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IN THE PRIVY COUNCIL

No. 23 of 1959

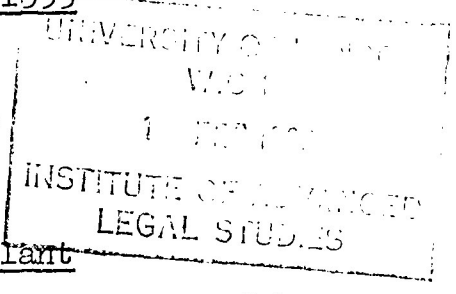
ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

OLATUNJI OMOTAYO (Defendant) Appellant

- and -

A. Y. OJIKUTU (Plaintiff) Respondent



63556

CASE FOR THE APPELLANT

- 10 1. This is an Appeal from a Judgment of the Federal Supreme Court of Nigeria sitting at Lagos, dated the 23rd February, 1957, allowing the Respondent's appeal and dismissing the Appellant's appeal from a Judgment of the Supreme Court of Nigeria, Lagos Judicial Division, dated the 26th November, 1954. Record
p.123
- 2. The Appellant and Respondent are General Traders carrying on business in Lagos, Nigeria.
- 20 3. On the 7th January, 1954 the Respondent commenced an action in Suit No. 662/1953 in the Supreme Court of Nigeria claiming in his Writ of Summons from the Appellant the sum of £36,000 whereof £21,000 was Special Damages and £15,000 General Damages for breach of a contract of Agency between the Appellant and the Respondent. p.1
- 4. By a statement of claim dated the 20th March, 1954 the Respondent alleged a loss of the sum of £20,000 and claimed a further sum of £20,300 as General Damages. p.2
p.6, Ll.5 & 6
- 30 5. The Respondent's case as so claimed was that the Appellant was the Respondent's agent for Reward for the purpose of purchasing Motor Trucks from one Frankel in England and that as a result of the Appellant's breach of contract of Agency the Respondent lost the sum of £20,000 advanced by him on the transaction.

Record

Doc. 3, p.6

6. The Appellant by his Defence denied that he had an Agency with the Respondent and pleaded alternatively that he carried out his contract truthfully, in good faith and without negligence. It was also pleaded that any agency was determined after no more than £5,000 had been paid.

p.8

Ex.C, p.152

Ex.M, p.168

7. The Appellant contracted with Frankel in London for the purchase of fifty trucks which were to be shipped by Frankel from London to Nigeria. The Appellant paid the sum of £5,000 to Frankel in London which £5,000 was paid to the Appellant by the Respondent. The Respondent paid to Frankel in Lagos the sum of £15,000 by cheque dated the 18th November 1952. Frankel defaulted and did not ship the trucks. The Respondent claimed that the Appellant was liable to repay to him both the sum of £5,000 and the sum of £15,000.

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Doc.18, p.102

8. On the 26th November, 1954 the Supreme Court of Nigeria, Lagos Judicial Division (Mr. Justice Johnston) gave Judgment for the Respondent for the sum of £5,000 special damages and the sum of £500 general damages; disallowed the Respondent's claim for the sum of £15,000 and awarded to the Respondent the sum of 375 guineas costs.

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9. The Supreme Court of Nigeria, Lagos Judicial Division (Mr. Justice Johnston) in the said Judgment found that the Appellant by his negligence committed breach of his contract of agency in regard to the sum of £5,000 paid by him to Frankel in London and was liable to the Respondent for this amount as special damages.

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10. The said Court in the said Judgment also found that the sum of £15,000 was paid to Frankel without the agency of the Appellant and after revocation of such agency and that this payment was uninfluenced by the Appellant's previous conduct in words or writing.

Doc.19, p.111

11. On the 19th February, 1955 the Respondent filed Notice of Appeal against the decision of the Supreme Court of Nigeria dated the 26th November, 1954, except that part of the decision which related to the award to him of the sum of £5,000.

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Doc.20, p.114

12. On the 24th February, 1955 the Appellant filed a Notice of Appeal against that part of the decision of the Supreme Court of Nigeria dated the 26th

November, 1954 which allowed the Respondent's claim for the sum of £5,000 with costs in the sum of 375 guineas.

Record

10 13. On the 23rd February, 1957 the Federal Supreme Court of Nigeria (O. Jibowu, Federal Justice, M.C. Nageon De Lestang, Federal Justice and P.C. Hubbard, Acting Federal Justice) allowed the Respondent's Appeal, entered judgment in his favour for the sum of £20,000 and the sum of £500 costs in the Court below with the sum of £128 costs of the Appeal, and dismissed the Appellant's appeal with the sum of 25 guineas costs.

Docs.23 & 24,
pp. 123, 133

14. With regard to the payment of the sum of £5,000 by the Appellant to Frankel in London the Federal Supreme Court found that the evidence clearly supported the findings of the learned Judge (Mr. Justice Johnson, Supreme Court of Lagos).

20 15. With regard to the sum of £15,000 paid by the Respondent to Frankel in Lagos the Federal Supreme Court found that the learned Judge (Mr. Justice Johnston, Supreme Court of Nigeria) had clearly misdirected himself on the evidence, failed to direct himself on some aspects of the evidence and therefore reached a wrong conclusion. The Federal Supreme Court found that the learned Judge mis-
30 directed himself on the evidence when he held that the Respondent paid the sum of £15,000 without the agency of the Appellant and that the payment was uninfluenced by the Appellant's previous conduct in words or writing. The Federal Supreme Court found that the Appellant refrained from disabusing the Respondent's mind of the false assurances which obviously formed the basis of the Respondent's dealing with Frankel.

p.132

p.132

16. On the 11th March, 1957 the Federal Supreme Court of Nigeria (S. Foster Sutton, Chief Justice) granted to the Appellant conditional leave to appeal to Her Majesty's Privy Council.

40 17. On the 11th March, 1957 the Federal Supreme Court of Nigeria (S. Foster Sutton, Chief Justice) granted to the Appellant stay of execution of the judgment debt and costs pending the determination of the appeal to Her Majesty's Privy Council subject to the Appellant entering into good and sufficient security for payment of the judgment debt and costs up to date to the satisfaction of

Doc.25, p.134

Record

the Registrar of the Federal Supreme Court.

18. On the 4th April, 1957 the Appellant complied with the said Order as to the giving of good and sufficient security for payment of the judgment debt and costs.

Doc.26, p.135

19. On the 22nd May, 1957 the Federal Supreme Court of Nigeria granted to the Appellant final leave to appeal to Her Majesty's Privy Council from the judgment of the Federal Supreme Court of Nigeria dated the 23rd February, 1957.

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20. The Appellant humbly submits that this appeal be allowed and that the Judgment of the Federal Supreme Court of Nigeria dated the 23rd February, 1957 be set aside and that the Respondent's claim as framed in the Writ of Summons, be dismissed for the following, among other,

R E A S O N S

1. BECAUSE both the Supreme Court and the Federal Supreme Court applied to the Appellant's conduct too high a standard of care, and further their findings were against the weight of the evidence in that the Appellant was expressly found by the trial Judge to have taken up a banker's reference as to Frankel through the London Branch of the Nigeria Farmers & Commercial Bank, which finding is submitted to be correct. Both the Courts failed to give due weight to the influence such a reference would have on the Appellant's mind as affecting his vulnerability to Frankel's subsequent frauds.
2. BECAUSE as to the claim for £15,000 such loss did not flow from the Appellant's breach of duty as to the £5,000 and/or is too remote.
3. BECAUSE as regards the claim for £15,000 the trial Judge was correct in his findings and in particular that the Appellant's authority as an agent had been revoked prior to the issue of the cheque by the Respondent and that before such issue the Appellant had ceased to be the Respondent's agent, and that the Respondent had been put on inquiry and was acting on his own behalf and after notice when he issued the said cheque.

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GLYNN BLACKLEDGE.

K. NARAYAN.

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(Defendant) Appellant

- and -

A.Y. OJIKUTU
(Plaintiff) Respondent

CASE FOR THE APPELLANT

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