elected in the office of Mr. S. Veerasamy, attorney at Law of Port-Louis.

Acknowledgment of service by Mr. Attorney S. Veerasamy on 16.3.1971.

Registered in Reg.A375 No.9644 of 17.3.1971

No. 3

PLAINTIFF'S REPLY

In the
Supreme Court
of Mauritius

No.2
Statement
of Defence
9th March
1971 -
continued

No.3
Plaintiff's
Reply
4th May 1971

10. The Plaintiff Corporation records the Defendant's admissions contained in para.1 of the Statement of Defence.

30 20. The Plaintiff Corporation denies paras. 2 and 3 of the Statement of Defence in their form and tenor and avers that :

a) The defendant on being stopped from proceeding with the erection of additional floors to the two-floor building which he had been permitted to build at Lord Kitchner Street, Port-Louis, under the

In the
Supreme Court
of Mauritius

No.3
Plaintiff's
Reply

4th May 1971
- continued

building permit No.502, applied for a building permit in respect of the addition of the aforesaid three floors;

- b) the Defendant on making the said application submitted a plan to the Plaintiff Corporation and deposited the prescribed fee towards the subsequent issue of the said building permit;
- c) the defendant was not informed that his plan was approved prior to the said deposit; 10
- d) the aforesaid plan was subsequently rejected by the City Engineer and returned to the Defendant with a request to submit a certificate from a qualified architect as to the structural soundness of the said addition;
- e) the defendant failed to comply with such request;
- f) the Defendant was prosecuted before the District Court of Port-Louis in December, 1967 (Cause No. 1061/67) for making an addition of three storeys to an existing building without permit in breach of sec: 20 of the Building Ordinance (Cap.263); 20
- g) the defendant pleaded guilty to the aforesaid charge and was fined Rs 1010 by the District Magistrate on the 16th of February 1968; the Plaintiff Corporation having undertaken to refund to the Defendant the deposit previously made by him; 30
- h) The Defendant was, neither in the course of the aforesaid prosecution nor in the trial of the subsequent prosecution of July-August 1968 (Cause No. 449/68) referred to in para.3 of the Statement of Claim, prevailed upon by any representation of the Plaintiff Corporation to plead guilty to the charges brought against him.

30. The Plaintiff Corporation denies para.4 of the Statement of Defence. 40

40. The Plaintiff Corporation records the admission contained in para.5 of the Statement of Defence and denies the allegations contained therein.

5. The Plaintiff Corporation maintains all

the allegations contained in the Statement of Claim and prays in terms of para.10 thereof. Save as hereinabove expressly admitted, all the averments of the Statement of Defence are denied.

In the
Supreme Court
of Mauritius

No.3
Plaintiff's
Reply

4th May 1971
- continued

Under all legal reservations.

Dated at Port-Louis this 4th day of May, 1971.

(Sd.) S.Veerasingam

10

Of No.50 Sir William Newton Street,
Port-Louis Plaintiff Corporation's Attorney.

To The abovenamed and styled Defendant.

Acknowledgment of service of the foregoing reply by

Mr. Attorney A.K.Rajah, Defendant's Attorney,
on 4.5.71.

Registered in Reg.A 380 No.1758 of 28.10.71.

No. 4

REJOINDER

No. 4
Rejoinder

14th June 1971

20

10. The Defendant denies para.2(a), (b) and (c) of the Reply in their form and tenor, and avers :

(a) that he has never been stopped from proceeding with the erection of the additional floors to the two-floors building under reference;

30

(b) that the defendant, before starting the erection of the additional floors called at the office of the Town Engineer and informed Mr. Rouillet, an employee and "prepose" of the plaintiff that he (the Defendant) intended to cause the three additional floors to be erected on his building;

(c) that the said employee advised the Defendant to submit an application to that effect with an

In the
Supreme Court
of Mauritius

No.4
Rejoinder
14th June 1971
- continued

appropriate plan in support thereof;

(d) that the Defendant submitted the application and plan in due course with the said employee who informed the defendant that as soon as his application would be approved, he would notify him of the same;

(e) that in fact on or about 10th May, 1967, the Defendant was informed verally by the said Mr. Rouillet, the employee and "prepose" of the Defendant that his (the Defendant's) application and plan had been duly approved and to come to the Town Hall to pay for his building permit;

10

(f) that on the 18th May, 1967, the acting City Engineer, an employee and "prepose" of the Plaintiff wrote to the defendant to request him to pay the building permit fee of Rs 1,008.60 as soon as possible;

(g) that on the 23rd May, 1967, the Defendant paid to the Plaintiff the aforesaid sum of Rs 1008.60cs and after payment called on the said Mr. Rouillet to ask him to deliver him the appropriate permit;

20

(h) that the said Mr. Rouillet told the Defendant that the application and plan have been approved and he delivered it to him (the Defendant) in person later;

(i) that after the aforesaid payment, the Defendant proceeded with the erection of the three additional floors.

30

20. The Defendant denies para.2(d) and (e) of the Reply in their form and tenor and avers:

(a) that he was invited by the Plaintiff's Committee for works after he had already completed the construction of the aforesaid additional floors to produce to the City Engineer a certificate from a qualified architect as to the structural soundness of the building, without specifying whether it was for the whole building or part of it only;

40

(b) that the Defendant produced to the City Engineer, an employee and "prepose" of the Plaintiff, a certificate by Mr. McGregor, an engineer as to the soundness of the whole building.

30. The Defendant admits para.2(f) of the Reply.

40. The defendant denies para.(g) of the Reply and puts the plaintiff to the proof thereof, and reiterates and maintains the averments contained in para.3 of his Statement of Defence (Reg.A 375 No. 9644).

In the
Supreme Court
of Mauritius

No.4
Rejoinder

50. The Defendant denies para.2(h) of the Reply.

14th June 1971
- continued

10

60. The Defendant maintains all the facts, matters and things set out in his Statement of Defence and moves that Plaintiff's action be dismissed with costs.

Under all legal reservations.

Dated at Port-Louis this 14th day of June, 1971.

(Sd) A.K.A. Rajah

Defendant's Attorney.

To the abovenamed plaintiff.

Acknowledgment of service of the foregoing rejoinder by Mr. S.Veerasingam on 26th August, 1971.

20

Registered in Reg. A 378 No.7082 on 29.9.1971

No. 5

SURREJOINDER

No.5
Surrejoinder
26th August
1971

10. In answer to para.1(a) to (i) of the Rejoinder the Plaintiff Corporation :

30

a) denies that the defendant applied and paid for a building permit before proceeding with the erection of the three additional floors;

b) denies that it ever employed one Mr.Rouillet in the Town Engineer's or in any other department;

c) denies that any employee of the Plaintiff Corporation ever informed the defendant that the plans submitted by him had ever been approved;

d) denies that a building permit relating to the three additional floors was ever delivered to the Defendant;

In the
Supreme Court
of Mauritius

No.5
Surrejoinder
26th August
1971 -
continued

e) maintains all the facts, matters and things averred in para.2(a), (b) and (c) of the Reply.

20. In answer to para.2 of the Rejoinder the Plaintiff Corporation:

a) avers that the defendant was invited to produce a certificate relating to the soundness of the building concerned, meaning the original building together with the additional floors;

b) denies that the defendant ever produced a certificate from Mr. McGregor certifying the soundness of the whole building. 10

The Plaintiff Corporation maintain all the facts matters and things averred in para.2(d) and (e) of the Reply.

30. The Plaintiff Corporation maintains all the allegations contained in the Reply and prays in terms of para.10 of the Statement of Claim.

Under all legal reservations. 20

Dated at Port-Louis this 26th day of August, 1971.

.(Sd.) S.Veerasingam

Plaintiff's Attorney

To The abovenamed and styled Defendant.

Acknowledgment of service of the foregoing surrejoinder by Mr. Attorney Rajah on the 28th August, 1971.

Registered in Reg. A 378 No. 5595 on 1.9.71

No. 6

REPLY TO SURREJOINDER

In the
Supreme Court
of Mauritius

No.6
Reply to
Surrejoinder
14th September
1971

10. In answer to para.1, 2 and 3 of the surrejoinder, the defendant maintain all the facts set out in the rejoinder and avers that the proposal referred to by him gave his name as being Mr. Rouillet, the defendant not being aware of the real name of the person.

10 20. The defendant denies all the averment contained in the surrejoinder.

30. The defendant moves in terms of his Statement of Defence.

Under all legal reservations.

Dated at Port-Louis this 14th day of September, 1971.

(Sd.) A.H.A.Rajah

Defendant's Attorney

To the abovenamed plaintiff.

20 Acknowledgment of service by Mr.S.Veerassamy of the foregoing reply to the surrejoinder on 15.9.71

Registered in Reg. A 378 No. 7081

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No. 6(A)

Cause List

No. 6A
Cause List
3rd December
1973

On Monday 3rd December, 1973.

Before Hon. Sir Maurice Latour-Adrien Chief Justice.

For Plaintiff A.Raffray Q.C. and J.Piat are replaced by F.Vallet

For Defendant H.Moollan and S.Bhayat

30 Case fixed to 18 and 19.3.74 for Merits.

(Sd.) Y.Bhunoo,
for Master and Registrar

In the
Supreme Court
of Mauritius

No. 7

PROCEEDINGS

No.7
Proceedings
18th March
1974

Before The Honourable D. Ramphul, Judge.

A. Raffray Q.C. appears together with
J.Piat for Plaintiff.

S. Bhayat appears together with Y.Abou
Bakar for Defendant.

Raffray informs Court that one of his
main witnesses Mr. Lefebure, City Engineer,
is ill and will not be available for the next
2 or 3 days. 10

He further informs the Court that there
is a point in law to the effect that "Defendant
not having followed the procedure traced out
by building ordinance, is debarred from defending
the action." This has not been pleaded in the
pleadings, but it is necessary at this stage to
raise it.

Bhayat, in the light of Raffray's statement
agrees to the case being postponed. 20

To 1.4.75 for mention.

(Sd.) Y.Beebeejaun, for Master and Registrar

Proceedings
1st April
1974

Proceedings of the 1st April, 1974.

Before The Honourable Sir Maurice Latour-
Adrien, Chief Justice Raffray Q.C. for Plaintiff.
S.Bhayat and Aboo Bakar for Defendant. Case
fixed to 16th and 17th September, 1974 for
hearing on preliminary point.

(Sd.) Y.Bhunnoo, for Master and Registrar.

Proceedings
16th
September
1974

Proceedings of the 16th September, 1974. 30

Before The Honourable Sir Maurice Latour
Adrien Chief Justice. Mr. Raffray Q.C. for
the Plaintiffs. S. Bhayat appears for the
defendant.

Counsel state that it will be necessary to

hear evidence before the preliminary objection is argued.

By agreement, the case is adjourned to the 5th, 6th, 7th and 8th May 1975 for hearing.

(Sd.) G.Marjolin

for Master and Registrar

Case is removed from the Cause list of 5th, 6th, 7th and 8th May, 1975 and put to 28th, 29th and 30th January, 1975 for merits.

In the
Supreme Court
of Mauritius

No.7
Proceedings

16th
September
1974 -
continued

10

No. 8

PLAINTIFF'S AMENDED REPLY

In Limine litis

The jurisdiction of the Supreme Court to try and adjudicate upon the defendant's statement of Defence is excluded by the operation of sec.57 of the Building Ordinance, Cap.263, which provides an exclusion remedy against any demolition order by way of appeal therefrom.

No.8
Plaintiff's
Amended
Reply

11th
September
1974

20

The defendant having failed to avail himself of such remedy is debarred from raising the issues contained in paras. 2 to 6 of the Statement of Defence and from moving in para.7 thereof, that the Plaintiff's action be dismissed.

ON THE MERITS

The averments of the reply made on the merits are maintained.

Under all legal reservations.

Dated at Port-Louis this 11th day of
September, 1974.

30

(Sd.) S.Veerassamy, Plaintiff's Attorney.

In the
Supreme Court
of Mauritius

No.8
Plaintiff's
Amended Reply
11th September
1964 -
continued

To The Defendant abovenamed.

Acknowledgment of service of the foregoing
amended reply by Mr. Rajah on the 11th
September, 1974.

Registered in Reg.A 390 No.3752 of 13.9.74.

No.9
Proceedings
28th January
1975

No. 9
PROCEEDINGS

Hearing of the case

On Tuesday the 28th January, 1975
Before the Hon. H.Garrioch, S.P.J. and
the Hon. C.Moollan, J.

10

Mr. Raffray Q.C. with Mr. J.Piat appears
for the Plaintiff. Mr. S.Bhayat with Mr.
Abou Bakar appears for the Defendant.

Mr. Raffray opens. He then calls and
examines:

No. 10

DEPOSITION OF MOROO MUNGUR

In the
Supreme Court
of Mauritius

No. 10
Deposition of
Moroo Mungur
28th January
1975

MOROO MUNGUR, s.a.h. District Clerk, IInd
Division, P.Louis

10 I produce a copy of Court Record CN
1061/67: Municipality of P.Louis v. A.G.Dustagheer
charge of making additions of three storeys
to a building without permit. The accused was
present and he pleaded guilty. I also produce
a copy of Court record Cause No.449/68:
Municipality of Port-Louis v. A.G.Dustagheer:
Charge of erecting a building contrary to
plans submitted. Judgment was delivered on
9.8.68 Defendant pleaded guilty. Documents
filed and marked A & B respectively.

No cross examination by Mr. S.Bhayat.

Mr. Raffray moves to call the defendant
on his personal answers. Mr. Bhayat has no
objection.

20

No. 11

DEPOSITION OF AHMAD GOOLAM
DUSTAGHEER

No. 11
Deposition of
Ahmad Goolam
Dustagheer
28th January
1975

AHMAD GOOLAM DUSTAGHEER of Port-Louis (on
his personal answers):

30 My name is Goolam Ahmad Dustagheer. In
January 1964 I erected a concrete building at
49 Lord Kitchner Street, Port-Louis. It was
composed of a ground floor and a storey. I
did apply for a building permit. I obtained
it. It bore No.502. In 1967 I did add three
other storeys to the existing building. The
addition was started in June, 1967.

In the beginning of 1967 I do not
remember the precise date, I went to Munici-
pality of Port-Louis, I was given an applica-
tion form. I filled in the form and handed
it back. I also attached plans to the
application form.

In the
Supreme Court
of Mauritius

No.11
Deposition of
Ahmad Goolam
Dustagheer

28th January
1975 -
continued

I left the plans and application forms with the Municipality. Then I went home and waited for a reply. One day, an officer of the Municipality called on me on my building site and informed me verbally that the permit would be approved and asked me to call at the Municipality to pay the fee. That conversation took place around 15th May, 1967. On 23rd May 67 I received a letter from the Municipality asking me to pay the fee in connection with my application. The letter is in the possession of my attorney. (The letter is put in by Mr. Bhayat - Document C - together with two receipts marked C1 and C2).

10

On 23.5.67 I went to pay the fees and I was issued with two receipts. It was after payment of the fees and after I had been told by an inspector of the Municipality that I could now start the building, that in fact I started adding the extra storeys. It was in June, 1967 that I started the addition.

20

I do not know the name of the Inspector who called at my place and told me to go ahead with my building. He did not tell me his name. It was one of my employees who went to the Municipality to pay the building fee. I was not present when the receipt was issued; I had gone back to my place. I was never told at the Municipality that I could continue the erection of the building. It was an inspector who called at my work site who told me so.

30

I am positive that it was in June 1967 after having paid the building fee that I started the erection of the extra storeys.

I have never mentioned Mr. Rouillet as being the person who told me to go ahead with my building. I do not know if the Inspector's name is Mr. Rouillet. I never gave that name to my attorney at any time. He (my attorney) may have got that information from the Municipality.

40

I do not know Mr. Damoo as the building Inspector. I know him only because it was he who asked me to pay the building fee. I am not sure that I know the real name of the person who came to see me. I know the person by sight not by name.

(Mr. Damoo is called on the floor of the Court).

50

I see that person. He came once in front of my building site and he asked me to pay the building fee. I do not know his name.

In the
Supreme
Court of
Mauritius

10 When the gentleman came to see me in May 1967 I had not started any addition to my building. Only the ground floor and the first storey had been constructed with the iron bars of the pillars projecting above the first storey. The building consisting of the ground floor and the first storey was completed at the end of 1966. When erecting the first storey, I caused the iron bars to protrude above the first storey for a length of about 20 feet.

No.11
Deposition
of Ahamd
Goolam
Dustagheer
28th January
1975 -
continued

20 When that person, Mr. Damoo, came to see me in May 1967, certain works of scaffolding only had been erected, but the erection of the additions had not yet started. I did that scaffolding works first in order not to allow the pieces of scaffolding (wood planks) to lie about on the first storey.

I was not served by Mr. Damoo with any notice on the 16th May, 1967, asking me to stop the erection of my building.

The copy of the notice is put in - Document D - by Mr. Raffray.

RECESS

AFTER RECESS;

AHMAD GOOLAM DUSTAGHEER (on his personal answers)
Examination by Mr. Raffray continues :-

Cross-
Examination

30 If the gentleman (Mr. Damoo) says that when he came on the site of my building in May 1967 there were two concrete ceilings supported by concrete pillars on top of the first storey and that there were also iron bars protruding from the third ceiling (slab) that is not true.

40 The same person to whom I tendered my application and my plan, came to my building and told me that I could proceed with the erection of the storeys as everything was alright and the permit had been approved.

That person came regularly to my site of work to inspect and supervise the construction. That is why I described him as a building inspector. It was not Mr. Damoo who told that I could proceed with the construction that

In the
Supreme Court
of Mauritius

No.11
Deposition of
Ahmad Goolam
Dustagheer
28th January
1975 -
continued

everything was alright and that the permit had been approved.

I had already filed my plan and my application form early in 1967. Much earlier than May 1967. The document shown to me was signed by me. It was filled in by my employee. It is an application form for a building permit. - Document filed - marked E. I am not sure about the date. It was not filled in by me. I also produced my plans with the application form. I did not go to the Municipality on the 16th May, 1967. I received the letter asking me to pay the building fee on the 18th May. I went to pay the fee on the 23rd May, 1967.

10

Mr. Damoo did call on me on the 16th May to tell me to go and pay the fee at the Municipality, but he did not tell me to stop the construction. On 16th May I did not go to the Municipality. I went on the 23rd May. If Mr. Damoo says that he came on the 16th May and told me to stop the construction, that is not true because there was no additon then to the building.

20

I never went to the Municipality on the 16th May, and it is not true that the plans I had submitted were returned to me on that day to be signed by an architect or an engineer. If an entry dated 16th May, 1967 has been made on a file - Building permit file Re: Ahmad Dustagheer - to the effect that the plans had been remitted back to me for signature by an architect, it is because Mr. Damoo did come to my building site on the 16th May and gave me back my plans for the signature of the architect. He made an entry in a file and asked me to sign it, which I did.

30

The plans had been drawn up by one of my clients, one Mr. Fayd'herbe. I did not have the plans signed by an architect, but in the same week Mr. Damoo called on me again and took back the plans. The plans had not been signed by an architect or an engineer. But Mr. Damoo wanted them back all the same. It was about the end of 1967 then. I do not hold an official written permit from the Municipality to go on with the construction of the extra storeys. However, I was told verbally on several occasions that I could carry on with the construction. In 1963 I had applied for a building permit for the construction of a building composed of a ground floor and a storey. I got

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the permit a month after I had applied for it. It was delivered to me at my building site by a building inspector of the Municipality.

In the
Supreme Court
of Mauritius

No.11
Deposition of
Ahmad Goolam
Dustagheer
28th January
1975 -
continued

The inspector whose name I shall give as Pop Rouillet called on me on several occasions and told me that I could carry on with the construction as the permit would be signed in due course by the mayor.

10 Mr. Damoo did not come to my site in May 1967 and afterwards and never told me to carry on with my construction. It was Mr. Pop Rouillet who came in on several occasions and who told me that I could carry on with my construction. So I carried on with the work for the months of June, July and August, 1967, as I had been given the green light verbally by Mr. Pop Rouillet.

20 On 10.8.67 I was not served with a Notice by an usher asking me to stop forthwith with my construction. (Notice put in by Mr. Raffray, filed, Document F). I remember that I was served however with a notice to appear in Court. In November, 1967 I was not served with a Notice to stop the erection of the building. Mr. Moutou an usher served me a Notice to appear in Court. He never served me any notice to stop the construction. (Notice produced by Mr. Raffray and marked G.)

30 In February 1968 I attended Court on a charge of building without a permit. I informed the Court that I had already paid the building fee. The Magistrate then sentenced me to pay a fine which was paid by the Municipality.

40 In August 1968 I again appeared before the Court on another building offence. That charge was that I had built three storeys on top of my old building for which old building I had obtained a permit. I pleaded guilty to the charge. I asked the Magistrate whether I could carry on with my construction. He said that since the fine had been paid I could do so. So I went on with my construction of three other storeys according to the second plan which provided for five storeys.

In February 1968 when I appeared before the Court I had completed the building with its five storeys.

I agree that from 1967 to August 1968 I

In the
Supreme Court
of Mauritius

No.11
Deposition of
Ahmad Goolam
Dustagheer

28th January
1975 -
continued

had received letters from the Municipality asking me to have my plans signed and approved by an engineer or an architect. But whenever I went to the Municipality to have my plans approved by the engineer, he sent me to the secretary who in his turn sent me to the engineer and so on. I wanted my plans back to have them signed by an engineer but could never get them back from the Municipality because the secretary sent me to the engineer and the engineer to the secretary and so on. After August, 1968 I was invited to attend a meeting of the committee of the Municipality and I did go to the meeting. I did not however inform the committee that I was unable to get back my plans from the Municipality to have them signed. The committee did not ask me that question. The committee did ask me to send in a certificate from a qualified engineer regarding the soundness of the building. 10 20

I went to see Mr. Fayd'herbe who had drawn up my plans and he sent me to Mr. McGregor. I went to see Mr. McGregor to look after that question. Mr. McGregor came to visit my building. Prior to that I had been served with a mise en demeure from the Municipality to the effect that they would pull down the building.

On receipt of the notice I went to the Municipality on the closing date of the notice. I decided to see the Mayor for a few days' delay. He agreed, I went to see Mr. McGregor; he came to inspect my building on the same day. The Municipality had not yet started pulling down the building then. Mr. McGregor, after consulting the Municipality Engineer asked to inspect the foundations. I showed him a spot in a foundation. He inspected it with the Municipality Engineer. When I told them that all the foundations were alike, Mr. McGregor made out a certificate and gave it to the Municipal engineer. 30 40

The first day Mr. McGregor inspected the foundations the Municipality had not started the demolition job. It was a few days afterwards, while I was laying bare the foundations for Mr. McGregor to see further that the Municipality started their demolition work. Mr. McGregor had written out his certificate when the Municipality started its job of pulling down the building. Mr. McGregor did not ask me to comply with some definite specifications

and to make some improvements to the building before he gave me his certificate. Mr. McGregor had already given his certificate when the Municipality started pulling down the building. Mr. McGregor referred me to my lawyer. My lawyer (Mr. de Pitray) wrote to the Municipality which thereupon halted the demolition. Mr. McGregor had said that certain tests had to be made to test the soundness of the building, but the Municipality had already demolished the two upper slabs by then.

In the
Supreme Court
of Mauritius

No.11
Deposition of
Ahmad Goolam
Dustagheer
28th January
1975 -
continued

It is not true to say that I refused to carry on the tests and obey the suggestions which Mr. McGregor had asked me to do. In fact as I had employed Mr. McGregor I was always prepared to do what he told me. It was the Municipality which by demolishing the slabs had prevented me to do what Mr. McGregor [sic] had suggested. I do not know if Mr. McGregor wrote to the Municipality to say that I was uncooperative.

CASE FOR THE PLAINTIFF CONTINUES

Mr. Raffray calls and examines:

No. 12

DEPOSITION OF PLAINTIFF'S
WITNESS, A.G. DAMOO

No.12
Deposition of
Plaintiff's
witness,
A.G. Damoo

ABDOOL GAFFOOR DAMOO, Building Inspector,
s.a.m. of Port-Louis

28th January
1975

I became a Building Inspector of the Municipality on the 21.4.1967. When I first noticed that building at Lord Kitchner Street, Port-Louis the building was composed of a ground floor, and of three storeys. A fourth storey was in the process of being built but was not yet completed. I checked in my books and found that no building permit had been obtained for the three additional storeys. There was a permit issued in respect of the ground floor and the first storey only. I went to the building site and served a notice personally on the defendant on 16.5.67 asking him to stop further construction until he had

In the
Supreme Court
of Mauritius

No.12
Deposition of
Plaintiff's
witness
A.G.Damoo

28th January
1975 -
continued

obtained a permit and to make a formal application for same. I am positive that the fourth storey was at that time in the process of being built. On the top of the first storey I am positive that at the time pillars, (colonnes) and two "dalles" (slabs) had been built and on top of the third slab (dalle) a fourth storey was being erected.

An hour after I had served the defendant the notice, the defendant came to see me at the Municipality in my office. That was on 16.5.67. He gave me an application form (document "E") together with two sets of plans each of three copies. I showed the plans to Mr. Hansrod, the engineer. Mr. Hansrod gave me back the plans and asked me to return them to the defendant for him to have them signed by an engineer or architect. I gave them back to the defendant and made him sign my file to acknowledge receipt of the plans. There is nothing in my record to show that the defendant had submitted the plans before May 1967 to the Municipality.

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20

It is not true that I handed over the plans to the defendant at the building site at Lord Kitchner Street, Port-Louis. The defendant was asked on the 18.5.67 to come and pay the building fee. He did so on the 23rd May, 1967. In those days the practice at the Municipality was to ask that the building permit fee be deposited before the actual permit was approved and delivered. When the defendant paid the fee, he was given a receipt which contains a warning to the payee to the effect that the receipt did not authorise him to build without an official building permit. The receipt itself is not a building permit. It is not true that I called on the defendant at the end of December 1967 to take back the plans from him. The defendant did sign my file on the date on which I gave him back the plans. The defendant never returned the plans properly signed by an architect or an engineer. On several occasions after serving the notice on the defendant I visited the site and found that the construction had never stopped. I reported it to my engineer. A notice by usher was then served on the defendant. The defendant ignored that notice too. I reported this to the engineer. A further notice was then served on the defendant on the 25th November, 1967. In spite of that new notice the defendant went on with his construction.

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The defendant was subsequently charged before

In the
Supreme Court
of Mauritius

No.12
Deposition of
Plaintiff's
witness
A.G.Damoo
28th January
1975 -
continued

10 the District Court for erecting a building
without a permit. The case was heard in
February 1968. The defendant pleaded guilty.
On 18.8.67 and again on the 25.9.67 the
defendant was written to by the Municipality
and asked to submit plans signed by a qualified
architect. (One letter dated 1.8.67 produced
marked H, and one letter dated 25.9.67 produced
and marked I by Mr. Raffray - to be registered
later). After the Court case in February
1968 i.e. on the 25.3.68 yet another letter
was sent to the defendant informing him that
he should submit plans certified by an engineer.
Letter produced, marked J. On 4.4.68 the
defendant was written to again reminding him
about the plans certified by architects,
letter produced marked K.) Up to July 1968
the defendant submitted no certificate of any
kind from an architect or an engineer. By
20 then, the construction was progressing but
at a reduced speed. I lodged another plaint
before the Court in August, 1968 against the
defendant to which charge he pleaded guilty.
The City Engineer in August, 1968 was Mr.
Lefebure. It was he who took charge of all
steps which were taken against the defendant
from then on. I do not know and I am not
aware of any officer in the Building
department who had ever told the defendant
30 that he could go ahead with his building. I
have not heard of any one by the name of
Pop Rouillet.

CROSS-EXAMINED BY MR. BHAYAT

Cross-
Examination

40 Before 24.4.67 I was not in the employ
of the Municipality. When I joined there
was another building Inspector by the name
of Octave Bestel. He has retired from the
Municipality since the end of 1967. He was
never known as Pop or Rouillet to my knowledge.
The date on the application form looks like
the 7th March, 1967, "7.3.67", but does not
look like "7.5.67", I think that it is possible
that the defendant may have taken an applica-
tion form before the 16th May 1967. He could
not however have handed it in before 16.5.67,
because it was on that very day that I went
to see him and he came himself to the
Municipality and handed it to me on the 16th
May 1967. The date on the application is not
50 of great importance because the application is
officially registered on the day the building
fee is paid. The application form was officially
registered in this case on 23.5.67, date on
which the payment of the fee was made. No
application is registered until payment is

In the
Supreme Court
of Mauritius

No.12
Deposition of
Plaintiff's
witness
A.G.Damoo
28th January
1975 -
continued

effected. As long as the payment is not made, the applicant may take away his application form or he may decide to leave it with the officer as he chooses. Nothing is done about the application until the fee is paid. That was what was applied in those days at the Municipality of Port-Louis. The procedure has now changed. The Municipality receives and registers the application and examines them. Payment is only made after the permit is approved and is ready to be delivered to the applicant. Formerly when applications were made through the post, the applications and plans were examined straightaway and then the applicants were asked to pay the fee. The defendant was asked to pay the fee on the day he made the application because I had calculated the amount of the fee right away, but the defendant did not pay me on the same day. A letter was subsequently sent to him asking him to come and pay, which he did on 23.5.67.

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At 3.30 p.m. case is adjourned to to-morrow, 29th May, 1974 at 10.30 a.m. for continuation.

(Sd.) G.Marjolin, for Master and
Registrar.

No.13
Proceedings
28th and 29th
January 1975

No. 13

PROCEEDINGS

Minutes of the Master and Registrar for the Court proceedings of 29.1.75

Mr. A.Raffray Q.C. with Mr. J.Piat appears for the plaintiff.

30

Mr. S.Bhayat with Mr. Aboobakar appears for the defendant.

Mr. Raffray opens and quotes Cap.263 secs. 20(1) and 20(2) and sect.(5) Halsbury Vol 31 VO Public Health note 417 pp. 282-283 1891 24 Q.B.D. p.712 & foll: case of Hopkins & Anor. v. Board of Health,

and refers to the judgment of Justice Denmont

pp.713-714, to the judgement of Justice Wills p.715. Appeal Judgment of Lord ? pp.716-717.

In the
Supreme Court
of Mauritius

No.13
Proceedings
28th and 29th
January 1975 -
continued

Mr. Raffray then calls Monqo Mungur, District Clerk of Port-Louis, s.a.h. who produces documents A and B. The witness is not cross-examined. Mr. Raffray moves to call the Defendant on his personal answers. Mr. Bhayat has no objection. Documents C, C1, C2, D, E, F, G are put in.

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Mr. Raffray then calls and examines: Abdool Gaffoor Damoo s.a.m. Building Inspector, of Port-Louis, Docs. H, I, J and K are put in. Witness is cross-examined by Mr. Bhayat.

At 3.30 p.m. the case is adjourned to to-morrow 29th January, 1975 at 10.30 a.m. for continuation.

(Sd.) G.Marjolin
for Master and Registrar

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No. 14

CONTINUED CROSS-EXAMINATION
OF A.G. DAMOO

On Wednesday the 29th January, 1975

Before the Hon: H.Garrioch S.P.J. and the Hon. C.Moollan J. Mr. Raffray Q.C. with Mr. J.Piat appears for the plaintiff. Mr. S.Bhayat appears for the Defendant.

ABDOOL GAFFOOR DAMOO s.a.m. is further cross-examined by Mr. Bhayat :-

30

The duties of a Building Inspector are to examine applications for building permits, to see whether the plans have been produced and to verify that all documents are correct. He also has to calculate the amount of the fee to be paid. In those days, the fee was deposited before the permit was approved. The Inspector has also to inspect building

No.14
Continued
Cross-Examina-
tion of
A.G.Damoo

29th January
1975

In the
Supreme Court
of Mauritius

No.14
Continued Cross-
Examination of
A.G.Damoo

29th January
1975 -
continued

sites and see whether they are fit for the building purposes; his superior Officers (engineers) then see whether the plans were suitable for the building. At present, inspectors also inspect sites to see whether buildings comply with the plans submitted. Even previously the Inspector if he wanted to, used to go regularly to the sites to visit and check the constructions while they were in progress.

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I do not know if Inspectors before me used to visit the building site of the defendant to supervise his constructions. The first time I went to the site of the defendant was on the 16th May 1967 when I served a notice on him. I was instructed to go there and see what was going on, and on seeing what was being done i.e. additional storeys were being added, I served a notice on the defendant. I saw Mr. Dustagheer in front of the building, he asked me who I was and I told him. When I issued him with a notice after explaining to him that he was contravening the building regulations. On the same day he produced plans and application forms at the Municipality of Port-Louis. I did see additional, unauthorised constructions on the building. I knew that the additional storeys were unauthorised because I had checked in the book that the defendant had no permit for the additions. The notice which I served on the defendant was in respect of offence (a) and (b) written on the receipt. The carbon copy of the notice, as I see it is not the same as the original, because the lines crossed are not quite on the same level as in the original. It was the practice, in certain cases, in the old days, to write to an applicant and ask him to come and pay his fee if he had not paid on the very day he deposited his application. Such letters were written where I found the need arose. I also write to those applicants who leave their application forms with me and also when such applicants take a long time coming to pay their fee.

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I usually examine the plans myself and keep them with me when the plans are simple enough; but when they are rather complicated I take instructions from the engineer whether to keep them or send them back to the applicants. In the case of Mr. Dustagheer I showed the plans to the City Engineer.

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[sic]

On several occasions after the 16th May 1967 I went to the building site of the defendant to see what was going on. Each time I was instructed to do so by the engineer. I went there at irregular intervals. Sometimes every fortnight, sometimes every month. It is not true that only the scaffolding had been built on the slab of the first storey on the 16th May. From the street, part of the scaffolding could be seen. A second and a third storey had been built on top of the first storey. The pillars, beams and "dalles" of the 2nd and 3rd storeys had been cast. There were also three or 4 layers of "blocs" placed on the 2nd and 3rd storeys. It is not true that only iron bars and scaffolding were protruding from the slab of the first storey. It is not true that on the 16th May I returned plans and application forms to the defendant at the building sites, i.e. the plans and applications submitted by him earlier on in March 1967. The application to build the ground floor and the first storey i.e. the old building was made on 4th December? It was registered on 5th December, 1963. The permit in respect of same was issued on 24th January 1964. In the old days when an application was rejected the applicant was informed verbally by the inspector that the application had been rejected and told to apply for a refund of his deposit fee. Sometimes when applicants were informed by letters when they did not call at the Municipality in person. I am positive that no building permit was ever issued to Dustagheer in respect of the additional storeys. I was never instructed to inform Dustagheer that his application had been rejected. I am now holding a file concerning the applications made by Dustagheer. I see no entry in that file saying that his application has been rejected.

In February 1968 defendant was prosecuted for making additions to an existing building without permit. He pleaded guilty and was fined on the 16th February 1968. On that same day the Municipality paid the fine by cheque. I remember telling the Magistrate that the fee for the building permit had already been deposited at the Municipality by the defendant. So the Magistrate asked me to refund Defendant the amount deposited. This was done on the same day. A cheque was written out by the Municipality. I do not know to what

In the
Supreme Court
of Mauritius

No.14
Continued Cross-
Examination of
A.G. Damoo

29th January
1975 -
continued

In the
Supreme Court
of Mauritius

No.14

Continued Cross-
Examination of
A.G.Damoo

29th January
1975 -
continued

or whose order the cheque was drawn. In July 1968 the defendant was prosecuted for building contrary to plans submitted. The information originally was badly drafted. It was amended later after the Municipality had taken legal advice. I have the information against an offender drafted according to the instructions I receive and also in respect of the offence or offences for which I am told to prosecute the offender. I now say that when I prosecute offenders I act on my own decision as a building Inspector and when I find some difficulties in my way I ask for legal advice. I mean to say that I myself draft the information and decide which sections of the law apply in the different cases, and the informations are accordingly drafted. If originally the offence in the information was in respect of "structural soundness of the building" as per the Court record (document B) these words must have been put by me on the information following a report or instructions in my file. I did lodge this information before the Court after instructions and advice. The information was subsequently amended on the day of the trial I do not remember if Mr. Dustagheer did say then that he had paid for the permit and that the Municipality had refunded him the amount. I know however that Mr. Dustagheer pleaded guilty.

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Re-Examination

RE-EXAMINED BY Mr. RAFFRAY

I am absolutely certain that the application forms and plans and drawings were not in the possession of the Municipality before the 16th May, 1967. In fact it was on that day that for the first time Dustagheer submitted plans, drawings and application forms. He signed my file also on that very day at a later stage when I gave the plans etc. back to him.

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No. 15

DEPOSITION OF PLAINTIFF'S
WITNESS, G.G. LEFEBURE

In the
Supreme Court
of Mauritius

No.15
Deposition of
Plaintiff's
witness G.G.
Lefebure

29th January
1975

GERARD GEORGES LEFEBURE, sworn, City Engineer
residing at Curepipe

Je suis un ingénieur civil diplômé.
Je suis au service de la Municipalité depuis
aout 1966. J'étais alors ingénieur sanitaire.
10 Le 1er aout 68 je fus nommé City Engineer.
J'ai fait l'intérimat comme deputy City
Engineer de Septembre 1967 a septembre 68.
J'a vais alors accès au département des
Buildings. Il y avait en ce temps là dans
le département un monsieur du nom de Pop
Loulié. Monsieur Loulié a quitté Maurice en
novembre 66 en sick leave pour Afrique du Sud.
Il n'est jamais retourné à son service à la
Municipalité. De janvier à juin 67 il était
en Afrique du Sud.

20 Au debut d'octobre 1968 J'ai commencé à
m'occuper de l'affaire relative au bâtiment
de M. Dustagheer. Dustagheer avait alors
été déjà poursuivi devant la cour de District.
Dustagheer a été subséquemment invité à
assister à une réunion du Works Committee de
la Municipalité. Une lettre lui fut envoyée
en date du 11 oct.68. (Letter produced marked
L). Il y a eu, après que cette lettre ait
été envoyée des séances du Works Committee et
30 des séances du Conseil Municipal relativement
à la construction Dustagheer. J'ai assisté
Des procès-verbaux de toutes les séances ont
été dressés. (Extract produced and marked M).
Le Works Committee avait demandé à M. Dustagheer
de soumettre un certificat d'un "qualified
registered engineer or architect" jusqu'au
30.10.68. A cette date il n'avait pas encore
fait le nécessaire. La Municipalité lui envoya
de nouveau une requête en date du 6 nov.68.
40 (Document produced and marked N). Le 27 nov.
1968 comme il n'avait encore rien fait, le
Works Committee prit alors la décision de
démolir la construction. La lettre en date
du 2 décembre 68 lui fut envoyée. (Letter
produced, marked O).

Il n'eut aucune réaction a cette lettre.
Le 12 décembre 1968 une autre lettre lui fut
envoyée (letter produced marked P). Au 24
février 69 M. Dustagheer n'avait encore rien
50 fait et n'avait donné aucun signe. A ce moment

In the
Supreme Court
of Mauritius

No.15

Deposition of
Plaintiff's
witness G.G.
Lefebure

29th January
1975 -
continued

une mise en demeure fut servie sur lui, lui demandant de démolir le bâtiment dans un délai de quinze jours, faute de quoi la Municipalité elle-même effectuerait la démolition aux frais de M. Dustagheer. Dustagheer n'ayant pas obtempéré à la mise en demeure, la démolition du bâtiment fut alors effectuée. Elle débuta le 17 mars 69. Entre le 17 mars 69 et le 21 mars 69 un échafaudage de protection fut construit autour du bâtiment. La démolition commença le 21 mars 69. J'ai examiné le plan du premier bâtiment construit en 1964. A mon avis la structure du rez de chaussée et du premier étage n'était pas en mesure de soutenir de étages additionnelles sur le premier étage. Au moment de la démolition, il y avait trois étages supplémentaires au dessus du premier étage, dont la structure était complétée., c.a.d. colonnes poutres et dalles. Du côté sud du bâtiment, à tous les étages supplémentaires, des blocs avaient été posés sur une hauteur de plus de six pieds. A part des pans des murs sur la façade sud, il y avait aussie des blocs posés à d'autres endroits.

Jusqu'au jour où commença la demolition c.a.d. le 21 mars 69, je n'avais pas été à aucun moment contacté par M. McGregor. Il est inexact de dire que la démolition avait débuté alors que M. McGregor avait déjà contacté la Municipalité. C'est le 31 mars 69 que la Municipalité recut pour le première fois une lettre de Mc. McGregor (letter produced marked Q). C'était la première intervention de M. McGregor dans cette affaire. Une dernière communication en date du 7 avril 69 fut recue par la Municipalité (letter produced marked R). Je me suis rendu le 16 avril 69 en compagnie de M. McGregor et de M. Roger Duval architecte sur les lieux et nous avons constaté que M. Dustagheer n'avait pas mis ses fondations comme nous le désirions et telles qu'elles étaient exposées on ne pouvait voir les fers de renforcement qui s'y trouvaient. M. McGregor a alors demandé à Dustagheer de faire le nécessaire pour nous permettre de voir les fers qui s'y trouvaient. Dustagheer a dit qu'il ferait ce qu'il fallait. Subséquemment le 23 avril 69 M. McGregor écrivit de nouveau à la Municipalité. (Letter produced, marked S). Au 23 avril 69 au dessus du 4eme étage il y avait un cinquième étage qui était en cours de construction, et au 23 avril ce 5eme

10 etage avait été démoli par les travaux entrepris par la Municipalité à partir du 21 mars. Les suggestions contenues dans la lettre de Mr. McGregor du 23 avril ont été examinées et si tous les instructions et conseils de M. McGregor avaient été suivis, le bâtiment aurait alors été en bien meilleur état. La démolition fut suspendue à partir du 1er mai 69 à la demande de McGregor. Une lettre en date du 28 mai 69 fut envoyée par la Municipalité à M. McGregor (Letter produced marked T). Suite à une discussion que j'ai eue avec McGregor j'avais alors stipulé certaines conditions - lesquelles se trouvent dans la lettre T. Une lettre en date du 28 mai 69 fut aussi envoyée à Dustagheer (Produced and marked U). lui informant de la décision de la Municipalité. Subséquentement la Municipalité reçut de M. de Pitray une lettre en date du 4 juin 69 (produced and marked V). Au 30 juin 69 je n'avais pas reçu la confirmation ou l'acceptation de Dustagheer relatives aux suggestions faites par M. McGregor. Et le 30 juin la Municipalité a écrit à M. McGregor (Letter produced marked W); Cependant le 29 juin M. McGregor avait écrit à la Municipalité se plaignant de l'attitude de Dustagheer et faisait savoir à la Municipalité qu'il se retirait de toute cette affaire. (Letter produced document X) Les deux lettres W et X ont du se croiser.

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Je n'ai jamais pu inspecter à fond les fondations du bâtiment de Dustagheer et jamais les load tests n'ont pu être faits. A la suite de la lettre de M. McGregor (Doc.X) il n'y avait d'autre alternative pour la Municipalité que de recommencer la démolition. Une lettre en date du 4.7.68 fut cependant envoyée à Dustagheer (document filed and marked Y).

40 M. Dustagheer n'a jamais indiqué par lettre ou autrement qu'il acceptait de se conformer aux suggestions et aux modifications etc faites par Mr. McGregor.

Recess

AFTER RECESS

GERARD GEORGES LEFEBURE, SWORN (Continuation of examination in chief by Mr. Raffray):

50 En dehors des quatre lettres de M. McGregor déjà versées au dossier (docs. Q, R, S et X) Je n'ai reçu aucune communication de lui. A mon sens aucune de ces quatre lettres ne

In the
Supreme Court
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No.15
Deposition of
Plaintiff's
witness G.G.
Lefebure

29th January
1975 -
continued

Continued
Examination
of G.G.
Lefebure
on 29th
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No.15
Deposition of
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1975 -
continued

constitue un certificat satisfaisant de la solidité du batiment en question. Aucun certificat relatif au "structural soundness" du batiment ne m'est parvenu de McGregor. Le 7 juillet 1969, la démolition a été reprise, elle s'est terminée en mars 1970 après des travaux d'environ 11 mois en tout. Le 8 octobre une lettre fut adressée a M. Dustagheer relative aux travaux de démolition. (Letter produced marked Z). M. Dustagheer ne fit rien. Le 17 octobre 69 une autre lettre lui fut dépêchée car il n'avait encore rien fait de ce que la lettre du 8 octobre lui demandait. (letter filed, document AA). M. Dustagheer ne s'est jamais montré co-opératif vis à vis de la Municipalité en ce qu'il s'agit des travaux de démolition. Malgré toute l'aide que la Municipalité lui avait accordée, M. Dustagheer n'a pas réagi convenablement, et en fin de compte, il a fallu prendre la décision de démolir le bâtiment. Le démolition fut entreprise parce que le bâtiment représentait un danger pour le public. Des photographies à des stades divers de démolition ont été prises sur mes instructions. (Photos produced, marked AB to AB9).

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Les travaux de démolition ont coûté de l'argent à la Municipalité. En tout elle a coûté la somme de Rs 20,925.77cs et les détails de ces dépenses ont été donnés dans les "particulars" de la plainte. La Municipalité réclame donc au défendeur la somme de Rs 20,925.77cs qui n'a jamais été payée jusqu'à présent. Je produis une lettre en date du 13.3.69 envoyée à M. Dustagheer par l'avoué de la Municipalité (Letter produced marked AA1).

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CROSS EXAMINED BY MR. BHAYAT:

Cross-
Examination
of G.G.
Lefebure
29th January
1975

Mr. Loulié a quitté le pays le 20 novembre 66. J'ai depuis le début été convaincu que le bâtiment représentait un danger public, d'où la décision de lui demander de produire un certificat sur le "structural soundness" du dit bâtiment.

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Ce n'est pas à ma connaissance que M. Dustagheer venait régulièrement à la Municipalité de octobre 68 à février 69. Après service de la Mise en demeure c.a.d. le 2 avril 69 il est venu me voir pour me demander de ralentir la démolition parce que son commerce en souffrait. Je lui ai dit que ce n'était pas possible. La période de 11 mois environ prise pour la

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Deposition of
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witness G.G.
Lefebure

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continued

démolition est à mon sens raisonnable, compte tenu du fait qu'elle avait été faite à la main. On ne s'est pas servi de machines afin de ne pas causer des dégâts considérables aux bâtiments avoisinants et au bâtiment d'en bas appartenant à M. Dustagheer lui-même. La mise en demeure a été servie après conseil de notre conseiller légal, mais sans doute sur mon initiative et à ma demande. Dans la

10 lettre du 7.4.69 (document R) McGregor semble être satisfait que la base du bâtiment pouvait soutenir les cinq étages. Mais ce n'est que son opinion. Je n'ai pas moi-même formé une opinion précise aussi longtemps que M. McGregor ne me précisait pas convenablement ses intentions. M. McGregor n'a jamais été très précis. Il a toujours fait de réserves. J'ai eu l'occasion, en deux ou trois fois, de

20 rencontrer McGregor et de lui parler de cette affaire, je ne lui ai pas dit que je n'étais pas d'accord que le bâtiment n'était pas "safe and sound". Vu que lui-même (McGregor) ne semblait pas être tout à fait sûr que le bâtiment fût "safe and sound".

La lettre de McGregor en date du 23 avril 69 (document S) ne me fait pas penser que M. McGregor était entièrement satisfait du bâtiment. Il me dit simplement que le bâtiment ne représentait aucun danger immédiat. Et j'ai

30 alors suspendu la démolition. Je ne me souviens pas si j'ai dit à McGregor que les fondations ne pouvaient pas soutenir le bâtiment. Mais je me souviens d'avoir attiré son attention sur les fondations qui, au lieu d'être rectangulaires étaient plus ou moins circulaires. Mais cependant il m'en fait pas mention dans sa lettre du 23 avril (document S).

Le paragraphe 4 sous "upper floors" contient une suggestion qui pouvait être exécutée mais à mon avis il aurait été préférable de démolir l'escalier plutôt que de le renforcer.

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Dans la lettre du 28 mai 69 (document T) la Municipalité n'était pas d'accord avec la suggestion de McGregor de renforcer l'escalier. Dustagheer a ouvert certaines fondations, mais je considère que le travail d'ouverture était insuffisant et j'ai demandé, et McGregor était

50 d'accord avec moi, qu'elles soient ouvertes plus largement.

Dans sa lettre du 29 juin (document X), McGregor semble dire que le travail d'ouverture

In the
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Deposition of
Plaintiff's
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29th January
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continued

des fondations n'a pas été entrepris par
Dustagheer malgré ses requêtes répétées.

Le "Load testing" est un travail à
être fait par un ingénieur, en l'occurrence
M. McGregor; mais cependant il aurait fallu
que Dustagheer lui donne les "concrete
blocks" pour ce travail.

Par le paragraphe 4 de la lettre du 28
mai 69 (Document T) il appert que M. McGregor
était d'accord à mettre des poids de cent
livres (en se servant de blocs) par pier carré
sur les dalles pendant 24-48 heures pour voir
s'il n'y avait pas de déflexions dans ces
dalles. Ce travail devait être fait sur
place. Chaque étage devait être ainsi
soumis à ce test. Je ne sais pas s'il y
avait suffisamment de blocs disponibles à
Dustagheer pour faire ces tests. En ce qui
me concerne je n'avais qu'à attendre que le
certificat de McGregor et je n'avais pas à
prendre aucune part dans ce load test. A
part un ou deux points ou suggestions sur
lesquels je ne suis pas d'accord avec McGregor,
le reste de ses suggestions aurait très bien
pu être retenu et tout était praticable et
pouvait être fait. Un point sur lequel nous
n'étions pas d'accord était l'escalier. Et
alors ce point est mineur. En somme si McGregor
avait pris toutes les dispositions qu'il avait
suggérées il est sûrement vrai qu'on aurait pu
finalement avoir sauvé le bâtiment de
Dustagheer. Si toutes les suggestions contenues
dans la lettre de 23 avril (document S) de
McGregor avaient été faites, je pense qu'il
aurait été possible alors de dire que le
bâtiment aurait été O.K. Dans notre lettre
du 28 mai (document T) au para (1) nous lui
demandons de nous soumettre les détails des
modifications pour examen. Au dernier paragraphe
de cette lettre (document T) nous lui disons que
nous fixerons un délai pour l'exécution des
travaux de modifications après qu'il aurait
soumis à la Municipalité les plans nécessaires.

M. McGregor a toujours été d'accord avec les
conditions et suggestions faites par la
Municipalité. D'ailleurs lui-même il recommande
dans une de ses lettres que Dustagheer suive
tout conseil donné par la Municipalité. Sauf
que McGregor insistait pour conserver l'Escalier
alors que nous voulions que l'escalier fut refait.
Il n'est pas vrai que les discussions entre
McGregor et moi auraient pris des années pour se

finaliser. En somme je crois que si Dustagheer et McGregor faisaient ce qu'ils disaient qu'ils allaient faire, tout aurait pu avoir été fait dans un laps de temps relativement court. Et si dans la suite pour l'escalier McGregor avait réussi à me persuader qu'en réparant l'escalier il avait pu le faire à ma satisfaction, je crois que là aussi il n'aurait pas eu de problèmes.

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RE EXAMINED BY MR. RAFFRAY

C'est absolument ridicule de dire que M. McGregor et moi avons été en désaccord. C'est le contraire qui est vrai. Lui et moi avons été toujours très co-operatifs et nous avons tout fait pour essayer d'aider Dustagheer. Si, je le répète, toutes les nombreuses suggestions faites avaient été exécutées, il n'y aurait eu aucun problème à ce jour. J'ai toujours accepté les suggestions de McGregor mais c'est le défendeur qui ne les a jamais mises à exécution.

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CASE CLOSED FOR PLAINTIFF CORPORATION

No. 16

DEPOSITION OF A.G. DUSTAGHEER

D E F E N C E

Mr. Bhayat calls and examines:

AHMAD GOOLAM DUSTAGHEER, s.a.m. a proprietor of Port-Louis

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I solemnly affirm as to the correctness of my answers made when questioned on personal answers by Mr. Raffray. I have explained how I made my first application for a building permit in 1963. As regards my second application I left it in the hands of Mr. Pope Rouillet at the Municipality. I think now that his name is Mr. Pope Loulie. It was Mr. Loulie himself who indicated to me how to fill in the form. My employee subsequently filled in the form and I handed the form to Mr. Loulie himself later

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In the Supreme Court of Mauritius

No.15
Deposition of
Plaintiff's
witness G.G.
Lefebure

29th January
1975 -
continued

Re-Examination
of G.G.
Lefebure on
29th January
1975

No.16
Deposition
of A.G.
Dustagheer

29th January
1975

In the
Supreme Court
of Mauritius

No.16
Deposition
of A.G.
Dustagheer

29th January
1975 -
continued

on. It is not true that I handed over the application form to Mr. Damoo. The first time I saw him was when he came to my building site some time before the month of May 1967. My first application was handed over to Mr. Loulie in 1963. I went to pay the fee in the same month i.e. in December, 1963. Mr. Loulie told me then that the permit would have to be signed by the Mayor and that I would get it later on. Mr. Loulie himself subsequently took the permit to me at my shop.

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As regards the second permit, I was told the same thing after handing the application form. I was told to go and that my permit would follow. I was not aware that Mr. Loulie had left Mauritius. The last time I met him was on 27 June, 1968, he came to my shop on that day and gave me a notice for the payment of property tax (amounting to Rs 57,000). I have the notice with me - it is a notice of assessment of tax on buildings.

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It is not true that when Mr. Damoo came to my site for the first time there were other storeys on my building apart from the first storey. There were only iron bars projecting from the slab of the first storey; it was in June 67, after Mr. Loulie had told me that the permit would be forthcoming that I started building the additional storey. I was told by the works committee that I would have to produce a certificate signed by an engineer after the building would have been completed. I have never produced that certificate, because I have never completed the building. I explained to the Municipality about my difficulty in obtaining a certificate as my constructeur (contractor) had left the country.

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In February 69 I was served with a mise en demeure to pull down the additional storeys. On receipt of the mise en demeure, I went to see the secretary of the Municipality; he told me to go and see the engineer. The engineer referred me back to the secretary. This took place on two occasions. Subsequently I saw Mr. McGregor in order to obtain a certificate as early as possible. Then Mr. McGregor took over the case and approached the Municipality. Mr. McGregor suggested that a "foundation" be opened and laid bare. He selected one found in the centre. Both Mr. McGregor and Mr. Lefebure inspected the foundations. I showed them the iron bars which they were looking for. On that

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very day Mr. McGregor delivered a certificate to Mr. Lefebure. Mr. McGregor said he was satisfied with what he had seen of the foundations and did not suggest that the foundations be widened. The foundations were 8 feet deep and 6 feet by six feet (width and length). The hole which was dug to expose the foundations is still in the same state today. Mr. McGregor told me that certain tests would have to be carried out with blocks on the "dalles". Mr. McGregor was not able to effect the tests because the Municipality had dug holes in various parts of the slabs. The "blocs" required for the tests were available. Those holes were dug by the Municipality at the time the "foundations" were being laid bare for inspection. In photograph AB 2 I see the holes which the Municipality had dug in the slab in each room. Those holes were made after Mr. McGregor had already taken charge of my works and the Municipality had demolished the 4th storey of my building.

I do not remember what were the suggestions made by Mr. McGregor in respect of the staircase. The Municipality made no suggestions about the staircase. I was always ready and willing to follow the suggestions of Mr. McGregor.

In June 1969 McGregor decided to quit my job saying that the Municipality was not prepared to co-operate with him as they were always turning down his suggestions and that he preferred to abandon the fight. By then McGregor had left me, the Municipality was going on with its demolition job. My trade was in bad condition, and so I could only sit at home and feel despondent.

I run a shoemaker's factory shop at the ground floor of my building. This is my only trade. I felt demoralised. Each day I saw my building being demolished. I could do nothing about it.

At 3.25 p.m. the case is adjourned to to-morrow at 10.30 a.m. for continuation.

(Sd.) G. Marjolin, for Master and Registrar

In the
Supreme Court
of Mauritius

No.16
Deposition
of A.G.
Dustagheer

29th January
1975 -
continued

In the
Supreme Court
of Mauritius

No. 17

PROCEEDINGS

No.17
Proceedings
29th and 30th
January 1975

Minutes of proceedings in Court on Wednesday
the 29th day of January 1975.

Before the Honourable W.H.Garrioch, Senior
Puisne Judge and the Honourable C.Moollan Judge.

Mr. Raffray Q.C. with Mr. J.Piat appears
for the plaintiff.

Mr. S.Bhayat with Mr. Aboo Bakar for the
defendant.

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Mr. S.Bhayat continues his cross-
Examination of witness A.G.Damoo s.a.m. who
is re-examined by Mr. Raffray.

Mr. G.G.Lefebure, City Engineer, sworn
is examined by Mr. Raffray, cross-examined by
Mr. S.Bhayat and re-examined by Mr. Raffray.

Case closed for the Plaintiff Corporation.

Mr. Bhayat calls and examines the defendant
A.G.Dustagheer s.a.m.

Documents L, M, N, O, P, Q, R, S, T, U,
V, W, X, Y, Z, AA, AA1, Ab, Abl to AB8 are
produced.

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At 3.25 p.m. the case is adjourned to
to-morrow 30th January, 1975 for continuation

(Sd.) G.Marjolin, for Master and
Registrar

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Proceedings in Court on Monday the 30th January,
1975.

Before the Hon. H. Garrioch Ag Chief
Justice and Hon C. Moollan Judge.

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A.Raffray (Q.C.) (J.Piat with him) for
plaintiff.

S.Bhayat (Y.Aboo Bakar with him) for
defendant

CROSS- EXAMINATION OF A.G.
DUSTAGHEER

In the
Supreme Court
of Mauritius

AHMAD GOOLAM DUSTAGHEER s.a.m. is
cross-examined by A.Raffray Q.C.

No.18
Cross-
Examination of
A.G.Dustagheer
on 30th
January 1975

10 I erected the building, the ground
floor to be used for my shoemaking factory
and the first storey to be used as my office.
The other storeys I constructed were to be
used partly by myself as offices and the
others, which I would not occupy, were to
be let to others to be used as offices.
My trade having been affected 100% the
first storey is not at present occupied.
I cannot say how much I could obtain if I
were to let the ground floor and the first
floor. I cannot say whether Mr. Faydherbe
is an engineer or an architect. He drew my
first plan which I deposited at the
20 Municipality and same was approved. I
asked him to draw the 2nd plan. He always
came to my office but I never went to his
office. I said yesterday that I had some
difficulty to obtain a certificate because
my constructor, one Mr. Mahmood, had left
Mauritius. After I had received a notice
to pull down my building I went to see Mr.
Faydherbe and he, himself, sent me to Mr.
30 McGregor. The plans were returned to me at
the end of 1967 and not in May 1967, and I
waited for Mr. Faydherbe to come to my
building to give me certain instructions but
by that time the Municipality had taken
back the plans from me. I do not know where
the office of Mr. Faydherbe is. He used to
come to my place of business. I made certain
searches to know where the office of Mr.
Faydherbe was but it was difficult. I
40 enquired from my employees whether they knew
where the office of Mr. Faydherbe was but
they didn't know, they promised to make
searches but in vain. Mr. Faydherbe was
one of my customers. I used to mend or
manufacture shoes for him since long ago.
It was he himself who drew up my first plan.
Mr. Faydherbe was my customer and I did not
ask him where he was living. 7 or 10 days
after handing back the plans the same person
came to take back the plans from me. It
50 was at the end of December, 1967. It was
Mr. Damoo himself who came back for the plans.
Mr. Damoo told me that he had come for the
plans and I gave them to him in presence of

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No.18

Cross-
Examination of
A.G.Dustagheer
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- continued

my employees. When I gave the plans back to Mr. Damoo, they were rolled up and he did not care to see whether the plans had been signed and approved. He simply took them away. He did not try to know from me whether I had succeeded in having the plans signed. He simply took the plans and went away. Mr. Rouillet told me after I had informed him that I had already paid for the building permit that the permit was being signed by the Mayor. It was after the 23rd May 1967 that Mr. Pope Rouillet told me so. It was the same Mr. Pope Rouillet who verified all my plans and the site for the first building in 1963. I started the works for the additional storeys in June, 1967. From June 67 to the end of 67 the 4th and 5th storeys had been constructed. I say so because at the beginning of 1968 there were no workers on the site. In May 67 Mr. Damoo didn't serve me with a notice to stop further construction. I have no knowledge of having been served with a notice by Mr. Damoo in May 67. Mr. Damoo did not tell me to stop further construction because there was none at the time. He only asked me to come and pay the building permit fee.

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It is not true to say that Mr. Moutou served me with two notices to stop construction. I never got any paper. Never Moutou came in front of me to serve me with the notices. Never either a B. Inspector or another employee of the Municipality came on behalf of the Municipality and told me to stop further construction. I retained Mr. McGregor for the buildings and he made certain suggestions to me. He visited the building. He asked me to lay bare the foundations in the middle of the building. I did so and he inspected the foundation. Mr. Lefebure too inspected the foundation. Another person also inspected the foundation. Mr. McGregor gave instructions to Mr. de Pitray who served a paper on the Municipality. Thereafter the demolition work was suspended. Mr. McGregor told me that certain test had to be carried out with the slabs but the Municipality had already made holes in those slabs and no tests could be carried out. Mr. McGregor never made suggestions concerning the columns. According to the plans there were six iron bars of 3/4" in diameter for the columns. Mr. McGregor was satisfied that the columns had been well built because he saw the six iron bars 3/4" in. diameter in them.

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10 He did not make any suggestion concerning
the columns. I received the letter now shown
to me (document U) Mr. McGregor had already
told me on several occasions that according
to him the building had been well built.
When I received document U I went to see Mr.
McGregor who came to inspect the building
again. I did not give the undertaking in
writing and Mr. McGregor told me that he would
do the needful. I went to see Mr. McGregor
on the same day I received the letter. I
cannot say whether I met with Mr. McGregor
after the 28th May 1969. Mr. McGregor never
told me that he was going to withdraw from the
case. After the demolition works had started
again, I went to see Mr. McGregor. I
explained to him the situation and he told
me that he would do the needful. I went to
see Mr. McGregor in his office. I do not
20 remember what he told me when I told him
that the Municipality had started pulling
down the building again. I knew that Mr.
McGregor told me that the Municipality was
not co-operating with him but I do not
remember whether he told me that he was
withdrawing from the affair. It is not true
to say that Mr. McGregor told me that he
preferred to withdraw because I was not
following the suggestions he had made. I do
not remember whether I received a copy of the
letter written by Mr. McGregor to the Muni-
30 cipality wherein he stated the reasons why he
was withdrawing from the affair. I was so
upset at the time that I do not remember
whether I received the letter (document X).

No re-examination. Case closed for Defendant.
Counsel address Court.

Taken down by me (Sd.) O.Khodadin for
Master and Registrar

In the
Supreme Court
of Mauritius

No. 19

PROCEEDINGS ON 30TH JANUARY
1975 AND LEGAL ARGUMENTS

No. 19
Proceedings
on 30th
January 1975
and Legal
Arguments

Minutes of Proceedings in Court on Thursday
the 30th day of January, 1975

Before The Honourable W.H.Garrioch S.P.J.
and Hon. C.Moollan Judge.

A.Raffray Q.C. (J.Piat with him) for plaintiff
S. Bhayat (Y.Aboobakar with him) for Defendant.

Raffray Q.C. cross-examines:

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AHMAD GOOLAM DUSTAGHEER s.a.m.

Case closed for defendant.

BHYAT: There has been confusion throughout
this case. Refers to Cap.263 - Vol.II

Subsidiary Legislation - Reg.No.45 and
submits that if the Reg. had been followed
the objection from plaintiff should have come
earlier than May 1967.

Defendant bona fide started the construction
thinking that the building permit would be
forthcoming as was the case for the first
construction.

20

Stresses on the procedure adopted by the
Authority was explained in Court, which
procedure, he submits, was adopted for the
convenience of the Corporation without the
least bothering whether the public could be
prejudiced or misled.

On the question of permit, Bhayat refers
to s.15 (1) of the Building Ordinance Cap.263
It is incumbent on the Authority to give the
permit within 14 days. According to the
procedure adopted the onus has been shifted on
the applicant.

30

Refers to Local Ordinance 16 of 1962
S.120 - Schedule VII which speaks of building
permit fee. Nowhere does it speak of any
deposit to be made to allow the Authority to
examine the plan and documents. The Authority
went beyond the law for their own convenience.

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There is nothing in the regulations which

specified that the plan has to be certified by an architect.

S.1 of the Buildings Regs.

He next refers to the notices served on the defendant and submits that here again the Authority has by-passed the procedure laid down in law. S:41 and 43 of Cap.263.

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10 The notices did not either mention the section under which they are issued or the nature of the work to be carried out.

20 The original information for the second prosecution speaks of structural soundness of buildings. After the first conviction the authority realised that under sec.20(1) of the Building Ordinance they had no power to have the building pulled down. Something had to be done, hence the second prosecution and conviction under sec.20(2) they had the power to pull down.

Defendant appeared before the Works Committee and he was asked to produce a certificate of structural soundness of the building.

Defendant, a dejected and confused man, has been very straightforward.

30 Can defendant be blamed when he says that he was not bound to follow the instructions of the mise en demeure which required him to have the building pulled down within fifteen days. When according to the City Engineer himself the period of 11 months during which the building was pulled down was a reasonable one ? he asks.

Refers to exchange of correspondence between Mr. McGregor and the Municipality.

Can it be said that the authority had done everything to save the building.

40 Would it not have been proper for the authority to serve a notice on the defendant - as laid down in law - stating the exact work to be done ? he asks.

Wonders whether the 2nd demolition could have been done without the service of a notice.

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On the plea in limine Bhayat submits that the correspondence and conversations between Mr. McGregor and The Municipality constituted a waiver on the part of the Municipality.

To a question from Court Raffray Q.C. states that he will not elaborate on the point in limine, as according to him, the evidence on record is sufficiently clear for judgment to be given in favour of the plaintiff. 10

Bhayat submits that the evidence of plaintiff itself is clear that the offence committed by defendant falls under sub-section 1 of S.20 and therefore plaintiff had no power to order the pulling down of the building.

Mr. Lefebure stated that the building was a danger to the public. The Building regulations make provisions for cases of this nature under Part III of the Ordinance. The procedure has not been followed. 20

The meetings between defendant and Pope Rouillet may have happened the way he described.

Submits the Authority has not been acting conscientiously and has been creating confusion in the mind of the public.

Plaintiff has been putting holes in the slabs. Could the defendant cause the load testing of the slabs to be carried out in the circumstances ? he asks. 30

Finally submits that the defendant was wrongly prosecuted and that the plaintiff had no power to pull down the building and that it did so at its own risks.

Legal
Argument
by Plaintiff's
Counsel

RAFFRAY Q.C.

The building permit fee can be envisaged as having been paid in consideration of certain work which had to be carried out before a building permit is issued. 40

There has been no confusion at all throughout this case. Defendant far from being kept in the dark was consistently from start to finish in the most clear way informed of the requests and of the danger he was running if

he failed to follow the requests.

Refers to S.14 of the Building Ordinance and submits that the plaintiff was entitled to ask for any kind of information it thought fit. It was a very ambitious structure and plaintiff wanted to know who made the plan and also of his qualifications.

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The explanations of the defendant would make one suspicious of the identity or even the existence of the person - whom he describes as Mr. Fayd'herbe. The explanations are unacceptable and are not entitled to any credit.

20

It has been amply proved that the first sine qua non condition, namely to have the plan attested by the person who drew it - under which a permit is delivered, had not been fulfilled. Defendant was clearly wrong and was violating the law and without paying any heed of such request started piling up the storeys.

He took no heed of the notice served on him by Mr. Damoo on 16/5. He even denied that he was ever served with two notices by the usher. He was told to stop the construction, he was not a beginner and he knew full well that he could not do what he did on the 2nd occasion.

30

Submits that the demolition procedure must of necessity apply to subsections 1 and 2 of section 20.

Further submits there is res judicata as regards the 2nd prosecution and conviction. The defendant cannot ask the Court to re-open the whole issue and to find that the second conviction was wrong.

40

Defendant was properly brought before Court and he was rightly convicted for the offence. He contravened the law by doing something which went far beyond the permit issued to him.

The Plaintiff was anxious to take action in the most fair manner and has shown extreme leniency to the defendant. They went out of their way to save the building.

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From the evidence it is clear that the Authority wanted to obtain some sort of assurance that the building was structurally sound, although there had been a breach of the law.

Defendant was given every chance of saving his building. He flouted the law openly defied the Authority, took no heed of the letters begging him to do something.

It was only after the demolition had started that the defendant rushed to Mr. McGregor and Mr. de Pitray, and not before.

10

There is not a tittle of evidence to shew that Mr. McGregor was not able to give a certificate and withdrew because Mr. Lefebure was being un-cooperative.

There has been no waiver. The defendant was given every information and he was told that should he fail to give the undertaking the demolition would start anew.

20

There is nothing to suggest that the building was in a bad state. It was something erected in defiance of the law. The Authority could not accept the risks and did what should have been done.

Court Reserves Judgment

(Sd.) O.A.Khodadin
for Master and Registrar

No.20
Notice of
Judgment
24th April
1975

No.20

NOTICE OF JUDGMENT

30

Notice dated the 24th April, 1975 to Counsel and solicitors that Judgment would be delivered on the 29th April, 1975 at 10.30 a.m.

No. 21
PROCEEDINGS

In the
Supreme Court
of Mauritius

No.21
Proceedings
29th April
1975

On Tuesday the 29th day of April, 1975
before The Honourable W.H.Garrioch, Senior
Puisne Judge.

Y. Mohamed appears replacing S.Bhayat
for Defendant.

R. Montocchio appears replacing
A.Raffray Q.C. for Plaintiff

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Judgement of the Court (Hon. H.Garrioch
Senior Puisne Judge and Hon. C.I.Moollan
Judge) read out in Court and filed. Judgment
for Plaintiff in the sum of Rs 20,925.77
plus costs.

(Sd.) Y.A. Beebeejaun,
for Master and Registrar

No. 22

JUDGMENT OF W.H. GARRIOCH,
P.S.J. and C.I. MOOLLAN, J.

No.22
Judgment of
W.H.Garrioch
P.S.J. and
C.I.Moollan,J.

29th April
1975

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The plaintiff in this action seeks to
recover from the defendant the cost of
demolishing three partly completed storeys
of a building averred to have been erected
in contravention of the provisions of section
20 of the Building Ordinance, (Cap. 263)
(referred to as the "Ordinance" in this
judgment).

30

The pleadings which have run to a reply
to a surrejoinder contain a good amount of
surplus matter which had better been left
to evidence. Shrunk to their essentials,
the parties' respective cases are these:
the plaintiff (which is the authority for
enforcing the provisions of the Ordinance
in Port-Louis) avers that in January 1964,

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No.22

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the defendant was granted a permit for the construction of a building consisting of a ground floor and first floor in the city as per a drawing submitted by him; that without having obtained the required authorisation from the plaintiff, the defendant, in 1967, added three storeys to his building; that he was prosecuted a first time under section 20(1) of the Ordinance for having made additions to his building without a permit and a second time under section 20(2) of the Ordinance for not complying with the plan upon which the permit to erect his building had been granted to him; that he pleaded guilty on each occasion and was fined; that the plaintiff, which was empowered under section 20 of the Ordinance in the circumstances to cause the additional storeys to be pulled down, removed or dealt with as it thought fit, decided, before taking the drastic step of having the offending additions demolished, to afford the defendant a chance of saving his building by asking him to produce a certificate from a qualified architect or engineer that the building was structurally sound; that despite all the time and assistance allowed by the plaintiff to the defendant for that purpose the latter failed to comply with the plaintiff's demand, so that in the end there was no alternative but to have the additions pulled down. The defendant, on his part, states in substance that before proceeding to the erection of the additional floors, he did apply for a permit and submit his plan as required; that he was informed by an employee of the plaintiff (identified later as Mr. Loulie) that his plan had been approved and was requested to pay for the permit; that he paid the prescribed fee; that he then called on the same employee and asked him for the permit; that the employee told him that his application and plan had been approved and later delivered the plan to him in person; that after paying for the permit he, in June 1967, started upon the construction of the additional floors; that subsequently, after he had been prosecuted and called upon to submit a certificate of structural soundness in respect of his building, he did produce a certificate from Mr. McGregor.

The factual aspect of the case offers no difficulty really. After hearing both sides we have no hesitation in accepting the evidence of the plaintiff's witnesses, supported as it is by documents of decisive weight, and rejecting that of the defendant whose pitiful endeavours

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to wriggle out of the mess into which he had thrown himself only succeeded in showing him as a disguiser of truth. The facts which we find clearly established are these: In May, 1967, Mr. Damoo, a building inspector of the plaintiff corporation, noticed that three additional storeys were being erected on the defendant's building. Having ascertained from his registers that the defendant had not been issued with a permit for those extra works, he went on the site and served a notice personally on the defendant enjoining him to stop the construction until he had obtained the permit and advised him to make a formal application for it. Later, on the same day, the defendant called on Mr. Damoo and handed an application form dated March 3, 1967, together with two sets of plans. Mr. Damoo showed the plans to Mr. Hansrod, the City Engineer, who told him to return the plans to the defendant with a request to have them signed by an engineer or architect. Mr. Damoo acted accordingly. On May 18, 1967, following the practice then in force of having the permit paid for before issue, the defendant was instructed to pay the prescribed fee, which he did on May 23. A receipt was delivered to him which contained an express clause that the payment of the fee in no way entailed authorization to start the construction of the building. The defendant at no time sent back his plans duly approved by an engineer or architect. On several occasions after serving the notice of the 16th May on the Defendant, Mr. Damoo visited the site and found that the works had not stopped. The defendant was on August 18, and September 25, 1967, requested by letter to submit his plans with the necessary approval. Two other notices were also served by usher upon the defendant, on August 10, and November 25, 1967, respectively directing him to stop the works. All were ignored. The Defendant was then prosecuted for the first time. Judgment was given against him on February 16, 1968. On March 25 and April 4, 1968, the defendant was again written to and invited to submit a certificate from an architect regarding the structural soundness of his building and warned that in case of non-compliance his additional floors could be pulled down. In August, 1968, the defendant was prosecuted for the second time. The reason for that prosecution was, we were told, that the plaintiff

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was not sure that the first conviction of the defendant gave it the right to pull down the constructions unlawfully put up. By October, 1968, no certificate having been produced by the defendant he was summoned before the Works Committee of the Corporation and explained what was required of him. The Defendant not having complied, the decision was made at the end of November to cause the additional floors to be pulled down, and the defendant was notified in writing accordingly. By the end of February, 1969, there having been no reaction on the part of the defendant, he was served with a notice enjoining him to proceed to the demolition of the extra floors within fifteen days or else plaintiff would itself do so at his expense. The defendant having made no move, the plaintiff started demolition work on March 21, 1969. On March 31, 1969, Mr. McGregor, a qualified building engineer, wrote to the Town Clerk concerning the defendant's building informing him that he had verified the defendant's plans and intended to carry out certain checks jointly with Mr. Lefebure, the City Engineer, on the building before making a final report as to its soundness. The Plaintiff decided as a consequence to halt temporarily the demolition works started. From then on various attempts were made by Mr. McGregor in conjunction with Mr. Lefebure to have the defendant's building tested for soundness and to have the weak parts reinforced in the manner proposed by Mr. McGregor or insisted upon by Mr. Lefebure without success. On June 29, 1969, Mr. McGregor wrote to the Town Clerk reporting the state of affairs and saying in conclusion "I contacted Mr. Dustagheer several times during the past month and did all I could to guide him and to the ways and means of saving his building. Unfortunately, Mr. Dustagheer has proved extremely uncooperative and I am left with no alternative but to reject all responsibility for the strengthening of his building, of which I no longer consider myself in charge." The sequel may be guessed. Demolition works were resumed after a last notice and proceedings instituted for the recovery of the costs.

Counsel for the plaintiff has said that the reason why so much trouble had been gone through with a view to helping the defendant was that the plaintiff desired to comply with

the rules of natural justice, which, according to authorities on similar legislation in England, required that a person who had built in contravention of the law should be given an opportunity of showing cause against the demolition of the offending structures. (Halsbury Laws of England, Vol 31, vo. Public Health, p.417; Hopkins v. Smithwick Local Board of Health (1890) 24 Q.B.D. 712). We have no doubt that the plaintiff has in the application of those principles gone to the extreme limits of tolerance and that counsel was right when he observed that short of begging the defendant to help himself the plaintiff had done everything it could, in the circumstances, to get him out of trouble.

There remains to be considered certain points made in law on behalf of the defendant.

The first was that the plaintiff's mode of dealing with matters relating to buildings and building permits generally, and with the defendant's case particularly, was not in accordance with the Ordinance or the Regulations made thereunder, and was likely to cause prejudice and confusion. Thus, building permits were being issued after the time-limit of fourteen days laid down by section 15 of the Ordinance and the fee for the permits caused to be prepaid without authority. The plaintiff had insisted on the defendant having his plans signed by an engineer or architect when no such requirement was to be found in either the Ordinance or the Regulations. Notices issued by the plaintiff had, under section 41 of the Ordinance to be served by usher; service by a building Inspector as in the case of the defendant was not authorized. Besides, the notices were required to set out all the particulars specified in section 43 which the notices served on the defendant failed to do. It was not surprising, in the circumstances, counsel concluded, that the defendant may have been confused as to what the plaintiff really wanted of him.

We are not clear as to what conclusions was sought to be drawn from those submissions (except, perhaps, that the plaintiff's behaviour encouraged the defendant himself to take liberties with the law), nor do we think it necessary to fathom their purport. In our view, they are beside the real issue. Whether the procedure adopted by the plaintiff was questionable or not, there was one thing

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that the defendant was not entitled to do, namely, to build without authority. If he thought that the conditions imposed upon him for the obtention of a permit were not justified, or that the plaintiff was unduly withholding the issue of a permit, his only right, vested in him by the Ordinance (section 15), was to challenge the propriety or legality of those conditions before the Magistrate. Having chosen to continue to build without authority in contravention of section 20 of the Ordinance he lay himself open to any action which the plaintiff was empowered to take under that section which makes no provision for that kind of exoneration that the defendant seems now to be trying to invoke. With regard to Notices, sections 41 and 43 of the Ordinance refer to those that are required or have to be given under the Ordinance. Section 20 itself, under which the plaintiff has purported to act, makes no provision for the service of any notice either before prosecution of the contravener or prior to the plaintiff taking steps regarding offending structures. However, we find that, twice before the defendant was proceeded against, a notice was served upon him by usher enjoining him to stop work on the building. Once he had been convicted, all the plaintiff had to ensure following the English decisions cited by the plaintiff's counsel (supra), with the principle of which we agree, was that the defendant had an opportunity to show cause against the decision of the plaintiff to have the unlawful additions removed. That opportunity was duly afforded to the defendant when he was summoned before the Works Committee. It does not seem that under section 20, the plaintiff was bound to offer to the defendant the option of himself carrying out the demolition of the extra floors and that it had to do so by a regular notice. Assuming that such a requirement existed, it was in fact fulfilled when the plaintiff as a last resource caused a "mise en demeure", which we find complied with the exigencies of sections 41 and 43, to be served on the defendant. We, consequently, hold that the plaintiff has committed none of the breaches of the law alleged.

Next it was pointed out that the plaintiff's decision to pull down the defendant's additional floors purported to be made in exercise of its powers under section 20 of the Ordinance under which the defendant had been prosecuted, a first time, for adding to his building without

10 permit and, a second time, for not complying with his original plan. Yet, what he was summoned to submit was a certificate of soundness with respect to the building. If the plaintiff was of the view that the building was unsound or dangerous it ought to have proceeded under section 22 and following of the Ordinance which make provision for the manner dealing with dangerous buildings, and to have complied with the procedure laid down there. Having failed to do so, the plaintiff had no right to demolish the defendant's constructions as if they were dangerous.

20 This is again, we are afraid, misconceiving the position. The right acquired by the plaintiff under section 20, as a result of the defendant's contravention, of pulling down the offending structures or dealing with them in some other way could not obviously be affected by the offer to the defendant of a means of saving them from demolition. It was not a possible unsoundness of the building that gave the plaintiff its right of action, but the defendant's infringement of section 20. The certificate of soundness asked for in the first instance and, later, the prescribing of certain works to be carried out on the existing building had all for object to allow the defendant to obtain a permit for the completion of his construction and, consequently, regularise his situation. By acting as it did the plaintiff was, in terms of the section, causing the additions to be "dealt with" as it thought fit.

40 Finally, it was contended on behalf of the defendant that, in the circumstances of this case, the plaintiff had no power under section 20 of the Ordinance to pull down the defendant's building. Counsel submitted that the breach of the law which the defendant would have in fact committed was making extensive additions to his existing building without first obtaining a permit from the plaintiff. The offence was punishable under the first subsection of section 20 of the Ordinance which makes no provision for the pulling down of, or otherwise dealing with, the offending structures by the plaintiff. The power to deal with the structures in that manner was conferred upon the plaintiff only by subsection (2) which catered for those cases where a person having obtained a building permit

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either failed to comply with a condition imposed upon him or to build according to his plan. In the present instance the permit originally granted to the defendant was for a building consisting of a ground floor and first floor. That building had been erected and completed in strict accordance with the plan submitted. The Defendant had subsequently applied for a permit to make additions to existing building and had submitted plans relating to those additions. If, as averred against him, he had undertaken the construction of the additions without waiting for the permit, his offence was that of making additions to an existing building without permit contrary to subsection (1) of section 20, not that of not complying with plans under subsection (2) of the section.

10

On behalf of the plaintiff it was contended that the power of the plaintiff under section 20 of the Ordinance of demolishing offending structures could be exercised for a contravention of either subsection (1) or subsection (2). In the present case, the defendant had acted against both subsections. Assuming that the plaintiff's power was only exercisable under subsection (2), the fact that the defendant had been charged with an offence against that subsection, had pleaded guilty and convicted, made the matter res judicata and precluded the defendant from now questioning the action taken by the plaintiff.

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30

This last issue is not free from difficulty. With respect to the proper construction to be put on section 20 of the Ordinance, we agree that the wording of subsection (2) allows of a doubt as to the extent of the powers of the "Authority" which only recourse to the ancestry of that provision can dispel.

Section 20 of the Ordinance was originally section 28 of the Building Ordinance, 1896, which read -

40

- (1) Any person who erects a building, or alters or adds or makes extensive repairs to, an existing building, without having previously obtained a permit, shall be guilty of an offence.
- (2) Any person who, having obtained a permit for erecting a building, or making any extensive alteration or addition to, or repairing a building, does not comply

50

with any condition imposed upon him, or with any part of the plan or specification upon which the permit has been granted, shall be guilty of an offence.

- 10 (3) Any person guilty of an offence under this article shall be liable to a fine not exceeding Five hundred rupees (Rs 500), and the Authority may further cause any building erected, or any extensive additions, alterations or repairs made in breach of any of the above provisions, to be pulled down removed or otherwise dealt with as the Authority shall think fit, and the expenses incurred in so doing shall be recoverable against the offender.

20 Section 28 of 1896 Ordinance became, when the building legislation was next consolidated by Ordinance No.13 of 1915, section 13 of that Ordinance. The material part of the latter section was -

- (i) Any person who erects a building, or alters or adds or makes extensive repairs to, an existing building, without having previously obtained a permit, or
- 30 (ii) Any person who, having obtained a permit for erecting a building, or making any extensive alteration or addition to, or repairing a building does not comply with any condition imposed upon him, or with any part of the plan or specification upon which the permit has been granted, shall be liable to a fine not exceeding five hundred rupees (Rs 500), and the authority may further cause any building erected, or any extensive additions, alterations or repairs made in breach of any of the above provisions, to be pulled down, removed or otherwise dealt with as the authority shall think fit, and the expenses incurred in so doing shall be recoverable against the offender.
- 40

We pause here to observe that subsection (3) of section 28 of the 1896 Ordinance made it quite clear that the powers of the Authority extended to offences against both preceding subsections. The change of wording in section 13 of the 1915

In the
Supreme Court
of Mauritius

No.22

Judgment of
W.H.Garrioch
P.S.J. and
C.I.Moollan,J

29th April
1975 -
continued

In the
Supreme Court
of Mauritius

No.22

Judgment of
W.H. Garrioch
P.S.J. and
C.I. Moollan, J

29th April
1975 -
continued

Ordinance did not affect the purport of the provision. The way in which the penalty clause and the definition of the powers of the Authority were made to appear to be part of the second subsection was manifestly clumsy draftsmanship and insufficient to warrant any suggestion that the penalty and the exercise of those powers were intended to be restricted to an offence against that subsection. So, under both section 28 of the 1896 Ordinance and section 13 of the 1915 Ordinance, in the phrase "made in breach of any of the above provisions" the "above provisions" were those of subsections (1) and (2) of the section. 10

Then section 13 of the 1915 Ordinance was amended by Ordinance No.7 of 1937. Subsection (1) of the section was repealed and replaced and has assumed the form it now has in the Ordinance which is -

(20)(1) Any person who erects a building, or alters or adds or makes extensive repairs to an existing building, without having previously obtained a permit, shall be liable to a fine not exceeding five hundred rupees in addition to the amount payable for such permit. 20

By making provision in the subsection for a penalty which, as already observed, was formerly to be found in subsection (2) and by ending it with a full stop, the legislator would thus have in part severed the pre-existing connection between the two subsections. Is it to be inferred that the intention was to make both self-contained and wholly independent of each other? We do not think so. It seems to us as patent as can be that the legislator could not have intended by the amendment of 1937 to alter the meaning which the reference to "the above provisions" in subsection (2) had up to then had. Our conclusion is based first on the strictly textual interpretation which we have just undertaken; secondly, upon a consideration of the absurd consequence that would ensue upon a different construction, that is to say, the consequence that the Authority would have power to get rid of a structure not conforming with the plan upon which a building permit had been issued, but would no longer be able to act under the section if a building were to be erected without a permit, and therefore, without any plan having been submitted. 30 40 50

Reference may, in passing, be made to section 78(2) of the Ordinance - formerly, section 71(2) of the 1915 Ordinance - which provides for the making of Regulations and under which the Authority is vested with an all-round power of ordering the pulling down or removal of any building or part of a building "erected in breach of the provisions of this Ordinance". What is puzzling, however, (and this appears to be another slip of the draftsman) is that that power is conferred by the subsection in addition to penalties which may be imposed for a breach of the Regulations. Be that as it may, we do not think that the existence of the seemingly general purpose power granted to the Authority affects the proper construction to be put on section 20.

In the
Supreme Court
of Mauritius

No.22
Judgment of
W.H. Garrioch
P.S.J. and
C.I. Moollan, J
29th April
1975 -
continued

We accordingly hold that the plaintiff could legally have proceeded to the demolition of the floors added to the defendant's building after his conviction under subsection (1) of section 20 of the Ordinance.

With respect to the issue of res judicata, it seems to us that the real point is not that the conviction of the defendant under subsection (2) of section 20 of the Ordinance is a fact which we ought in these proceedings to accept as conclusive evidence of an infringement by him of that provision. It is settled by authority that a judgment of a criminal court cannot be admitted in a civil action as evidence of the truth of the matter decided by that Court. (See e.g. Gorpatur v. Kooshur, 1951 M.R.31). The proposition should rather be that the Authority, under section 20, derives its power to take remedial action regarding an offending structure from the conviction of the contravener. Once a person has been convicted of an offence against the relevant provisions of the section, unless he takes steps to challenge his conviction by appeal to the Competent Court, the Authority is entitled to act on the strength of the defendant's conviction, and the offender cannot later be heard to say that the Authority's action was unlawful on the ground that he had not committed the offence concerned.

Having reached that conclusion the need does not arise for us to decide that the third question raised on this issue, whether the erection of the three additional floors by the defendant was in violation of both subsections (1) and (2) of section 20 of the Ordinance. We wish

In the
Supreme Court
of Mauritius

No.22
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W.H.Garrioch
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C.I.Moollan,J

29th April
1975 -
continued

further to remark that we have deemed it useful to give consideration to the submissions of the counsel for the defendant relating to the intendment of section 20 of the Ordinance, but that the defence put forward by the defendant had, upon his pleadings, nothing to do with that aspect of the matter at all.

In the result, therefore, the plaintiff must succeed. The amount claimed not having been disputed, we give judgment for the plaintiff in the sum of Rs 20,925.77cs with costs.

10

(Sd.) W.H.Garrioch, Senior Puisne Judge

(Sgd.) C.I.Moollan, Judge

29th April, 1975

No.23
Order
granting
Final Leave
to appeal
to Her
Majesty in
Council

8th August
1975

No.23

ORDER GRANTING FINAL LEAVE
TO APPEAL OT HER MAJESTY
IN COUNCIL

20

Record No: 18719

IN THE SUPREME COURT OF MAURITIUS

On Friday the 8th day of August, 1975, in the 24th year of the reign of Queen Elizabeth II.

In the matter :

AHMAD GOOLAM DUSTAGHEER

Applicant

v.

THE MUNICIPAL CORPORATION
OF PORT-LOUIS

Respondent

UPON HEARING S.Juggernaut, replacing Y. Aboubakar, of Counsel for the applicant and A.Raffray, Q.C. for the respondent, after taking cognizance of the proceedings to date in the matter and also after consideration;

30

IT IS ORDERED by the Court here that
APPLICANT BE & HE IS HEREBY granted final leave

to appeal to Her Majesty's Privy Council
against the judgment of this Court in S.C.R.
16484.

In the
Supreme Court
of Mauritius

(Sd.) Y.A. BEEBEEJAUN

FOR MASTER AND REGISTRAR

No.23
Order
granting
Final Leave
to appeal
to Her
Majesty in
Council

8th August
1975 -
continued

A true copy
(Sd.)

Y.A.Beebeejaun
for Master & Registrar

10 Ref. B118 No. 4084
of 13/8/75

EXHIBIT

"A1"

ORIGINAL CHARGE AGAINST
DEFENDANT AND ORIGINAL DECISION

Exhibit "A1"
Original
Charge against
Defendant and
Original
Decision

Municipality of Port-Louis against Ahmad
Goolam Dustagheer.

Charge of making an addition of 3 storeys to
an existing building without permit.

20 Complaint lodge on 24.11.67
To be heard 1.12.67
Judgment given on 16. 2.68

JUDGMENT Fined Rs 1010 plus Rs 2
costs

DISTRICT COURT OF PORT-LOUIS
2nd Division

Day of Trial 1st December, 1967
No. of Cause Book 1061/67
Information upon Oath.

30 Charge of Breach of Laws of Mauritius C.Lane
Vol.III Cap.263 p.450 Sec.20(1)

Exhibit "A2"
Original
complaint of
Plaintiff's
witness, A.G.
Damoo

EXHIBIT

"A2"

ORIGINAL COMPLAINT OF
PLAINTIFF'S WITNESS, A.G.
DAMOO

ABDOOL GAFFOOR DAMOO, a Municipal Building
Inspector, maketh oath and saith af follows :-

That on the 27th day of July in the year of
Our Lord One thousand nine hundred and 67 at
49 Lord Kitchner Street in the said District one 10
Ahmad Goolam Dustagheer proprietor at 49 Lord
Kitchner did unlawfully make an addition of 3
storeys to a building without having previously
obtained a permit. Permit fee Rs 1008.-

Wherefore the said complainant prayeth the
Court that the said accused be brought before
it and dealt with according to law. Sd. A.G.Damoo.

Taken and sworn in the District Court of
Port-Louis, 2nd Division, before me the under-
signed Magistrate this 24th day of November, in 20
the year One thousand nine hundred and sixty-seven
(Sd.) R.Bourdet, D/Magistrate, P.Louis.

Proceedings before Mr. Magistrate of Port-Louis
the 1st day of December, 1967.

Accused absent. Summons to issue. To 15/2 (id)
A.B.A.

15/2 Accused absent. Fresh summons to issue.
To 29/12 (Id) A.B.A.

29/12 Accused absent. Warrant of arrest to issue.
To 12/1 (Id) A.B.A. 30

Later 29/12 Accused present. Order to issue
warrant recalled. Case fixed to 12/1 p.f. (Id)
A.B.A.

12.1 Accused present. Prosecutor moves for an
adjournment to consider position. To 26.1 (Id)
A.B.A.

26.1 Accused present. On motion by prosecutor
who states that the council is still awaiting an
opinion from the legal adviser, case is adjourned
to 16.2. (Id) A.B.A. 40

16.2. Accused present, Pleads guilty.

Judgment: Fined Rs 1010 plus Rs 2 costs.
(Fine includes costs of permit). As the
fees had already been paid to the Municipality
Mr. Piat who appears for prosecution, states
that the Municipality will refund the amount.
(Id) A.B.A.

Exhibit "A2"
Original
complaint of
Plaintiff's
witness, A.G.
Damoo

- continued

(Certificate by the District Clerk as
to the correctness of the above copy of the
record).

10

EXHIBIT

"B1"

ORIGINAL CHARGE AGAINST
DEFENDANT AND ORIGINAL
DECISION

Exhibit "B1"
Original
Charge against
Defendant and
Original
Decision

Building Inspector A.G.Damoo against
Ahmad Goolam Dustagheer

Charge: Erecting a building contrary to plans
submitted.

Complaint lodged on 10.7.68

20

To be heard on 19.7.68

Judgment given on 9.8.68

Judgment Fined Rs. 100 plus Rs 10 costs

Exhibit "B2"
Original
complaint of
Plaintiff's
witness, A.G.
Damoo

EXHIBIT

"B2"

ORIGINAL COMPLAINT OF PLAINTIFF'S
WITNESS, A.G. DAMOO

District Court of Port-Louis
IIInd Division.

Day of Trial 19.7.68 No. of Cause Book 449/68

INFORMATION UPON OATH:

CHARGE OF Breach of Laws of Mauritius C.Lane
Vol III Cap. 263 p.450 Sect.20(2) 10
Mauritius District Court of Port-Louis

(Sd.) A.G.Damoo a Municipal Building
Inspector

maketh oath and saith as follows :

That on the eleventh day of April in the
year of Our Lord one thousand nine hundred and
sixty-eight at 49 Lord Kitchner in the said
District, one Ahmad Goolam Dustagheer did
unlawfully erect a building contrary to plans
submitted. To wit structural soundness of 20
Building.

Building permit fee claimed Rs 1508.70.

Wherefore the said Complainant prayeth the
Court that the said accused be brought before
it and dealt with according to law.
(Sd.) A.G.Damoo

Taken and sworn in the District Court of
Port-Louis, 2nd Division before me, the under-
signed Magistrate this tenth day of July in the
year One thousand nine hundred and sixty-eight. 30
(Sd.) R.Bourdet, District Magistrate of Port-Louis.

Proceedings before Mr District Magistrate of
Port-Louis the nineteenth day of July 1968.
Accused present. Prosecutor prays for a postpone-
ment to consult his legal adviser. 9/8 p.f. (id)
R.B.

9/8 Accused present.

At this stage Mr. Piat for the Municipality
moves to amend the Information by deleting the
words "did unlawfully erect a building contrary to 40

plans submitted" also "to wit Structural soundness of the building" and to replace those words by the following "having obtained a permit for erecting a building, did unlawfully not comply with the plan upon which the permit has been granted."

Exhibit "B2"
Original
complaint of
Plaintiff's
witness, A.G.
Damoo

- continued

Motion granted.

Amended Information read over to accused, pleads guilty.

10

Rs 100 plus Rs 10 (id) S.N.

(Certificate of the District Clerk as to the correctness of the above copy)

EXHIBIT

"C"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "C"
Letter -
Plaintiff to
Defendant

18th May 1967

Letter Ref. 7292/B/3464 dated 18th May 1967 from Plaintiff to Defendant.

Dear Sir,

20

With reference to your application for a permit for the addition to a building at the above address, you are requested to pay the building permit fee of Rs 1,008.60 as soon as possible.

Yours faithfully,

(Sd.) Ahmad Hansrod, ag.
City Engineer

Ref. A 386 No.13990

Exhibit "C1"
Defendant's
Receipt
23rd May 1967

EXHIBIT
"C1"
DEFENDANT'S RECEIPT

MUNICIPALITY OF PORT LOUIS No.0640
Code No.50

Received from Mr. Dustagheer A.Goolam the sum of Rs 792.60 in payment of a building permit as per file No. 7131.

NOTE This payment entails in no way authorization to start the construction of the building. 10
Such authorization shall be granted by means of an official permit if and when all formalities imposed by the law are complied with.
(Received the smount stated in figures by the Corporation's receipting machine in respect of the amount referred to herewith).

(Sd.) Illegible.

9801 23 May '67 A00792.60- Reg B 117 No 5401

Exhibit "C2"
Defendant's
Receipt
23rd May 1967

EXHIBIT
"C2"
DEFENDANT'S RECEIPT

Received the amount stated in figures printed by the Corporation's receipting machine in respect of the amount referred to herewith.

No. 0354
Code No. 52

Received this day from Mr. Dustagheer A.Goolam the sum of Rs 216 in payment of balconies.

(Sd.) Illegible

9002 23 May '67 A 00216.00 Ref B 117 No 5401 30

EXHIBIT

"D"

NOTICE OF BREACH OF BYE-LAWS C.E.68

Exhibit "D"
Notice of
Breach of
Bye-Laws
17th May 1967

Municipality of Port-Louis
Engineer and Architect's Department
Section 1 c - Bye Laws

Notice

To Mr. A. Goolam Dustagheer,
49 Lord Kitchner St.

10

Notice is hereby given that you have committed a breach of law on the premises situate at 49 Lord Kitchner St. for (a), (b) (c) (deleted) (d) erecting a building contrary to plan submitted.

You are hereby required forthwith to

a) (deleted)

20

b) pull down the parts that are not in conformity with the Regulations on the said premises according to the provisions of the Regulations.

If you fail to comply with this Notice within 48 hours, legal action will be taken against you.

Served by me

this seventeenth day of May, 1967.

Building Inspector
for City Engineer and Architect.

Reg A 386 No 13654

Exhibit "E"
Notice

7th August
;1967

EXHIBIT

"E"

NOTICE

T.E.11

MUNICIPALITE DE PORT-LOUIS

Departement de l'ingénieur & Architecte

Demande pour constructions et reconstructions,
additions, changements ou réparations a des
bâtiments existants

Ref. T.E.7131

10

Le soussigné A.G.Dustagheer demeurant
à la rue Deschartes vient par la présente
demander à Son Honneur le Maire de Port-Louis
l'autorisation d'ajouter trois étages en
bâtiment en construction le tout sur ma
propriété situé 49 Lord Kitchner et
conformément au plan ci-annexé.

JE M'ENGAGE A NE PAS COMMENCER LES
TRAVAUX AVANT D'ENTRE EN POSSESSION DU
PERMIS DE CONSTRUCTION; Port-Louis ce 7.8.196

20

(Sd.) A.G.Dustagheer

(Seal of The Municipality of Port-Louis
Engineer & Architect Dept.)

Ref. A 386 No 13653

EXHIBIT
"F"
NOTICE

Exhibit "F"
Notice
2nd August
1967

No File 7131 & 3464

Served on the

Upon Mr. Dustagheer Ahmad Goolam of 49 Lord
Kitchner or 50 Deschartes St. P.Louis

10

Remarks: That your construction (addition of
3 storeys to your building) has already been
put up without having previously obtained a
permit. You are requested to stop work
immediately. Breach of Ord: 13 of 1915.

(Sd.) Illegible for Ag. C.E 2.8.67

Personal service by usher Moutou on Defendant
on 10.8.67 Reg A 386 No 13652

EXHIBIT
"G"
NOTICE

Exhibit "G"
Notice
22nd November
1967

No File 7131 & 3464

20

Served on the

[sic]

Upon Mr. Dustagheer Ahmad Goolam of 49 Lord
Kitchner & ro Deschartes, P.L.

Remarks: That your construction (addition of
3 storeys) are being put up despite the
notice served upon you by usher on 28.7.67.
You are therefore requested to stop all work
immediately. Breach of Ord: 13 of 1915

(Sd.) G.Lefebure 22.11.67

30

Personal service by usher Moutou on the
Defendant on 25.11.67 Reg A 386 No 13651

Exhibit "H"
Letter -
Plaintiff to
Defendant
18th August
1967

EXHIBIT
"H"
LETTER - PLAINTIFF TO DEFENDANT

Letter No. 7632/B/7131 dated 18th August,
1967 from plaintiff to Defendant

Dear Sir,

With reference to your application for a
building permit for an addition at the above
address, you are requested to submit plans
approved by a qualified architect, within a
week.

10

Yours faithfully,
(Sd.) G.L.
Ag. City Engineer

B.L. Pl. report progress I ? 18.8.67
Reg A 392 No 1225

Exhibit "I"
Letter -
Plaintiff to
Defendant
25th Septem-
ber 1967

EXHIBIT
"I"
LETTER - PLAINTIFF TO DEFENDANT

No 7764/B/7131 dated 25th September 1967 from
Plaintiff to Defendant

20

Dear Sir,

Building permit at above address

Further to my letter No. 7632/B/7131 of
the 18th August, 1967, you are requested to
submit plans approved by a qualified architect,
within 15 days, failing which legal action will
be taken against you.

Yours faithfully,
(Sd.) G.L. Ag. City Engineer

30

P.I Report progress. I) ? 25.9.67 Reg A392 No.1226

EXHIBIT

"J"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "J"
Letter -
Plaintiff to
Defendant

25th March
1968

TC 68/335

25th March 1968

Sir,

10 I am directed to inform you that the City Council, on considering the case of the building erected by you at 49 Lord Kitchner Street, has decided that you should submit a certificate from your architect attesting whether the building concerned is safe and sound or not.

It would be much appreciated if you could let me have the relevant certificate as early as possible.

I am,

Sir,

Your obedient servant,

(Sd.) S. Bhuckory
Town Clerk

20

Ref A 386 no 13581

EXHIBIT

"K"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "K"
Letter -
Plaintiff to
Defendant

4th April
1968

No. TC 68/400

Sir,

30 Further to my letter TC68/335 dated 25th March, 1968, I have to point out that I have not yet received the certificate I requested from you regarding the structural soundness of the building erected by you at 49 Lord Kitchner Street.

Exhibit "K"
Letter -
Plaintiff to
Defendant
4th April
1968 -
continued

I have to request you to let me have the relevant certificate by Thursday 18th April, 1968 at latest, failing which, the Municipality will have no alternative than to order the pulling down of the building under reference. A certificate issued by any qualified architect or engineer will be accepted.

I am Sir,
Your obedient servant,

(Sd.) S. Bhuckory
Town Clerk.

10

Reg A 386 No 13616

Exhibit "L"
Letter -
Plaintiff to
Defendant
11th October
1968

EXHIBIT

"L"

LETTER - PLAINTIFF TO DEFENDANT

No. TC 68/1282

Sir,

Building contrary to plan at 49 Lord
Kitchner Street

I am directed to invite you to be in attendance at the City Hall near Committee Room No.2 (2nd Floor) on Wednesday 16th October, 1968 at 3.45 p.m. in connection with the abovementioned case.

20

[sic]

You will be asked to depone before the Works Committee to show cause why the building in question should not be pulled down.

I am Sir,
Your obedient servant,

(Sd.) S. Bhuckory,
Town Clerk

30

Reg. A 386 No. 13617

EXHIBIT
"M"

EXTRACTS FROM COMMITTEE MEETING
AND COUNCIL MEETINGS

Exhibit "M"
Minute of
Committee
Meeting on
16th October
1968

Extract from the minutes of the Proceedings
of the Works Committee held at the City Hall
on 16th October, 1968

415. BUILDING CONTRARY TO PLAN (MP. 17/68)

10 The committee considered further the case
of a building erected contrary to plan at 49
Lord Kitchner Street.

Mr. Dustagheer was interviewed by the
Committee and requested to submit by Wednesday
30th October, 1968 a certificate from a
qualified and registered engineer attesting
the structural soundness of the building
concerned.

Certified a true extract

(Sd.) S.Bhuckory, Town Clerk

20 Reg. A.392 No.1227

Extract from the minutes of Proceedings of
the City Council held at the City Hall on
6th November, 1968

Extracts of
Council
Proceedings
On 6th
November
1968

448. PROCEEDINGS OF COMMITTEES

(b) Works Committee - 16th October, 1968

Mr. Ian Fat Po, seconded by Mr. R.Hein,
moved for the adoption of the proceedings of
the Works Committee held on the 16th October,
1968.

30 Agreed to.

Certified a true extract.

(Sd.) S.Bhuckory, Town Clerk

Reg. A 392 No . 1228

Exhibit "M"
Extracts of
Council
Proceedings
27th November
1968

Extract from the Minutes of Proceedings
of the Works Committee held at the City
Hall on 27th November, 1968

465. BUILDING CONTRARY TO PLAN (MP 9/65)

The committee considered further the case
of a building erected contrary to plan at
49 Lord Kitchner Street.

In view of the contravener's inability
to produce a certificate from a registered
and qualified engineer attesting to the
structural soundness of the said building,
it was

10

RECOMMENDED that the building be pulled
down by the City Engineer's Department and
the costs charged to the contravener.

Certified a true extract

(Sd.) S.Bhuckory, Town Clerk

Reg A.392 No.1229

Extract of
Council
Proceedings
on 11th
December
1968

Extract from the minutes of Proceedings of
the City Council held at the City Hall on
Wednesday, 11th December, 1968.

20

505. PROCEEDINGS OF COMMITTEES

(b) Works Committee - 27th November, 1968

Mr. Abdool Carrim seconded by Mr. de
Robillard, moved for the adoption of the
proceedings of the Works Committee held on the
27th November, 1968.

Agreed to.

Certified a true extract.

(Sd.) S.Bhuckory
Town Clerk

30

Reg A.392 No.1230

EXHIBIT
"N"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "N"
Letter -
Plaintiff to
Defendant
6th November
1968

TC 68/1498

Dear Sir,

10 I wish to refer to the interview which the Municipal Works Committee had with you on 16th October, 1968 and to point out that I have not yet received the certificate you were requested to submit from a qualified and registered engineer regarding the structural soundness of your building at 49 Lord Kitchner Street.

You were granted a delay of 15 days to submit the said certificate and this delay has expired on 30th October, 1968.

Yours faithfully,
(Sd.) S. Bhuckory, Town Clerk

Reg A.386 No.13618

20

EXHIBIT
"O"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "O"
Letter -
Plaintiff to
Defendant
2nd December
1968

Letter No. TC 68/1579 dated 2nd December 1968 from Town Clerk to Defendant.

Sir,

30 Further to my letter TC 68/1498 of the 6th Ultimo, I am directed to inform you that, in view of your inability to produce a certificate from a qualified and registered engineer attesting to the structural soundness of your building at 49 Lord Kitchner Street, the Works Committee has recommended to the Council that the

Exhibit "O"
Letter -
Plaintiff to
Defendant

2nd December
1968 -
continued

said building be pulled down by the City
Engineer's Department and the costs charged
to your own account.

I am, Sir,
Your obedient servant,
(Sd.) S.Bhuckory
Town Clerk.

Reg A.386 No. 13618

Exhibit "P"
letter -
Plaintiff to
Defendant

12th December
1968

EXHIBIT

"P"

10

LETTER - PLAINTIFF TO DEFENDANT

No. TC 68/1639

Sir,

Further to my letter TC 68/1579 of the
2nd instant, I am directed to inform you that
the City Council, at its meeting of the 11th
instant has sanctioned the recommendation of
the Works Committee that your building erected
contrary to plan at 49 Lord Kitchner Street
be pulled down by the City Engineer's Department
and the cost charged to your own account.

20

I am, Sir, Your obedient servant

(Sd.) S. Bhuckory

Town Clerk

Reg. A.386 No.13619

EXHIBIT

"Q"

LETTER - APPELLANT'S ARCHITECT
TO PLAINTIFF

Exhibit "Q"
Letter -
Appellant's
Architect to
Plaintiff

31st March
1969

Dear Sir,

I wish to refer to our recent conversation concerning the building which belongs to Mr. Dustagheer, situated at Lord Kitchner Street, Port-Louis.

10 I hereby certify that I have undertaken the detailed verification of the plans according to which Mr. Dustagheer declares that the construction has been carried out, and I hope to be in a position to report my findings to you next Monday.

20 In the meantime Mr. Dustagheer has promised to put bare three of his foundation footing slabs to enable the City Engineer and myself to ascertain that these foundations have in fact been laid according to the drawings.

30 If after verification, I find the sections and reinforcements shown on the drawings adequate, and if, after examination of the foundations and columns the City and myself agree that they are according to the plan, I shall report further on the modifications which we consider necessary in order to bring Mr. Dustagheer's building to a degree of soundness compatible with the standards required by the Municipality of Port-Louis.

I hope that the above arrangements prove satisfactory to you and I thank you for your attention in this matter.

Yours faithfully,

(Sd.) Robert McGregor, BSc
(Eng) (Lond, M.I.C.E;
MS.Ing. Civ de France

Exhibit "R"
Letter -
Appellant's
Architect to
Plaintiff
7th April
1969

EXHIBIT
"R"

LETTER - APPELLANT'S ARCHITECT
TO PLAINTIFF

Dear Sir,

I wish to refer to my letter of the 31st ultimo.

I have examined the structural drawings produced by Mr. Dustagheer and have found the concrete sections and steel reinforcement adequate to carry the ground floor and the five upper floors shown on the drawings. 10

The final load transferred to the ground is of an average of two tons per sq.ft. (minimum 1.8 and maximum 2.2 tons per sq.ft.).

The next step is to prove that the construction has been carried out in accordance with the design. Three of the column foundations have been laid bare and I shall inspect them tomorrow in the company of the City Engineer. 20

Yours faithfully,
(Sd.) Robert McGregor

Received at the Town Clerk's Department on the 9th April, 1969.

Reg. A 386 No. 13621

Exhibit "S"
Letter -
Appellant's
Architect to
Plaintiff
23rd April
1969

EXHIBIT
"S"

LETTER - APPELLANT'S ARCHITECT
TO PLAINTIFF

Dear Sir,

Mr. Dustagheer's Building

I wish to refer to my letter of the 7th instant concerning the above-mentioned building

and to say that, since the demolition of the upper floor by the Municipal authorities and of two of south block walls by Mr. Dustagheer himself, I consider that the building no longer constitutes an immediate danger.

Exhibit "S"
Letter -
Appellant's
Architect to
Plaintiff

23rd April
1969 -
continued

I would be prepared finally to certify this building as permanently safe, provided Mr. Dustagheer formally agrees to undertake the following modifications and carries them satisfactorily :

10

Ground Floor:

- (1) lay new reinforced concrete footing slabs alongside the existing ones.
- (2) widen the existing columns.

Upper floors:

20

- (1) Carry out a load test of each floor and roof slab by the application of a live load of 100 lb/sq.ft. for a period of 24 hours.
- (2) Repair the concrete of the existing columns and beams where necessary.
- (3) Put up concrete block walls between every alternate row of columns in order to brace the structure.
- (4) Strengthen the existing concrete stairs by the addition of reinforced concrete stringers and columns.
- (5) make immediate arrangements with the Central Electricity Board for the removal of the electric cables which cross one of the balconies.
- (6) Make any further modifications which the City Engineer deems necessary.

30

Should Mr. Dustagheer agree in writing to the above conditions, I recommend that the demolition of his building be temporarily halted and that a prescribed limit of time be fixed for the satisfactory completion of the above-mentioned works.

40

Thanking you for your attention in this matter,

I remain Dear Sir, Yours faithfully,
(Sd.) Robert McGregor

Cc Mr. Paul Nairac Q.C. The City Engineer Reg A386 No.13622

Exhibit "T"
 Letter -
 Plaintiff to
 Appellant's
 Architect
 28th May 1969

EXHIBIT

"T"

LETTER - PLAINTIFF TO APPELLANT'S
 ARCHITECT

No.2090/TC/732

Dear Sir,

Mr. Dustagheer's Building

I refer to your letter dated 23rd April 1969 and to the discussion you had with the City Engineer on 21st instant. It is understood that the points raised by you were considered and the following conclusions reached: 10

(1) Details of the alterations you propose to carry out will be submitted by the end of this week for scrutiny.

(2) The staircase is to be demolished and rebuilt properly.

(3) You will contact Mr. Dustagheer as regards the examination of the foundations of the building. 20

(4) You are to take immediate steps to have the slabs load tested.

(5) The uppermost storey which has been partly demolished by the Municipality is to be removed completely.

After examination of the plans submitted by you a reasonable delay will be fixed for the execution of the proposed alterations.

Yours faithfully,

(Sd.) S. Bhuckory, Town Clerk 30

Reg A 386 No. 13623

EXHIBIT

"U"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "U"
Letter -
Plaintiff to
Defendant

28th May
1969

No. TC/733

Dear Sir,

Demolition of Building

10

I am directed to inform you that pending further consultation with your engineering adviser, the demolition of your building at Lord Kitchner Street has been temporarily halted.

I am to request you at this stage to submit a written undertaking to the effect that you agree to have the building improved within a reasonable delay to be fixed in due course, along the lines indicated to you by your adviser and to submit new plans which will have to be approved.

20

Should you fail to comply with the above conditions within a week's time the Municipality will have no other alternative but to proceed with the demolition of the Building.

Yours faithfully,

(Sd.) S.Bhuckory, Town Clerk

Reg A 386 No. 13624

Exhibit "V"
Letter -
Defendant's
Solicitor to
Plaintiff
4th June 1969

EXHIBIT

"V"

LETTER - DEFENDANT'S SOLICITOR
TO PLAINTIFF

Dear Sir,

Re: A.G.Dustagheer

I am requested by Mr. A.G.Dustagheer to acknowledge receipt of your letter dated 28th May 1969 received on 30th May, 1969 and to inform you that my client is prepared to have the building in Lord Kitchner Street improved within a reasonable delay along the lines indicated by Mr. McGregor in his letter of the 23rd April, 1969.

10

Mr. McGregor will supervise the improvements along with the architect of the Municipality of Port-Louis.

Yours faithfully,
(Sd.) A. de Pitray

Reg A 386 No. 13625

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Exhibit "W"
Letter -
Plaintiff to
Defendant's
Architect
30th June
1969

EXHIBIT

"W"

LETTER - PLAINTIFF TO DEFENDANT'S
ARCHITECT

No. 3178/TC69/974

Dear Sir,

Mr. Dustagheer's Building

I am given to understand that Mr.Dustagheer is unwilling to cooperate on the lines indicated to him in connection with his dangerous building at Lord Kitchner Street, and that you intend withdrawing from this case.

30

Will you please let me have confirmation of your intention.

Yours faithfully, (Sd.) S.Bhuckory, Town Clerk
Reg A 386 No. 13626

EXHIBIT

"X"

LETTER - DEFENDANT'S ARCHITECT
TO PLAINTIFF

Exhibit "X"
Letter -
Defendant's
Architect to
Plaintiff

29th June
1969

Your ref. 2090/TC69/732

Dear Sir,

Mr. Dustagheer's Building

I apologize for the delay in replying to your letter of the 28th May.

- 10 (1) Proposed alterations. I have prepared detailed drawings of the alterations which I proposed to carry out, but have not been able to complete the work for the reasons stated in paragraph 3 and 4 below.
- (2) Staircases. Certain modifications could be carried out in order to avoid the demolition of the staircases.
- 20 (3) Foundations. I have in vain endeavoured repeatedly to persuade Mr. Dustagheer to expose the foundations of his building. Nothing has been done so far, so that it has not been possible for me to make any recommendations as regards consolidation of the existing foundations.
- (4) Load-Testing of roof and floor slabs. Mr. Dustagheer has not provided the concrete blocks with which I proposed to load-test his slabs, so that I have been unable to carry out the load tests.
- 30 (5) Uppermost storey. Mr. Dustagheer has been informed that he should remove what is left of the uppermost storey, but he has done nothing so far to comply with these instructions.

40 I contacted Mr. Dustagheer several times during the past month and did what I could to guide him as to the ways and means of saving his building. Unfortunately Mr. Dustagheer has proved extremely uncooperative and I am left with no alternative but to reject all responsibility for the strengthening of his building, of which I no longer consider myself in charge.

Exhibit "X"
Letter -
Defendant's
Architect to
Plaintiff

29th June
1969 -
continued

I very much regret any inconvenience
which may have been caused to the Municipal
authorities.

Yours faithfully,
(Sd.) Robert McGregor

Reg A 386 No. 13627

Copy to: (1) The City Engineer
(2) Municipality of Port-Louis

Exhibit "Y"
Letter -
Plaintiff to
Defendant
4th July 1969

EXHIBIT

"Y"

10

LETTER - PLAINTIFF TO DEFENDANT

9937/CE31/69

Dear Sir,

As you have failed to comply with the
conditions laid down in the Town Clerk's
letter 2090/TC69/732 dated 28th May, 1969,
I have to inform you that the pulling down
operations of the three uppermost storeys of
your building will resume as from Monday
7th July, 1969 at 7.00 a.m. under the same
conditions as prescribed in the notice dated
13th March 1969 served upon you by Mr. S.
Veerasamy, our Municipal Attorney.

20

Yours faithfully,

(Sd.) G.Lefebure, City Engineer

Reg A 386 No 13628

Copy to: Town Clerk
Mr. McGregor
Mr. de Pitray

EXHIBIT

"Z"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "Z"
Letter -
Plaintiff to
Defendant

8th October
1969

No. 10319/CE31/69

Dear Sir,

The sand, macadams, shuttering and other materials found on the roof of the second floor of your building will handicap the progress of our demolition work.

10

You are hereby requested to have them removed within a week, failing which the Municipality will do the needful and have them dumped at Roche Bois. Any cost incurred will be borne by you.

Yours faithfully,

(Sd.) G.Lefebure, City Engineer

Reg A 386 No. 13631

EXHIBIT

"AA"

LETTER - PLAINTIFF TO DEFENDANT

Exhibit "AA"
Letter -
Plaintiff to
Defendant

17th October
1969

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No. 10351/CE31/69

Dear Sir,

Further to my letter No.10319/CE31/69 of the 8th October, 1969, I have to inform you that as you have failed to remove the materials within the delay granted to you, the Municipality will do so as from Tuesday 21st October, 1969, and have them dumped at Roche Bois.

The costs incurred will be borne by you.

30

Yours faithfully,
(Sd.) G.Lefebure, City Engineer

Reg A 386 No. 13632

Exhibit "AA1"
Letter -
Plaintiff to
Defendant

13th March
1969

EXHIBIT

"AA1"

LETTER - PLAINTIFF TO DEFENDANT

Dear Sir,

Building at No.49 Lord Kitchner St.
Port-Louis

You are hereby informed that the Municipality intends, in view of your failure to comply with the Order served upon you on the 24th February, 1969, in relation to the pulling down of the above building, to cause that part of the said building erected by you contrary to your building permit, i.e. the three storeys added by you to the said building, to be pulled down and removed at your own costs and that such pulling down and removal shall start on Monday 17th March, in the morning. 10

You are hereby further informed that the Municipality intends to take all steps necessary to ensure the safety to its own employees and workers as well as the third parties in the course of such pulling down and removal operation including the erection of a protection fence along the ground floor frontage of the said building. All materials demolished and removed from the said building will be carted away to the Municipal Tipping Site at Roche Bois where you are requested to send your representative to take delivery thereof. 20

Yours faithfully, 30
(Not signed)

Reg: A 386 No. 13634

IN THE PRIVY COUNCIL

No. 36 of 1975

O N A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

AHMAD GOOLAM DUSTAGHEER

Appellant
(Defendant)

- and -

THE MUNICIPAL CORPORATION
OF PORT-LOUIS

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

GERSTEN & CO.
21 Goodge Street,
London, W1P 1FD

Solicitors for the Appellant

SLAUGHTER & MAY,
35 Basinghall Street,
London, EC2V 5DB

Solicitors for the Respondent