**Desai & another v Shah & others**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 25 January 1974

**Case Number:** 85/1973 (64/74)

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**Before:** Harris and Muli JJ

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*[1] Rent Restriction – Dwelling house – Jurisdiction given over any part used as a dwelling house –*

*Rent Restriction Act* (*Cap.* 296), *s.* 4 (1) (*K*).

*[2] Rent Restriction – Standard rent – Assessment – May be fixed by tribunal of own motion – Tribunal*

*not bound by figures submitted to it – Rent Restriction Act* (*Cap.* 296), *s.*5 (1) (*K*).

*[3] Rent Restriction – Standard rent – Reassessment – Uneconomic return – Excessive purchase price –*

*Burden of showing purchase price to be excessive is on tenant – Rent Restriction Act* (*Cap.* 296), *s.* 4 (2)

(*K*).

*[4] Rent Restriction – Standard rent – Reassessment – Uneconomic return –* 15 *per cent p.a. a guideline not a maximum – Rent Restriction Act* (*Cap.* 296), *s.*4 (*K*). *[5] Rent Restriction – Standard rent – Assessment – May be made operative from commencement of tenancy – Rent Restriction Act* (*Cap.* 296), *s.*5 (1) (*K*). *[6] Rent Restriction – Costs – Tribunal may order costs to follow event.*

**Editor’s Summary** The respondents applied to the Rent Restriction Tribunal to assess the standard rents of two flats occupied by the appellants, which flats were in a building containing two other flats which were occupied by the respondents themselves. The tribunal assessed the rents at a different figure from that requested by the respondents. The flats had been bought by the respondents in 1970. The tribunal awarded Shs. 1,000/ – costs for a two day hearing. On appeal the appellants contended that the tribunal had no jurisdiction over a portion of a building, that the tribunal could not fix a different figure from that put forward by a party, that the tribunal should have found that the price paid for the building was excessive, that the increase allowed would give a return of between 16 and 17 per cent p.a. on the investment, that the increase should not have been ordered to take effect from August 1972, and that costs should not have been awarded or should not have exceeded Shs. 75/ – .

**Held –**

(i) The Act applies to any part of a house used as a dwelling;

( ii) the tribunal may fix rents of its own motion, and is not bound by figures put forward by parties or witnesses;

(iii) The burden of proving that the purchase price paid was excessive is on the tenant;

(iv) There was no evidence that the price was excessive;

(v) The figure of 15 per cent p.a. return in the Act is not intended to be a maximum;

(vi) The operative date of a rent assessment can be set back to the commencement of the tenancy;

( vii) as the application was served in July 1972 the date fixed of August 1972 was proper;

(viii) Costs may follow the event if the tribunal so considers;

(ix) The quantum ordered was not excessive.

Appeal dismissed.

**No cases referred to in judgment**