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Judgment
22/1964

IN THE PRIVY COUNCIL

No. 18 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N:

ABUDU GBADAMOSI IJALE (Defendant)
Appellant

78625

- and -

A.G. LEVENTIS AND (Plaintiffs)
COMPANY LIMITED Respondents

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- and - (by
Cross Appeal)

B E T W E E N:

A.G. LEVENTIS AND COMPANY
LIMITED (Plaintiffs)
Appellant

- and -

ABUDU GBADAMOSI IJALE (Defendant)
Respondent

C A S E FOR THE APPELLANT

Record

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1. This is an appeal by the Appellant, the defendant in the action, and a cross-appeal by the Respondents the plaintiffs in the action, from a Judgment of the Federal Supreme Court of Nigeria (Ademola F.C.J; de Lestang and Mbanefo F.J.J.) dated 12th May, 1959, whereby the sum of £25,917.17. 2, adjudged as being recoverable by the Respondents from the Appellant, by the Judgment of de Comarmond Acting C.J. (as he became) dated 29th November, 1955, given in the Supreme Court of Nigeria, Lagos Judicial Division, was reduced by the sum of £10,657.10. 0, to the sum of £15,260.12. 2

pp.51-57

pp.42-43

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2. The Appellant appeals on the ground that the said sum of £15,260.12. 2 should have been further reduced as hereinafter set forth; the Respondents cross-appeal on the ground that the said sum of £25,917.12. 2 should not have been reduced

p.10.LL30-38;
p.26LL23-30;
p.52.LL14-22.

3. The Respondents among their other activities, traded in Nigerian produce such as cocoa and palm Kernels and were licensed buyers of cocoa to the Nigerian Cocoa Marketing Board for the purchase of cocoa for sale to the Board; the Appellant had been employed by the Respondents as a buyer for them of ungraded cocoa and palm Kernels. The method by which the business was transacted between them was for the Respondents to advance to the Appellant money for purchases made by him.

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p.2 L30-p.3
L.13.

4. On the 10th June, 1953 the Appellant's said employment ceased and in the action which had been instituted by the Respondents against the Appellant they had claimed as follows :-

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(1) £25,025.19. 8 alleged to be the balance of an account stated in writing contained in a document admittedly signed by the Appellant dated the 10th June 1953, or in the alternative the same amount alleged to be money had and received by the Appellant from the Respondents for their use with 10% p.a. interest until payment or judgment.

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(2) £57. 2. 4 for goods sold and delivered and services.

(3) £1,065.17. 5 also for goods sold and delivered.

p.25 LL 7-10;
LL23-26

5. At the trial of the action which took place before Comarmond S.P.J. the Respondents abandoned item 2 and withdrew item 3 and the appeal before the Federal Supreme Court and this appeal and the cross-appeal are concerned solely with item 1.

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p.63

6. The said document as constituting the alleged account stated was put in evidence at the said trial and is Exhibit "A". Comarmond S.P.J. held it not to constitute such

and in reaching this conclusion said as follows :-

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10 "The first question is whether there was a proper account stated i.e. evidence that the parties after a series of initial dealings had agreed to make up their accounts, to set up one item against another, and to be answerable only for the balances. If there is such evidence and it discloses a balance in Plaintiffs favour of £25,025.19. 8, the present claim is clearly based upon a genuine consent and is based on contract.

p.25.L30-
p.27.L28.

"The plaintiff relied on a document (Exhibit A) which bears the heading 'Return of Transactions made on behalf of Messrs. A.G. Leventis & Co. Ltd.

".....

20 "The first part of the document shows a sum of money brought forward to the defendant's debit; on the credit side appears two sums of £575 and £25, being respectively, the defendant's salary for July 1951 to May, 1953 and his salary for June 1953. The balance is the sum mentioned in the claim i.e. £25,625.19. 8

30 "Had Exhibit A contained nothing else, it might well have been on account stated. However it also contains a section called 'Produce Statement' with columns for the weight of ungraded cocoa and palm Kernel, the weights of graded produce, and the stock on hand at the date of the 'return'

40 We may now return to Exhibit A. In the section called 'Produce Statement' are entries to the effect that the stock of ungraded cocoa at the beginning was 73.5; no entry appears in the graded cocoa column, and the stock at end is therefore unchanged. The position regarding palm.Kernels is the same; the weight 7.13.2.7 remaining unchanged. I was given to understand that these weights are in tons, hundred weights etc.

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pp.10-13. "What is called the beginning of the period means the day when the last return was made. Exhibit A comes from a book (Exhibit E) containing the printed forms of 'return' numbered consecutively in pairs. The idea is that the carbon copy of a return remains in the book while the original or top copy is torn out and kept by the plaintiff. Exhibit A was signed on the 10th June, 1953, by the Defendant. Mr. Matheron"(an employee of the Respondents and who had given evidence on their behalf) "also signed it under the words 'Return checked and found correct by' Under the Defendant's signature and above Mr. Matheron's appear the words 'except stock of bags' written by Mr. Matheron." 10

The learned Judge then proceeds regarding the real matter of dispute as follows :- 20

p.27 LL.29-40 "The disputed issue in this case is that the defendant maintains that the weights of ungraded produce shown on Exhibit A were in the store when the return was made and checked, whereas Mr. Matheron's evidence was that the return was as usual compiled from book entries and documents and showed what the position should be according to the books. Mr. Matheron stated that there was no produce in store No.1 on the 10th June and that he knew quite well that the stock shown on Exhibit A was inexistent." 30

Then having considered the evidence called on both sides the learned Judge found that the Appellant was entitled to be credited in respect of 73.5 tons of ungraded cocoa in these words :-

p.29 L47-p.30 LL 1-4 "On the evidence before me, I have reached the conclusion that the plaintiff has failed to establish that there was no ungraded produce as shown on Exhibit A in the store on the 10th June, 1953. This being so, Exhibit A cannot possibly be regarded as an account stated, because the value of the produce hereto be credited to the defendant." 40

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The learned Judge in the absence of the parties being unable to reach agreement as to the value of the said cocoa adjourned the case to the 12th May, 1954, to hear evidence as to the value of the said 73.5 tons of ungraded cocoa.

p.32 LL.1-22

7. The case then came before Jibowu J (as he then was) who, (rightly as the Appellant respectfully submits) adjourned it for further hearing to Comarmond S.P.J. Instead of this being done however, it came before Abbott J. (as he then was) who despite counsel's protests heard the case and having heard evidence given on behalf of the Respondent by one Richard Joseph Welch acting Principal Produce Officer, Port Harcourt, and that given by the Appellant found that the value of the said ungraded cocoa was nil. In the course of his Judgment Abbott J. said as follows:-

p.34 L.23

pp.35-41.

"Furthermore the evidence given by "(the said Welch)" amounts to very much the same thing as saying there was no ungraded produce in the store. He says that the value of what was there was nil."

p.41 LL.10-12

p.40 LL.10-14

This, it is submitted, is clearly contrary to and in conflict with the finding of Comarmond S.P.J. who, as aforesaid found that there was 73.5 tons of ungraded cocoa for which the Appellant was entitled to be credited, and that the matter to be determined was merely the value of the said cocoa. Therefore in view of the said effect of the evidence of the said Welch as stated by Abbott J. he was wrong, it is submitted in not accepting the evidence of the Appellant which was that the value of the said cocoa was £174. 9. 0 per ton and that it was grade 1 main crop.

p.37.LL.28-30;
LL.40-43.

He stated in cross examination that when he put the value of £174. 9. 0 per ton on the said cocoa he was relying on a letter Exhibit F dated 27th June, 1953 which he received from the respondents. Therein the quantity of 73.5 tons of cocoa is valued at £174. 9. 0 per ton by the Respondents the total sum therefor at the said value amounting to £12,764.

p.37 LL.42-3

Exhibit F
pp.66-67

Record

It is submitted that this is the amount accordingly which the Appellant was entitled to be given credit for in respect of the said 73.5 tons of cocoa.

p.42 LL 35-
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In the course of the hearing before Abbott J. it was conceded by the Respondents that the sum of £276. 2. 6 which was in respect of palm Kernels and as shown in Exhibit F had to be deducted. It is respectfully pointed out that the said value of £174. 9. 0 per ton in respect of the said 73.5 tons of cocoa appears as item "(a)" in Exhibit F the said deduction of £276. 2. 6 in respect of the said palm Kernels appears immediately beneath as item "(b)"

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8. After the said hearing before and finding by Abbott J. the case was remitted back to Comarmond Acting C.J. (as he had become) for final Judgment, the learned Acting Chief Justice deducted the said sum of £276. 2. 6 in respect of the said palm Kernels from the said amount claimed in item 1 aforesaid of £25,025.19. 8 the amount then arrived at being £24749.17. 2. On this sum be allowed a sum in round figures of £1168 as interest, calculated, as stated by him, as follows :-

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p.43 LL.8-
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"The plaintiff set out clearly in paragraphs 8 and 9 of the Statement of Claim his grounds for claiming interest. These grounds were that there was an agreement by deed that the defendant would pay interest at ten per centum per annum on the amount remaining due by the defendant one month after a demand in writing for payment had been made. It was conceded in paragraph 9 of the Statement of Claim that the parties had not contemplated that advances of money to the defendant would at any time exceed £5000, but it was averred that advances having in fact been made in excess of £5000 the agreement about payment of interest should be construed as applying to any sum advanced even in excess of £5000. "Demand for payment was made on the 27th June, 1953" (i.e. by Exhibit "F")

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"The averments contained in paragraphs 8 and 9 of the Statement of Claim were not challenged in the statement of defence. However I am not prepared to agree that the provisions regarding payment of interest contained in the Deed or deeds of mortgage can be held to have been extended by tacit agreement."

10 Nevertheless having said this the learned Judge on what ground or for what reason valid in law it is not possible to discover, said :-

"I therefore allow interest calculated at ten per centum per annum on £5000 monthly from the 27th July, 1953, to date of this judgment, that is £1,168 in round figures".

p.43

It is submitted that in having awarded the said interest the learned Judge was wrong in law and the said sum of £1168 should accordingly be credited by way of deduction to the Appellant.

20 The learned Judge accordingly gave Judgment for the Respondents for £25,917.17. 2 being the sum of £24,749.17. 2 with the addition of the said interest of £1168.

9. The Appellant is entitled to an additional item of credit in respect of the proceeds of 4 of his lorries given by him to the Respondents to be sold. This was conceded by the Respondents at the first hearing before Comarmond S.P.J.

p.10 LL 12-13

30 10. The Appellant appealed against the said Judgment of Comarmond Acting C.J. to the Federal Supreme Court.

As regards the said purported finding of Abbott J. that the value of the said cocoa was nil the Federal Supreme Court on their Judgment delivered by Ademola C.J. in which Mbanefo F.J. concurred said as follows :-

p.54 LL 16-24

40 "It is clear that Abbott J. went beyond the terms of enquiry before him, for a specific finding had been recorded by de Comarmond, J. on the issue whether or not there was ungraded produce in the store. In a detailed judgment on the point on the 12th March, 1954, de Comarmond J.

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has, for various reasons, accepted the entry made on Exhibit 'A' and signed by both parties showing 73.5 tons ungraded cocoa. The evidence of Mr. Welch before Abbott J. about the non-existence of the cocoa in the store, was in my view, out of place; it should not have been accepted as they were in conflict with the findings already made by de Comarmond, J.

Then as regards the value of the said cocoa he said :- 10

p.54 L.38-
p.55 L.5.

"It has been suggested that the case should be sent back for re-trial. I think not. I think this Court is in a position to determine the value of 73.5 tons of ungraded cocoa from the material before the Court below. The letter Exhibit 'F' from the respondent's Solicitor to the Appellant refers to the cocoa in the store at £174. 9. 0 per ton: the defendant-appellant himself in his evidence admitted this figure to be correct. There is also evidence that the minimum value of the ungraded cocoa at the time was £145 per ton.

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"I will therefore assess the 73.5 tons of ungraded cocoa in the store at £145 per ton and will credit the appellant with that amount. This works out at £10,657.10. 0. This sum will be deducted from the amount of £25,917.17. 2."

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p.55 LL 6-
14.

They then reduced the sum of £25,917.17. 2 to £15,260.12. 2 and subject to such amendment dismissed the appeal, ordering the costs in the Court below to stand but awarding the Appellant some costs by reason of his having partially succeeded in his appeal.

De Lestang F.J. delivered a separate Judgment agreeing with that of the F.C.J. and in doing so as regards the assessing a value of the said cocoa at £145 per ton, said :-

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"The minimum value of gradable cocoa is £145 per ton, and there being no evidence that the ungraded cocoa in the store was a superior quality I consider that it should be valued on that basis."

Record
p.57 LL 37-41

10 9. It is submitted that the learned Federal Judge is incorrect in saying that there was no evidence that the ungraded cocoa was of a superior quality. As has been pointed out above the Appellant in his evidence given before Abbott J. said :-

"I was never challenged by Welch about quality of cocoa in store. Value of cocoa delivered to store was £174. 9. 0 per ton."

p.37 LL 28-30

And when cross-examined said :

"I agree cocoa can deteriorate in storage but mine never did
I say that all my cocoa there was grade 1 main crop."

p.37 LL 37-42

20 11. It is submitted that the Judgment of the Federal Supreme Court is wrong in not having put a value of £174. 9. 0 per ton on the said 73.5 tons of cocoa and in not having disallowed the said sum of £1168 interest allowed and awarded by Comarmond Acting C.J. and in not having accordingly further reduced the said amount of £15,260.12. 2 together with the further amount of credit in respect of the said proceeds of the said sale by the Respondents of the A Appellants said 4 lorries. And that to the said
30 extent the Judgment of the Federal Supreme Court is wrong and should be revised altered and amended, or that the case should be remitted back, and that the cross-appeal is without ground or substance and should be dismissed for the following amongst other

R E A S O N S

40 1. BECAUSE the said 73.5 tons of cocoa should have been valued at £174. 9. 0 per ton to be so valued as of first grade quality.

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2. BECAUSE the Respondents were not entitled to any interest, and the interest of £1168 allowed and awarded to the Respondents by Comarmond Acting C.J. was contrary to law.
3. BECAUSE, as was conceded by the Respondents, the Appellant was entitled to and should be credited with the amount of the proceeds of the sale of his said 4 lorries by the Respondents.
4. BECAUSE there is no ground or substance in the cross-appeal. 10

S.N. BERNSTEIN.

No. 18 of 1962

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL SUPREME COURT
OF NIGERIA

BETWEEN:

ABUDU GBADAMOSI IJALE
(Defendant) Appellant

- and -

A.G. LEVENTIS AND COMPANY
LIMITED (Plaintiffs) Respondents
(and cross-appeal Consolidated)

C A S E

FOR THE APPELLANT

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