

NITYA RAM v ALIVERETI TAITO and Anor (HBA0020 of 2004)

HIGH COURT — APPELLATE JURISDICTION

5 WINTER J

4 May 2005

10 **Contract — limitation — agency — whether Magistrates Court erred in not limiting contract to specific or reasonable period of time — Magistrates Court decision awarding sum of money — no defence filed to amended statement of claim — no pleading in defence of inferred condition limiting period of daily charges to specific or reasonable length of time.**

15 The parties entered into a contract for the care of three vehicles. In the substantive case, the Magistrates Court awarded the sum of \$8900 for the contracted rate of \$20 per day for 445 days against the Appellant. The Appellant appealed against the Magistrates Court decision. The case against the second Defendant's (D2) bank was dismissed. D2 was served with the first Defendant's (D1) appeal as a matter of courtesy but sought and was granted leave to be excused upon advice that they would accept the appeal decision. D1's statement of defence contained no positive defence and alleged that the contract he entered into for the care of the vehicles was signed under duress. D1 likewise claimed that the vehicles were not properly cared for while in the Plaintiff's possession. No defence was filed to the amended statement of claim. There was no pleading in the defence of an inferred condition limiting the period of daily charges to a specific or reasonable length of time. At issue was whether the Magistrates Court erred in not limiting the contract to a specific or reasonable period of time.

25 **Held** — (1) The Magistrates Court did not err in not limiting the contract to a specific or reasonable period of time since there was no pleading seeking to limit the applicable period of the contract specifically or generally. Apart from a bar table speech, there was no proper notification that this issue was triable and essential to the defence. The learned magistrate had no obligation to make a substantive finding on this issue as there was no direct evidence of the parties' intentions in relation to any limitation of the time period.

30 (2) The Magistrates Court is not a court of pleading. Civil matters can be disposed of summarily without pleadings. It is not part of the duty or function of the court to enter upon a general enquiry into a case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised. Indeed the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties.

35 Appeal dismissed.

Cases referred to

40 *Blay v Pollard & Morris* [1930] 1 KB 628; *Colonial Securities Trust Company v Massey* [1896] 1 QB 38; *Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218; [1955] 3 All ER 864; [1956] 2 WLR 81; *Lester v Balfour Williamson Merchant Shippers Ltd* [1953] 2 QB 168; [1953] 1 All ER 1146; [1953] 2 WLR 1068, cited.

45 *R. Singh* for the Appellant

V. Tuberi for the Respondent

Winter J. The Appellant appeals against the decision of the learned magistrate, Mr Aminiasi Katonivaliku, delivered on 31 August 2004.

50 The Plaintiff's claimed daily fees charged to the bailiff first Defendant (D1) for the care of three motor vehicles.

The learned magistrate gave judgment in favour of the Respondent Plaintiffs and against the Appellant in the sum of \$8900, being a contracted rate of \$20 per day for 445 days. The case against the second Defendant (D2) bank was dismissed. They were served with the D1's appeal as a matter of courtesy but
5 sought and were granted leave to be excused upon advice that they would abide the appeal decision.

The D1's statement of defence is bland, contains no positive defence, alleges the contract he entered into for the care of the vehicles was signed under duress or alternatively claims the vehicles were not properly cared for while in the
10 Plaintiff's possession. No defence was filed to the amended statement of claim. There is no pleading in the defence of an inferred condition limiting the period of daily charges to a specific or reasonable length of time.

Mr Singh in his written submissions addressed the first ground of appeal:
15 duress; but on appeal abandoned that ground.

As for grounds 2, 3 and 5, these are in effect each a different aspect of the same ground that the learned magistrate fell into error by not limiting the contract to a specific or reasonable period of time. This argument can be disposed of shortly.

The Magistrates Court is not a court of pleading. Civil matters can be disposed
20 of summarily without pleadings. However, where parties embark on and maintain a claim or defence in that formal way, they are bound by O XVI Rules and common pleading practise.

A system of pleadings is the primary, if not the basic method for stating and resolving disputes, questions of facts, or of mixed law and fact between parties
25 to any proceedings.

The first object of pleadings is to define and clarify with precision the issues and questions which are in dispute between the parties that fall to be determined by the court. Fair and proper notice of the case, an opponent is required to meet
30 must be properly stated in the pleadings so that opposing parties can bring evidence on the issues disclosed (*Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218 at 238; [1955] 3 All ER 864 at 868; [1956] 2 WLR 81).

A further object of pleadings is to inform the court what are the precise matters
35 in issue between the parties which the court may determine. Pleadings set the limits of the action which may not be extended without due amendment properly made. Cases must be decided on the issues on the record and if it is desired to raise other issues they must be placed on the record by amendment (*Blay v Pollard & Morris* [1930] 1 KB 628 at 634). It is not for the judge to
40 speculate about the nature of a party's case. The judge and the parties are circumscribed by the pleadings on the record.

The parties are adversaries. It is left to each of them to formulate their case in their own way. For the sake of certainty and formality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without an
45 amendment properly made.

It is not part of the duty or function of the court to enter upon a general enquiry into a case before it, other than to adjudicate upon the specific matters in dispute which the parties themselves have raised. Indeed, the court would be acting
50 contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. The court does not provide its own terms of reference. The parties do.

Decision

The Appellant Plaintiff did not in his defence raise any positive pleading seeking to limit the contract to any reasonable or specific period of time. The evidence did not address that issue. In the court at first instance, counsel only
5 obliquely mentioned the argument in his submission (p 47 of the record) to the learned magistrate. That submission was not based on evidence or pleading.

In a civil appeal, the Appellant must show that the learned magistrate made an error in his findings of fact. Unless the appellate court is satisfied that the trial court was in error on those findings of fact, the appeal ground must be dismissed
10 (*Colonial Securities Trust Company v Massey* [1896] 1 QB 38 at 39).

There was no pleading seeking to limit the applicable period of the contract specifically or generally. Accordingly, apart from a bar table speech, there was no proper notification that this issue was triable, let alone essential to the defence. Further, the learned magistrate had no obligation to make a substantive finding on
15 this issue as there was no direct evidence of the parties intentions in relation to any limitation of the time period. I am not satisfied that grounds 2, 3 and 5 are made out.

Lastly, the Appellant raises a ground that he was acting as agent of the second Respondent (R2) bank. Agency is again not specifically pleaded in the statement
20 of defence. It was, however, addressed during the course of the proceedings as the R2 bank denied any agent responsibility. An agent who signs a document or a contract in his own name without qualification is personally liable on that contract unless it appears from the face of the document that he is signing as a mere agent of someone else and the signature was not intended to bind him
25 (*Lester v Balfour Williamson Merchant Shippers Ltd* [1953] 2 QB 168; [1953] 1 All ER 1146; [1953] 2 WLR 1068).

The trial magistrate was not satisfied as to agency; a conclusion he was quite justified in coming to on the evidence adduced. Further, it is remarkable that the first Respondent (R1) did not seek indemnity from the R2. If the Appellant
30 considered that someone other than him was responsible for payment, he should have joined the co-defendant as a third party and he did not do so. The trial magistrate and this court cannot cure such a fundamental error.

Conclusion

35 The Appellant has not been able to satisfy me either that he was acting as a mere agent or that the contract was in some way to be limited in time. Mr Singh with his usual diligence advanced every possible argument in support of this appeal but I am satisfied that the learned magistrate reached the right conclusion on the pleadings and evidence before him.

40 Accordingly, the appeal fails and is dismissed with costs fixed in the sum of \$500 to be paid within 14 days.

Appeal dismissed.

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