

## GRAPHICS AFRICA LIMITED v RANK XEROX LTD AND R.D.S INVESTMENTS LIMITED (1995) S.J.

SUPREME COURT  
GARDNER, C.C.J., SAKALA .D.C.J., AND CHAILA, J.S.  
11TH MAY, 1995 AND 3RD NOVEMBER, 1995  
APPEAL NO. 54 OF 1994

### Flynote

**agency - Breach of agency agreement - Termination of agency by notice - Where first notice is in contravention of the terms of the agency contract - Whether second notice is effective**

### Headnote

The appellant was an agent for the first respondent for the sale of goods on commission on its behalf. In April, 1986 the first respondent purported to terminate the agency agreement by notice which did not comply with the requirements of the agreement. At the same time the first respondent appointed the second respondent as agent in place of the appellant. The appellant then issued a writ claiming damages for breach of the agency agreement. In the mean time the first respondent served an amended notice of termination of the contract. After trial the appellant appealed against the finding that the second defendant was not liable in damages and against the order of the learned trial judge that part of the damages claimed should be referred to the Deputy Registrar for assessment. There was a further appeal against the order by the learned trial judge that interest on the award should run only for six months

### Held:

- (i) There was no evidence to support the plaintiff's claim that the second respondent was in any way responsible for its appointment as agent in place of the appellant
- (ii) There was no reason for the learned trial judge to call for an assessment of part of the damages by the Deputy Registrar

For the appellants: R M A Chongwe SC of RMA Chongwe and Company  
For the respondents: L Nyembele of Ellis and Company

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### Judgement

**GARDNER, A.C.J.:** delivered the judgement of the court.

This is an appeal against a judgement of the High Court awarding damages against the first respondent and refusing an award against the second respondent.

The facts of the case are that the appellant was an agent for the first respondent for the sale of goods on commission on its behalf. In April, 1986 the first respondent purported to terminate the agency agreement by notice which did not comply with the requirements of the agreement. At the same time the first respondent appointed the second respondent as agent in place of the appellant. The appellant then issued a writ claiming damages for breach of the agency agreement. In the mean time the first respondent served an amended notice of termination of the contract.

After the hearing of the action the learned trial judge found that because the first notice of termination of the contract was not given in accordance with the terms of the contract, it was invalid as a notice but the second notice was not effective because the contract had already been terminated by the first notice. The learned trial judge also held that because there was no evidence that the second respondent was responsible for the giving of notice by the first respondent no claim would lie against the second respondent. The learned trial judge further held that granting of an injunction against the second respondent was irrelevant to the appellant's claim for damages. Finally the learned trial judge found that by serving an invalid notice the first respondent was in breach of agreement and awarded part of the damages claimed in the statement of claim, which he held to be agreed damages, to the appellant. The appellant now appeals against the finding that the second defendant was not liable in damages

and against the order of the learned trial judge that part of the damages claimed should be referred to the Deputy Registrar for assessment. There is a further appeal against the order by the learned trial judge that interest on the award should run only for six months.

So far as the first ground of appeal is concerned, Mr Chongwe argued that in his statement of claim it was alleged that despite the order for the interim injunction the second respondent had continued to do business as agent for the first respondent. He maintained that this was a matter for which damages should be assessed by the Deputy Registrar.

With regard to the award of damages, Mr Chongwe argued that all damages set out in the statement of claim had been proved in evidence by the witness for the appellant and had not been contradicted. With regard to the question of interest Mr Chongwe argued that there was no justification for limiting the award of interest to a period of six months.

Mr Nyembele on behalf of the respondent agreed with the learned trial judge's finding that there was no evidence to support a claim for damages against the second respondent. He pointed out that the question of breach of injunction and damages therefore was irrelevant and argued that, in any event, the witness for the respondent had given evidence that the agency agreement with second respondent had been terminated. He drew our attention to the fact that there was no cross examination of the witness in respect of this evidence.

Mr Nyembele conceded that interest should be payable on the awarded damages up to the date of judgement and he did not contest the items claimed in the statement of claim respect of the damages incurred as a result of the breach of agreement.

In reply Mr Chongwe pointed out that the appellant's continuing loss as a result of the second respondent's breach of the injunction had been drawn to the attention of the court in chambers and this supported the claim against the second respondent.

So far as the first ground of appeal is concerned, we are satisfied that there is no evidence to support the plaintiff's claim that the second respondent was in any way responsible for its appointment as agent in place of the appellant. Nor is there any evidence on the record to support the appellant's claim that the second respondent continued to act as agent after the injunction had been granted. There is nothing to contradict the evidence of the respondent's witness that the agency contract with the second respondent was terminated as a result of the injunction. The appellant's own witness did not give any evidence to support the claim against the second respondent and there is no reason for us to find that the learned trial judge misdirected himself in this respect. This ground of appeal cannot succeed.

With regard to the appeal against the quantum of damages awarded we agree that there was no reason for the learned trial judge to call for an assessment of part of the damages by the Deputy Registrar. The whole of the damages claimed in paragraph 22 of the statement of the claim to a total of K3,393,308 should have been awarded. The appeal on this ground must therefore succeed. We agree with both parties that interest should be payable until judgement and accordingly interest is awarded on the amended sum of K3,393,308.97.

So far as the rate of interest is concerned, the learned trial judge ordered that interest should be payable at the current bank rate ruling when the writ of summons was issued, i.e. 11th of April 1986 to the date of delivery of his judgement.

Mr Chongwe told the court that he was under the impression that this meant the average rate of interest between the two dates. Mr Nyembele argued that the judge meant exactly what he said in the judgement. The usual practice in the courts is to award interest at the average short term bank deposit rate for the period between the date when the money became due and the judgement, and although the wording of the judgement in this case does not have that effect we can see no reason why the learned trial judge should have departed from the usual practice. Accordingly we accept that Mr Chongwe was misled by the wording of the judgement. We allow him to appeal out of time in this respect and we order that interest be awarded at the average short term bank deposit rate between the date of the writ, and the 11th of April, 1986, and the date of this judgement.

There were no other grounds of appeal and for the reasons we have given this appeal is allowed. The sum awarded for damages and the order for assessment by the Deputy Registrar are set aside. We award damages in the amended sum of K3,393,308.97 with interest at the average short term bank deposit rate for the period between the date of the writ, the 11th April, 1986 and the date of this judgement.

Costs of this appeal to the appellant.  
Appeal allowed.

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