FRATELLI FASANI SPA v ZAMBITAL (Z) LTD AND ANOR (1983) Z.R. 129 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND MUWO, JJ.S.
18TH NOVEMBER ,1983
(S.C.Z. JUDGMENT NO. 20 OF 1983)
APPEAL NO. 23 OF 1983

Flynote
Contract - Performance - Place - Jurisdiction.
Courts- Jurisdiction - Contract - Place of performance - Need to ascertain.

Headnote
In a disagreement involving a contract between a Zambian Importer and an Italian exporter, the trial court found that the performance of the contract was carried out in Italy and out of the jurisdiction of the Zambian courts.

Ruling:

The performance of the contract, in the circumstances had to be carried out in Zambia, and the Zambian courts had jurisdiction over the matter.

For the appellant: S. M. Malama, Jacques and Partners.
For the respondents: M. Lwatula, Ellis and Co., instructed by A. J. Mkandawire and Co.

Judgment
NGULUBE, D.C.J.: delivered the ruling of the court.

This case came before a High Court judge who ruled that, because one of the parties to the contract was out of the jurisdiction, the performance of the contract must have been carried out in Italy. In fact the performance of the contract had to be carried out in Zambia. In any event, both parties to this action submitted to the jurisdiction of the Zambian courts. The learned trial judge further argued that, because there were no assets of the defendant in Zambia, no judgment could be enforced. The pleadings,

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however, indicate that the defendant had assets in this country. The learned trial judge also argued that, to award the balance of the purchase price in this case to the Italian company would be contrary to exchange control regulations. The contract was between a Zambian importer and an Italian exporter and in the circumstances, the normal assumption to make is that there must have been exchange control authority in the first place. We are satisfied that the transaction in this case

falls within the contemplation of Order 10 Rule 15 of the High Court Rules and that therefore, the Zambian courts have jurisdiction. The decision of the High Court is hereby set aside. The appeal is allowed with costs to the appellant.

Appeal allowed

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