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Judgment
12, 1965

IN THE PRIVY COUNCIL

No. 26 of 1964

ON APPEAL FROM THE GAMBIA COURT OF APPEAL

B E T W E E N :

SOLO DABO (Defendant)

Appellant L. 15, W. 1.

- and -

ABDALLA MOUSA by his Attorney

AHMED JACOB (Plaintiff)

Respondent

- 3 FEB 1966

80944

CASE FOR THE APPELLANT

Record

- 10 1. This is an appeal from an opinion order and decision of the Gambia Court of Appeal (Ames P. Dove-Edwin and Luke JJ.A.) delivered on 2nd December 1963 affirming a judgment of the Supreme Court of the Gambia dated 30th April 1963. pp.64-66
2. The action was commenced by the Respondent as Plaintiff by writ issued 23rd March 1963 for the sum of £19,200 allegedly due from the Appellant. p.1
- 20 3. The Statement of Claim alleges that both parties reside in Sierra Leone and although no allegation to that effect appears therein, the Plaintiff's evidence was that the document sued on was executed in Sierra Leone. At first instance, the Chief Justice held this document to have been a promissory note within the Bills of Exchange Act but in the Gambia Court of Appeal it was conceded by the Respondent that it was not a promissory note and the Court of Appeal so found. p.2
p.47
L.15
p.48 L.8
p.54 L.31
p.65 L.12
- 30 4. It is contended by the Appellant that the Statement of Claim discloses no cause of action. No loan is expressly alleged, nor any relationship of principal and agent, trustee and cestui que trust. Ames.p. described the action of the Court of Appeal as one "for money had to deliver" but the Appellant submits that that is no cause of action and even if it were, the Statement of Claim does not so allege. No banker and customer relationship nor any other fiduciary relationship was alleged or deposed to

Record throughout the hearing at first instance.

p.46 L.30 5. It was contended by the Appellant below
p.64 L.28 and is again submitted now in any event the Courts
of the Gambia had no jurisdiction to entertain
the suit between the parties, there being no
breach of any contract within its jurisdiction.
The contractual relationship (if any and none is
admitted) arose in Sierra Leone, the breach or
failure to comply therewith, if any, was clearly
and expressly in Sierra Leone (unless the document 10
was a promissory note) and no other breach is
alleged or sued on. No tort is alleged. It is
submitted that only the Courts of Sierra Leone
could take juridical cognizance of the transaction.
p.3 L.27 The Defence pleaded illegality, and it is submitted
that that is an additional ground why the forum
conveniens was Sierra Leone whose own Courts would
be the most likely to know their own laws and be
able to decide when how and where they had or
had not been infringed by any particular set of 20
facts adduced in evidence

6. The principal questions involved in the
appeal are:-

(1) Whether on the alleged proved or
admitted facts the Courts of the Gambia had
jurisdiction to entertain the suit;

(2) Whether the Statement of Claim discloses
any cause of action against the Defendant;

(3) Whether the transaction sued on is
tainted with illegality barring the Plaintiff from 30
the Courts;

(4) Whether the document sued on has been
proved to be genuine having regard to the
allegation by the Appellant that it was a forgery
and all the evidence on this issue.

p.6 L.13 7. The Plaintiff alleged that he had "handed"
to the Defendant the sum of £19,200 at Freetown
in Sierra Leone for payment to one Mohamed Khalil,
at Bo in Sierra Leone, the said Mohamed Khalil
being described as the Plaintiff's nephew in the 40
Statement of Claim but as his brother in the
Plaintiff's evidence. He was not called to give
p.30 L.21 evidence. The Defendant's version being a complete

denial, the Plaintiff's account was never challenged as to intrinsic truth or inherent probability. The Defendant admitted a running account between the parties on the smuggling of diamonds, and said a sum of £5,000 or thereabouts was probably due from him to the Plaintiff at the date of the issue of the writ but certainly denied any handing over of money or cash by the Plaintiff to him. It is significant that the Statement of Claim nowhere alleges this or any delivery of cash.

pp.27-30

An issue arose early in the trial and appears to have occupied a great deal of time as to whether the document alleged by the Plaintiff to have been lost ever existed and as to whether the document described as an undertaking confirming the original undertaking in fact bore the Defendant's signature. That the Defendant's ordinary signature differed from that on the document was not disputed but the Chief Justice at first instance found that the Defendant had 2 signatures, and the one on the undertaking was one of his 2 authentic signatures. The Defendant also contended that the actual dispute arose from transactions between the parties concerning diamonds and that neither party was authorized empowered or legitimately enabled by the laws of Sierra Leone to trade in diamonds. It was common ground that both parties had been expelled from Sierra Leone for dealing in an unauthorized way in diamonds.

p.7 L.17
p.10 L.21

pp.47-48

8. It is submitted that, in any event, there was no jurisdiction in the Courts of the Gambia to entertain the suit. Insofar as the document sued on is genuine, it is concededly a mere copy of a previous undertaking and is merely of evidential value, the original having been made (according to the Respondent) in Sierra Leone. It is further submitted that no cause of action arose in the Gambia at any time.

9. The Appellant appealed to the Gambia Court of Appeal (Ames, (President), Dove-Edwin J.A., Luke J.A.) and on the 2nd day of December 1963 judgment was given dismissing the appeal.

p.53

<u>Record</u> p.65 L1-10	10. Mr. Justice Ames, with whom Mr. Justice Dove-Edwin and Mr. Justice Luke concurred, stated that the Chief Justice for the Supreme Court of the Gambia was correct in deciding that he had jurisdiction - "The proceedings in the suit showed that he was correct. It was not so much that part of the cause of action arose here, as that a sufficient cause of action arose here. Mr. Johnson argued that in such event, the Defendant should have been sued in Lebanon and not here. Possibly he could have been; I do not know. He also could have been sued in Freetown on the basis of what happened there, had it been done before they were both deported - and that would now complicate or frustrate any such action. He could also be sued here, where he was, on the basis of what happened here." - and that the	10
p.65 L.12-17 p.65 L.22-25	document was not a promissory note although the Chief Justice had held that it was so: that the Statement of Claim was not a claim on a promissory note but that it was for money to deliver, and admitted not to have been delivered, and refused to be returned to the respondent when demanded and admitted to be still unpaid and owing to the respondent; there were no grounds for the complaint that "it was wrong to admit the document signed here without proof that the Sierra Leone one had been lost"; that as to the finding of facts (with one exception) he was in agreement with the learned Chief Justice; and that as "to the so called forgeries, there is the clearest evidence indicating not the probability but the certainty that the documents genuine. And I say so, notwithstanding the different signatures of the appellant registered at the Bank." that the exceptions concerned exhibits No.1-6 and that with reference to No.6 "The figures agree with the figures given by the appellant in his evidence. The items were said to have been made on different dates, but it does not look like that to me. It has a regularity, and each item looks as if made with the same degree of care or abandon. It appears to be an account written at some one time, an "aide memoire", for some reason or other"; that "The Defendant sought to establish that the £19,200 was the value of diamonds handed over, which had been illegally won, or money handed to pay for illegally won diamonds. The evidence was not clear to me as to what exactly he was alleging the illegality to be.	20
p.65 L.26-28 p.65 L.39-40 p.65 L.40-44	the document was not a promissory note although the Chief Justice had held that it was so: that the Statement of Claim was not a claim on a promissory note but that it was for money to deliver, and admitted not to have been delivered, and refused to be returned to the respondent when demanded and admitted to be still unpaid and owing to the respondent; there were no grounds for the complaint that "it was wrong to admit the document signed here without proof that the Sierra Leone one had been lost"; that as to the finding of facts (with one exception) he was in agreement with the learned Chief Justice; and that as "to the so called forgeries, there is the clearest evidence indicating not the probability but the certainty that the documents genuine. And I say so, notwithstanding the different signatures of the appellant registered at the Bank." that the exceptions concerned exhibits No.1-6 and that with reference to No.6 "The figures agree with the figures given by the appellant in his evidence. The items were said to have been made on different dates, but it does not look like that to me. It has a regularity, and each item looks as if made with the same degree of care or abandon. It appears to be an account written at some one time, an "aide memoire", for some reason or other"; that "The Defendant sought to establish that the £19,200 was the value of diamonds handed over, which had been illegally won, or money handed to pay for illegally won diamonds. The evidence was not clear to me as to what exactly he was alleging the illegality to be.	30
p.66 L.15-19	to have been made on different dates, but it does not look like that to me. It has a regularity, and each item looks as if made with the same degree of care or abandon. It appears to be an account written at some one time, an "aide memoire", for some reason or other"; that "The Defendant sought to establish that the £19,200 was the value of diamonds handed over, which had been illegally won, or money handed to pay for illegally won diamonds. The evidence was not clear to me as to what exactly he was alleging the illegality to be.	40
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He failed to rebut the Plaintiff's version of the transaction. Moreover, there was no proper proof, as the learned Chief Justice pointed out, as to what is and what is not legal in diamond mining in Sierra Leone. So had the particular transaction been clearly established, there would have been no means for the learned Chief Justice to decide whether or not it was illegal".

Record

- 10 11. The Appellant submits that the judgment of the Court of Appeal should be reversed and the action dismissed for the following among other

R E A S O N S

1. BECAUSE

(i) there was no jurisdiction in the Courts of the Gambia to entertain the suit;

(ii) the Statement of Claim discloses no cause of action;

(iii) the transaction sued on is tainted with illegality;

- 20 (iv) the verdict is unsupported by the evidence.

P.A.W. MERRITON

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Attorney AHMED JACOB Respondent

CASE FOR THE APPELLANT

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