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IN THE PRIVY COUNCIL

No. 14 of 1969

O N A P P E A L
FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N

NABIEU S. AMADU (Defendant) Appellant

AND

AIAH SIDIKI (Plaintiff) Respondent

AND BETWEEN

AIAH SIDIKI (Plaintiff) Appellant

AND

NABIEU S. AMADU (Defendant) Respondent
(Consolidated Appeals)

CASE FOR THE PLAINTIFF/RESPONDENT
(APPELLANT IN THE CROSS-APPEAL)

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1. Aiah Sidiki, the Plaintiff/Respondent (Appellant in the cross-appeal) is hereinafter referred to as "the Plaintiff", and Nabieu S. Amadu, the Defendant/Appellant (Respondent in the cross-appeal) is hereinafter referred to as "the Defendant".

2. These are consolidated cross-appeals from a judgment of the Court of Appeal for Sierra Leone dated 8th May 1967, whereby the Court of Appeal allowed the Defendant's appeal from a judgment of Davies J. in the Supreme Court of Sierra Leone dated 10th February 1967, awarding the Plaintiff the return of a gem stone or its value of Le. 88,000.00, but the Court of Appeal holding that the Defendant was not entitled to keep the proceeds of sale, and ordering the sum of Le. 88,000.00 standing to the credit of the Defendant to be paid to the Crown.

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LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

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3. The principal issues arising in the Plaintiff's appeal are :-

(a) Whether it was open to the Court of Appeal on the evidence to find that the subject-matter of the action, namely a "gem stone", was a diamond;

(b) Whether the Court of Appeal were correct in law in holding that title to the gem stone vested in the Crown;

(c) Whether the Court of Appeal were correct in law in holding that the Plaintiff's possession of the gem stone was necessarily unlawful; 10

(d) Whether the Court of Appeal could properly find on the evidence or were correct in law in holding that the Plaintiff's handing of the gem stone to the Defendant for safe keeping was an illegal transaction; and

(e) Whether in any event, (if it be assumed that the Plaintiff's possession of the gem stone was unlawful) the Court of Appeal were correct in law in holding that the Plaintiff's action against the Defendant must therefore fail. 20

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4. By a Writ of Summons with Statement of Claim dated 12th October 1966 the Plaintiff instituted

THE PRESENT SUIT

claiming

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(A) The return of a gem stone or the sum of Le. 88,000.00 (£44,000) the value thereof;

(B) Damages for its conversion or wrongful detention.

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5. By his Statement of Claim the Plaintiff alleged that in February 1966 the Plaintiff entrusted to the Defendant for safe keeping a piece of gem stone, the property of the Plaintiff; that on or about 18th February 1966 the Plaintiff orally demanded the said gem stone but the Defendant refused to deliver it up and thereby converted it to his own use. 40

10 6. By his Defence dated 6th December 1966 the Defendant denied that he had received from the Plaintiff or that the Plaintiff had entrusted to him a piece of gem stone or any other article, stone or thing on the alleged or any other date; the Defendant further denied that the Plaintiff had demanded the piece of gem stone or any other article or thing from him, and that he at any time refused to deliver up any gem stone or any other article to the Plaintiff.

7. The action came on for hearing before Mr. Justice Percy R. Davies on the 18th January 1967. The Plaintiff gave evidence and called three other witnesses in support of his case. The Defendant gave evidence and called two other witnesses.

20 8. In his judgment delivered on 10th February, 1967, the learned judge reviewed the evidence in detail, and concluded that the Defendant and his witnesses had told "a congeries of lies". He stated that he believed the story of the Plaintiff and his witnesses, and was satisfied that the Defendant received the gem stone of the Plaintiff and converted it to his own use. He gave judgment for the Plaintiff for the return of the gem stone or Le. 88,000.00., its value, and by way of damages he awarded interest from the date when the cause of action arose until the date of judgment. Judgment was entered for the Plaintiff accordingly with costs.

30 9. The facts found by the learned judge and subsequently accepted by the Court of Appeal, may be summarised as follows :-

40 The Plaintiff was the ward of the Defendant and lived with him. In about February 1966, the Plaintiff found a gem stone on the road and entrusted it to the Defendant for safe keeping. Soon after the Plaintiff asked the Defendant to return the gem stone, but the Defendant asked him to wait a while. The Plaintiff waited, and was later told by the Defendant that he (the Defendant) had sold the gem stone for £44,000 or Le. 88,000.00. The Defendant showed him the money but did not hand it over, and later deposited most of it in various banks. The Defendant gave the Plaintiff Le. 1,200. But when the Defendant failed to hand over the balance of the proceeds of sale, the Plaintiff complained to the Paramount Chief Kamakeinde, who investigated the matter.

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The Defendant admitted to the Paramount Chief in the presence of witnesses that the Plaintiff's story was true. The Chief advised the Defendant to pay over the money to the Plaintiff, but he did not do so. Later the Plaintiff complained to his uncle, Paramount Chief Musa, who also investigated. The Defendant told Chief Musa that he was not prepared to pay anything to the Plaintiff because of the latter's conduct in reporting the matter to the Chiefs.

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10. The Defendant appealed from the judgment of Davies J. to the Court of Appeal for Sierra Leone. By his notice of appeal the Defendant took the point, which had not been taken in the pleadings or raised in any way in the Court below, that the judgment was wrong in law by reason of the maxims "ex turpi causa non oritur actio" and "in pari delicto potior est conditio defendentis". The Defendant's said notice of appeal referred to sections 67 and 68 of the Minerals Ordinance, Cap. 196. The proceedings in the Court of Appeal did not include the taking of further evidence, but were confined to legal argument.

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pp.41-5

11. On the 8th May 1967 the judgment of the Court of Appeal was delivered by Marcus-Jones J.A. The Court accepted the findings of fact of the trial judge, which they stated to be "that the Plaintiff gave the diamond stone to the Defendant who subsequently sold it for Le. 88,000.00 and failed to pay over the proceeds of sale to the Plaintiff". It is respectfully pointed out however, that the learned trial judge throughout his judgment in the Court below referred to the subject-matter as "a gem stone" and made no finding that it was a diamond.

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p.42

12. Marcus-Jones J.A. went on to say that the appeal had come to the Court on the question of illegality, of which any Court was bound to take note, notwithstanding that it had not been raised in the pleadings or before the Court below.

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With regard to the Plaintiff's contention that he was entitled to possession of the stone as a finder until dispossessed

by the owner, this was in the Court's view untenable. Marcus-Jones J.A. said :-

"There is clear and unequivocal evidence that the gem stone was a diamond stone such as could be dealt with only by licence". p.42
p.10

10 The learned Justice of Appeal then referred to section 67 of the Minerals Ordinance, Cap. 196, which prohibits the possession of any mineral except upon certain conditions, and to section 3(1) thereof, which inter alia vests the property and control of all minerals and mineral oils in the Crown. The judgment then proceeded :- p.43-4

20 "It is an incontrovertible fact that when the Plaintiff found this piece of diamond he had no right in law to keep it, and when he handed it over to the Defendant, he also had no right to keep nay ~~more~~ sell it. Possession was and still is vested in the Crown and their dealing with the diamond without a lawful right to do so was plainly illegal ... The evidence points clearly to an illegal transaction and as this was obvious to the trial judge it was open to him to have taken the point despite the fact that it was not pleaded. I reach the conclusion that the Plaintiff could not have given evidence without disclosing the illegal nature of the transaction. This is amply supplied by the evidence and consequently the Plaintiff is not entitled to the fruits of his judgment ... possession of the diamond is still vested in the Crown and it remains so until the Crown is divested of it". p.44-5

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13. In consequence of the above judgment the Court of Appeal allowed the Defendant's appeal, but ordered that the proceeds of sale be paid to the Crown. p.46

40 14. The provisions of the Minerals Ordinance (Laws of Sierra Leone, Cap. 196) immediately relevant to this appeal are as follows :-

Section 3 "(1) The entire property in and control of all minerals and mineral oils, in under or upon any lands in Sierra Leone, and of all rivers, streams and watercourses throughout Sierra Leone, is hereby

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declared to reside in the Crown save insofar as such control may in any case have been limited by any express grant made by the Crown before the commencement of this Ordinance.

(2) Except as in this Ordinance provided, no persons shall prospect or mine on any lands in Sierra Leone, or divert or impound water for the purpose of mining operations"

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Section 66 "For the purposes of the provisions of sections 67 to 74 the term "minerals" shall mean any minerals to which the Governor in Council may by Order apply the said sections".

Section 67 "No person shall possess any mineral unless he is the lessee of a mining lease, or the holder of a mining right, exclusive prospecting licence or a prospecting right, or of a licence granted under section 71, or the duly authorised employee of such lessee or holder".

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15. No evidence was given at any stage of the proceedings as to any of the following matters:-

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(a) The provenance or history of the gem stone or title to it, prior to its being found by the Plaintiff;

(b) That the gem stone was or was not a "mineral" within the meaning of the Minerals Ordinance;

(c) Whether or not any Order in Council had been made under section 66 of the Ordinance; or

(d) The employment or status of the Plaintiff, or the status of the Defendant, or whether either of them was lawfully entitled to possess minerals.

10 16. The Plaintiff accordingly humbly submits that there was no evidence before the Court of Appeal to justify that Court in holding that the Plaintiff's possession of the gem stone was necessarily unlawful, nor to justify the holding that title to the gem stone was necessarily vested in the Crown. The Plaintiff further humbly submits that the maxim "ex turpi causa non oritur actio" was wrongly applied in the circumstances of the case, and that a grave and substantial miscarriage of justice has resulted in consequence of the order appealed from.

17. Final leave to appeal to Her Majesty in Council was granted to the Plaintiff by order of the Court of Appeal dated 11th August 1967.

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20 18. The Plaintiff humbly submits that this Appeal should be allowed with costs there and in the Court below and that the Defendant's cross-appeal should be dismissed, and that the order of the Court of Appeal should be discharged and the judgment of the Supreme Court restored, for the following among other

R E A S O N S

30 (1) BECAUSE in the absence of any evidence as to the nature of the gem stone in question, and/or without proof of any Order made under section 66 of the Minerals Ordinance, the Court of Appeal were wrong in holding that the stone was a "mineral" for the purposes of that Ordinance;

(2) BECAUSE in the absence of any evidence as to the matter, the Court of Appeal were wrong in holding that the Plaintiff's possession of the gem stone in question was necessarily unlawful;

(3) BECAUSE in the absence of any evidence as to the matter, the Court of Appeal were wrong in holding that title to the said gem stone was necessarily vested in the Crown;

40 (4) BECAUSE the Court of Appeal were wrong in holding that the Plaintiff could not succeed without disclosing an illegal transaction;

(5) BECAUSE it was sufficient for the

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Plaintiff to succeed against the Defendant in conversion to prove his possession of the stone in question; it was unnecessary for the Plaintiff to prove how he obtained possession, or to disprove the title of a third party, or to prove that his possession was necessarily lawful.

(6) BECAUSE the Court of Appeal misdirected itself as to the proper application of the maxim "ex turpi causa non oritur actio".

(7) BECAUSE even if the Plaintiff's possession of the gem stone was contrary to the provisions of the Minerals Ordinance, that fact was no answer to the Plaintiff's claim against the Defendant.

BERNARD MARDER

