[COURT OF APPEAL]

Freetown
Feb. 19,
1963.

PETER MACAULEY . . . . . *Appellant*

v.

JANET HALLOWELL . . . . . *Respondent*

Ames Ag.P.
Benka-Coker
C.J.,
Dove-Edwin J.

[Civil Appeal 28/62]

Claim for declaration of title—Plea of non est factum—Fraud of defendant—Effect of representation by defendant that conveyance a guarantee.

Peter Macauley, the grandson of Janet Hallowell, presented a document to his grandmother for her signature, informing her that it was a guarantee with respect to his job. It turned out to be a conveyance of the only property the woman possessed to her grandson. On discovering the true state of affairs, she asked the Supreme Court to set aside the conveyance and make a declaration that the property was hers. The court accepted her story that she did not know the deed she signed was a conveyance and that she was led to believe it was merely a guarantee, and made the requested declaration.

Macauley appealed against this decision.

Held, dismissing the appeal, that where a party executes a deed in the mistaken belief that it is a guarantee and such belief is induced by the fraud of the party taking under the deed, the deed will be set aside, not merely on the ground of fraud but also on the ground that the mind of the signer did not accompany the signature.

Foster v. *Mackinnon* (1869) L.R. 4 C.P. 704 applied.

James E. Mackay for the appellant.
Cyrus Rogers-Wright for the respondent.

DOVE-EDWIN J.A. This is an appeal from the judgment of the acting puisne judge sitting in Freetown and dated August 24, 1962, granting the plaintiff/respondent a declaration that she is the owner of No. 7, Orange Street, Kissy Village, and further restraining the defendant/appellant from interfering with the said property and also ordering the master and registrar to hold an inquiry to determine the mesne profits and £25 damages against him for trespass.

In her claim for a declaration that the property at 7, Orange Street, Kissy Village, belongs to her and for an injunction and mesne profits and damages for trespass, the plaintiff/respondent set out in her statement of claim how she became the owner of the property. The defendant/appellant is her grandson. She alleged that in her absence the defendant wrongfully entered on the premises and took possession and claimed that the premises were his.

In his statement of defence the defendant/appellant admitted that he is the grandson of the plaintiff/respondent but claims that he built the premises at No. 7, Orange Street, Kissy Village, and says that plaintiff/respondent lived with him on the premises.

He claims ownership of the property in paragraphs 5, 6 and 7 of his defence, which are set out here—

> " 5. In 1942 or 1943 the defendant gave the sum of £200 to the plaintiff for safe keeping and on or about 1944 the defendant applied for a return of the said sum of £200, explaining to the plaintiff that he wanted to buy a piece of land.

"6. The plaintiff then told the defendant that she would make a voluntary conveyance to him of the land at 7, Orange Street.

"7. The plaintiff then made and executed a voluntary conveyance dated November 4, 1946, and registered at Vol. 31, p. 134, of the Register of Conveyance kept in the office of the Registrar-General."

The plaintiff/respondent, in her reply, denied that she had received the £200 or any money at all, that she promised to make a voluntary conveyance to defendant/appellant or anyone on his behalf, or that she executed any conveyance whatsoever to the defendant/appellant.

At the trial the conveyance relied upon by the defendant/appellant was put in evidence and marked Exhibit "A." This turned out to be a conveyance of property at Orange Street, Kissy Village, by the plaintiff/respondent to the defendant/appellant for love and affection for her natural grandson and a further consideration of the sum of £10. The dimensions of a piece of land at Orange Street were set out and also a plan purporting to be the premises referred to in the deed.

In his judgment the learned trial judge accepted the plaintiff/respondent's case and found that when she signed Exhibit "A" she did not know she was alienating her property. She thought she was signing a guarantee for defendant/appellant. He did not believe the defendant or his witness, Cassell, and found for the plaintiff. Against this finding this appeal is lodged.

We agree with the learned judge's findings of fact. When the plaintiff/respondent signed Exhibit "A" she had no idea she was alienating any of her properties at all. The £10 alleged to have been paid is not acknowledged. No question was put to the plaintiff/respondent as to her receiving the sum.

The claim that the premises were conveyed to the defendant/appellant for love and affection was only brought out when Exhibit "A" was produced. Both in his defence and evidence the defendant/appellant made out that the premises were conveyed to him because of moneys he had paid to the plaintiff/respondent for safe keeping which she could not return.

There are two grounds of appeal: misdirection and judgment against the weight of evidence.

As to misdirection, which is in two parts: (1) that the trial judge misdirected himself in holding that although the plaintiff/respondent executed the deed (Exh. "A") she did not intend to part with the property. As set out before, the learned trial judge found as a fact that when the plaintiff/respondent signed the document she thought she was signing a document as guarantee for the defendant/appellant in his work. In view of this finding it was correct for the learned trial judge to hold that she did not intend to part with her property.

(2) As to misdirection in applying the principles of *Milland* v. *Wasley* (1952) C.P.L. 728, *Foster* v. *Mackinnon* (1869) L.R. 4 C.P. 704 and *Lewis* v. *Clay* (1898) 67 L.J.Q.B. 224 we think that the learned judge did not misdirect himself in considering these cases.

In *Foster* v. *Mackinnon*, referred to in Chitty on Contracts, General Principles (22nd ed.), para. 219, Byles J. said:

> "It is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in

contemplation of law never did sign, the contract to which his name is appended."

In our view, the learned trial judge was correct in applying the principles of the law.

As to ground 2—weight of evidence. There was ample evidence on which the learned trial judge based his findings.

The grounds of appeal fail and the appeal is dismissed with costs assessed at 20 guineas awarded to respondent.

[COURT OF APPEAL]

MORIE GBENIE . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Criminal Appeals 2 and 3/63]

Criminal Law—Murder—Manslaughter—Provocation—Time for cooling—Necessity for clear direction to assessors.

Appellant had a bottle of "omole" (locally distilled gin). Deceased asked appellant for a drink, which appellant gave him. When deceased asked for more, appellant refused. Deceased grabbed the bottle and a struggle ensued, during which the bottle fell and was broken. Appellant became very angry, seized an axe handle and hit deceased on the back of the neck causing his death. Appellant was charged with murder, and was tried by a judge sitting with assessors.

In his instructions to the assessors, the trial judge stated that provocation was one of the main defences put up by the appellant, but he failed to direct them adequately and gave no direction at all on the question whether, provocation being established, the appellant had had time to "cool down."

The appellant was convicted and sentenced to death. Against this conviction he appealed.

Held, allowing the appeal, that, on a trial for murder, where there is some evidence of provocation, it is the duty of the trial judge not only to put the issue of provocation to the assessors so that they understand it, but also to instruct them on the question whether the defendant had had "time for cooling."

Lusenie Brewah for the appellant.
Donald Macauley (Senior Crown Counsel) for the respondent.

DOVE-EDWIN J.A. The appellant was charged with the murder of Lissah on August 3, 1962, at Gbenie Village in the Bonthe Chiefdom.

The facts were that appellant had a bottle of what is described as cooked wine (omole), that is, locally distilled gin. The deceased, it appears, asked appellant for a drink out of the bottle. Appellant gave some to him and deceased wanted some more. According to the evidence appellant was unwilling to give deceased any more from the bottle and deceased held onto the