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~~VT 462~~
Zanzibar Zanzibar

1955

Nos. 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*

RECORD OF PROCEEDINGS

BIRCHAM & CO.,
WINCHESTER HOUSE,
100 OLD BROAD STREET,
LONDON, E.C.2,
Solicitors for the Appellant.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 COPTHALL AVENUE,
LONDON, WALL, E.C.2,
Solicitors for the Respondent.

**INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.**

13031

UNIVERSITY OF LONDON
W.C.1.

-4 JUL 1956

No. 14 of 1954.

In the Privy Council.

INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN

POPAT HIRJI (Plaintiff) *Appellant*

AND

FAZAL KASSAM VELJI (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

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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.*

RECORD OF PROCEEDINGS

10

No. 1.
PLAINT.

HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.
In the High Court.
Holden at Zanzibar.
Civil Case No. 15 of 1951.

*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

POPAT HIRJI Plaintiff

versus

FAZEL KASSAM VELJI Defendant.

No. 1.
Plaint,
26th
April 1951.

1. The Plaintiff above-named states as follows :—

20 Both the Plaintiff and the Defendant are Indian Merchants residing and carrying on business *inter alia* as Clove dealers at Mbuyuni and Mlandege respectively in the Town of Zanzibar.

2. By a Contract in writing dated 5th July, 1950, copy translation whereof in English is annexed hereto and marked "A," the Defendant sold and agreed to deliver to the Plaintiff 10,000 lbs. of fair quality Cloves at the price of Shs.110/- per 100 lbs. Delivery of the 10,000 lbs. of fair quality Cloves was to be given by the Defendant to the Plaintiff on 31st March, 1951, on payment of the price thereof.

30 3. That in spite of repeated demands made by the Plaintiff the Defendant failed and neglected to deliver the said 10,000 lbs. of fair quality Cloves or any at all. The Plaintiff has thereby suffered damage.

*His
Britannic
Majesty's
Court for
Zanzibar.*

*In the
High
Court
Holden at
Zanzibar.*

No. 1.
Plaint,
26th
April 1951,
continued.

4. The Plaintiff is entitled to damages at the rate of Shs.200/- per every 100 lbs. of Cloves, being the difference between Shs.110/- the contract price and Shs.310/- the Market price on 31st March, 1951.

5. By his Advocates' letter dated 4th April, 1951, the Plaintiff demanded from the Defendant payment of Shs.20,000/- being the difference between Shs.110/- the contract price and Shs.310/- the market price on 31st March, 1951, per 100 lbs. for the said 10,000 lbs. of fair quality Cloves which the Defendant sold and agreed to deliver to the Plaintiff under the contract referred to in paragraph 2 hereof.

6. The Defendant has failed and neglected to pay to the Plaintiff 10 the said sum of Shs.20,000/- or any part thereof.

The Plaintiff therefore prays for judgment against the Defendant for Shs.20,000/- and costs, and for interest on the decretal amount at 6% per annum till payment.

(Sgd.) POPAT HIRJI,
Plaintiff.

I, Popat Hirji, the Plaintiff above-named hereby declare that what is stated above is true to the best of my knowledge, information and belief.

(Sgd.) POPAT HIRJI, 20
Plaintiff.

(Sgd.) WIGGINS & STEPHENS.

Advocates for Plaintiff.

Dated at Zanzibar this 26th day of April, 1951.

No. 1A.
Exhibit
"A" to
Plaint.

No. 1A.
EXHIBIT "A" to PLAINT.

"A"

Translation
Local Contract

Translation
Local Contract Note.

Original
Duplicate } Copy
Triplicate } 30

Contract Note No. 316/50

Popat Mitha Poonja—Broker

Phone No. 377 P.O. Box No. 400 Tel Add "Parbtani"
Zanzibar date 5th July, 1950.

The goods mentioned in this Contract have been sold by Sheth Fazal Kassam Velji to Sheth Popatbhai Hirji through broker Popat Mitha Poonja under the undermentioned conditions.

Quality of goods Pemba or Zanzibar Cloves those that given by the seller.

Quantity	10,000 lbs. i.e. lbs. ten thousand net.	<i>His</i>
Packing	In gunny bags.	<i>Britannic</i>
Delivery	Ex godown or customs.	<i>Majesty's</i>
Samples	Fair quality.	<i>Court for</i>
Duty paid or transhipment		<i>Zanzibar.</i>
Price	Shs.110/- in words one hundred and ten shillings per 100 lbs.	<i>In the</i>
Period	Immediate cash.	<i>High</i>
Ready or forward	(Buyer) binds himself to weigh on 31st March, 1951.	<i>Court</i>
10 Shipment		<i>Holden at</i>
Other conditions	10,000 lbs. net Cloves buyer binds himself to weigh at seller's place on 31st March, 1951. Buyer and seller have entered into a binding signed transaction.	<i>Zanzibar.</i>
Broker's signature .. .	(Sgd.) POPAT MITHA POONJA.	— No. 1A. Exhibit "A" to Plaint, <i>continued.</i>

NOTE.—The above-mentioned goods have been sold according to the above-written conditions which are acceptable to us. Due to war or accident if goods do not arrive the Seller is not responsible but buyer is to take delivery whenever goods arrive according to the shipment written in the contract.

Seller's signature (Sgd.) FAZAL KASSAM VELJI.

Buyer's signature (Sgd.) POPAT HIRJI.

No. 2.
SUMMONS.

No. 2.
Summons,
27th
April 1951.

HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.

In the High Court.

Holden at Zanzibar.

Civil Suit No. 15 of 1951.

30 POPAT HIRJI, Mbuyuni, Zanzibar . . . Plaintiff

versus

FAZEL KASSAM VELJI, Mlandege, Zanzibar . Defendant.

To Fazel Kassam Velji, the above-named Defendant.

WHEREAS the above-named Plaintiff has instituted a suit against you for the reliefs specified in the Plaint a copy whereof is hereunto annexed and for the costs of this action, you are hereby summoned to appear in this Court in person, or by an advocate duly instructed, and

*His
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Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the 7th day of May, 1951, at 9.30 o'clock in the forenoon, to answer the claim ; should you appear and dispute the claim the Court will proceed to give directions for the disposal of the suit but in default of your appearance on the day before mentioned the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this 27th day of April, 1951.

(Sgd.) J. F. DASTUR, 10
Registrar.

No. 2.
Summons,
27th
April 1951,
continued.

NOTICE.—1. Should you apprehend your witness will not attend of their own accord you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim you should pay the money into Court together with the costs of the suit to avoid execution of the decree which may be against your person or property or both.

Court costs Shgs.530-00. 20
Counsel's costs Shgs.112-50.

No. 3.
Defence,
25th June
1951.

**No. 3.
DEFENCE.**

IN HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.
In the High Court.
Holden at Zanzibar.

Civil Case No. 15 of 1951.

POPAT HIRJI Plaintiff

versus

FAZAL KASSAM VELJI Defendant. 30

1. Each and every allegation as set forth in the Plaint is denied save as is herein specifically admitted.

2. The Defendant admits paragraph 1 of the Plaint.

3. As regards paragraph 2 of the Plaint the Defendant denies that the " writing dated the 5th July, 1950 " is a contract or that same has got any legal effect. He further maintains that the said writing is inadmissible in evidence and is unenforceable in law.

4. The Defendant denies that the Plaintiff has suffered any damage or that the Plaintiff is entitled to recover any damage as against him and he further denies that the market price of cloves on the 31st March 1951 was Shs.310/- per hundred pounds.

*His
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Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

5. The Defendant denies that the Plaintiff has any right of action against him.

WHEREFORE the Defendant prays that the Plaintiff's suit be dismissed with costs.

Dated this 25th day of June, 1951.

No. 3.
Defence,
25th June
1951,
continued.

10

(Sgd.—in Gujarati) FAZAL KASSAM VELJI,
Defendant.

I, FAZAL KASSAM VELJI, the Defendant above-named hereby declare that what is stated above is true to the best of my knowledge, information and belief.

(Sgd.—in Gujarati) FAZAL KASSAM VELJI
Defendant.

Drawn By :—O'BRIEN KELLY & HASSAN,
Advocates, Mombasa.

20

Filed By :—FAZAL KASSAM VELJI,
Defendant, Zanzibar.

No. 4.
AMENDED DEFENCE.

No. 4.
Amended
Defence,
20th July
1951.

IN HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.
In the High Court.
Holden at Zanzibar.

Civil Case No. 15 of 1951.

POPAT HIRJI Plaintiff

versus

FAZAL KASSAM VELJI Defendant.

30

(1) Each and every allegation as set forth in the Plaint is denied save as is herein specifically admitted.

(2) The Defendant admits paragraph 1 of the Plaint.

(3) As regards paragraph 2 of the Plaint the Defendant denies that the " writing dated the 5th July 1950 " is a contract or that same has got any legal effect. He further maintains that the said writing is a note or memorandum made by a Broker and not being duly stamped is not admissible in evidence and therefore is unenforceable in law.

*His
Britannic
Majesty's
Court for
Zanzibar.*

*In the
High
Court
Holden at
Zanzibar.*

No. 4.
Amended
Defence,
20th July
1951,
continued.

(4) The Defendant denies that the Plaintiff has suffered any damage or that the Plaintiff is entitled to recover any damage as against him and he further denies that the market price of cloves on the 31st March 1951 was Shs.310/- per hundred pounds.

(5) The Defendant denies that the Plaintiff has any right of action against him.

WHEREFORE the Defendant prays that the Plaintiff's suit be dismissed with costs.

Dated this 20th day of July, 1951.

(Sgd.—in Gujarati) FAZAL KASSAM VELJI, 10
Defendant.

I, FAZAL KASSAM VELJI, the Defendant above-named hereby declare that what is stated above is true to the best of my knowledge, information and belief.

(Sgd.—in Gujarati) FAZAL KASSAM VELJI,
Defendant.

Drawn by :—O'BRIEN KELLY & HASSAN
Advocates, Mombasa.

Filed by :—FAZAL KASSAM VELJI,
Defendant, Zanzibar. 20

No. 5.
Pro-
ceedings
before
Hearing,
26th April
to 1st
October
1951.

No. 5.

PROCEEDINGS before Hearing.

IN HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.
In the High Court.
Holden at Zanzibar.

Civil Case No. 15 of 1951.

POPAT HIRJI Plaintiff

versus

FAZAL KASSAM VELJI Defendant.

26.4.51

30

Plaint admitted.

(Sgd.) J. M. GRAY,
C.J.
26.4.51.

7.5.51

P. S. Talati for Plaintiff.

Defendant in person—does not admit debt.

W.S. on or before 28.5.51.

Mention 11.6.51.

(Sgd.) J. M. GRAY,
C.J.
7.5.51.*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

No. 5.

Pro-
ceedings
before
Hearing,
26th April
to 1st
October
1951,
continued.

11.6.51

10 *P. S. Talati* for Plaintiff.

Defendant asks for extension of time to file defence.

W.S. on or before 25.6.51 (final).

Mention 9.7.51. Costs of today to Plaintiff in any event.

(Sgd.) J. M. GRAY,
C.J.
11.6.51.

9.7.51

P. S. Talati for Plaintiff.

Defendant in person.

20 *P. S. Talati* asks for amendment of defence.

No particulars given regarding facts alleged in last sentence of para. 3.

Order—Defence to be amended by giving particulars in para. 3 thereof setting forth the facts showing the writing to be inadmissible in evidence and unenforceable in law.

Amendment on or before 23.7.51.

Mention 30.7.51.

(Sgd.) J. M. GRAY,
C.J.
9.7.51.

30 30.7.51

P. S. Talati for Plaintiff.

Defendant in person.

Amended W.S. filed.

Mention 28.8.51.

(Sgd.) J. M. GRAY,
C.J.
30.7.51.

His Britannic Majesty's Court for Zanzibar. In the High Court Holden at Zanzibar. 28.8.51
K. S. Talati for Plaintiff.
 Defendant in person.
 Mention 1.10.51.
 (Sgd.) J. M. GRAY,
 C.J.
 28.8.51.

1.10.51
 No. 5. *K. S. Talati* for Plaintiff.
 Defendant in person. 10
 Hearing 31.10.51.
 (Sgd.) J. M. GRAY,
 C.J.
 1.10.51.

No. 5. Proceedings, before Hearing 26th April to 1st October 1951, continued.

**No. 6.
 PROCEEDINGS.**

No. 6. Proceedings, 31st October 1951.

**HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.
 In the High Court.
 Holden at Zanzibar.**

Civil Case No. 15 of 1951. 20

POPAT HIRJI Plaintiff
versus
 FAZAL KASSAM VELJI Defendant.

31.10.51
K. S. Talati for Plaintiff.
 Defendant in person.

Plaintiff's Evidence.

PLAINTIFF'S EVIDENCE.

No. 7.
 1st Witness. Suleman Gulam-hussein Bhaloo, 31st October 1951.

No. 7.

SULEMAN GULAMHUSSEIN BHALOO (Moh.), sworn.

Broker, Clove Growers Association. Market value of cloves on 30 31.3.51 was 310/- per 100 lbs.

(N.B.—This witness evidence interposed before pleadings read.)

(By consent of parties C.G.A. reports for weeks ending 29.3.51 and 6.4.51 admitted and also evidence of Mohanlal Karumshanker Jani and Madhavji Kalidas in Civil Case 21/51 admitted as evidence in this case.)

See page 13 in this record.

Pleadings read.

Issues as in Civil Case 21/51.

No. 8.

POPAT HIRJI (Moh.), sworn.

His
 Britannic
 Majesty's
 Court for
 Zanzibar.
 In the
 High
 Court
 Holden at
 Zanzibar.
 Plaintiff's
 Evidence.

Live at Mchangani, Zanzibar. Deal in cloves. I made a contract with Defendant for purchase of Cloves. I met Popat Mitha, who is a broker, at the Customs. There were 10-15 people gathered there. He told me there were 100 bags of cloves to be sold containing 10,000 lbs. of cloves. He told me cloves belonged to Defendant. He told me he would go and speak to Defendant. Within five minutes he returned, Popat Mitha told me there were 10,000 lbs. of cloves at 110/- per 100 lbs. to be delivered on 31/3/51. This happened on 5/7/50. I told him to go and make the contract and if he brought Defendant's signature, I would agree to it. Then I went to my house to have lunch. Popat Mitha came to my house one or two days after. He brought a contract in three copies. The contract bore Defendant's signature. I signed three copies. Broker gave me one copy and took away two copies. As there was no stamp on my copy, I affixed a shilling stamp. I affixed it on the day the contract was brought to me. I affixed it about five minutes after signing it. Broker took away two copies. When the broker left, I looked at the contract and saw there was no stamp. So I stamped it. I sold these cloves to Manji Hirji and Janmohamed Somji. I sold them at a profit of 5,000/-.

No. 8.
 2nd
 Witness.
 Popat
 Hirji,
 31st
 October
 1951.

On 31.3.51 Defendant did not deliver cloves. I sent him a note two or three days before. Exh. 1 is the note. Exh. 2 is the contract I signed

(exh. 2 = Exh. 5 in Civil Case 21/51)

I sent Exh. 1 on 22.3.51. Defendant did not deliver cloves on 31.3.51. On 31.3.51 price of cloves was 310/-. When Defendant failed to deliver, I paid them 5,000/- and I still owe them 10,000/-. I refer to endorsement on back of Exh. 2, which shows my sale to Manji Hirji. I made this as a memorandum of the transaction. I wrote the date 23.12.50. When I sold these cloves, I wrote these words. On 28.3.51 my advocates wrote to Defendant asking for delivery of cloves. Exh. 3 is the letter. On 4.4.51 my advocates wrote demanding the difference in price. Exh. 4 is the letter. I have only read one or two books in Gujarati. Since the letters of demand Defendant has made no offer to me. After the institution of the suit he made an offer to me. He said he would give me 8,000/-.

XXd. Hassan :

I have got a licence for shamba and also a licence for cloves. I had a licence to deal in cloves in 1950. I took out a licence of 150/- in 1950. (Talati objects—It has not been alleged in pleadings that Defendant is unlicensed).

Hassan :

I am examining this witness as to credibility. [I refer to O.8 r. 2 of Civ. Pro. Rules and to the case of *North Western Salt Co. v. Electrolytic Alkali Co. Ltd.* [1914] A.C. 461 I cannot see how this cross-examination can be treated otherwise than as cross-examination to prove illegality of the contract. If defence wished to raise question of illegality on this score, they should have raised it in their pleadings. I disallow questions on this subject.]

*His
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Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.
—
Plaintiff's
Evidence*

When broker brought me Exh. 2, his signature was on contract. When he delivered Exh. 2 to me, there was no stamp on it. I sold benefit of contract to Bhanji Hirji and Janmohamed for 5,000/-, which was paid to me in cash. They have not given up their benefit under this contract for sum of 3,500/-. I have not returned 3,500/- to them and they have not given up the benefit of their assignment. I have refunded them 5,000/-. After this case has been disposed of I have to give them 10,000/-. I have no receipt for the sum I have refunded. I paid cash. They gave me 5,000/- on day I sold cloves to them. I have taken back the contract. That is all. There might be a record in my books. I have not brought 10 any books to court.

No. 8.
2nd
Witness.
Popat
Hirji,
31st
October
1951,
continued.

(*Talati* : I was only served with notice to produce this morning. They could not be produced this morning. I admit I received notice before 9 a.m. My client lives in Mchangani, Ngambo).

I am claiming damages. I owe these people 10,000/-. I admit my damages are 5,000/- but I still owe them 10,000/-. After broker had left, I read Exh. 2 and saw there was no stamp and so I affixed the stamp. I knew a stamp was required. Before this I purchased 50 bags of cloves belonging to Miwani.

No re-xn.

20

To Court :

I see second endorsement on Exh. 2. When I had written this, I gave the document to Bhanji Hirji. I paid Bhanji Hirji 5,000/- and he gave me back Exh. 2 and I told him I would sue Defendant and then give him 10,000/-.

No. 9.
3rd
Witness.
Popat
Mitha,
31st
October
1951.

No. 9.

POPAT MITHA (Moh.), sworn.

3rd Witness.

Broker. In July 1950 I arranged for sale of cloves between Plaintiff and Defendant. On 5.7.50, Defendant told me he wanted to sell and Plaintiff told me he wanted to buy. Defendant spoke to me first. Then Plaintiff said he would buy. The quantity agreed to be sold was 10,000/- and delivery to be given on 31.3.51. The contract was to be signed by both parties. I wrote the contract. I wrote it the same day. After writing contract I obtained signatures of both parties. I first obtained Defendant's signature and then I obtained Plaintiff's signature. Exh. 2 is the contract. Three copies were made of Exh. 2. I gave one to Defendant and one to Plaintiff and one I kept. I had no authority to sign this contract on behalf of either party. They each had to sign for themselves. I have a book in which I keep printed forms of contract. Three 40 forms are used for each contract. When I have written the contract, I pull all three forms out of the book and file my own copy. Seller has to pay commission. When the seller delivers to buyer, the buyer pays

commission to me. I do not know if there was any delivery of cloves to Plaintiff on 31.3.51. Plaintiff told me he had not received delivery. I went and spoke to Defendant, who said he would see about it. I obtained Defendant's signature to Exh. 2 at his godown near the Customs. I obtained Plaintiff's signature at his house. After Plaintiff signed Exh. 2 I handed over one copy of contract to him. I gave the other copy to Defendant and I filed other copy.

XXd. Hassan :

10 I wrote Exh. 2 on 5.7.50 at my house. When I negotiated this contract, I did not act as agent for Plaintiff or Defendant. I acted as broker for both parties. After I had settled terms of contract. Exh. 3 is original of contract. It is top copy of contract. I gave Exh. 5 to Defendant. I do not put any stamp on contracts like these. It is for the parties to do so. It is in their discretion whether they put a stamp on it.

No re-exn.

No. 10.

BHANJI HIRJI (Moh.), sworn.

Live in Zanzibar at Mchangani. Plaintiff's brother. I do business with him in cloves. I have dealings with him. Last Dec. I purchased 20 cloves from him. I purchased the cloves he had bought from Defendant. I purchased them for 5,000/-. It was written on reverse of his contract with Defendant. The consideration was 5,000/- paid to Plaintiff. Second endorsement on back of Exh. 2 is the contract. These cloves were sold to me and my partner Janmohamed Somji. After I paid 5,000/-, he gave me Exh. 2. Delivery was to be on 31.3.51. I went to Defendant to ask for these cloves. Plaintiff did not go with me. He did not give me the cloves. Then I went to Plaintiff and told him I had not got the cloves. I told Plaintiff to give me my right. Plaintiff refunded me 5,000/-. He then told me he would take legal proceedings against Defendant and that 30 whatever he got he would give me. Then I returned Exh. 2 to Plaintiff. I never took any letter from Plaintiff to Defendant.

XXd. Hassan :

The 5,000/- may be in my book of a/c. I cannot say at present. 5,000/- was given in cash by me to Plaintiff and Plaintiff repaid me in cash. He gave me a promise and I am entitled to 10,000/- acc. to the price ruling in the market. I and my partner are entitled to this 10,000/-. I paid 5,000/- to purchase the cloves and the money was refunded to me. Janmahomed Somji is my partner. He is man now shown to me in Court.

No re-exn.

Case for Plaintiff.

DEFENDANT'S EVIDENCE.

No. 11.

JANMAHOMED SOMJI (Moh.), sworn.

I see second endorsement on Exh. 2. Bhanji Hirji asked me whether I wanted to share in Exh. 2 after reading it to me. I agreed to take a share in it. I agreed to take a half share. The price paid for the benefit of

*His
Britannic
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In the
High
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Holden at
Zanzibar.*

*Plaintiff's
Evidence.*

(S/c 2 of 5)

No. 9.
3rd
Witness.
Popat
Mitha,
31st
October
1951,
continued.

No. 10.
4th
Witness.
Bhanji
Hirji,
31st
October
1951.

*Defendant's
Evidence.*

No. 11.
Janma-
homed
Somji,
31st
October
1951.

40

*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

*Defendant's
Evidence.*

*No. 11.
Janma-
homed
Somji,
31st
October
1951,
continued.*

this contract was 5,000/-. I contributed 2,500/-. The money was paid to Plaintiff. Bhanji Hirji said he would pay the 5,000/- and I would pay him 2,500/- later. I later paid him 2,500/-. We did not get the cloves. Plaintiff told us he would pay us our money. He refunded to us our 5,000/-. He told us he would pay us 10,000/- more. Defendant came and a companion came yesterday to my shop and told me I should have to give evidence. There was no conversation between us except to say I would have to give evidence in court. I did not tell them we had been paid 3,500/- and the contract had been cancelled. I told them I would say in court what I have said in court. I agreed to give evidence and said I would give the evidence I have given. Defendant brought me here in his car today. Yesterday they brought me into Zanzibar from my house. My house is some distance from this court—15 miles from the court. I agreed to give evidence when they brought me in my car. I inquired and I was told I should not appear in court until I got a notice from Government. Plaintiff told us he would give us money in this case. I am going to demand money from him. I have not made a written demand of Plaintiff.

XXd. Talati :

Money I expect from Plaintiff is money I expect as damages for breach of contract—this 10,000/-. 20

No re-xn.

Case for Defendant.

*No. 12.
Defen-
dant's
Counsel,
31st
October
1951.*

**No. 12.
DEFENDANT'S COUNSEL.**

Hassan addressess court :

Is Exh. 2 a Note under Art. 41 of the 1st Sched. of Stamp Decree or Agreement under Art. 5 ?

It comes under Art. 41 and is chargeable with 0/20.

14 Bom. 102 at p. 105 (broker and buyer signed). E.A.C.A. Civ. App. 3/49—*Haridas Mathuradas Rughani v. Lakhani Lt.* (broker, seller and 30 buyer signed).

Kenya Stamp Ord. ss. 4, 39, Art. 5 Exemption (a)—Art. 42.

Zanzibar Stamp Decree ss. 4, 39, Art. 5 (a), 41.

Zanzibar Stamp Decree s. 19, Proviso. (No stamp on contract at time broker signed.)

No. 13.
PLAINTIFF'S COUNSEL.

Talati addresses court :

This is a contract. Memo of broker is duly stamped.

7 Ex. Cases 211 at p. 214.

Brokers have no authority to sign.

Mews Digest XIX 666 (*Adams v. Morgan*) 26 Q.B.D. 651 (dominant intention of instrument).

7 Q.B.D. 172.

10 Broker's memo, meaning of—Halsbury vii.

90 Art. 123 "execution" is defined in s. 2 (ii) of Stamp Decree but see 19 Bom. 638 (stamped at time of delivery). This document stamped at time of delivery. 24 Mad. 259 at p. 261 (simultaneous stamping at time of execution).

Onus of proof of proving document is not duly stamped is on Defendant—114 E.R. 670.

(1929) 124 I.C. 53 at p. 54.

(1932) 141 I.C. 169.

42 E.R. 674 at p. 675.

20 (1929) 52 All 169.

Damages—Contract Decree s. 73 (U. (a)).

(1914) A.C. 514—*Williams v. Agias*.

(1918) 41 Mad. 709—*Haji Ismail v. Wilson*.

(nominal damages).

(Sgd.) J. M. GRAY, C.J.,

31.10.51.

No. 14.

EVIDENCE of Madhavji Kalidas and Mohanlal Karunashankar Jani, 4th and 5th Witnesses in Civil Case No. 21 of 1951 of the High Court, Zanzibar, admitted in this Case.

30 [See Record P.C. Appeal No. 13 of 1954—Pages 12 to 14]

*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

No. 13.
Plaintiff's
Counsel,
31st
October
1951.

No. 14.
Evidence
of
Madhavji
Kalidas and
Mohanlal
Karuna-
shankar
Jani, 4th
and 5th
Witnesses
in Civil
Case
No. 21 of
1951 of the
High
Court,
Zanzibar,
admitted,
31st
October
1951.

His
 Britannic
 Majesty's
 Court for
 Zanzibar.
 In the
 High
 Court
 Holden at
 Zanzibar.

No. 15.
 Judgment,
 28th
 November,
 1951.

No. 15.

JUDGMENT.

HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.

In the High Court.

Holden at Zanzibar.

28.11.51.

Talati for Plaintiff.

Defendant in person.

Civil Case No. 15 of 1951.

POPAT HIRJI *and* FAZAL KASSAM VELJI.

10

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 Stamp Duty Decree and, not having been stamped at the proper time, cannot be received in evidence.

The document in question resembles that produced in Civil Case No. 21 of 1951—*M. Takim & Co. v. Fazal Kassam Welji*. Like the document in that case it contains under the printed heading "Other conditions" the words "The seller and the buyer have made bargain with signature" which are followed by the Broker's signature. Below this signature appear in print words to the same effect as in *M. Takim & Co.'s* case, 20 to wit, "the above-mentioned goods have been sold on the conditions written above, which are acceptable to us." These words are followed by the signatures of the seller and buyer.

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 Defendant has not delivered the goods and there therefore remains to be considered the question of damages. The Plaintiff sold to two other persons the cloves referred to in the contract at a profit of 5,000/-. On the date when the cloves were due for delivery under the contract the 30 market price was 310/- per 100 lbs., which would have given the Plaintiff a profit of 20,000/-.

Illustration (a) to section 73 of the Contract Decree would appear to suggest that this latter sum is the sum which I ought to award. Section 73 says the measure of compensation shall be the loss or damage, "which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it." Illustration (a) says that the measure of damages on breach of a contract such as the present one is the sum (if any) by which the contract price falls short of the price at which the cloves might have been obtained 40 "when they ought to have been delivered."

With regard to Illustrations to enactments the Privy Council has declared in *Mahomed Syedol Arafin v. Yeoh Ooi Gark* [1916] 2 A.C. 515, at p. 781, that "it is the duty of a Court of law to accept, if that can be done, the illustrations given as being of relevance and value in the construction

of the text. The illustrations should in no case be rejected because they do not square up with ideas possibly described from another system of jurisprudence as to the law with which they and the sections deal. And it would require a very special case to warrant their rejection on the ground of their assured repugnancy to the sections themselves. It would be the very last resort to make such an assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

- 10 In *Jamal v. Moola Dawood & Sons* (1915) 43 Cal. 493 the Privy Council was called upon to apply section 73 of the Indian Contract Act (which corresponds to s. 73 of our local Decree) to the case of a suit by a vendor on breach of a contract for sale of shares. Following the decisions in *Rodocanachi v. Milborn* (1886) 18 Q.B.D. 67 and *Williams v. Agius* [1914] A.C. 510 the Board held that the loss to be ascertained was the loss at the date of breach and the fact that the other party obtains the benefit of another contract does not entitle the party committing the breach to the benefit of this latter contract. This decision was followed by a full Bench of the Madras High Court in *Hajee Ismail & Co. v. Wilson & Co.*
- 20 (1917) 41 Mad. 709. This was a case of a buyer suing for non-delivery of goods and the Court held that the measure of damages was that set forth in Illustration (a) to section 73 of the Indian Contract Act, though it should be noted that that was a case in which the buyer had made no attempt to purchase similar goods in the market or elsewhere.

No. 15.
Judgment,
28th
November
1951,
continued.

- In the judgment delivered by Lord Esher in *Rodocanachi v. Milborn*, which was referred to with approval in the House of Lords in *Williams v. Agius*, it was laid down that the law does not take into account in estimating the damages anything that is accidental as between the Plaintiff and the Defendant, as for instance a contract entered into by
- 30 the Plaintiff with a third party. As the noble Lord said, if the Plaintiff had sold the goods before the breach for more than the market price at the date of breach, he could not recover damages on that footing and therefore it would be unjust if that market price did not govern the matter when he had sold for less. In estimating the damages for non-delivery of goods under a contract of sale the market price at the date of breach is the decisive element.

- I can see nothing in the facts of the present case which makes the rule laid down in *Rodocanachi v. Milborn* and *Williams v. Agius*, inapplicable. It is true that the market price of cloves has risen to more or less treble
- 40 the contract price between the date of this contract and the due date of delivery. The circumstances may be abnormal, but that is not a reason for not enforcing the rule laid down in the cases just cited.

Judgment will therefore be for Plaintiff for 20,000/- and costs and interest on the decretal amount as prayed.

(Sgd.) J. M. GRAY,

C.J.

28.11.51.

*His
Britannic
Majesty's
Court for
Zanzibar.
In the
High
Court
Holden at
Zanzibar.*

HIS BRITANNIC MAJESTY'S COURT FOR ZANZIBAR.

In the High Court.

Holden at Zanzibar.

No. 16.
Decree,
28th
November
1951.

Civil Suit No. 15 of 1951.

POPAT HIRJI Plaintiff

versus

FAZAL KASSAM VELJI Defendant. 10

THIS SUIT coming on this day for final disposal before The Honourable Sir John Milner Gray, Kt. Chief Justice of this Court in the presence of Mr. K. S. Talati, Advocate for the Plaintiff and of Mr. S. F. Hassan Advocate for the Defendant IT IS ORDERED that the Defendant do pay to the Plaintiff the sum of Shs.20,000/- and Shs.1,563/- the costs of this suit with interest at the rate of six per cent. per annum on the total amount of this decree from this date to the date of realization Total Shs. 21,563/-.

								Shs.
Principal	..	..	..	..	..	..	..	20,000 20
Interest	..	..	..	..	..	..	..	—
Court costs	..	..	..	..	..	..	..	649
Counsel's costs	..	..	..	..	..	..	..	911
Cost of Decree	..	..	..	..	..	..	..	3
							Total	21,563

Given under my hand and the Seal of the Court this 28th day of November, 1951.

(Sgd.) J. M. GRAY,
Chief Justice.



No. 17.

MEMORANDUM OF APPEAL.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.
Civil Appeal No. 47 of 1952.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 17.
Memo-
randum
of Appeal,
15th
January
1952.

(From Original Civil Case No. 15 of 1951 of His Britannic Majesty's High Court of Zanzibar.)

FAZAL KASSAM VELJI (Original Defendant) Appellant

versus

POPAT HIRJI . . . (Original Plaintiff) Respondent.

10 The above Appellant hereby prefers this Appeal to this Honourable Court from the Judgment of His Britannic Majesty's High Court of Zanzibar in Civil Case No. 15 of 1951 on, *inter alia*, the following grounds:—

1. That the Learned Chief Justice erred in holding that the Agreement sued upon was not a " Note or Memorandum sent by a Broker or Agent to his Principal intimating the purchase or sale on account of such Principal."

2. That the Learned Chief Justice erred in holding that the Agreement sued upon was not liable to Stamp Duty in accordance with Article 41 of the Zanzibar Stamp Decree 1940.

20 3. Whatever may have been the effect of the final paragraph headed " Note " in the local Contract Note as between the parties, the fact remains that the document came into existence and was executed as a " local Contract Note " evidencing an effective sale of goods and the conditions of such sale.

4. That the Learned Chief Justice erred in holding the document sued upon could in Law be distinguished from the document sued upon in Civil Appeal No. 3 of 1949 (Haridas Mathuradas Vagani trading as Vagani and Company, Appellant *versus* Lakhani Limited, Respondent) of this Court and further erred in Law in not following the decision of this Court in that Appeal.

30 5. That the Judgment is against the weight of Law and evidence.

WHEREFORE the Appellant humbly prays that this his Appeal be allowed and that the Judgment of the learned Chief Justice be set aside with costs in His Britannic Majesty's High Court of Zanzibar and in this Court.

Dated at Mombasa this Fifteenth day of January 1952.

(Sgd.) ?

O'BRIEN, KELLY & HASSAN.

Filed by :—O'BRIEN, KELLY & HASSAN,
Advocates,
Mombasa.

40

*In the
Court of
Appeal for
Eastern
Africa.*

No. 18.
PRESIDENT'S NOTES.

Civil Appeal No. 47 of 1952.

No. 18. 28.10.1952
President's
Notes,
28th
October
1952.

CORAM : NIHILL, P.
WORLEY, V.-P.
PELLY MURPHY, Ag C.J.

O'Brien Kelly for Appellant.

Talati for Respondent.

Talati :

10

Preliminary objection. Memorandum of Appeal was filed with Deputy Registrar, Zanzibar, on 2nd February, 1952. There should have been an annexure—a copy of the judgment and a copy of the decree. Fees for drawing decree by Plaintiff-Respondent on 30.11.51. We filed an application for execution on 23.1.52. So decree must have been in existence by then. Appellant should have obtained a certified copy of the decree and filed it with the Memo. of Appeal on 2.2.52.

In May 1952 Deputy Registrar Zanzibar sent certified copy of decree to Registrar Nairobi.

Appellant got a certified copy of decree on 8.2.52.

20

Civil Appeal 88 of 1952.

O'Brien Kelly :

I do not know the facts with certainty, re Rule 6. I don't concede any of the facts. I do not know them.

Talati :

Something was done by Registrar not by the Appellant. I concede time had not run out by time certified copy of decree was filed. I am not giving evidence. I am only examining the documents.

Mr. O'Brien Kelly would like to speak to Mr. R. L. Patel his local agent.

30

On Merits :

O'Brien Kelly :

I rest my argument on arguments in connected appeal.

Mr. Talati :

Evidence in this case is at pp. 9-11 i.e. evidence of broker and buyer. Concede the two documents the same. The fact that spaces provided for buyer and seller's signatures does not mean we just conformed when you take into account the words the buyer and seller have made bargain.

“ have ” must not be construed too strictly in past tense.
O'Brien Kelly : No reply.

(Adjourned.)

12 noon.

We hear *O'Brien Kelly* again after he has consulted with his local agent Mr. R. L. Patel.

O'Brien Kelly :

I have now consulted with Registrar and R. L. Patel concede technical breach of Rule 6 (2).

10 2nd February 1952. Registrar made a note that Memo of Appeal had been filed and fees paid.

6th February 1952. Letter from R. L. Patel to Registrar asking for certified copy of decree for purpose of appeal. Certified copy of decree was never supplied, but was attached by Registrar on 8th February. Also understand the requisite copy of decree was in existence since 30th Nov. 1951.

“ Shall be accompanied ”.

20 This is a pure technicality. If there was a lapse of half an hour or even a minute the rule would still be broken. Must give rule a reasonable period if papers are in order before appealable time has expired and before appeal is forwarded to Central Registry.

When eventual file in Central Filing, papers were in order. Appeal was filed in time. Everything was eventually attached in time.

Talati :

Civil Appeal No. 88 of 1952. Counsel asked for leave to amend the Memorandum of Appeal.

Court :

In previous cases no decree had been drawn up on date when Memo of Appeal was filed.

30 Fact that decree was in existence does not cure defect.

Neither does fact that Appellant might have withdrawn his appeal and file a fresh one within time affect position. He did not do so.

Judgment Reserved.

(Sgd.) J. H. B. NIHILL, P.

1.11.52. Bench as before.

Ahmed Ayub for *Kelly* for Appellant.

Talati for Respondent.

Judgment of Court read by the President.

Order made in terms of the judgment in Civil Appeal No. 40/52.

40

(Sgd.) J. H. B. NIHILL, P.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 18.
President's
Notes,
28th
October
1952,
continued.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 19.
Judgment,
1st
November
1952.

No. 19.

JUDGMENT.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.
Civil Appeal No. 47 of 1952.

(From original Decree in Civil Case No. 15 of 1951 of H.B.M. High Court
of Zanzibar at Zanzibar).

FAZAL KASSAM VELJI Appellant

versus

POPAT HIRJI Respondent.

In this appeal the advocate for the Respondent has raised a preliminary objection to the competence of the appeal on the ground that the Appellant did not comply with the provisions of Rule 6 (2) (b) of the East African Court of Appeal Rules, 1925, which require that in the event of an appeal from a decree issued in pursuance of a judgment, the memorandum of appeal shall be accompanied by both a copy of such decree and a copy of the judgment. The advocate for the Appellant has conceded that there was on his part a technical failure to comply with this Rule, but has submitted that the record of appeal as now before the Court is correct in all respects and contains all the requisite documents, and that this is a case where the Court should exercise its discretion and regard the documents as having been duly filed. 10 20

The history of this matter is as follows. The judgment against which the Appellant seeks to appeal was given in H.B.M's. High Court of Zanzibar on 28th November 1951, and the memorandum of appeal is dated as at Mombasa 15th January 1952, but was actually filed in the office of the Deputy Registrar of this Court at Zanzibar on 2nd February 1952. At that date the relevant provision was Article 37 of the Zanzibar Order in Council, 1924, the amendment effected by section 2 of the Zanzibar Order in Council 1952 not having come into force until 5th April 1952. Article 37 therefore read: "Unless otherwise expressly provided by any law for the time being in force in Zanzibar an appeal shall lie from the decrees or any part of the decrees and from the orders of the High Court passed or made in the exercise of its original jurisdiction to the Court of Appeal." And in the Civil Procedure Decree (Chapter 4) which governs proceedings in the High Court, i.e., in both H.B.M's. High Court for Zanzibar and in H.H. the Sultan's Court, there is in section 2, a definition of decree of which the relevant words are that it shall mean the formal expression of an adjudication. The adjudication against which the Appellant seeks to appeal was a judgment given by the High Court of Zanzibar in its original jurisdiction awarding the Plaintiff 20,000/- with costs and interest, and a decree was drawn up as of the date of the judgment, namely, 28th November, 1951, and in accordance with that judgment. It is not clear exactly when this decree was drawn up, but Mr. Talati concedes that it must have been in existence at the latest on 23rd January 1952, on which date the Plaintiff (present Respondent) filed an application for execution. 30 40

It is from that decree, and from that decree only, that the Appellant's right of appeal springs, and it is clear beyond argument that his memorandum of appeal should have been accompanied by both a copy of the decree and of the judgment in pursuance of which the decree was issued. There is, however, on the record of the file of the Deputy Registrar at Zanzibar a letter from Messrs. O'Brien Kelly & Hassan of date 16th January 1952, stating that they are instructed to lodge an appeal and forwarding the memorandum of appeal together with a copy of the judgment, but there is no reference in either the memorandum of appeal or in the accompanying letter to the "decree." It appears from statements made by Counsel at the bar before us that the Appellant himself was told to instruct a local advocate to attend to the business of filing the appeal and that Mr. R. L. Patel was so instructed; and on 6th February, 1952, Mr. Patel applied to the Registry in writing for a certified copy of the decree, undertaking to pay all proper charges. This certified copy was in fact never supplied to the Appellant or his advocate, but, on receipt of the fees, copies were certified and filed by the Deputy Registrar with the other documents relating to the appeal on 8th February 1952. We have further been informed by counsel that this is in accordance with the usual practice of the Registry in Zanzibar and that it has never been customary for the Appellant himself or his advocate to attach to the memorandum of appeal a copy of the decree, but that this is done by the Registrar after receipt of the necessary fees. It is clear to us that this practice is incorrect and should be no longer followed; it is the duty of the Appellant to present to the Deputy Registrar the memorandum of appeal together with all such copies of the judgment, decree, finding or order, as the circumstances of the case may require, and the Rules do not cast on the Registrar any power to dispense with such copies. We think, therefore, that for the future it would be better for the practice in the Registry to conform with the Rules. It remains only to add that the requisite copies of the decree were annexed to the memorandum of appeal within the time limited for presenting the appeal and before the record was prepared and sent to the Central Registry at Nairobi. There, however, by some error, they became separated from the memorandum of appeal, so that in the record as laid before us no copy either of the decree or of the judgment was annexed to the memorandum of appeal; but we are quite satisfied that this subsequent error cannot be laid to the Appellant's charge.

It remains to consider, however, whether the failure of the Appellant "to accompany" his memorandum of appeal by a copy of the decree has rendered his appeal incompetent. Mr. O'Brien Kelly has urged that the word "accompanied" should not be too strictly construed, and that it would be a reasonable interpretation of the Rule to hold that it is sufficiently complied with when, as in the instant case, all the necessary documents have been filed before the time limited for appealing has expired, before the record is sent to the Central Registry and before any notice of appeal has been sent out. Mr. Talati, on the other hand, relied upon the judgment of this Court in Civil Appeal No. 88 of 1952: *Morrison v. Mohamedraza Suleman Versi & Anor.* which was an appeal from the High Court of Tanganyika, and in which this Court upheld a preliminary objection of a similar nature and dismissed the appeal. In that case, however, there was a substantial difference; at the time when the memorandum of appeal was filed, no decree embodying the terms of the judgment had

*In the
Court of
Appeal for
Eastern
Africa.*

No. 19.
Judgment,
1st
November
1952,
continued.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 19.
Judgment,
1st
November
1952,
continued.

been drawn up. Application had been made to the Registrar of the High Court of Tanganyika for a certified copy of the decree before the memorandum of appeal was presented, but the costs awarded at the trial not having been taxed the decree could not be drawn up. This Court held, therefore, that the appeal as presented was incompetent and in fact was premature having been filed before the decree had come into existence from which an appeal could lie. Accordingly, and for the reasons given in the judgment of this Court in Civil Appeal No. 69 of 1952 (*Kiwege and Mgude Sisal Estates, Ltd. v. Manilal Ambalal Nathwani*) the appeal was dismissed, this Court saying that where a right of appeal did not exist 10 under the Municipal Law it cannot be conferred retrospectively by any amendment of the memorandum of appeal made by leave of this Court. So also in Civil Appeals Nos. 67 and 70 of 1951, in which this Court upheld preliminary objections based on the absence of a formal order as required by the relevant provisions of the Kenya Legislation conferring a right of appeal to this Court. As is there said in the leading judgment of the President: "There is nothing therefore against which the party aggrieved can appeal, because the Municipal Law of Kenya does not provide, in the case of a decision of the Civil Court which is not a decree, that an appeal 20 can be entered against a decision of a civil court not formally expressed so as to constitute an order."

In the instant case, however, there was in existence on 2nd February, 1952, when the memorandum of appeal was presented, a formal decree and therefore the Appellant's right to appeal had also come into existence; and in contradistinction to the appeals in the cases cited above, his appeal could have been and would have been competent beyond any question had he annexed to it a copy of the formal decree, for he was still within the appealable time. The distinction seems to us to be fundamental and vital. In the former cases this Court has held that the defect went to the root of the jurisdiction and was incurable; in the instant case it appears to us that 30 it is nothing more than a procedural slip which was cured within a reasonable time and within the appealable time, and we are of the opinion that it would be putting an unduly harsh construction on the Rule to hold that a merely technical failure to comply with it was incurable and that the appeal was entirely incompetent.

For these reasons we think that the preliminary objection fails and that the appeal should be considered on its merits.

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 40 document in Civil Appeal No. 40 of 1952. 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.

J. H. B. NIHILL, President.

N. A. WORLEY, Vice-President.

J. PELLY MURPHY, Actg. Chief Justice
(Zanzibar).

Zanzibar.

1st November 1952.

50

No. 20.
DECREE.

*In the
Court of
Appeal for
Eastern
Africa.*

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.
Civil Appeal No. 47 of 1952.

(From Original Decree in Civil Case No. 15 of 1951 of H.B.M. High Court
of Zanzibar at Zanzibar.)

No. 20.
Decree,
1st
November
1952.

FAZAL KASSAM VELJI (Original Defendant) Appellant

versus

POPAT HIRJI (Original Plaintiff) Respondent.

10 This Appeal coming on 1st November 1952 for hearing before Her Majesty's Court of Appeal for Eastern Africa in the presence of O'Brien Kelly, Esquire on the part of the Appellant and of K. S. Talati, Esquire on the part of the Respondent.

IT IS ORDERED that (1) the appeal be and is hereby allowed (2) the judgment of the High Court of Zanzibar dated 28th November 1951, be and is hereby set aside and judgment for the Defendant-Appellant with costs be substituted therefor, (3) the Respondent do pay the Appellant the costs of this appeal.

C. G. WRENSCH,
Registrar.

20

H.M. Court of Appeal for Eastern Africa.

Dated this 1st day of November, 1952.

Issued this 11th day of January 1954.

No. 21.

No. 21.
Order
granting
Conditional
Leave to
Appeal to
Privy
Council,
22nd May
1952.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO PRIVY COUNCIL.
IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM.

Civil Appeal No. 47 of 1952.

F. K. VELJI Appellant

versus

30

POPAT HIRJI Respondent.

An appeal in this case lies as a matter of right under Article 3 (a) of the Order in Council (The Eastern African (Appeal to Privy Council) Order in Council, 1951).

40 Conditional leave to appeal to the Privy Council is granted, the applicant to furnish security to the satisfaction of the Court in a sum of £400 within three months from today for the due prosecution of the appeal and for any costs payable by the applicant in the event of the applicant not obtaining an order for final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the applicant to pay the costs of the appeal.

In the Court of Appeal for Eastern Africa.

No. 21.
Order granting Conditional Leave to Appeal to Privy Council, 22nd May 1952, continued.

The applicant to take the necessary steps for preparation of the record and despatch thereof to England within three months from today.

Mr. Talati has asked us for a stay of execution of the order of this Court dated 1st November 1952 in so far as it affects the costs now due to be paid by the Respondent to the appeal to this Court. We are prepared to grant this pending the determination of the appeal to the Privy Council on condition that the costs as taxed be paid into Court within fifteen days. The costs of this application to be costs in the cause.

(Sgd.) J. H. B. NIHILL, President.
(Sgd.) ENOCH JENKINS, Actg. Vice-President. 10
(Sgd.) G. M. MAHON, Actg. Chief Justice.

Dar es Salaam.
22nd May, 1952.

No. 22.
Order granting Final Leave to Appeal to Privy Council, 30th December 1953.

No. 22.

ORDER GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT ZANZIBAR.

Civil Appeal No. 47 of 1952.

(From Original Decree in Civil Case No. 15 of 1951 of H.B.M. High Court of Zanzibar at Zanzibar.) 20

FAZAL KASSAM VELJI Appellant
versus
POPAT HIRJI Respondent.

This is a motion for final leave to appeal to the Privy Council. The applicant has complied with the conditions set out in our order which gave conditional leave to appeal, and the motion is not opposed. Final leave to appeal is accordingly now given together with a special direction that in the event of the appeal to the Privy Council in Civil Appeal No. 40 of 1952 not going forward the record in that case shall form an annexure to the record in this case, the record to be despatched within thirty days of today's 30 date.

The costs of this application to be costs in the cause.

(Sgd.) J. H. B. NIHILL,
President.
(Sgd.) F. A. BRIGGS,
Justice of Appeal.
(Sgd.) J. M. GRAY,
Acting Judge.

Zanzibar.
30th December, 1953.

PLAINTIFFS' EXHIBITS.

No. 2.

TRANSLATION of Local Contract Note No. 316/50 and Gujarati Writing on Reverse thereof.

LOCAL CONTRACT NOTE.

*Plaintiff's Exhibits.*No. 2.
Translation
of Local
Contract
Note
No. 316/50,
5th July
1950.

Note No. 316/50

Original
Duplicate } Copy
Triplicate }

POPAT MITHA POONJA, Broker.

Phone No. 377

P.O. Box No. 400.

10

Tel. Add. Parbtani

Zanzibar D.5th July, 1950.

Seth Fazal Kassam Velji has, on the following conditions, sold the goods mentioned in this contract to Seth Popatbhai Hirji through Broker Popat Mitha :—

Kind of goods	..	..	Those that the seller gives Pemba or Zanzibar Cloves.
Quantity	..	..	10,000 lbs. in words ten thousand lbs. nett.
Size or weight	..	..	Nil.
Packing	..	..	In gunny bags.
20 Delivery	..	..	Ex godown or Customs.
Samples	..	..	Fair quality.
Dutiable or transshipment			—
Price	..	..	Shillings 110/- in words Shillings one hundred ten for one hundred lbs.
Period	..	..	Immediate cash.
Ready or coming	..	..	On 31st March, 1951 to weigh with (and obtain) signature.
Shipment	..	..	—
30 Other conditions	..	..	The buyer is to weigh cloves ten thousand lbs. nett from the seller on 31st March, 1951. The seller and the buyer have made bargain with signature.

Broker's Signature : POPAT MITHA POONJA.

NOTE.—The above-mentioned goods have been sold on the conditions written above, which are acceptable to us. (If) goods do not arrive due to the reasons of war or accident then seller does not remain responsible, but when goods arrive according to shipment written in the contract then buyer is to remove.

Seller's signature FAZAL KASSAM VELJI.

40

Buyer's sig. POPAT HIRJI.

Plaintiff's Exhibits. TRANSLATION OF GUJARATI WRITING ON THE REVERSE OF THE LOCAL CONTRACT NOTE No. 316/50.

No. 2.
Translation
of Local
Contract
Note
No. 316/50,
5th July
1950,
continued.

Have bought from Seth Fazal Kassam Velji cloves b. (bag) 100 in words hundred, thousand pounds 10,000/- at Shs.110/- in words hundred ten. Are to be weighed on March D.31.

I have sold to-day D.23.12.50 the cloves of this contract to Khoja Bhanji Hirji and Khoja Janmohamed Somji the cloves of this contract ten thousand pounds in words ten thousand that (I) purchased from Khoja Fazal Kassam Velji, the cloves of this contract. Get profit Shs.5,000/- in words Shilling five thousand on complete price. That 10 money (I) have received.

Stamp of 10 cents.

(Sgd. on the stamp)

POPAT HIRJI.

DEFENDANT'S EXHIBIT.

No. 5.

TRANSLATION OF LOCAL CONTRACT NOTE No. 316/50.

[Same as Exhibit No. 2—Page 25]

PLAINTIFFS' EXHIBITS.

No. 1.

NOTE, Plaintiff to Defendant.

TRANSLATION OF GUJARATI WRITING PRODUCED
AS EX. 1.

Zanzibar date 22nd March 1951.

To Brother Fazal Kassam Welji.

To wit you have sold to us according to the contract dated 5th July, 1950 No. 316/50, 10,000 lbs. of cloves in words ten thousand lbs. net through broker Popat Mitha Poonja at the rate of Shs.110/- per 100 lbs. upon condition to deliver on 31st March, 1951, those goods we have sold to Bhanji Hirji therefore we have to request you to deliver the goods in time. 30

(Sgd.) POPAT HIRJI,
with his own hand.

Defendant's Exhibit.

No. 5.
Translation
of Local
Contract
Note
No. 316/50,
5th July
1950.

Plaintiff's Exhibits.

No. 1.
Note,
Plaintiff
to
Defendant,
22nd
March
1951.

20

No. 3.

LETTER, Plaintiff's Advocates to Defendant.

*Plaintiff's
Exhibits.*P.O. Box No. 23,
Zanzibar.

28th March, 1951.

No. 3.
Letter,
Plaintiff's
Advocates
to
Defendant,
28th
March
1951.Wiggins & Stephens
Advocates
K. S. Talati
P. S. Talati
10 Telegrams
Juriat Zanzibar.

Tel. No. 33.

Mr. Fazal Kassam Velji,
Zanzibar.

Dear Sir,

We are instructed by our client Mr. Popat Hirji to write to you as follows :—

By a Contract dated 5th July, 1950 you sold to our client 10,000 lbs. of fair quality cloves at Shs.110/- per 100 lbs. You agreed to deliver the said 10,000 lbs. of cloves to our client on 31st March, 1951 when the said cloves would be weighed by our client.

Our client states that he reminded you by his letter dated 22nd March, 1951, that the said cloves were to be delivered to him on 31st March, 1951.

Our client shall be glad if you will kindly let him know the time and the place at which he should come to weigh the said 10,000 lbs. of cloves and to take delivery of the same from you on the 31st March, 1951. Our client shall pay to you on 31st March, 1951 the sum of Shs.11,000/- being the contract price of the said cloves, on delivery of the said cloves to him.

We are also instructed by our client to inform you that in case the said 10,000 lbs. of cloves are not delivered by you to him on 31st March, 1951, he shall hold you responsible for any damages that he may suffer on account of your failure to comply with the said contract.

Yours faithfully,
(Sgd.) WIGGINS & STEPHENS.

*Plaintiff's
Exhibits.*

No. 4.

LETTER, Plaintiff's Advocate to Defendant.

No. 4.
Letter,
Plaintiff's
Advocate
to
Defendant,
4th April
1951.

P.S. TALATI.

4th April, 51.

Mr. Fazal Kassam Velji,
Zanzibar.

Dear Sir,

We are instructed by our client Mr. Papat Hirji, to refer you to our letter dated 28th March, 1951.

On or about the 31st March, 1951, our client saw you for the delivery of the said 10,000 lbs. of cloves when you refused to deliver the same. 10

Our client states that he has suffered damage on account of your breach of Contract and that he is entitled to damages at the rate of Shs.200/- per 100 lbs. of cloves being the difference between Shs.310/- the Market price on 31st March, 1951, and Shs.110/- the Contract price.

We are therefore instructed by our client to demand from you a sum of Shs.20,000/- being damages at the rate of Shs.200/- per 100 lbs. of cloves for the said 10,000 lbs. of cloves.

Please note that unless you pay to our client the said sum of Shs.20,000/- within four days of the receipt of this letter by you, our client shall be compelled to take such steps against you in the matter as 20 he may be advised, when costs will be incurred.

Yours faithfully,

C. G. A. PRODUCE MARKET REPORT.

Exhibits.

CLOVE GROWERS ASSOCIATION.

P.O. Box 26.

Zanzibar.

PRODUCE MARKET REPORT.

Week ending 29th March, 1951.

C.G.A.
Produce
Market
Report,
29th
March
1951.

					SUPPLIES	EXPORTS
	Cloves	..	..	..	73,039 lbs.	—
	Copra	..	..	..	542,326 lbs.	—
10	Chillies	..	..	..	—	2,080 lbs.
	Mangrove Bark	..	..	..	—	—
	Clove Stems	..	..	..	141,696 lbs.	—
	Clove Oil	..	..	..	—	—
	Coconut Oil	..	..	..	—	107,112 lbs.
	Copra Oil Cake	..	..	..	—	533,433 lbs.

				Chillies	Coconut	Copra Oil
Destinations of Exports				lbs.	Oil lbs.	Cake lbs.
	United Kingdom	..	..	2,080	—	—
20	East Africa	..	..	—	107,112	—
	Continental Europe	..	..	—	—	533,433
				<u>2,080</u>	<u>107,112</u>	<u>533,433</u>

PRICES.

Cloves : No sales.

London quotation (Mail) Zanzibar on the spot quoted 53d. For shipment March/April 54d. c.i.f. Madagascar, spot 45d. nominal; shipment 44d. nominal c.i.f. (Prices per lb.).

Copra : Prices per 100 lbs. at the close of business :—

	47/14	48/57	
30	F.M. Shs. to	F.M.S. Shs. to	B.S.D. No arrivals.
	58/57	60/-	

Prices lower.

Coconuts : Shs. 160/- to Shs.180/- per 1,000 on heap unhusked ex plantations. Prices unchanged.

Chillies : The Association's guaranteed minimum buying price is Shs.120/- per 100 lbs. effective until further notice. London quotation (Mail) Mombasa, spot Shs.340/- sellers. For shipment Shs.320/- c.i.f. (Prices per cwt.). Prices unchanged.

Mangrove Bark : No Sales.

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*

RECORD OF PROCEEDINGS

BIRCHAM & CO.,
WINCHESTER HOUSE,
100 OLD BROAD STREET,
LONDON, E.C.2,
Solicitors for the Appellant.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 COPTHALL AVENUE,
LONDON, WALL, E.C.2,
Solicitors for the Respondent.