

ALPHA v. BUNDU-WILLIAMS

SUPREME COURT (Bankole Jones, C.J.): June 15th, 1964
(Mag. App. No. 11/64)

[1] Agency—principal—rights of principal against agent—action to recover rents received—receipt and amount of rents to be proved: A principal cannot sue his agent for rents collected in the course of his agency unless there is positive evidence of the amount of the rents payable and of their receipt by the agent (page 66, lines 14–21).

The respondent brought an action against the appellant in a magistrate's court for the recovery of money collected by the appellant as his agent.

The respondent owned certain property which he rented to various persons. He alleged that the appellant was his agent for the collection of rent. The appellant denied that he had ever been constituted agent for the respondent or that he had collected any rents. The magistrate found in favour of the respondent and the appellant appealed on the grounds (a) that the decision was against the weight of evidence and (b) that the respondent's claim was not proven as he had failed to prove the amounts of rent which were severally due from the tenants or that the agent had received them.

Buck for the appellant;
Barlatt for the respondent.

BANKOLE JONES, C.J.:

This is an appeal against the decision of a magistrate (Mr. J.B. Short) in a civil suit where pleadings were filed. The respondent in the court below alleged that he constituted the appellant his agent to collect rents from tenants occupying certain premises of his at Gray Bush. It would appear that the rents amounted as a whole to £32 per month. He sued for £47, made up as follows: £15, being the balance of rent for September 1962; and the sum of £32 rent for October 1962.

In his defence, the appellant, among other things, denied that he was ever constituted the agent of the respondent in respect of the premises or at all and that he ever received rents on the respondent's behalf.

The learned magistrate in his decision said that he found as a fact that the appellant was the agent of the respondent and that he

5 had been collecting rent for the respondent as such agent. He accordingly gave judgment for the respondent. It is against this judgment that the appellant has appealed to this court on two grounds namely: (a) that the decision is against the weight of evidence adduced at the trial; (b) the respondent's claim is not proven.

10 Both these grounds raise questions of fact. The learned magistrate was right when he said the issue he had to decide was whether the appellant was the agent of the respondent and was collecting rent for him. He found that he was an agent and had been collecting rent for the respondent. There is some evidence, scanty though it may be, to support this. The respondent said that in September 1962 he received £17, leaving a balance of £15.

15 What is not quite clear is whether the tenants had in fact paid their rents to the appellant and what rent they were supposed to pay each month. It was therefore not enough for the respondent to prove that the appellant was his agent and that he was collecting rent for him. It must also be proved what the rent was, for the simple reason that a principal cannot sue an agent for rents he should collect in the course of his agency unless there is positive evidence that he has in fact received such rents.

20 The learned magistrate seems to have spent some time dwelling on the question of ownership of the land. With respect, this matter does not arise.

25 In all the circumstances, I will allow the appeal but send back the case to be retried by another magistrate together with a copy of this judgment for his guidance. There will be no order as to costs.

30 *Order accordingly.*

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