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24/1963

IN THE PRIVY COUNCIL No. 24 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

G. O. LAJA (Defendant) Appellant

- and -

M.A. OKUPE (Plaintiff) Respondent

C A S E FOR THE RESPONDENT

Record

1. This appeal is from a Judgment of the Federal Supreme Court of Nigeria, dated the 16th March, 1961, allowing an appeal from a Judgment of the High Court of Lagos, dated the 7th December, 1959, which had dismissed with costs a claim by the Respondent (hereinafter called "the Plaintiff") for the sum of £10,047.5.0 as money paid to the Appellant (hereinafter called "the Defendant") for a consideration which has wholly failed. The Federal Supreme Court gave the Plaintiff judgment for the said amount with costs. p. 33 p. 25 p. 27 p. 38

2. The issue which arises for determination on this appeal is whether upon the undisputed facts the Federal Supreme Court was right in deciding that there had been a total failure of consideration for the said sum of £10,047.5.0, admittedly paid by the Plaintiff to the Defendant.

3. The facts upon which the Plaintiff's claim was founded are set out in the Judgment of the Federal Supreme Court in the following terms :-

"The plaintiff and the defendant were old friends. The plaintiff had another friend by the name of Abdul Raheem Ligali, who was a business associate of his. The plaintiff made a contract with the defendant whereby the latter was to supply by instalments ten thousand tons of logs; these he was to deliver to Ligali, who would check the deliveries, and thereafter the plaintiff would pay From time p.33, ll.16-38

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to time the defendant informed the plaintiff that he had delivered a certain quantity; and from time to time Ligali informed the plaintiff that the defendant had delivered a certain quantity; and on the faith of what he was informed the plaintiff gave Ligali over £30,000, and paid the defendant himself £10,047. 5. 0. Afterwards the plaintiff discovered that the defendant had not delivered a single log. Ligali was supposed to ship the logs to Europe on the plaintiff's behalf: the plaintiff discovered that Ligali had not shipped any. The plaintiff averred that Ligali and the defendant were facing criminal charges about the £42,000. The present suit was against the defendant for repayment of the £10,047. 5. 0 given him direct."

p. 1. 4. The suit was instituted by Particulars of Claim dated the 1st September, 1959, the first paragraph of which reads :-

p. 1, l.17. "The plaintiff's claim against the defendant is for £10,047.5.0 for a consideration which has wholly failed."

pp.2-11. p.11, l.20 After certain interlocutory proceedings, not relevant to this appeal, pleadings were ordered.

pp. 12-13 5. In a Statement of Claim dated the 7th October, 1959, the Plaintiff set out inter alia the following allegations:-

p. 12, l.13 "3. During the year 1955 the defendant agreed with the plaintiff to supply the plaintiff with 10,000 tons logs for export.

.....

p. 12, l.19 5. The defendant further agreed with the plaintiff that delivery would be by instalments and that every quantity available would be delivered to one Abdul Raheem Ligali for shipment for and on behalf of the plaintiff.

.....

p. 12, l.37 9. Between December 1955 and August, 1956 the plaintiff made certain payments by cheques to the defendant for logs reported to have been supplied by the defendant for shipment to Oslo.

p. 13, l.3 10. The plaintiff made payments to defendant by cheques issued on Agbonmagbe Bank Limited as shown hereunder:-

	Date	Cheque No.	Amount	Record
1.	28/12/55	04817	£ 1,473.15. 0	
2.	15/2/56	0809	£ 2,293.10. 0	
3.	5/3/56	0816	£ 3,080. 0. 0	
4.	4/4/56	2703	£ 2,200. 0. 0	
5.	20/8/56	1894	£ 1,000. 0. 0	
			£10,047. 5. 0	

11. The defendant cashed the cheques for the total amount of £10,047. 5. 0. — p. 13, l.13

. . . . . .

13. The defendant did not deliver any logs at all. — p. 13, l.20

. . . . . .

16. The defendant has failed or neglected to repay the said £10,047. 5. 0. to the plaintiff despite repeated demands. " — p. 13, l.20

6. The Defendant delivered a Statement of Defence dated the 2nd November, 1959, in which he, inter alia :- — pp.19-20

(i) Denied the alleged agreement mentioned in paragraphs 3 and 5 of the Statement of Claim. — p. 20, l.6

(ii) Appeared to admit in substance that the alleged payments had been made, but denied that they were for logs reported to have been supplied by him. (The pleading was to the effect that the monies represented by the cheques were paid by the Defendant on the Plaintiff's behalf to certain unnamed "logs men"). — p. 20, l.8

(iii) Admitted that he did not deliver any logs, but averred that he was under no obligation to do so. — p. 20, l.25

(vi) Admitted that he had failed or neglected to pay the sum of £10,047.5.0 to the Plaintiff despite demands, but averred that such failure or neglect was lawful and justifiable. — p. 20, l.32

7. At the hearing of the action on the 1st December, 1959, cor de Lestang C.J., the Plaintiff gave evidence. In examination-in-chief he stated inter alia as follows :- — pp.22-24

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p. 23, ll.1-22 "Between 1955 and 1956 defendant agreed to supply me with 10,000 tons of logs which I agreed to purchase. It was arranged that he should supply the logs to one Ligali for export to Europe. Ligali is also a close friend of mine and had agreed to export the logs on my behalf. From time to time defendant telephoned me that logs had been delivered to Ligali. I also saw him after telephone conversations and paid him by cheques for the number of the logs delivered by him to Ligali I gave him in all five cheques. These are the cheques (Ex. A1 - A5). Issued on my bank. Defendant cashed the cheques and endorsed them. Total amount £10,047. 5. 0. After payment I enquired after the logs - Defendant said they had been delivered to Ligali who had shipped them to Oslo. I discovered subsequently that all this was not true. I reported matter to police and defendant was charged. I never instructed defendant to pay any money to Ligali, I never bargained to buy logs from Ligali. I asked defendant for my money back. He has not paid me. "

8. In cross-examination the Plaintiff was asked about payments between him and Ligali. He said inter alia as follows :-

p. 23, l.27 "I supplied a lot of money direct to Ligali to pay the defendant whenever Ligali reported that defendant had supplied logs and he had measured them. This money had nothing to do with the money I am claiming now. The cheques were given by me to defendant direct. I paid over £30,000 direct to Ligali, to be paid over to Defendant. Ligali paid me about £62,000. "

p. 23, l.35 The Plaintiff then put in two letters written by him to Ligali, relating to the shipping transaction between them, and continued:-

p. 23, l.37 "Out of the transaction concerning the 10,000 tons of logs I have received from Ligali £62,000 approximately. I gave money to Ligali to be paid to defendant and not vice versa. "

9. No evidence was adduced on behalf of the
p. 25, l.15 Defendant, who did not dispute the Plaintiff's evidence.

pp.25-27. 10. By his Judgment, delivered on the 7th December, 1959, the learned trial Judge found for the

Defendant on the ground that, as the Plaintiff had received £62,000 from Ligali, the consideration for the payment of the sum of £10,047.5.0 paid by the Plaintiff to the Defendant had not wholly failed. He dismissed the action with costs. Record p. 27, l.8

11. In the Federal Supreme Court, a reasoned Judgment was delivered by Bairamian F.J., the other members of the Court (Brett and Taylor F.J.J.) concurring. The Judgment of the High Court was reversed on the ground that the Plaintiff's contract with the Defendant, under which the sum of £10,047.5.0 was paid by the Plaintiff to the Defendant, was not the contract under which the sum of £62,000 was paid by Ligali to the Plaintiff, and therefore the latter payment could not avail the Defendant in support of his contention that the Plaintiff had received consideration for the monies paid by him to the Defendant. The said Judgment of Bairamian F.J. included the following passages :-

"The £62,000 which Ligali paid the Plaintiff were not paid under the contract between the Plaintiff and the Defendant. Ligali doubtless paid that money under the contract between himself and the Plaintiff, because of representations which he had made to the Plaintiff. This becomes clear when one looks at the two letters which the Plaintiff put in as exhibits ..... The amount paid to Ligali is not clear; and if this had been a case between Ligali and the plaintiff, it might have been necessary to clear it up. Here it is sufficient to say that the plaintiff had a separate claim against Ligali, who had taken his money, pretending it was for logs received and shipped or to be shipped to Europe for the Plaintiff's profit, but using it no doubt for his own profit instead. Ligali paid the plaintiff £62,000; but that payment concerns the obligations of Ligali to the plaintiff, and I cannot see how any discharge, whether partial or entire, of Ligali's obligations by Ligali can avail the defendant. p. 35, l.4 p. 35, l.38

There are cases in which a stranger to a contract between A. and B. pays A. some money in order to discharge the debt of B., which precludes A. thereafter from making any further claim against B: e.g. Hirachand Punamchand v. Temple, 1911, 2 K.B. 330. In the case in hand there is no allegation and

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no evidence that the plaintiff received the £62,000 from Ligali in discharge of the obligation of the defendant as well as of Ligali himself. "

"There was confusion in this case, which apparently arose in this way. The plaintiff was embarking on an enterprise which involved him in two separate and distinct contracts - one of sale, with the defendant, and another of agency with Ligali; the defendant was to supply 10,000 tons of logs; Ligali was to take delivery and ship the logs to Europe; and the plaintiff has kept apart his rights against each of them under his respective contracts. As both contracts related to the same 10,000 tons of logs, it was perhaps a natural slip to speak of them as one "transaction" of 10,000 tons of logs. Another factor which perhaps contributed to the confusion was the fraud practised by the defendant and by Ligali apparently helping each other in representing to the plaintiff that the defendant had supplied logs - which enabled Ligali to pretend that he was shipping or had shipped them. "

. . . . . .

p. 37, l.36 "the plaintkff bargained with the defendant for the supply of logs, paid him for a number of pretended deliveries which the defendant, told the plaintiff he had made, but got no logs; he is entitled to claim back from the defendant the money he paid him for those particular bogus deliveries. The argument for the defendant, that the Plaintiff has not been completely disappointed as he has received £62,000 from Ligali, merely creates confusion and clouds the issue in the present case. "

p. 38, l.5 Judgment was entered for the Plaintiff for the amount claimed with costs in both courts.

p. 39 12. On the 23rd October, 1961, Final leave to appeal to Her Majesty in Council was granted to the Defendant.

13. The Plaintiff submits that this Appeal should

be dismissed with Costs for the following, amongst other, Record

R E A S O N S

(1) BECAUSE the Judgment of the Federal Supreme Court of Nigeria is right for the reasons stated in the Judgment delivered by Bairamian F.J.

(2) BECAUSE on the evidence the Plaintiff is entitled to the relief claimed by him.

10 (3) BECAUSE the Judgment of the High Court of Lagos is wrong in law and on the facts.

GLYNN BLACKLEDGE

RALPH MILLNER.

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C A S E

FOR THE RESPONDENT

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