

**MOBIL OIL SIERRA LEONE LIMITED v. TEXACO AFRICA LIMITED
and UNITED AFRICA COMPANY**

SUPREME COURT (Marke, J.): October 2nd, 1964
(Civil Case No. 260/64)

- [1] **Civil Procedure—writ of summons—name of party—incorrect name no ground for setting aside writ:** The omission of the word “Limited” in the name of a limited company which is a party to legal proceedings is a misnomer if, in all the circumstances of the case and looking at the document as a whole, a reasonable man is in no doubt as to whom that description refers to, because of the absence of another entity to which the description might refer. Such an omission is not a ground for setting aside a writ of summons (page 134, line 37—page 135, line 16).
- [2] **Civil Procedure—writ of summons—name of party—when misnomer crucial:** When a company is misnamed in legal proceedings, the test as to whether a misnomer is so crucial as to cause a writ to be set aside for irregularity is the attitude of a reasonable recipient of such a writ; if, in all the circumstances and looking at the document as a whole, the recipient company knew that it was intended for itself but that there was a mistake as to name, then this is a case of mere misnomer, which can be cured by amendment, but if the recipient does not know for whom it was intended, in particular where there is another entity to whom the description might refer, this is beyond the realm of curable misnomer (page 134, line 37—page 135, line 8).
- [3] **Companies—name—name in litigation—incorrect name no ground for setting aside writ:** See [1] above.
- [4] **Companies—name—name in litigation—when misnomer crucial:** See [2] above.

The plaintiff company brought an action against the second defendant company (now applicants) during which the applicants moved to set aside the writ of summons.

In the writ of summons the applicant limited company was described as the “United Africa Company” rather than by its correct name of the “United Africa Company of Sierra Leone Limited.” There was no other entity to whom this description could refer.

The applicants thereupon applied to the court to have the writ set aside for irregularity. It was argued that the irregularity was material as there was no such person as the “United Africa Company” and that therefore there was no person before the court. The plaintiffs resisted the application upon the ground that no confusion was caused by the misdirection.

Cases referred to:

- (1) *Davies v. Elsby Bros. Ltd.*, [1961] 1 W.L.R. 170; [1960] 3 All E.R. 672, *dicta* of Devlin, L.J. applied.
- 5 (2) *Whittam v. W. J. Daniel & Co. Ltd.*, [1962] 1 Q.B. 271; [1961] 3 All E.R. 796.

Barlatt for the applicants;
Luke for the plaintiffs.

10 MARKE, J.:

This is an application by the second defendant on a summons to set aside the writ of summons herein and the service thereof for irregularity on the ground that they were not described on the said writ of summons by their proper name.

15 Mr. Barlatt, who appeared for the applicants, in an affidavit sworn by him, stated in para. 6 thereof as follows: "The name 'United Africa Company' on the said writ of summons issued and served herein is not the proper name of the 'United Africa Company of Sierra Leone Limited,' which is a limited liability company incorporated
 20 under the law of Sierra Leone." Mr. Barlatt, in his argument, referred to the notes to O.2, r.3 of the Rules of the Supreme Court which appear in the 1957 *Annual Practice*, where it is stated that if a defendant is misnamed, he would have a judgment against him for default of appearance set aside for irregularity. Mr. Barlatt said
 25 that the irregularity in this case was material as the United Africa Company, as such, was not a person and no person was therefore before the court.

Mr. Luke for the plaintiffs conceded that the proper name of the applicants was "United Africa Company of Sierra Leone Limited,"
 30 but urged that as there was no confusion in the name of the person intended to be sued, the misnomer in this case was not such as would justify setting aside the writ.

A similar point came up in *Davies v. Elsby Bros. Ltd.* (1) in which Devlin, L.J. prescribed the test to be applied in cases such as the
 35 present in these terms ([1961] 1 W.L.R. at 176, [1960] 3 All E.R. at 676):

" . . . [T]he test must be: how would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say
 40 . . . 'Of course it must mean me, but they have got my name wrong, then there is a case of mere misnomer. If, on the

other hand, he would say: 'I cannot tell from the document itself whether they mean me or not and I shall have to make inquiries,' then it seems to me that one is getting beyond the realm of misnomer.

One of the factors which must operate on the mind of the recipient of a document, and which operates in this case, is whether there is or is not another entity to whom the description on the writ might refer. . . ."

Further, in *Whittam v. W. J. Daniel & Co. Ltd.* (2) where the defendants were sued as W. J. Daniel, a firm, and not in their proper name, it was held that the omission of the word "Limited" was a mere misnomer. In all the circumstances of the case there was no doubt who it was that the plaintiff intended to sue, and secondly, the mere omission of the word "Limited" did not mean that no person was sued and that, until that was corrected, there was no defendant to the proceedings.

Applying the test of Devlin, L.J., there is not the slightest suggestion that there is another entity to whom the description "United Africa Company" could apply. Though not legally correct, every reasonable person in Sierra Leone will concede that the words "United Africa Company" are used with reference to that company whose corporate name and style is "United Africa Company of Sierra Leone Limited" and it has not been suggested in the affidavits filed in support of this application that there is any other entity in Sierra Leone to whom the words "United Africa Company" can reasonably refer.

The application to set aside the writ and service thereof on the ground stated in the summons fails and is hereby dismissed. The applicants are to pay the costs of the plaintiffs, which are to be taxed.

Application dismissed.