

ISIKELI TUI'ONE (Appellant, Defendant)

v.

PENISIMANI FINAU (Respondent, Plaintiff)

This is an appeal from a decision of the Supreme Court (Hunter J) whereby judgment was given for the Plaintiff (respondent) for £286/18/6. The defendant appealed. One ground of appeal was that the Judge erred in admitting in evidence an agreement which was registered seven months after it was made. The registration had been made by the direction of a previous Judge. This ground was rejected by the Court of Appeal. Other grounds were argued and the Privy Council laid it down that in future an appellant would not be allowed to rely on a ground not stated in his petition of appeal, except in most exceptional circumstances.

On the 12th December, 1958 the Privy Council (Hammett C.J.) dismissed the appeal and said :

On the 14th March, 1956 the Plaintiff-Respondent obtained judgment in the Supreme Court for £286/18/6 and costs assessed at £133/10/6. The Defendant-Appellant appealed. The case was, on the 25th January, 1957, sent back to the Court below to be reopened to enable the Defendant-Appellant's evidence to be heard. This has now been done. The Supreme Court after hearing the Defendant-Appellant entered judgment for the Plaintiff-Respondent on 3rd April, 1957 for £286/18/6 and costs assessed at £87/5/-.

The Defendant has again appealed. The grounds of appeal appear to be that the learned trial Judge wrongfully admitted in evidence an Agreement for the loan of £100 on the security of a lorry, which was only registered 7 months after it was made, on the direction of the Judge. We have examined the provisions of the Contract Act Cap. 83 Section 10 (3) (read with Act No. 11 of 1952) where it expressly states that a Judge of the Supreme Court may in his discretion, order the Registration of an agreement. In our opinion there are no merits in this ground of appeal.

The rest of the grounds of appeal appear to complain that the learned trial Judge did not allow against the claim sums alleged to be due to the Defendant which should have been the subject of a counter claim by the Defendant.

The Defendant did not file a counter claim in this case and we do not consider his complaints are justified. On perusing the judgment of the learned trial Judge it would appear that he did, on grounds which we consider were adequate decline to accept the Defendants evidence on these matters.

The petition of Appeal stated that other legal points would be raised at the hearing of the Appeal which were not set out in the petition. We wish to make it clear that where a lawyer is retained by an appellant it is his duty to include in the petition of Appeal, all the grounds upon which he intends to rely when the appeal is heard. If he fails to do so he will not be permitted

to rely on any other grounds of appeal except with leave which will only be given in the most exceptional circumstances. We trust this matter will be borne in mind in future by lawyers when preparing Petitions of Appeal.

In this case the Defendant-Appellant borrowed either personally or by his wife as his agent a total of £300 from the Plaintiff-Respondent on the security of his lorry. The Defendant's relative, Roberts with the knowledge of the Defendant, who did not at the time object, took possession of the vehicle and the Plaintiff has lost his lien over it. The Defendant admitted he has not repaid these loans to the Plaintiff or any interest thereon.

After a long hearing the learned trial Judge was of the opinion that the Plaintiff had made a profit of some £45 out of the running of this lorry whilst it was in his possession. He has allowed the Defendant-Appellant credit for this sum and given judgment against him for £286/18/6 and costs. In our view there are no grounds for interfering with this decision.

The Appellant has asked this Court to order Joy Salt, who obtained the lorry from Roberts, to return it to him. Since Joy Salt is not a party to this action the Appellant is not entitled to such an order. If he wished to proceed against Joy Salt he must do so by means of a separate action.

The appeal is dismissed with £5/5/- costs.