

Privy Council Appeal No. 10 of 1970

Abdool Latiff - - - - - - - - *Appellant*

v.

Tani Persaud - - - - - - - - *Respondent*

FROM

**THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE OF GUYANA**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1971

Present at the Hearing:

LORD GUEST

LORD WILBERFORCE

LORD CROSS OF CHELSEA

[*Delivered by* LORD CROSS OF CHELSEA]

This is an appeal by Abdool Latiff the plaintiff in the action against an order of the Court of Appeal of the Supreme Court of Guyana dated 14th April 1969 affirming the judgment of Mr. Justice Vieira dated 28th June 1968 dismissing the action for want of prosecution. The action was started by specially endorsed writ dated 14th September 1967 whereby the plaintiff claimed against one Tani Persaud the sum of 1,789.94 dollars on various grounds there set out. A defence was put in in January 1968 which alleged (*inter alia*) that the statement of claim disclosed no cause of action. On 15th May and 1st June 1968 Mr. Justice Vieira heard submissions by Counsel on the question whether the statement of claim as drawn disclosed a cause of action and an application on the part of the plaintiff for leave to make two amendments to it. On 8th June the judge gave judgment holding that the submissions of the defendant were well founded, refusing to allow the amendments and dismissing the action with costs. On 17th June before his order of 8th June had been drawn up the judge saw counsel for the plaintiff (Mr. Stafford) and counsel for the defendant (Mr. Rai) in his chambers and told them that on reflection he considered that he had been wrong to dismiss the action and that he was recalling his order. He gave leave to the plaintiffs to make one of the two amendments for which he sought leave and varied the order for costs by directing that the plaintiff should pay to the defendant one half of his costs incurred up to that day. He adjourned the further hearing of the action until 28th June. Mr. Stafford told the judge that he doubted whether he had any power to recall the order of 8th June even though it had not been drawn up and said that his client was lodging an appeal against that order. Notice of appeal was in fact filed later on 17th June and served on the defendant. When the matter came before the judge again on 28th June the plaintiff was not represented. Mr. Stafford had told the judge earlier that day that an appeal against the order of 8th June was pending and that he had no instructions to appear on the further hearing

of the action. Mr. Rai submitted that a judge had a right to recall his order at any time before it was drawn up and that the notice of appeal was irregular. The judge had the name of the plaintiff called three times outside the Court and as neither he nor anyone on his behalf appeared he made an order dismissing the action for want of prosecution and directed the plaintiff to pay the defendant's costs. On 28th October 1968 the Court of Appeal gave judgment on the plaintiff's appeal against the order of 8th June. The Court held that the judge had power to recall his order of 8th June, that accordingly the notice of appeal of 17th June was invalid, and that any appeal which the plaintiff might wish to bring must be against the order of 28th June. The Court extended his time for bringing such an appeal and directed that the costs of the appeal should be costs in the cause. On 7th November 1968 the plaintiff served notice of appeal against the order of 28th June—the grounds of appeal being in substance first that the judge ought not to have proceeded with the trial of the action pending the hearing of the appeal and secondly that the plaintiff was not given proper notice of the hearing on 28th June. On 29th November Mr. Justice Vieira gave written reasons for his decision for the benefit of the Court of Appeal. After setting out the history of the matter he said "As far as I can see the only point in this appeal is whether the appellant was given proper notice concerning the fixture of June 28th". Then after saying that as Mr. Stafford was present in his Chambers on 17th June it was not really possible to argue that the plaintiff was not notified of the date fixed for the hearing, he continued:

"It seems to me, on the final analysis, neither here nor there whether this Appeal is dismissed or allowed since, in my humble opinion, the really important factor in this whole matter is that now we have a very clear and authoritative decision of the Court of Appeal, the judgment of which was delivered by Crane J.A. (ag.) with whom the Acting Chancellor and Persaud, J.A. concurred, concerning the limits, if any, to the Jurisdiction of a Judge of the High Court in Guyana in relation to recalling and varying his own judgment or order after pronouncing same."

The appeal against the order dismissing the action for want of prosecution was heard on 14th April 1969. The members of the Court thought, as Mr. Justice Vicira thought, that the matter was concluded by the decision of the Court of Appeal of 28th October 1968; but their Lordships cannot agree. Although the judge was entitled to recall his order of 8th June and the plaintiff was very ill-advised to contend that the order made on 17th June was a nullity the action should not have been heard while the appeal was pending. If the plaintiff had attended the hearing on 28th June and asked for an adjournment the judge could not properly have refused to grant one, and in view of what Mr. Stafford had told him he might well have stood the case over on his own motion instead of dismissing it. After the first appeal was dismissed on 28th October the plaintiff instead of applying to the judge to discharge the order of 28th June brought an appeal against it. On that appeal the Court of Appeal should, their Lordships think, have discharged the order on proper terms as to costs. Unfortunately counsel (not Mr. Stafford) who then represented the plaintiff appears not to have appreciated or at all events to have been quite unable to get across to the members of the Court of Appeal the point that whether the order dismissing the action for want of prosecution should stand did not depend on whether the judge had power to recall his order. According to the reasons for the judgment which were signed by the Chancellor on 8th May 1970 counsel actually consented to the appeal being dismissed. But the order of the Court though it records the consent of the plaintiff to the part dealing with costs does not indicate that he consented to the dismissal of the appeal and their Lordships have before them an affidavit by counsel

in which he denies that he did consent to its being dismissed. There is no doubt that the plaintiff or his advisers are themselves largely to blame for the confusion which has arisen in this case. Nevertheless their Lordships think that subject to the defendant being properly protected in the matter of costs the order dismissing the action for want of prosecution should be discharged. The order which their Lordships will humbly advise Her Majesty should be made in this case is that that part of the order of the Court of Appeal dated 14th April 1969 which affirms the judgment of Mr. Justice Vieira dated 28th June 1968 be discharged; that the order of Mr. Justice Vieira dated 28th June 1968 be discharged; and that the action be remitted to the High Court for hearing. The costs of the hearing on 17th June will be dealt with as costs in the cause. The plaintiff must pay to the defendant his costs of the hearing on 28th June 1968. The order of the Court of Appeal dated 14th April 1969 as to the costs of the two appeals will stand and the appellant must bear his own costs of the appeal to the Board.

In the Privy Council

ABDOOL LATIFF

v.

TANI PERSAUD

DELIVERED BY
LORD CROSS OF CHELSEA