

## **CAVMONT MERCHANT BANK LIMITED AND AMAKA AGRICULTURAL DEVELOPMENT CO. LTD.**

SUPREME COURT  
SAKALA, CHIRWA AND CHIBESAKUNDA JJS  
5<sup>TH</sup>JULY AND 19<sup>TH</sup>SEPTEMBER, 2001.  
(SCZ JUDGMENT NO. 12/2001)

### **Flynote**

Contract – agency.

### **Headnote**

This was an appeal against the judgment of the High court entered in favour of the respondent in the sum of US \$18,925.38 with interest. The facts of the case centred on an agreement made between the appellant and respondent dated 27<sup>th</sup> August 1997. In the agreement, the respondent agreed to provide to the appellant storage facilities and the accompanying services at a consideration as agreed within the contract. The appellant agreed to make payments for services rendered on a monthly basis within 14 days of the respondent sending it invoices. It was not in dispute that the respondent discharge its obligation under the agreement by providing storage and other related services. It was also not in dispute that the appellant had partially settled its indebtedness to the respondent under the agreement.

### **Held:**

(i) That where an agent, in making a contact discloses both the interests and names of the principal on whose behalf it purports to make a contract, the agent as a general rule is not liable on the contract to the other contracting party.

### **Cases referred to:-**

1. Halsbury's Laws of England, 4<sup>th</sup> Edition, paragraph 170.
2. Bowstead and Reynolds on Agency – 16<sup>th</sup> Edition page 548
3. Brandt and Compny Vs H N Morris & Company Ltd (1917) 2KB 784.
4. Yeung Kai Yung V Hong Kong & Shanghai Banking Corp (1981) A. C. 787, 795.

For the appellant , Captain B.A. Sitali, Legal Counsel.

For the respondent, Mr. R. Simeza of Sangwa Simeza Associates.

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### **Judgment**

#### **Sakala, JS, delivered the judgment of the court.**

The is an appeal against a judgment of the High Court entered in favour of the respondent in the sum of US \$ 18,925.38 with interest. The facts of the case centred on an agreement made between the appellant and the respondent dated 27<sup>th</sup> August, 1997. In the agreement, the respondent agreed to provide to the appellant storage facilities and the accompanying services at a consideration as agreed within the contract. The appellant agreed to make payments for services rendered on a monthly basis within 14 days of the respondent sending its invoices. It was not in dispute that the respondent discharged its obligation under the agreement by providing storage and other related services. It was also not in dispute that the appellant has partially settled its indebtedness to the respondent under the agreement. The trial proceeded on a statement of agreed facts. The issues to e settled by the court were also agreed. These were:-

- "1. Whether the defendant (appellant) was released from its obligation to pay the plaintiff (respondent) for the services rendered because the plaintiff was aware that the defendant was acting for and on behalf of the Ministry of Agriculture Food and Fisheries who were providing the funding .
- "2. Whether the defendant (appellant) was released from its obligation to pay the plaintiff (respondent) for services rendered to it because its ability to pay is directly linked to the receipt of funds from the Ministry of Agriculture Food and Fisheries."

In resolving the first learned trial judge identified the parties to the agreement to be appellant and the respondent. The court then made the following findings. That the agreement did not cite any other party; that the Ministry of Agriculture Food and Fisheries was not cited or referred to as being the principal for the appellant, and that there was no specific reference to an agency relationship between the appellant and the Ministry of Agriculture Food and Fisheries although implied in the recitals. The court held that where an agent is the contracting party, he will be held personally liable even if he names his principal. The court concluded on the first issue that the evidence on record was overwhelming that the appellant personally negotiated the terms of the contract, personally entered into it and executed the same. The court held that the appellant was not, under the contract, released from its obligation to pay for the services rendered to the respondent.

The court noted that the second issue was inter-linked to the first one and that by its own conduct, the appellant placed no reliance on the Ministry of Agriculture, Food and fisheries as the ultimate and only source for it to pay the respondent for the services rendered. The court held on the second issue that the appellant was directly responsible and therefore liable for its contractual obligations. The court also noted that the appellant had already partially settled its indebtedness and that the disputed amount did not rise from a different contractual obligation from what has already been partially discharged. The court further noted that the appellant did not deny its liability and for that reason took out Third party proceedings to be indemnified by the Ministry of Agriculture Food and Fisheries. The court supported the view that Third party proceedings have a life of their own, independent of the main action.

In arguing the appeal before us, Captain Sitali, relied on written heads of argument based on six grounds. The summary of the grounds of appeal is that the learned trial judge erred in holding that the appellant, who was an agent, was personally liable despite the evidence that the principal was named and known to the respondent; that the learned trial judge erred in holding that the appellant, as an agent was not released from the obligation to pay for the services rendered by the respondent on the ground that the appellant negotiated the terms of the contract; that the learned trial judge erred in holding that the appellant personally negotiated between the parties did not cite any other party apart from the appellant and the respondent; that the learned trial judge erred in taking into account the third party's defence in holding that the third party's proceedings be treated separately and independently from the action when the appellant's defence was that the storage fees claimed by the respondent were payable by the third party.

We heard an argument on behalf of the appellant that the storage contract of 27<sup>th</sup> August, 1997 executed between the parties expressly stated that the appellant was acting on behalf of the Ministry of Agriculture Food and Fisheries. The submission on this argument was that it is trite law that where an agent, in making a contract, disclose both the interests and the names of the principal on whose behalf he purports to make a contract, the agent as a general rule is not liable on the contract to the other contracting party. We also heard arguments that there was no evidence adduced before the trial court that the party had negotiated the contract. It was submitted on behalf of the appellant that as long as the principal had been named and is known, the principal will be liable under the said contract. According to the counsel for the appellant, though advisable, it is not necessary for a contract executed by an agent to include a clause transferring liability to a principal as the mere fact that the principal is named and known to the other contracting party as a general rule transfer liability to the principal.

Halsbury's Laws of England (1) and Bowstead and Reynolds On Agency (2) were cited in support of these arguments and submissions.

The other arguments put forward on behalf of the appellant were that no evidence was adduced to support the findings that the appellant personally negotiated the terms of the contract; that the appellant claimed its agency relationship with the third party of having been created by the contract dated 27<sup>th</sup> August, 1997 signed between the appellant and the respondent; and that the issues submitted to the High Court for determination were exclusively issues as agreed between the respondent and the appellant which issues did not include the third party's defence. The submissions on these arguments were that the learned trial judge erred in taking into account the Third Party's defence and counter-claim in determining the issues agreed between the appellant and the respondent. It was also argued that the appellant never agreed nor consented that the third party's proceedings be treated separately and independently from the main action. The submission on this arguments was that the treatment of the Third Party Proceedings separately and independently from the main action was only to the extent of having the court determine the specific issues agreed between the appellant and the respondent.

In response to the appellant's arguments and submissions, Mr. Simeza argued grounds one to four as one ground. In his arguments Mr. Simeza emphasized that in dealing with this appeal, the court should ascertain the parties to the contract itself, and the various clauses in the contract agreed between the parties. He submitted that among the issues in the contract is payment, pointing out that the parties specifically agreed that the payment shall be made on monthly basis and shall due within 14 days of the storage agent supplying its invoices along with any necessary documents to support its claim to the appellant. Counsel contended that the agreement did not suggest that money would come from the Ministry of Agriculture food and Fisheries. He contended that the arguments that money was to come from the Ministry was to add issues which were not in the agreement. Mr. Simeza submitted that recitals in an argument are not part of an agreement but only give the background to an agreement. Mr. Simeza pointed out that even assuming that the appellant was an agent, which they were not in this case, the law on agency was very clear that an agent will be liable personally if he is a contracting party even if he names his principal. Brandt and Company Vs H N Morris & Company Limited (3) was cited in support of this proposition where it was pointed out that, prima facie when a person signs a document in his name, he is the person liable on the contract. He submitted that the contract in the instant case shows the parties who signed the contract. The Ministry of Agriculture Food and Fisheries is not shown as a party to the contract.

Mr. Simeza also submitted that the appellant never negated its liability in the contract and pointed out that if the parties had wanted the Ministry of Agriculture Food and Fisheries to make payment, it should have been expressly stated in the contract. Mr. Simeza also cited the case of Yeung Kai Yung V Hong Kong and Shanghai Banking Corp(4) where it was held that a person being an agent is liable for its engagement (contract) even though he acts for another (the principal) unless he can show that by the law of agency, he negated his personal liability.

In relation to the court taking into account Third Party's defence, Mr. Simeza pointed out that reference was by of obita as the court was giving a background to the actions and that the appellant was not prejudiced. On the ground which criticized the court's holding that Third Party Proceedings be treated separately and independently from the main action, Mr. Simeza contended that it was totally wrong on the part of counsel for the appellant to come before this court to complain about that holding because it was specifically agreed between the parties that Third party proceedings against the Attorney-General be treated separately and independently from the main action. Counsel submitted that the appellant was estopped from raising that ground because the order by the court was by consent of both parties.

We have very carefully considered the judgment of the learned trial judge as well as the arguments and submissions by both learned counsel. The whole action centred on specific provisions of an agreement between the parties. The facts were not in dispute. The issues for determination were settled namely: Whether the appellant was released from its obligation to

pay the respondent for services rendered because the respondent was aware that the appellant was acting for and on behalf of the Ministry of Agriculture Food and Fisheries who were providing the funding or whether the appellant was released from its obligation to pay the respondent for services rendered to it because its ability to pay was directly linked to the receipt of funds the Ministry of Agriculture Food and Fisheries.

Before delving into the issues raised, we wish to observe that we found it rather curious that the record of appeal prepared on behalf of the appellant should have omitted the inclusion of the very agreement itself when the settled issues depended on it. The agreement was only produced as a Supplementary Record of Appeal by Counsel for the respondent.

We have examined the Storage Contract. The only provision in the agreement that makes mention of the Ministry of Agriculture Food and Fisheries is contained in the recitals. It reads:-

`WHEREAS

1. The Ministry of Agriculture, Food and Fisheries (hereinafter called MAFF") , in order to enhance the agricultural sector, more particularly that pertaining to small scale farmers in the Republic of Zambia established the Agricultural Credit Management Programme (hereinafter called the "the Programme") and appointed Cavmont Merchant Ban Limited to manage the said the Programme on its behalf; and,"

Our understanding of this provision is that it introduces the appellant to whoever had to deal with it. In our view, it is not very arguable that the Storage Contract between the parties expressly stated that the appellant was acting on behalf of the Ministry of Agriculture Food and Fisheries in entering into the said contract. The recitals merely state that the Ministry had established the "Agricultural Credit Management Programme and appointed Cavmont Bank Limited to manage the said Programme on its behalf....." It does not say that the appellant entered into the storage contract on behalf of the Ministry of Agriculture Food and Fisheries.

We agree that it is trite law that where an agent, in making a contract discloses both the interest and names of the principal on whose behalf it purports to make a contract, the agent, as a general rule, is not liable on the contract to the other contracting party. This is the law of agency and we have no problem with it. But in the instant case, the Storage Contract speaks for itself. The Ministry is mentioned in the recitals as appointing the appellant to manage a certain programme and not as a principal in the contract.

The arguments relating to there being no evidence relating to terms negotiated or to support the trial judge's findings flew in the teeth of the Storage Contract itself. The learned trial judge examined the storage contract. He found that it was between the two parties. The Ministry of Agriculture Food and Fisheries is cited as having appointed the appellant to manage their agricultural Credit Management Programme. The Ministry was not a party to the Storage Contract.

The agreement contains specific provisions to which the parties agreed. Relevant to the issues settled by the parties for the determination of the court is clause 6 relating to remuneration. The clause reads:-

"The storage agent's remuneration shall be payable in accordance with the rate as agreed between the parties and set out in the first schedule of this contract. The payments shall be made on a monthly basis and shall be due within 14 days of the Storage Agent supplying its invoices along with any the necessary documentation to support its claim to the satisfaction of CMBL."

Our understanding of this provision is that remuneration for the respondent was payable in accordance with the rate agreed between the parties to the agreement as set out in the first schedule of the very agreement. These payments were to be made on a monthly basis and due within 14 days upon the respondent supplying its invoices and any other documentation to

support the respondent's claim to the satisfaction of the appellant. We are satisfied that the agreed issues for determination did not depend on any evidence but on the interpretation of the agreement itself. The parties to the agreement were the appellant and the respondent and not the Ministry of Agriculture Food and Fisheries.

The trial judge considered the issue of agency. He accepted that although the contract was silent on the issue of agency relationship between the appellant and the Ministry of Agriculture Food and Fisheries, it was implied from the recital in the contract. But the court nonetheless found that the appellant negotiated the contract, entered into it and executed it. The court concluded that the appellant was not released from its obligation under the contract to pay for the services rendered. These findings based on the interpretation of the agreement cannot, in our view, be criticized and did not require any evidence to be adduced before the court.

We totally agree with the submissions by Mr. Simeza that the agreement did not suggest that payment will depend upon the appellant being funded by the Ministry of Agriculture Food and Fisheries. Indeed, the law on agency is very clear. Where an agent is contracting party he will be held personally liable even if he names his principal.

The other arguments on behalf of the appellant relating to there being no evidence of the appellant personally negotiating the terms of the contract and those relating to the third party defence overlooked the fact that this action was tried without hearing evidence. The facts and the issues for determination by the court were all agreed. The issues of evidence could therefore not be raised in this court.

This appeal cannot therefore succeed. It is dismissed with costs to be taxed in default of agreement.

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