[COURT OF APPEAL]

Freetown
March 9,
1962

C. J. W. ROLLINGS . . . . . *Appellant*

v.

EZEKIEL LEWIS . . . . . *Respondent*

Ames Ag.P.
Dove Edwin
J.A.
Marke P.J.

[Magistrates' Appeal 26/60]

Practice—Review of previous decision by magistrate—"Liberty to apply."

Appellant brought an action against respondent claiming damages for breach of contract and asking for the return of his motor vehicle. The case was heard by the Senior Police Magistrate, who gave judgment on May 3, 1960, for appellant that respondent return his vehicle in running order on payment to respondent of £12 14s. 0d. with "liberty to apply." On July 18, 1960, appellant served a notice on the court and on respondent whereby he requested an order "that the plaintiff's car F.6551 be returned in good running condition within 24 hours from the date of the order and that in default the defendant do pay to the plaintiff the sum of £200, the value of the said vehicle. . . ." The same Senior Police Magistrate heard this application. After hearing witnesses called by both sides, he gave judgment as follows: "The plaintiff's application is refused. I hereby order that the said judgment of May 3, 1960, be varied by discharging the defendant from any liability for the return of the car to plaintiff and confirm the payment of £12 14s. 0d. to the defendant by plaintiff."

Plaintiff appealed against this decision to the Supreme Court, where Luke J. stated a case for the Court of Appeal, asking the following questions:

(1) Could a magistrate review a previous decision made after case is determined?

(2) Was the magistrate correct in having provided in his decision "liberty to apply"?

(3) What decision should the magistrate have given?

Held, (1) that the answer to the first question is "No";

(2) That the answer to the second question is "No"; and

(3) That the Senior Police Magistrate should not have entertained the application of July 18, 1960.

Kenneth O. During for the appellant.

No appearance for the respondent.

DOVE-EDWIN J.A. This is a case stated by Luke J. in which he seeks the opinion of this court in the above matter and asks the following three questions:

(1) Could a magistrate review a previous decision made after case is determined?

(2) Was the magistrate correct in having provided in his decision "liberty to apply"?

(3) What decision should the magistrate have given?

I shall set out the facts leading up to the questions asked. According to the case stated the plaintiff summoned the defendant on a plaint note claiming (1) damages for breach of contract and (2) the return of his vehicle F.6551.

Defendant counterclaimed for the sum of £70 6s. 0d.

The case came before the Senior Magistrate and he gave his judgment on May 3, 1960, for the plaintiff that defendant return his vehicle in running order

on payment to the defendant of £14 14s. 0d., less the amount of £2 already advanced, with "liberty to apply."

On July 18, 1960, plaintiff served a notice on court and defendant and case was relisted for hearing. At that hearing witnesses were called and the Senior Magistrate, having heard them, not only refused the application for return of the motor vehicle but discharged defendant from liability for the return of the said car to plaintiff and confirmed the payment of £12 14s. 0d. to the defendant by plaintiff.

Plaintiff appealed against this second decision and so this case was stated.

Referring to the original claim and counterclaim the learned Senior Magistrate said in his judgment, inter alia: "I hold that the plaintiff failed to pay the bill and consequently is not entitled to any damages for unlawful detention . . . and accordingly his claim fails.

"As to the counterclaim . . . he will be entitled to judgment in the sum of £14 14s. 0d.

"As to plaintiff he will have judgment for the return of his vehicle in running order on payment to the defendant of the sum of £14 14s. 0d., less the amount of £2 already advanced with 'liberty to apply'."

The notice on court referred to in the case stated was for an order "that the plaintiff's car, F.6551, be returned in good running condition within 24 hours from the date of the order and that in default the defendant do pay to the plaintiff the sum of £200, the value of the said vehicle. . . ."

The same Senior Police Magistrate heard this application. Witnesses were called by both sides and he gave judgment as follows:

> "The plaintiff's application is refused. I hereby order that the said judgment of May 3, 1960, be varied by discharging the defendant from any liability for the return of the car to plaintiff and confirm the payment of £12 14s. 0d. to the defendant by plaintiff."

I concede that the words "liberty to apply" could be inserted in a final judgment and that would not affect its finality. "A judgment with such a liberty reserved is still a final judgment, and may be pleaded in bar to another action for the same matter. The effect of the reservation is to permit persons having an interest under it to apply to the court touching such interest in a summary way without the necessity of again setting the cause down" (Daniell's Chancery Practice, Vol. I (8th ed.), at p. 687).

In view of this it is my view that the learned magistrate was wrong in accepting the application made on July 18, 1960, since the application set out to issue a new plaint and for the first time to claim for the value of the motor car.

In the first place, by hearing the application on July 18, 1960, and arriving at the conclusion he came to he was constituting himself an appeal court over his own judgment. This he clearly cannot do. This answers the first question, which is "No."

As to the words "liberty to apply." As stated before it could be used even in final judgments but in this case there was nothing left after the learned magistrate's final judgment—the use of the words "liberty to apply" was unnecessary. This answers the second question. As to the third question the magistrate should not have entertained the application of July 18, 1960, as he did. Consequently he should not have proceeded to any judgment.

If the plaintiff's motor car was not delivered according to the judgment the plaintiff had the same remedies open to all judgment creditors. He could have availed himself of these.

[COURT OF APPEAL]

Freetown
March 9,
1962

GEORGIANA LUCRETIA ROSE AND OTHERS . . . . *Appellants*

v.

JACOB WILLIAMSON SAWYERR AND OTHERS . . . *Respondents*

Ames Ag.P.
Dove-Edwin
J.A.
Marcus Jones
Ag.C.J.

[Civil Appeal 14/61]

Real Property—Will—Executrix de sa tort—Equity—Persons beneficially interested in property.

Jacob Williamson Sawyerr, the testator, died testate in the Gold Coast in 1916. In his will, he left certain property in Freetown to his sister, Ransolina Patience Cromanty, two brothers and two daughters in equal shares. Mrs. Cromanty, who was the only surviving executor, obtained probate of the will in the Gold Coast in 1916, but did not obtain probate in Sierra Leone. Returning to Sierra Leone, Mrs. Cromanty began to collect rents from the property. She did not account for the rents to anyone, despite repeated protests from other members of the family. In 1932, Mrs. Cromanty conveyed part of the property to one Joseph E. Metzger, and in 1953 she conveyed another part to two grand-nieces. Between 1948 and 1952 Mrs. Cromanty's nephew collected the rents from one of the properties, but in 1952 he returned the rents to the payers, who handed them over to Mrs. Cromanty.

Mrs. Cromanty died in 1957, leaving the remainder of the property to certain named persons. Her nephew and the grandchildren and great-grandchildren of the testator brought suit against the executors and trustees of her estate claiming a beneficial interest in the property. The Supreme Court made a declaratory judgment in accordance with the claim, and the executors and trustees appealed.

Held, dismissing the appeal, (1) that Mrs. Cromanty, in taking possession of the property, became an executrix de sa tort.

(2) That, since she had full knowledge of the testator's devises, she held as trustee for the devisees; and

(3) That the declaratory judgment correctly included the property conveyed to Metzger and the two grand-nieces even though they were not joined as defendants. (Ames Ag.P. dissented from this part of the holding.)

Cases referred to: *Gooding* v. *Allen*, 3 Sierra Leone Law Recorder 69; *In re Lord and Fullerton's Contract* [1896] 1 Ch. 228.

Edward J. McCormack for the appellants.
Melville C. Marke for the respondents.

AMES AG.P. The plaintiffs/respondents sued the defendants/appellants "as executors and trustees of the estate of Ransolina Patience Cromanty, deceased," and they claimed:

(a) A declaration that the plaintiffs are beneficially interested in the hereditaments and premises situate at Fourah Bay Road, Malta Street and Lucas Street, all in Freetown in the Colony of Sierra Leone and devised by