Privy Council Appeal No. 29 *of* 1952

Joseph Orakwue Izuora - - - - - - - - *Appellant*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH MARCH, 1953

Present at the Hearing:

LORD PORTER
LORD TUCKER
LORD ASQUITH OF BISHOPSTONE

[*Delivered by* LORD TUCKER]

The appellant is a barrister practising in Nigeria. On 18th September, 1951, Manyo-Plange, J., sitting in the Supreme Court of Nigeria in the Benin Judicial Division fined the appellant £10 and ordered that in default he be imprisoned for two months for contempt of court.

The appellant appealed to the West African Court of Appeal who on 23rd November, 1951, struck out the appeal on the ground of lack of jurisdiction, considering themselves bound by a previous decision of that court in the case of *Poku and another* given seven days earlier on 16th November, 1951. The appellant obtained special leave to appeal to Her Majesty in Council by order dated 24th June, 1952. No case was delivered on behalf of the respondent and counsel for the Crown was heard only on the question of costs.

The circumstances in which the order appealed from came to be made were as follows. On 4th September, 1951, at the conclusion of the hearing of a divorce case in which the appellant represented the respondent in those proceedings, judgment was reserved by the trial Judge, Manyo-Plange, J., until the following day. The appeliant thereupon applied to the Judge that he might be excused from attendance next day. His application was granted. Counsel for the petitioner then asked that he also might be excused. Thereupon the learned Judge stated that the court could not carry on in the absence of counsel for both parties and in the circumstances the appellant's permission was withdrawn and counsel for both parties were to attend next day. At the sitting of the court next day counsel for the petitioner was present but the appellant was absent and no communication from him had been received by the court.

The Judge ordered that the appellant be summoned to attend the court to show cause why he should not be committed for contempt.

Accordingly on 10th September a summons was issued, and was later duly served on the appellant, calling on him to appear before the court to show cause why he should not be committed for contempt of court; the contempt being " Your failure, without leave of the court, to attend the court sitting at Okene on Wednesday, 5th September, 1951, in suit No. B/34/50—Cole versus Cole—in which you were engaged as counsel for the respondent, in defiance of the court and in disobedience of an order of court made on Tuesday, 4th September, 1951, for counsel for the parties to appear at the resumed hearing on 5th September, 1951 ".

On 18th September the appellant duly attended the court and was represented by counsel who submitted on his behalf that no contempt was intended and that there had been a misunderstanding. The learned Judge in giving judgment observed that but for the appellant's inexperience he would not have hesitated to commit him to prison. He fined him £10 and ordered that in default he be imprisoned for two months.

In support of his appeal to the West African Court of Appeal the appellant swore an affidavit in which he set out at length the circumstances in which he came to absent himself. It is not necessary for the purposes of the present appeal to refer thereto. By his notice of appeal he submitted, *inter alia*, that his action in the circumstances did not and could not amount to contempt of court. As previously stated the Court of Appeal struck out the appeal for want of jurisdiction.

Before proceeding to consider (1) whether the West African Court of Appeal had jurisdiction to entertain the appeal and (2) whether the conduct complained of was capable in law of amounting to contempt of court, it may be convenient to refer to certain statutory provisions which give disciplinary powers to the courts in Nigeria over barristers and solicitors.

The Legal Practitioners Ordinance (Ch. 110 of the Laws of Nigeria) establishes a Legal Practitioners Committee which can, at the instance of the Attorney-General, inquire into allegations of misconduct against a legal practitioner. This committee reports to the Supreme Court who may admonish, suspend or strike the name of the offender from the roll of the court. The court can also exercise their powers independently without previous reference to the committee.

Section 56 (1) of the Supreme Court Ordinance (Ch. 211 of the Laws of Nigeria) also gives power to make rules of court for, *inter alia*, regulating " the discipline employment in causes and fees of legal practitioners ". In pursuance thereof Order XVI of the Supreme Court Rules gives power to the court in certain circumstances to suspend any barrister or solicitor or to strike his name off the roll.

Rule 11 of Order XVI is as follows:—

> " Every barrister or solicitor who shall be engaged in any cause shall be bound to conduct the same on behalf of the plaintiff or defendant, as the case may be, for whom he shall have been engaged, until final judgment, unless allowed by the court for any special reason to cease from acting therein; but he shall not be bound, except under express agreement, or unless re-engaged, to take any proceedings in relation to any appeal from such judgment."

Rule 19 reads:—

> " Any barrister or solicitor who commits any breach of any of the said provisions of this order or fails to comply with any of the said provisions, for which breach or non-compliance no specific penalty is provided, shall be liable for a first offence to a fine not exceeding twenty pounds, and for any subsequent offence to a fine not exceeding fifty pounds, without prejudice to the powers of the court to suspend any barrister or solicitor or strike his name off the roll for professional misconduct."

Their Lordships have thought it proper to refer to these provisions to show that the courts in Nigeria possess wide—and no doubt very necessary —disciplinary powers over barristers and solicitors, which it is to be observed, however, do not include the power to imprison.

Turning now to the question of the jurisdiction of the West African Court of Appeal, Section 10 Ch. 229 of the Laws of Nigeria which deals with appeals in criminal cases is as follows :—

> " A person convicted by or in the Supreme Court or a native court may appeal to the Court of Appeal—
>
> (*a*) against his conviction on any ground of appeal which involves a question of law alone ; and
>
> (*b*) with the leave of the Court of Appeal, or upon the certificate of the judge who tried him or, in the case of a person convicted by a native court, who heard his appeal to the Supreme Court, that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the court to be a sufficient ground of appeal."

Section 9 of the West African Court of Appeal (Gold Coast) Ordinance (Ch. 5 of the Laws of the Gold Coast) which was the relevant ordinance in *Poku's* case reads:—

> " A person convicted by or in a Divisional Court or by any Judge may appeal to the Court of Appeal."

The material word in each case is for present purposes the word " convicted ".

It is clear that the appellant's conduct was treated by the Judge as being contempt of a criminal kind, viz., " any act done . . . calculated to bring a court or a judge of the court into contempt or to lower his authority " or something " calculated to obstruct or interfere with the due course of justice or the lawful process of the courts " : see *Reg* v. *Gray* [1900] 2 Q.B. 36.

Was the order made by him, including the order for imprisonment in default of payment of the fine, a " conviction " within the meaning of section 10 of the ordinance? The West African Court of Appeal, following the decision of the full court in *Poku's* case, held that it was not. This decision was based upon the view that the ordinance was modelled upon the English Criminal Appeal Act 1907 and was to be interpreted accordingly. The English Act gives a right of appeal only in the case of a person " convicted on indictment ".

In the Nigerian Ordinance the words " on indictment " are omitted. It was thought that this omission was due to the fact that indictments do not form part of the criminal process in Nigeria and that the ordinance must therefore be interpreted as limiting the word " convicted " to convictions resulting from process analagous to the English procedure by way of indictment. Reliance was placed upon a passage in the speech of Viscount Simon in *Nokes* v. *Doncaster Amalgamated Collieries Ltd.* [1940] A.C. 1014 where in dealing with ambiguous words he said " Where, in construing general words, the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles then we may be justified in adopting a narrower construction ".

Their Lordships do not consider there is any ambiguity in the word " convicted ". Nor do they accept the view that to interpret it as giving a right of appeal in the case of criminal contempt involves the disregard of any fundamental principle merely because the English Act is so worded as clearly to exclude such a case. They consider that the governing principle to be applied in the present case is that stated by Viscount Simon at page 1022 of the report in *Nokes'* case where he says " The golden rule is that the words of a statute must prima facie be given their ordinary meaning ".

Dealing with the question whether an appeal lies to the Court of Appeal in England, where appeals in " a criminal cause or matter " are expressly excluded by the Judicature Act, Lindley, L.J., in *O'Shea* v. *O'Shea & Parnell* 15 P.D. 59 at page 64 said, " We must not, therefore, be misled by the words ' contempt ' and ' attachment ', but we must look at the substance of the thing. In the present case I have no doubt that the proceeding is a summary conviction for a criminal offence, and therefore no appeal lies ".

In the present case an order for payment of a fine and for imprisonment in default has been made by a Judge in the Supreme Court for conduct adjudged by him to amount to contempt of court of a criminal nature and their Lordships feel no doubt that such order was a " conviction " within the meaning of section 10 of the Nigerian Ordinance and that both *Poku's* case and the present case were wrongly decided in the West African Court of Appeal.

In these circumstances if their Lordships had been of opinion that the appellant's conduct could amount to contempt it might have been necessary to consider whether the proper course would not have been for the case to be remitted to the West African Court of Appeal to hear and determine the appeal. As, however, their Lordships take the contrary view such a course is not necessary.

It is not possible to particularise the acts which can or cannot constitute contempt in the face of the court, but in this connection it is desirable to bear in mind what was said in the judgment of the Board delivered by Lord Goddard in the case of *Parashuram Detaram Shamdasani* v. *The King-Emperor* [1945] A.C. 264 at p. 270 where these words are to be found :—" Their Lordships would once again emphasise, what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess ; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended ".

It is not every act of discourtesy to the court by counsel that amounts to contempt, nor is conduct which involves a breach by counsel of his duty to his client necessarily in this category. In the present case the appellant's conduct was clearly discourteous, it may have been in breach of Rule 11 of Order XVI, and it may perhaps have been in dereliction of his duty to his client, but in their Lordships' opinion it cannot properly be placed over the line that divides mere discourtesy from contempt.

Their Lordships will accordingly humbly advise Her Majesty that the appeal be allowed, the order of Manyo-Plange, J., set aside and the fine of £10 repaid to the appellant. The appellant must be paid his costs of the proceedings before the West African Court of Appeal and of his petition for special leave to appeal and one-half of his costs of the appeal.

(18661) Wt. 8267—24 100 4/53 D.L./PI/3

In the Privy Council

JOSEPH ORAKWUE IZUORA

v.

THE QUEEN

DELIVERED BY LORD TUCKER

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