

10,1959

IN THE PRIVY COUNCIL

No. 4 of 1957

ON APPEAL FROM HER MAJESTY'S COURT OF
APPEAL FOR EASTERN AFRICA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
12 MAR 1960
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N:

HASSANALI KURJI KANJI trading
as Hassan Trading Stores ...

(Defendant)
Appellant

55579

- and -

GAILEY AND ROBERTS LIMITED

(Plaintiffs)
Respondents

CASE FOR THE RESPONDENTS

- 10 1. This is an Appeal (brought pursuant to final
leave granted by Her Majesty's Court of Appeal for
Eastern Africa by Order dated the 28th day of
February 1957) from an Order of the said Court of
Appeal (Worley P, Sinclair V-P and Briggs J.A.)
dated the 29th day of June 1956 dismissing (subject
to a variation of the principal amount decreed from
Shs. 229,843/38 to Shs. 206,429/09 an Appeal by
the above named Appellant from an Order and Decree
of the High Court of Tanganyika (Cox C.J.) dated the
20 20th October 1955 whereby it was Ordered and Decreed
inter alia that the Appellant should pay to the
Respondents the principal amount of Shs.229,843/38.
2. In the month of December 1951 one Mohamedali
Jafferalli whose address was P.O. Box 48 Moshi and
who is the nephew of the Appellant was and was shewn
in the Respondents' books as indebted to the Respon-
dents in the sum of Shs. 109,345/70 and one S.K.
Premji who at that time carried on business under
the name Hassanali & Co. and whose address was also
30 P.O. Box 48 Moshi was and was shewn in the Respon-
dents' books as indebted to the Respondents in the
amount of Shs. 56,444/70. On the 31st December 1951
(i) Shs.9,345/70 of the said debt of Shs.109,345/70
was transferred by the Respondents in their books to
the debit of Hassan Trading Stores, whose sole pro-
prietor was and at all material times remained the
Appellant and whose address was also P.O. Box 48
Moshi, (ii) Shs. 100,000 the balance of the said
debt was transferred by the Respondents in their
40 books to the debit of Hassanali & Co. thereby
- p.98 1.8-p.99 1.21
p.97 1.11-p.98 1.6
p.89 11.1-30
p.66 11.8-10
p.11
p.63 11.21-22
p.66 1.20-21
p.10 11.14-21
p.10 1.22-
p.3 1.12
p.11
p.10 11.14-21

11.22-36 p.11	increasing the amount shewn to the debit of Hassanali & Co. to Shs. 156,444/70 (iii) the account of Mohamedali Jafferli in the Respondents books was closed. By the date of the institution by the Respondents of the proceedings out of which this Appeal arises the amount shewn to the debit of Hassanali & Co. in the Respondents' books had been reduced to Shs. 118,444/70.	
p.10 p.11		
p.4 1.18-		
pp.1-4	3. By Plaintiff dated the 5th February 1954 the Respondents instituted proceedings in the Arusha District Registry of the High Court of Tanganyika (hereinafter called the High Court) for the recovery from the Appellant of inter alia the said sum of Shs. 118,444/70 then shewn to the debit of Hassanali & Co. in their books on the ground (as appears by paragraph 5 of the said Plaintiff as amended on the 7th July 1954) that in December 1951 the Appellant had agreed to undertake liability for the account of Hassanali & Co. which then amounted to Shs. 156,444/70 made up as shewn in the last preceding paragraph hereof. By his Defence the Appellant inter alia denied that he had undertaken the said liability.	10
p.1 11.27-32 p.9		
p.3-7 p.5 1.34		20
p.97 1.11	4. In the amount of Shs. 206,429/09 ordered to be paid by the Appellant to the Respondents by the Order of Her Majesty's Court of Appeal for Eastern Africa (hereinafter called the Court of Appeal) was included the said amount of Shs. 118,444/70 and this Appeal relates only to the Appellant's liability to pay this amount. No question arises as to the Appellant's liability to pay the balance of the amount ordered to be paid namely Shs.87,984/39.	
p.82 1.39- p.83 1.16 p.94 1.38- p.95 1.2		30
p.62 11.27-29 11.35-39	5. The Action instituted by the Respondents came on for hearing in the High Court before Cox C.J. on the 9th December 1954 at Arusha and the 14th and 15th June 1955 at Dar-es-Salaam and at the conclusion of the hearing judgment was reserved. At the beginning of the hearing on the 9th December 1954 certain issues were agreed between the parties which, so far as material to this Appeal were:	40
	(a) Whether the Appellant was liable for the said sum of Shs.118,444/70 named in paragraph 5 of the Plaintiff as part of the agreement of December 1951.	
	(b) Whether, if the Appellant had agreed to undertake the liability of the account of Hassanali & Co., that account at the time of the agreement included a sum of	

Shs. 100,000 owed by Mohamedali Jafferli.

6. On the 20th October 1955, Cox C. J. delivered his reserved judgment. In the course of his judgment he said :

pp.79-83

10 "In the middle of 1951 and before that Mohamedali Jafferli had incurred a considerable liability with the Plaintiffs, and one of the local managers of the Plaintiffs, being concerned about it and the fact that he himself would be pressed from his head office in connection with this outstanding account, acquiesced in a proposal by the Defendant that the liability of this third concern to the Plaintiffs should be divided between Hassan Trading Stores and Hassanali & Company, and at the request of the Defendant Mohamedali Jafferli's account was closed, Shs. 9,345/70 cts. being transferred to the account of Hassan Trading Stores and Shs. 100,000/- transferred to the account of Hassanali & Company, and the proceedings now before this Court are in respect of the amounts alleged to be due to the Plaintiffs from Messrs. Hassan Trading Stores and Hassanali & Company, which together include the total of Shs.109,345/70 cts.transferred from Mohamedali Jafferli's account in order to close Mohamedali Jafferli's account. The Defendants admit liability as regards the Shs. 9,000/- but do not accept the liability as regards Shs.100,000/-.

p.79 11.20-42

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I am quite satisfied from the evidence that the Defendant accepted liability for the whole of Mohamedali Jafferli's liability to the Plaintiff's, and that that liability was divided between Hassan Trading Stores and Hassanali & Company as requested by the Defendant, with effect from the 31st day of December 1951.

p.80 11.30-36

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40 Although I am not altogether satisfied with all the manner of business and the records of all the business conducted by the Plaintiffs, yet I do accept the general story as told by the witnesses for the Plaintiffs and reject that of the defence where it is in conflict with it."

p.82 11.33-38

7. From this Decision the Appellant appealed to the Court of Appeal. The Appeal came on for hearing

p.85

p.91 11.32-35

before Worley P. Sinclair V-P and Briggs J.A. on the 28th and 29th June 1955 when the Appellants appeal was dismissed for reasons to be given in writing at a later date.

p.93-96

8. The reasons for the dismissal of the Appellants said appeal were read by Briggs J. A. on the 18th July 1956. The said reasons included the following passages:

p.93 1.33-
p.94 1.4

"The facts are clearly set out in the judgment of the High Court and it is unnecessary to repeat them. The case turned largely on an oral agreement made between the Appellant and a Mr. Green, formerly the Respondent's manager at Moshi, in December 1951. It was alleged by the Respondents that under this agreement the Appellant became liable to pay to them a large sum for principal and a sum of Shs. 16,884/77 for interest thereon. The agreement itself was proved to conclusion, although Mr. Green's evidence about it was, owing to the lapse of time, somewhat vague.

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p.95 11.3-21

We think it may be desirable to add a very brief account of the reasons which led us to reject the Appellant's contention on the main issue, which was that the alleged agreement of December 1951 was never proved. We agreed generally with the reasoning of the learned Chief Justice. We thought that, although Mr. Green's recollection was by no means clear and his evidence, had it stood alone, would not have afforded sufficient proof, that evidence was patently honest, and that the evidence of the parties' subsequent dealings could only be referable to the agreement which Mr. Green clearly believed to have been made. If the Appellant's own evidence and that of his witnesses was to be rejected as untrue, the agreement alleged was established, if not beyond reasonable doubt, at least with such balance of probability as is necessary in a civil case.

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p.96 11.43-48

The evidence for the Respondents had the same validity as if it stood wholly uncontradicted, and it was more than sufficient to establish their case and to justify the decree passed

in their favour."

9. The Respondents will contend

- 10 (1) That the questions whether in December 1951 the Appellant orally agreed to pay the Account of Hassanali & Co. and whether such account included the sum of Shs.100,000/- owed by Mohamedali Jafferli are pure questions of fact and have been determined against the Appellant both by the High Court and the Court of Appeal and cannot or should not now be open to challenge by the Appellant
- (2) That there was, in any event, evidence to support the findings of the High Court and the Court of Appeal and such findings are right.
- (3) That there was good consideration for the Appellant's promise to pay the Account of Hassanali & Co. whether such promise was original or by way of guarantee only such consideration consisting in either
- 20 (a) The release of the indebtedness of Mohamedali Jafferli to the extent of Shs. 9,345/70 which amount it is admitted by the Appellant he agreed to pay
- or(b) The release of the indebtedness of Mohamedali Jafferli to the extent of Shs. 100,000/- and the transfer of such indebtedness to Hassanali & Co.
- or (c) The actual giving of time to Hassanali & Co. at the implied request of the Appellant.
- 30 or (d) A combination of some one or more of (a) (b) and (c) above.

10. The Respondents humbly submit that the Judgments of the High Court of Tanganyika and Her Majesty's Court of Appeal for Eastern Africa are correct and should be affirmed for the following amongst other

R E A S O N S

- (1) Because the Appellant did promise whether originally or by way of guarantee to pay the account of Hassanali & Co.
- 40 (2) Because there was good consideration to support such promise.

(3) Because the decisions of the High Court of Tanganyika and Her Majesty's Court of Appeal for Eastern Africa were right.

R.J. PARKER.

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- and -

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CASE FOR THE RESPONDENTS

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