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UNIVERSITY OF LONDON
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 1 JUL 1956
 INST. OF ADVANCED
 LEGAL STUDIES

No. 14 of 1954.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

POPAT HIRJI (Plaintiff) *Appellant*

AND

FAZAL KASSAM VELJI (Defendant) *Respondent.*

Case for the Respondent.

RECORD.

10 1. This is an appeal from a Decree dated the 1st November, 1952, of the Court of Appeal for Eastern Africa (Nihill, P., Worley, V. P., and Murphy, Acting C.J.), allowing an appeal from a judgment of His Britannic Majesty's High Court for Zanzibar given on the 28th November, 1951, by Gray, C.J., in favour of the Plaintiff, who is the Appellant in these proceedings. p. 23. pp. 14-15.

20 2. The claim of the Appellant in his Plaint before the High Court of Zanzibar was for damages for breach of a contract in writing dated the 5th July, 1950, for the sale and delivery by the Respondent to the Appellants of 10,000 lbs. of fair quality cloves at a price of Shs. 110/- per 100 lbs. upon the terms contained in a document in the Gujarati language which was signed by one Popat Mitha Poonja, a broker, and by the Appellant and the Respondent. An English translation of the said document, marked "A," was annexed to the Plaint and bore the heading "Local Contract Note." pp. 1-2. pp. 2-3. pp. 2-3.

3. The Respondent by his Amended Defence alleged, *inter alia*, that the document referred to in the preceding paragraph was not admissible in evidence on the ground that it was not duly stamped; and at the trial reliance was placed, on behalf of the Respondent, upon the provisions of Sections 4, 19 and 39 and Articles 5 and 41 of the First Schedule of the Zanzibar Stamp Decree (No. 5 of 1940). pp. 5-6. p. 12, ll. 26-35.

4. The following statutory provisions are or may be relevant to this appeal :—

STAMP DECREE.

Section 2.—In this Decree, unless the context requires—

* * * * *

(10) “duly stamped,” as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the Protectorate ;

(11) “executed” and “execution” used with reference to 10 instruments, mean “signed” and “signature.”

* * * * *

(13) “instrument” includes every document by which any right or liability is or purports to be, created, transferred, limited, extended, extinguished or recorded ;

* * * * *

Section 4.—Every instrument described in the First Schedule hereto should, unless expressly exempted therefrom by this Decree, be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor—

(a) if it be executed in the Protectorate ; or,

(b) if, being executed out of the Protectorate, it relates to any 20 property situated therein or to any matter or thing to be performed or done therein.

* * * * *

Section 6.—Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Decree.

Section 7.—Subject to the provisions of Section 6 an instrument so framed as to come within two or more of the descriptions in the First Schedule hereto shall, where the duties chargeable thereunder 30 are different, be chargeable only with the highest of such duties.

* * * * *

Section 19.—All instruments chargeable with duty and executed by any person in the Protectorate shall be stamped within thirty days of execution :

Provided that any instrument chargeable with duty of ten cents or twenty cents or promissory notes and bills of exchange shall be stamped at or before the time of execution, or the date of the instrument whichever shall be the earlier.

* * * * *

Section 39.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law 40

or consent of parties authority to receive the evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

- 10 (a) any such instrument not being any instrument chargeable with duty of ten cents or twenty cents only (other than a cheque) or a bill of exchange (other than a bill of exchange presented for acceptance, accepted or payable elsewhere than in the Protectorate) or a promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of twenty shillings, or, when ten times the amount of the proper duty or deficient portion thereof exceeds twenty shillings, of a sum equal to ten times such duty or portion.

* * * * *

FIRST SCHEDULE.

STAMP DUTY ON INSTRUMENTS.

20	<i>Description of Instrument.</i>	<i>Proper Stamp Duty.</i>
	* * * * *	
	5. Agreement or Memorandum of an Agreement—	
	(A) if relating to the sale of a bill of exchange ;	Twenty cents.
	(B) if relating to the sale of a Government security, or share in an incorporated company or other body corporate ;	Twenty cents.
	(c) if not otherwise provided for.	One shilling.

Exemptions.

- 30 (1) Agreement or Memorandum of an Agreement—
- (A) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 41.

* * * * *

41. Note or Memorandum, sent by a Broker or Agent to his Principal intimating the purchase or sale on account of such Principal—

- 40 (A) of any goods of the amount or value of forty shillings or over. Twenty cents.

* * * * *

ZANZIBAR EVIDENCE DECREE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

92. When the terms of any such contract, grant or other disposition or property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms. 10

5. At the trial before Gray, C.J., in the High Court of Zanzibar the said Popat Mitha Poonja gave evidence, on behalf of the Appellant, that he was a broker and had arranged for the sale of cloves between the Appellant and the Respondent, that on the 5th July, 1950, the Respondent had told him that he wanted to sell and that the Appellant had then said he would buy, that he had settled the terms of the contract; and that he wrote out the contract, which was to be signed by both parties, on the same day and that he subsequently obtained the signatures of the Respondent and the Appellant. The Appellant gave evidence that on the 5th July, 1950, he had instructed the said broker to make the contract and had said that he would agree to it if the said Broker brought the Respondent's signature; that one or two days afterwards the said broker had brought three copies of the contract which bore the Respondent's signature and the broker's signature, that none of the said copies was stamped at that time, and that he then signed the three copies and kept one and affixed a stamp to it, after the broker left, about five minutes after signing it; he also gave evidence that the Respondent had failed to deliver the cloves and of the damage which he had thereby sustained. 20 30

6. In the course of his judgment the learned Judge said :—

“ The defence to this case is that the document on which the Plaintiff relies is a Broker's Note of the nature described in Article 41 in the First Schedule to the Stamp Duty Decree and, not having been stamped at the proper time, cannot be received in evidence. 40

The document in question resembles that produced in the Civil Case No. 21 of 1951—*M. Takim & Co. v. Fazal Kassam Velji.*

* * * * *

For the reasons given in *M. Takim & Co.*'s case I am of opinion that the document in the present case does not come within the purview of Article 41 above mentioned and can therefore be received in evidence.”

The learned Judge found for the Appellant and decreed that the Respondent pay to the Appellant the sum of Shs. 21,563 as damages, interest and costs. p. 16.

(As the case to which the learned Judge referred is also under appeal from the Court of Appeal for Eastern Africa, the reasons given therein by the learned Judge are already before the Judicial Committee in the Record of Proceedings in that case.)

7. The Respondent on the 15th January, 1952, lodged a Memorandum of Appeal to the Court of Appeal for Eastern Africa, the appeal was heard on the 28th October, 1952, and judgment was delivered on the 1st November, 1952. One judgment was delivered by the Court which, after considering a preliminary procedural objection by the Appellant (the Respondent before the Court of Appeal for Eastern Africa) and holding that it failed, dealt with the substantive question of law as follows :— p. 17.
p. 20-22.

“ As regards the merits, learned counsel for the Respondent has conceded that there is no substantial difference between the document relied on by the Plaintiff-Respondent to prove a contract of sale and the disputed document in Civil Appeal No. 40 of 1952 (*M. Takim & Co. v. Fazal Kassam Velji*). The issues of fact and law are the same in both appeals, and accordingly, the judgment in this appeal must follow our decision in the appeal last above cited, and we direct that an order be made in similar terms.” pp. 22, ll. 38-44.

8. In the result, the appeal was allowed with costs and the judgment of the High Court of Zanzibar was set aside, and the judgment with costs for the Respondent substituted therefor. p. 23.

9. The Respondent respectfully submits that the Decree of the Court of Appeal for Eastern Africa dated the 1st November, 1952, is right and right to be affirmed and that this appeal should be dismissed with costs, for the following, among other p. 27.

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REASONS

- (1) BECAUSE the document sued upon was a note or memorandum within the meaning of Article 41 (a) of the First Schedule of the Zanzibar Stamp Decree 1940.
- (2) BECAUSE the said document was not, in accordance with the said Decree, stamped at or before the time of execution.
- (3) BECAUSE the said document was not admissible in evidence unless, in accordance with the said Decree, it had been stamped at or before the time of execution.
- (4) BECAUSE of the other reasons given by the Court of Appeal for Eastern Africa.

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LEONARD CAPLAN.

In the Privy Council.

ON APPEAL

*from the Court of Appeal for Eastern
Africa.*

BETWEEN

POPAT HIRJI (Plaintiff) . *Appellant*

AND

FAZAL KASSAM VELJI
(Defendant) *Respondent.*

Case for the Respondent.

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