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PAULIASI NATIRI & OTHERS

v.

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VILIAME RAKULI No. 1 & OTHERS

[COURT OF APPEAL, 1972 (Gould V.P., Marsack J.A., Bodilly J.A.), 14th, 23rd June]

Civil Jurisdiction

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Interpretation—Ordinance—general purpose of legislation—protective nature—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205) ss.2, 3.

Agriculture—agricultural produce—assignment of proceeds by Fijian—unincorporated association of Fijians—assignment signed by President and Secretary on behalf of all—whether all members bound by approval given to document—agency—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205) ss.2, 3.

D *Unincorporated society—Fijians—assignment of cane proceeds—signature by President and Secretary on behalf of all members—approved by authorised person—effect of approval—agency—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205) ss.2, 3.—Interpretation Ordinance 1967, s.18—Agricultural Produce (Authorities by Fijians) (Repeal) Ordinance 1968.*

An assignment of cane proceeds to a non-Fijian was executed on behalf of an unincorporated society the members of which were all Fijians, by the President and Secretary of the Association; in so doing they acted E within the scope of their authority as agents of the other members and with their knowledge and consent; the assignment bore on its face material making it clear that the signatories signed as agents for the Association. In the circumstances the Assignment required to be approved under section 2(c) of the Agricultural Produce (Authorities by Fijians) Ordinance (in default of which it was void and any payments made pur- F suant thereto were recoverable) and approval was duly given to the instrument as signed. The only substantial question which arose on the appeal was whether the approval given to the instrument signed by the two authorised agents extended to and bound the members who had not signed personally.

Held: 1. The instrument made it clear that it was signed on behalf of the Association and it was the duty of the person authorised under G the Ordinance to give approval to satisfy himself concerning the Association as a whole.

2. In the absence of any clear indication that the legislature intended to exclude the law of agency by the Ordinance the question fell to be resolved by consideration of its general purpose and there was no such requirement to be found in the protective nature of the legislation, at least in a case where the agency was manifest.

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,3. All members of the Association were therefore bound by the Assignment.

Case referred to:

South Pacific Sugar Mills Ltd. v. Peni Muavesi (1968) 14 F.L.R.113.

Appeal from a judgment of the Supreme Court dealing wiith the effect of the Agricultural Produce (Authorities by Fijians) Ordinance upon an assignment of cane proceeds signed by two officers of an unincorporated society of Fijians.

K. A. Stuart for the 1st to 6th appellants; *R. G. Kermode* for the 7th appellant.

S. M. Koya for the 1st and 2nd respondents.

The facts suffciently appear from the judgment of Gould V.P.

23rd June 1972

The following judgments were read:

GOULD V.P.:

This protracted litigation was commenced by a Writ of Summons in September 1967. In July 1970 it reached this Court for the first time and judgments were delivered on the 12th August, 1970, setting aside the dismissal of the action by the Supreme Court and remitting the case to the Supreme Court for continuation.* That order followed upon this Court's having taken a different view from that of the Supreme Court of the effect of the Agricultural Produce (Authorities by Fijians) (Repeal) Ordinance, 1968, which, though passed in the year indicated, effected the repeal of the Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205) as from the 1st July, 1967. It was the finding of this Court that the saving provisions of section 18 of the Interpretation Ordinance, 1967, applied to the repeal, as from the 1st July, 1967, of the Agricultural Produce (Authorities by Fijians) Ordinance, with the result that the validity of an assignment of cane proceeds with which the action was concerned, fell to be considered in the light of the provisions of the latter Ordinance. Having taken further evidence, the learned Judge in the Supreme Court delivered his judgment on the 18th February, 1972, and from it this present appeal has been brought.

The action was brought by nine plaintiffs, all of whom claimed to be members of an unincorporated society known as "Drakoro Cane Growers Association", against seven defendants, the first five of whom were described as the remaining members of the same association, the sixth being Burns Philp (South Seas) Co. Ltd. (hereinafter called "Burns Philp Ltd.") and the 7th being South Pacific Sugar Mills Ltd. I will refer to the latter as the Sugar Company, and counsel have agreed that for the purpose of the action it is to be considered as one and the same as the Colonial Sugar Refining Co. Ltd. which was concerned originally in the transaction.

It is unnecessary to reproduce the pleadings in detail and it is possible greatly to curtail the narration of events by reason of a number of findings of the trial Judge which have not been challenged and which limit the scope of this appeal. The Drakoro Cane Growers Association (hereinafter referred to as "the Association") had an entirely Fijian membership, no written constitution and no proved rules. It appears to have been a type of co-operative, having for its object the pooling of cane growing resources for the purpose of providing houses for the members. The learned Judge

* See (1970) 16 F.L.R. 112

A has found that the members were the first, second and ninth plaintiffs and the first five defendants. Plaintiffs three to eight (inclusive) have not appealed against this finding and took no part in the present proceedings.

On the 10th April, 1961, the first defendant, as President, and the ninth plaintiff, as Secretary, of the Association signed an Assignment of Cane Crops for and on behalf of the Association, directed to the Sugar Company and in favour of Burns Philp Ltd. On the 31st July, 1962, the same two persons, acting in the same capacities, executed an authority to upstamp the Assignment to cover a further sum of $4000: Pursuant to arrangements under the Assignment, Burns Philp Ltd. supplied materials to the Association and two houses were built. Under the Assignment, the Sugar Company paid to Burns Philp Ltd., up to the 31st October, 1967, a total of £4,997. 16. 8: the Sugar Company retained the sum of £3,347 to the credit of the cane contract (upon the terms of which nothing turns) representing cane proceeds after the 1st July 1967.

Differences having arisen between the members of the Associataion, the plaintiffs commenced their action, in which the main relief claimed was a declaration that the Assignment was illegal, null and void. There was no suggestion that there was any invalidity in any of the transactions other than that which arose by virtue of the provisions of the Agricultural Produce (Authorities by Fijians) Ordinance, if the Assignment were caught by its provisions. If it were so caught, not only was the Assignment void but also any payment made in pursuance of it was recoverable "by the Fijian from the person making the payment." On the finding of facts by the trial Judge only three members of the Association were claiming this relief; the five who were defendants made no such claim.

The effect of the remaining pleadings was that the Sugar Company claimed by way of indemnity or damages against Burns Philp Ltd. the sum of £4997. 16. 8 which it had paid pursuant to the Assignment or such lesser sum as might be awarded against it in the action. Burns Philp. Ltd. counterclaimed against the plaintiffs for £2262. 13. 0 which it claimed was owing in any event for goods supplied, moneys advanced and services rendered, which amount as an alternative was increased to £7528. 16. 11, "if as the plaintiffs allege the assignment given to the sixth defendant be void."

The Agricultural Produce (Authorities by Fijians) Ordinance is headed — "An Ordinance to control the giving by Fijians of authorities for the payment to non-Fijians of the proceeds of agricultural produce". Sections 2 and 3 read as follows —

"2. Any instrument, not being —

(a) a crop lien; or

(b) an authority to pay any proceeds of agricultural produce —

(i) to any bank or to the Agricultural and Industrial Loans Board; or

(ii) into a Fijian's account with any bank or with the Agricultural and Industrial Loans Board; or

(c) an instrument approved under the provisions of this Ordinance. whereby a Fijian authorises the payment to any non-Fijian of the whole or any part of the proceeds of any agricultural produce payable or to become payable to such Fijian shall be void and any payment made in pursuance of any such instrument shall be recoverable by the Fijian from the person making such payment.

3.(1) Any Fijian wishing to obtain approval of an instrument authorising the payment to a non-Fijian of the whole or any part of the proceeds of any agricultural produce payable or to become payable to such Fijian may submit such instrument together with a copy thereof to an authorised person.

(2) An authorised person shall, upon payment of a fee of one shilling by the Fijian and upon signature by the Fijian in his presence of the instrument and the copy and after consulting such persons as he may consider expedient approve an instrument submitted to him under the preceding subsection where he is satisfied —

(a) that the Fijian making such instrument understands its meaning; and

(b) that the making of the instrument forms part of a genuine transaction which is for the benefit of the Fijian making such instrument.

(3) The authorised person shall signify his approval by writing the word "approved" together with his signature and title on the instrument and shall deliver it to the Fijian.

(4) The authorised person shall also write the word "approved" together with his signature and title on the copy of the instrument and shall file it in a book to be kept by him for that purpose."

It was not disputed that the assignors under the Assignment were Fijians and that the assignee was a non-Fijian. The learned Judge held that, so far as the two signatories were concerned the procedure and conditions of the Ordinance had been complied with and that the document had been approved by a District Officer, who was an authorised person within section 3 of the Ordinance. There is no challenge on appeal to this finding, or to his consequent finding that the Assignment was not void as against the signatories, who were the ninth plaintiff and the first defendant. It will be remembered that these two were among the eight found to be members of the Association.

The learned Judge held, however, that as the remaining members of the Association, had not signed the instrument, or gone before a District Officer and had the contents explained, the Assignment was clearly void against them.

This is the finding which Mr. Stuart, for the first to the six (inclusive) defendants, has sought to upset on the appeal, but before coming to his argument it is necessary to refer to the conclusion reached by the learned Judge as a consequence of the finding. Defendants one to five inclusive, all members of the Association, had not claimed in the action any order

A or relief against the Sugar Company or Burns Philp Ltd. In the case of the first defendant there was additionally the finding that the Assignment was not void as against him. In the case of the ninth plaintiff, he also was bound by the Assignment and could not recover. Therefore only the first and second plaintiff were entitled to recover one-eighth each of the moneys paid under the Assignment before the 1st July 1967. The learned Judge appeared to find this entitlement against both the Sugar Company and Burns Philp Ltd. (though s. 2 of the Ordinance mentions only the B "person making such payment") but in the light of the order subsequently made nothing turns on this in the appeal.

The main question then, is whether the finding that the Assignment was void against all members of the Association other than the two signatories, is correct. It is necessary to mention one further finding of the learned Judge, which is also unchallenged on the appeal, and that is, C that the ninth plaintiff and first defendant, in executing it, acted within the scope of their authority as agents of the members of the Association and with the knowledge and consent of all the then members.

Mr. Stuart, for the appellants, relied upon three submissions. The first is that the Agricultural Produce (Authorities by Fijians) Ordinance dealt with Fijians as individuals. In this case they were an association of indivi- D duals and though not a body corporate, they were, as a group, something other than individuals. He relied on the wording of the latter part of sectiton 2. Secondly an "instrument" is a prerequisite to the operation of the section to be signed by the Fijian in the presence of an approved person. Accordingly those who did not sign were not caught by the section — there was no law to stop a Fijian making an oral assignment. Thirdly the two signatories were agents of the members of the Association E and the fulfilment of the requirements of the section in relation to the two signatories and the approval given by the District Officer extended to cover all those whom the signatories represented.

Of these submissions the second can be disposed of shortly. We are dealing with a signed instrument, binding (apart from the Ordinance) on all members of the Association. The members acted through it, and there F is no question of any oral assignment, if that is a practicable possibility. The issue is the effect of the approval given to this particular instrument.

I think the first and third submissions run together. It does not appear to me permissible to regard as association of individual Fijians as some sort of quasi legal entity which removes it from the category covered by the word Fijian (which must also be construed in the plural) in the section. G But an unincorporated society can enter into contracts and dealings and the normal way for that to be done is through authorised agents, as was done here. Does the Ordinance mean that an association of Fijians may not adopt this normal business practice but that every member must sign and personally receive the benefit of investigation and approval? Or is it more proper to regard the protection given by the enquiries which no doubt an authorised person makes before giving his approval, as extending H to all those bound by the signatories? The Assignment has on its face material making it abundantly clear that the signatories sign as authorised agents of the Association. In my view the duty of the authorised person before approval would extend to satisfying himself concerning the Association as a whole, and not merely as to the two persons before him. If

indeed the District Officer were stationed in the area, he may well have been familiar with the association already. By virtue of the doctrine applied by the learned Judge, that everything must be presumed to have been rightly done, it must also be assumed that the District Officer as an authorised person within the Ordinance fully performed his function. A

So far as section 2 of the Ordinance is concerned there is nothing to prevent this approach. It merely requires that the instrument be approved under the provisions of the Ordinance. Prima facie section 3 requires that the Fijian wishing to obtain the approval in relation to the proceeds of his agricultural produce must sign personally before the authorised person and that the Fijian is the actual person "making the instrument". But there is nothing which specifically states that the Fijian may not perform these functions through his *alter ego*, the authorised agent. B

It may be thought that this would provide an easy way of evading the provisions of the Ordinance. I am not satisfied that such is the case. Even if the Fijian appointed an European his agent, it would still be the Fijian (through that agent) who authorised payment and the instrument would still require the approval of an authorised person. If the agency were not disclosed on the face of the instrument, the Sugar Company for example, the recipient of most of these assignment, would not be deceived, as its cane contract would be in the name of the Fijian. C D

In the absence of any clear indication as to whether the legislature intended to exclude the law of agency by the Ordinance, the question must be resolved by consideration of its general purpose. In a passage in my judgment in *South Pacific Sugar Mills Ltd. v. Peni Muavesi* (1968) 14 F.L.R.113, 120, relied upon by Mr. Koya for the first two plaintiffs I said that "the method of control is to require responsible public officers to satisfy themselves on two important matters both clearly designed to protect the Fijian against himself and against exploitation by others. His status under the Ordinance is a protected one." I was therefore of the opinion that an estoppel would not work against the Ordinance and a Fijian could not contract out of its provisions. But no question of estoppel or of contracting out arises here. The Court is dealing with an approved instrument and the only question is whether it was approved under the provisions of the Ordinance. E F

On full consideration of this difficult problem I am unable to see that the protective nature of the Ordinance requires the exclusion of the law of agency, particularly in a case like the present where the agency is manifest and there is no suggestion of subterfuge. In any particular case the measure of protection of the Fijian's interests is the degree of the observance of his functions and duties by the authorised person, and that would be so in the case of an agency such as the present one no less than in the case of an individual. That degree of observance must be assumed to have been at least adequate to the occasion, in any case where the authorised person decides to approve. G

For these reasons I consider that the approval given extended to all persons bound by the Assignment and that the Assignment was not void by reason of the Ordinance; it follows that the appellants are entitled to have the judgment of the Supreme Court set aside and the action dismissed. The counterclaim by Burns Philp Ltd. as to £2262. 13. 0 was dis- H

missed by the learned Judge. He was not satisfied by the evidence
A tendered in support of the claim, and referred particularly to the non-production of dockets which had been asked for. He was also not satisfied with the evidence of the claim for services and interest. All I need say on this is that Mr. Stuart has not advanced any argument sufficient to induce me to say that the learned Judge, who heard all the witnesses, was wrong in this decision. I would dismiss the appeal as to the counterclaim, and the alternative counterclaim, for the larger amount, does not
B arise.

There was a cross appeal filed by Mr. Koya, which in the event he limited to a question of costs. On my findings above, the basis of the cross appeal disappears and it must be dismissed.

No order appears to be necessary in relation to the third party pro-
C ceedings.

As to costs, the learned Judge found that all parties should pay their own costs in relation to all proceedings in the Supreme Court. This can be assumed to have been on the basis that, while the plaintiffs enjoyed a measure of success, their claim was not meritorious. The position is now different. I would order that the costs of all defendants in the
D Supreme Court on the claim be paid by the plaintiffs, but that the plaintiffs have their costs of the counterclaim against the sixth defendant. It is agreed that plaintiffs three to eight, who did not appear on the appeal, were nevertheless respondents, and their solicitor on the record, Mr. Koya, was served with the notice of hearng. They are therefore included in the order. The appellants having succeeded in this appeal except as to the counterclaim, and on the cross appeal, I would order that four-
E fifths of their taxed costs be paid by the first and second plaintiffs who alone were the active participants. The order for costs made in the first appeal is not of course affected.

As the opinion of the members of the Court is unanimous the appeal is allowed (except as to the counterclaim) and the cross appeal dismissed. There will be the orders for costs I have proposed above.

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MARSACK J.A.

I have had the advantage of reading the full and careful judgment of the learned Vice President and agree with the orders proposed by him and with the reasons he has given for them.

G In my view, the assignment cannot be held void, by the provisions of the Ordinance Cap. 205, as against all members of the Association except the two whose signatures appear on the document. It is common ground that the assignment was executed by the two members concerned for and on behalf of all the members, and with their full knowledge and approval. The document itself made it clear that the parties to it were the Drakoro Cane Growers Association, and Burns Philp (South Seas) Company
H Limited. It contained a certificate that Pauliasi Natiri and Taniela Varo, the President and Secretary respectively of the Association, were authorised to execute the assignment on behalf of the Association. The approving officer, the District Officer, Lautoka, must, therefore, have been fully aware that the document was on the fact of it an assignment

of cane proceeds which would become payable to all members of the Association. His approval must have been given on that basis; and so it cannot be held, in my opinion, that his approval would have legal effect only with regard to the two persons who had actually signed the documents.

For reasons which had been given by the learned Vice President, I would agree that there is nothing in the Ordinance to prevent that assignment binding a Fijian who had signed the document, not personally, but through his duly authorised agent.

Accordingly, I am in full agreement with the opinion of the learned Vice President that all members of the Association were bound by the assignment, and that the approval given by the District Officer Lautoka extended to the whole transaction between all members of the Association and the Company.

As I have said, I therefore fully concur with the judgment proposed by the learned Vice President.

BODILLY J.A.

I have had the opportunity of reading the judgment of the learned Vice President and I am, with respect, in entire agreement with the conclusions to which he has come. As he has pointed out, the case really turns upon whether, on a true construction of section 2 of the Agricultural Produce (Authorities by Fijians) Ordinance, Fijians are precluded from enjoying the benefit of the use of an agent when they wish to grant an authority for the payment of the proceeds of an agricultural crop to a non-Fijian. Although the Ordinance is, I think, clearly intended for the protection of the Fijian against exploitation, is it also intended to restrict his use of the ordinary business facility of acting through an agent? I do not think so. Speaking for myself, I should have thought that the use of an experienced business agent, whether Fijian or not, would be of considerable benefit to a Fijian farmer, or for that matter to any other farmer. Unless, therefore, a restriction upon the use of an agent can clearly be found in the Ordinance and I cannot find it, it seems to me that there is nothing to prevent him from acting through an agent. Whether he acts through an agent or not, in any event the transaction must come under scrutiny by a person authorised under the Ordinance for that purpose. That is to my mind the basic purpose of the Ordinance. It is to ensure that no such transaction shall be valid as against a Fijian unless it has passed through that sieve so that no improper advantage may be taken of him. If the transaction be properly scrutinised, and it is not suggested in this case that the transaction was not, it seems to me to matter not at all whether it is brought before the authorised person by the Fijian himself or by his accredited agent.

I would allow the appeal.

For the reasons given by the learned Vice President I would also dismiss the counterclaim and the cross appeal.

As regards the costs, I agree with the orders made by the learned Vice President in the circumstances of the case.

Appeal allowed (except as to counterclaim); cross appeal dismissed.