Croci v Moa & Fifita

Court of Appeal
Hampton CJ, Tompkins & Neaves JJ
App. 3/96

24 & 28 May 1996

Practice and procedure - application to set aside default judgment
Practice and procedure - appeal - judicial review
Judicial review - Magistrates Court
Magistrates Court - splitting claim - judgment void

This was an appeal from a judgment in the Supreme Court dismissing an application for judicial review from a refusal by the respondent Magistrates to accept for filing and to refuse to hear an application to "review" an earlier decision of another Magistrate giving 2 judgments (1 for $1,000 and the other for $300 - a "splitting" of the same action between the same parties where the defendant, the present appellant, was unrepresented).

Held:

1. The original plaintiff had but one cause of action against the appellant, the amount of which exceeded the Magistrate's jurisdiction.
2. Splitting the claim and the two judgments thereon was done without jurisdiction and the judgments a nullity.
3. The Magistrate could hear and determine say the claim for $1000 but only if the plaintiff had formally and effectually abandoned the excess.
4. The appropriate course for a defendant who alleges the Magistrates' Court has no jurisdiction by reason of circumstances similar to those in the present case, is by way of judicial review in the Supreme Court.
5. In addition if a Magistrate entertains and refuses an application to set aside a judgment given in the absence of a party that party may appeal to the Supreme Court. But if a Magistrate declines to entertain such an application judicial review would be appropriate. A Magistrate is under a duty to hear and determine an application to set aside a default judgment under power to be found within its general jurisdiction (and not under the Supreme Court Rules).

Statutes considered : Magistrates' Court Act

Counsel for appellant : Mr Macdonald & Mr Appleby
Counsel for respondent : Ms Weigall

Judgment

This is an Appeal from the judgment of the Supreme Court of Tonga (Lewis J.) given on 9 January 1996 dismissing an application by the appellant for judicial review in relation to certain proceedings in the Magistrate's Court at Nuku'alofa. In those proceedings, which were numbered respectively 93/94 and 94/94, 'Alisi Tu'aefe Palelei Co. Ltd was the plaintiff and the appellant was the defendant.

The application to the Supreme Court, which was filed on 22 May 1995, sought judicial review by way of writ of mandamus in respect of the alleged refusal of the respondent -

(a) to accept for filing what was described as "an Application to Stay the Execution of a Writ of Distress dated 13 February 1995", and

(b) to hear and determine the "Application to Stay" and an application described as "an Application for Review dated 27 January 1995".

The first and second respondents to the present appeal were named respectively as first and second defendants in the proceedings in the Supreme Court. The first respondent is a Senior Magistrate responsible for the administration of the Magistrate's Court at Nuku'alofa. The second respondent is the Chief Police Magistrate.

In order to understand the appellant's case, it is necessary to refer shortly to the history of the proceedings in the Magistrate's Court. 'Alisi Tu'aefe Palelei Co. Ltd, which it may be noted was not joined as a party to the proceedings in the Supreme Court or this Court, commenced two proceedings against the appellant to recover the balance unpaid of the price of a motor vehicle purchased by her from the company. In one proceeding, numbered 93/94, the amounted claimed was $1000. In the other, numbered 94/94, the amount was $300.

The two proceedings were heard together on 11 November 1994 in the Magistrate's Court constituted by Magistrate Palu. The Magistrate recorded that "the two cases were allowed to be heard jointly as they were of same nature and derived from the same matter and between the same parties". The hearing proceeded in the absence of the appellant, the Magistrate being satisfied that she had been served with the procee of the court and had received due notice of the date of hearing. In proceeding numbered 93/94, the appellant was ordered to pay $1000 within two months, in default a distress warrant to be issued. In the other proceeding, the appellant was ordered to pay $300 plus $151 costs within one month, in default a distress warrant to be issued.

The solicitor for the appellant prepared the document, described as the "Application for Review", dated 27 January 1995 and presented it, together with supporting affidavits, to the Magistrate's Court Office on 1 February 1995. The application relied on the fact that the appellant was not represented at the hearing and asserted that she had a substantive defence. Orders were sought that, in each case, the judgment of Magistrate Palu be set aside and that the distress warrant which, at the instance of 'Alisi Tu'aefe Palelei Co. Ltd, had been issued to enforce the judgment be stayed. No question was raised as to the jurisdiction of the Magistrate to hear the proceedings numbered 93/94 and 94/94. The solicitor was susequently informed that the first respondent considered that the Magistrate's Court had no jurisdiction to hear the application dated 27 January 1995 an application to stay the execution of the distress warrants. It appears that on 13 March 1995 the appellant paid the amounts in respect of which the warrants of distress had been issued.

The question whether the Magistrate's Court constituted by Magistrate Palu had

jurisdiction to entertain the proceedings numbered 93/94 and 94/94 was not raised in the Supreme Court by counsel for the appellant but by counsel for the respondents. Relevant to the jurisdictional issue are the provisions of s.59 of the Magistrates' Courts Act. That section provides -

"59 (1) Every magistrate shall have jurisdiction to hear and decide civil actions where either the plaintiff or the defendant resides in his district, provided that the amount claimed in any such action whether as debt, balance of account, or damages, or the value of the thing claimed does not succeed $1000.

(2) Subject to the above, civil actions where the amount claimed whether as debt, balance of account, or damages, or the value of the thing claimed does not suceed $2000, shall be tried by the Chief Police Magistrate.

(3) The rules of procedure governing Civil cases in the Chief Police Magistrate's Courts shall be the same as those for Civil Cases in the Supreme Court. The Registrar of the Supreme Court shall be the Registrar of the Chief Police Magistrate's Court."

The Supreme Court did not accept that the Magistrate's Court had no jurisdiction to hear and determine the proceedings numbered 93/94. Having observed that "all the indications point towards the likelihood that the two claims are both part of the one agreement which was alleged to be breached by Ms Croci" and that the claim appeared to have been split so as to enable the jurisdiction of the Magistrate's Court to be invoked, the learned trial judge continued -

> "If that be the case then whichever judgment was delivered first, it de jure operated res judicata the second (or following) judgment, thus providing an immediate appeal ground in respect of the following or second judgment."

We are unable to agree with the conclusion reached by the trial judge. As appears clearly to be the position, 'Alisi Tu'aefe Palelei Co. Ltd had but one cause of action against the appellant, namely a claim for debt arising from the alleged failure of the appellant to pay the full price of the motor vehicle purchased by her, the amount of the alleged indebtedness being $1300. That amount exceeded the monetary limit of the jurisdiction of the Magistrate's Court constituted by Magistrate Palu. The jurisdiction of the Magistrate's Court as so constituted could not be enhanced by the plaintiff company splitting the cause of action so as to claim $1000 in one proceeding and $300 in the other. Each of the judgments given by Magistrate Palu was, therefore, given without jurisdiction and is a nullity. What Magistrate Palu ought to have done was to dismiss the proceedings. It would have been proper for him to hear and determine the proceeding numbered 93/94, in which the amount claimed was $1000, if, and only if, the plaintiff company had formally and effectually abandoned the excess, by release or otherwise, so as to bar any other proceeding for its recovery and prevent it being set off against any claim which might be made against the plaintiff company by the appellant.

There was some discussion during the hearing as to the appropriate procedure to be followed in the Magistrate's Court by a defendant who alleges that the Magistrate's Court has no jurisdiction by reason of circumstances similar to those in the present case. In our opinion, the appropriate course for a defendant in such a case is to invoke thejurisdiction of the Supreme Court by way of judicial review pursuant to Order 27, Rule 1 of the Supreme Court Rules to seek an order of prohibition or certiorari as may fit the

circumstances of the particular case.

Counsel for the appellant also submitted that the trial ju e was in error in concluding that the appellant had no right to judicial review in respect of the failure of the failure of the Magistrate's Court to hear and determine the appellant's application to that Court to set aside the judgments given, in the absence of the appellant, on 11 November 1994 and holding that the appropriate remedy was to proceed by way of appeal.

In our opinion, the remedy by way of appeal would be an appropriate remedy, giving rise to a discretion in the Supreme Court to deny relief by way of judicial review in respect of the same matter, if a Magistrate's Court entertains an application to set aside a judgment given in the absence of a party and refuses the application. Where, however, the Magistrate's Court declines to entertain an application, we can perceive no adequate reason why relief by way of judicial review would not be appropriate. We have no doubt that a Magistrate's Court is under a duty to hear and determine an application to set aside a default judgment of that Court. Counsel for the appellant sought to find the source of jurisdiction in a Magistrate's Court to entertain suchan application by reference to Order 23, Rule 4(i) (iii) of the Supreme Court Rules which it was submitted, was made applicable by s.59 of the Magistrates' Courts Act to civil cases in those courts. We are unable to accept this submission in view of the amendment made to s.59 in 1990 deleting the provision previously contained therein that the rules of procedure for civil cases in the Supreme Court were to apply to civil cases in the Magistrates' Courts. We have no doubt, however, that the power in a Magistrate's Court to set aside a default judgment is a power to be found within its general jurisdiction.

It remains to consider what, if any, relief the appellant is entitled in the light of the conclusions to which we have come. Counsel for the appellant made it plain during the course of his submissions that the appellant, having satisfied the debt upon which the plaintiff company sued, no longer wished to contend that she was not indebted to the plaintiff company in respect of the purchase of the motor vehicle. In these circumstances, no useful purpose would be served by setting aside thejudgment of the Magistrate's Court in proceedings 93/94 and 94/94 on the ground that that Court lacked jurisdiction to hear and determine them. Further, in view of the lack of jurisdiction in the Magistrate's Court to hear and determine those proceedings, it would be inappropriate to issue an order in the nature of mandamus directing the Magistrate's Court to hear and determine the appellant's application dated 27 January 1995 to set aside the judgments given on 11 November 1994 or to hear and determine the application dated 13 February 1995 to stay the execution of the distress warrants issued at the instance of 'Alisi Tu'aefe Palelei Co. Ltd.

In these circumstances, we are of opinion that the appeal should be dismissed and we so order. In the light of the history of the matter, however, we consider it appropriate that there be no order as to the costs of the appeal to this Court.