

27,1955

~~P.C.~~
~~B.A.C. 2~~

UNIVERSITY OF LONDON
W.C.1

No. 34 of 1954. -4 JUL 1956

In the Privy Council.

INSTITUTE OF
LEGAL STUDIES

43594

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

LAGOS CHAMBER OF COMMERCE (INC.)
(Plaintiffs) *Appellants*

AND

1. REGISTRAR OF COMPANIES
- 10 2. ASSOCIATION OF MERCHANTS AND
INDUSTRIALISTS (Defendants) *Respondents.*

Case for the Appellants.

RECORD.

1. This is an appeal by special leave of Her Majesty in Council from an Order dated the 17th November 1952 of the West African Court of Appeal (Sutton P., Verity C.J. and Coussey J.A.), dismissing an appeal by the Appellants from a judgment dated the 8th May 1951 of the Supreme Court of Nigeria (Robinson J.), which dismissed an action brought by the Appellants for an injunction to restrain the First Respondents from proceeding with registration of an application by the Second Respondents to change their name from "The Association of Merchants and Industrialists" to "The African Chamber of Commerce."

p. 19.

pp. 12-14.

2. The point at issue is whether having regard to all the circumstances the proposed name "The African Chamber of Commerce" so nearly resembles the Appellants' name "The Lagos Chamber of Commerce (Inc.)" as to be calculated to deceive.

3. The Appellants were founded as an unincorporated association in the year 1888 under the name "Lagos Chamber of Commerce" and were in June 1950 incorporated under the name "The Lagos Chamber of Commerce (Inc.)."

p. 7.

4. Since their foundation in 1888 the Appellants have carried on the normal activities of a Chamber of Commerce. They have as a specific object "the protection and promotion of trade and commerce in Nigeria." They handle every type of trade known in Nigeria, and deal with trade enquiries from all over the world.

pp. 8, 9.

pp. 9, 10, 13, 21

5. Membership of the Appellants is open to any person firm or company established in trade in the western provinces of Nigeria and the colony of Lagos. Present membership includes 89 members comprising all the big firms trading in Nigeria and including (as well as firms from England, France, Belgium, Switzerland, Greece, India and America) 19 African firms. The Appellants are affiliated to the Chambers of Commerce of London, Liverpool and Manchester and of various places in Africa. In fact the Appellants are (as found by Robinson J.) "an authoritative body of responsible business men joined together for the protection and promotion of trade and commerce in Nigeria."

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p. 13.

6. At no time has there been any organisation association or corporation called or known as the Chamber of Commerce at or in Lagos other than the Appellants (before and since their incorporation). It is, as stated by Robinson J., ordinary practice for a Chamber of Commerce to be known by the name of the town where it is situated. It was never suggested in the course of this case, nor is there any evidence, that such practice had previously been departed from in any locality in West Africa.

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7. There was no evidence before the Court of the objects or of the date of foundation, or of the past, present or intended activities of the second Respondents, the Association of Merchants and Industrialists, or of the reasons why they desired to change their name, save—

p. 8.

(i) the evidence of the Vice-President of the Appellants that he had not before this case heard of the Second Respondents ;

p. 10.

(ii) the evidence of a director of the company who are secretaries of the Appellants that whilst he knows the Second Defendants "I do not know much about them. They help advise the Government and forward industry same as we do" ;

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(iii) an allegation in paragraph 5 of the Defence of the Second Respondents—

p. 5.

"The Second Defendant avers that Second Defendant's operations cover the whole of Nigeria and are limited to Africans only" ;

p. 12.

(iv) any inference that may be drawn from the argument put forward by the Second Respondent's counsel (when contending that your Petitioners desired a monopoly of overseas trade enquiries) : "There is a scramble for enquiries from overseas" ;

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(v) that their address is 47 Balogun Street, Lagos.

8. The Second Respondents, submitted on or about the 26th June 1950 to the First Respondent, the Registrar of Companies, notice to change their name to "The African Chamber of Commerce."

9. Section 9 (1) of the Companies Ordinance (Chapter 38) of the Revised Laws of Nigeria provides as follows (in terms substantially identical with those of Section 17 (1) of the Companies Act 1929) :—

“ No company shall be registered by a name which—

- (a) is identical with that by which a company in existence is already registered or so nearly resembles that name as to be calculated to deceive except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires or
- 10 (b) contains the words ‘ Chamber of Commerce,’ unless the company is a company which is to be registered under a licence granted in pursuance of Section 21 of this Ordinance without the addition of the word ‘ limited ’ to its name.”

It is assumed that the Second Respondents have complied with sub-paragraph (b).

10. In the Court of first instance the Appellants called evidence pp. 7-10. regarding the history activities and affiliation of the Appellants and in particular proved that they have trade communications with over 40 different countries outside Nigeria from whom correspondence is received, 20 and that the greater part of that correspondence is addressed to such addresses as—

- (i) Lagos Chamber of Commerce Nigeria ;
- (ii) Nigeria Chamber of Commerce Lagos ;
- (iii) Chamber of Commerce Nigeria ; and
- (iv) Chamber of Commerce Lagos.

11. Neither of the Respondents called evidence.

12. Robinson J. in the Court of first instance after reviewing the evidence called by the Appellants accepted that there was a likelihood of confusion as regards letters from foreign correspondents. After stating pp. 12-14. that the ordinary practice was to have one Chamber of Commerce for each centre known by the name of the town city or locality where it was situate and that it was contrary to commercial practice and good sense for one locality to have more than one Chamber of Commerce, he none the less decided against the Appellants on grounds which he stated as follows :—

40 “ But if good sense is not going to prevail is there any legal objection to the Second Defendants being registered as the ‘ African Chamber of Commerce ’ with an address in Lagos and thus almost certainly receiving a number of letters addressed ‘ Chamber of Commerce—Lagos ? ’ I think not. The words ‘ Chamber of Commerce ’ are descriptive. It describes what the company is and there could be no objection to each locality having one so long as the name of the locality is only taken by one. Chambers of Commerce are differentiated, from the point of view of registration, by the name of the Chamber—I think the Registrar is right when he says that his duty is to ignore the words ‘ Chamber of Commerce ’ and to see whether ‘ African ’ so nearly resembles ‘ Lagos ’ as to be calculated p. 14.

to deceive. If letters are correctly addressed, they will arrive at their respective addresses without confusion. Confusion will arise in fact because foreign correspondents, knowing the proper and ordinary practice of Chambers of Commerce, i.e., one for each place, would not expect a choice of addresses if they sent their letters to 'Chamber of Commerce Lagos.' They would expect their letters to find their way to the Lagos Chamber of Commerce but I do not think that because the Second Defendants choose to break away from common form that it can be said in the legal sense to be calculated to deceive. There could be no difficulty at all if their address was not in Lagos. But the Registrar, and the Court, is only concerned with the name, not the address. 10

Various authorities were cited but there is nothing directly on the point, and I do not think it necessary to examine them in detail—I will however record them."

The learned Judge then listed the cases cited to him.

13. From this decision the Appellants appealed to the West African Court of Appeal who on the 17th December 1952 dismissed the appeal.

pp. 17, 18.

14. The judgment of the Court was delivered by the President (Sir F. S. Sutton), the other two Justices concurring in it. After summarising the arguments on both sides the President gave his reasons in the following words :— 20

p. 18.

" I do not consider myself that if a company chooses to incorporate into its own name words descriptive of and universally used to describe an organisation formed for promoting commerce, it can fairly claim a monopoly of the use of those words. The words ' Chamber of Commerce ' are clearly descriptive and it seems to me that the addition of the word ' African ' ought to be sufficient to distinguish the two organisations. It certainly would be if reasonable care is used. In my view it would not be right to deprive the Appellants of the use of a descriptive name like ' Chamber of Commerce ' merely because mistakes may arise through lack of knowledge or carelessness on the part of persons making enquiries from abroad." 30

The President also expressed his dissent from the view expressed by Robinson J. as to the practice and good sense of there not being more than one Chamber of Commerce in one locality.

15. The Appellants submit that the particular nature of a Chamber of Commerce is a material consideration, to which neither Robinson J. or the Court of Appeal have given sufficient weight, in determining whether the proposed new name is sufficiently distinctive as not to be calculated to deceive ; and in particular that :— 40

(i) There is normally only one Chamber of Commerce in each centre (in this case Lagos).

(ii) Such a Chamber naturally comes to be addressed and here has come to be addressed as the Chamber of Commerce X Town (Lagos in this case).

(iii) This is bound to be so since it is a main function of a Chamber of Commerce to communicate with and receive communications from outsiders, who are apt to be less precise and more easily misled than residents in the locality.

(iv) The ordinary method of describing Chambers of Commerce by the name of the town causes no difficulty where, as is usually the case, their fields of operation are distinct. Here, however, the Second Respondents admit that their operations cover the same area as those of the Appellants.

10 (v) Any person overseas receiving a communication from the
"African Chamber of Commerce, Lagos" might not unnaturally
assume that it came from the body which had so long been the
one and only Chamber of Commerce at Lagos. On the inherent
probabilities of the case and on the facts as proved to the Court
the confusion is inevitable. The Appellants find it difficult to
appreciate how the Court of Appeal came to the conclusion that the
addition of the word "African" would be sufficient to distinguish
the two organisations if reasonable care were used, unless indeed
they were assuming of those who communicate with Chambers
20 of Commerce a standard of care which is contrary to the evidence
and is not to be expected in the normal operations in which a
Chamber of Commerce engages.

(vi) Even if overseas persons receiving such a communication
did not assume it to come from the identical body that had so long
been the one and only Chamber of Commerce at Lagos, they might
naturally, in the absence of full information, assume (contrary to
the facts) that the new body was the parent body of, had absorbed,
or was otherwise closely connected with the Appellants, and would
thus equally be deceived. (Compare—*The North Cheshire and*
30 *Manchester Brewery Co. Ltd. v. Manchester Brewery Co. Ltd.* [1899]
A.C. 83.)

(vii) In these circumstances it is the duty of the Second
Respondents when seeking to change their name to one they must
be assumed to consider would bring them advantages, to adopt
as their new name one which is clearly distinctive and makes it
obvious that they neither are or are connected with the Chamber
of Commerce that has been active at Lagos for over 60 years. This
they have not done.

16. There appears to be no authority on the degree of distinction
40 required when using names containing descriptive words describing concerns
of which there is normally one for each locality. The Appellants submit
that special care has to be taken by a new concern seeking to use such
descriptive words as part of its name, to distinguish its name from that of
an older concern in the locality whose name includes the descriptive words.
In particular it is submitted that when the new concern assumes a name
that is or is often regarded as territorial it must not as the sole prefix
to such descriptive words, use a name which could be assumed by those

without full knowledge to cover or relate to the territory of the older concern, so leading to the inference that it is the parent body of, has absorbed or is otherwise related to the old concern.

17. The Appellants also submit that Robinson J. and the Court of Appeal have misled themselves in certain other respects as stated in the Reasons appearing below.

18. The Appellants respectfully submit that the Order appealed from ought to be reversed for the following amongst other

REASONS.

- (1) BECAUSE there is in fact a likelihood of confusion 10
from the similarity of names, especially as regards
foreign correspondence, as Robinson J. rightly found.
- (2) BECAUSE such confusion is in all the circumstances
of the case an inevitable result of the similarity of the
names.
- (3) BECAUSE it is very material to bear in mind the special
circumstances attaching to a Chamber of Commerce,
in particular (i) that it is a main function of such a
Chamber to communicate with outsiders who are less
well informed than local residents, (ii) that there is 20
normally only one Chamber of Commerce in each
centre, and (iii) that such a Chamber normally comes
to be addressed (as the Appellants have in fact come to
be addressed) as the Chamber of Commerce X Town
(Lagos in this case).
- (4) BECAUSE in those circumstances if the operations of
two Chambers of Commerce cover the same area
deception is inevitable unless their names are markedly
distinctive.
- (5) BECAUSE in those circumstances it was the duty of 30
the Second Respondents when seeking to change their
name, to adopt a new name sufficiently distinctive to
prevent such confusion, which they have not done.
- (6) BECAUSE a name will be calculated to deceive if it
leads persons to think that the new body is the parent
of or has absorbed or is otherwise closely connected
with the old, even if it falls short of suggesting complete
identity (*North Cheshire & Manchester Brewery Co. Ltd. v.*
Manchester Brewery Co., Ltd. [1899] A.C. 83).
- (7) BECAUSE Robinson J. and the Court of Appeal have 40
not given sufficient weight to the considerations stated
in the four last preceding sub-paragraphs.

- (8) BECAUSE neither Robinson J. nor the Court of Appeal appear to have given weight to the fundamental consideration that: "When you are dealing with the question of people being deceived, that negatives the idea of their having certain knowledge or else they would not be deceived" (*North Cheshire & Manchester Brewery Co. Ltd. v. Manchester Brewery Co., Ltd.* [1899] A.C. 83, at p. 86).
- 10 (9) BECAUSE both Robinson J. and (it would seem) the Court of Appeal misled themselves by dissecting from the two names the words "Chamber of Commerce" when comparing them instead of comparing as they should have done the effect in all the circumstances of the two names as wholes.
- (10) BECAUSE the Court of Appeal paid undue attention to the suggestion (which was not part of the Appellants' case) that the Appellants claimed a monopoly of the words Chamber of Commerce.
- 20 (11) BECAUSE the proposed new name is in all the circumstances calculated to deceive.
- (12) BECAUSE the Order appealed from is wrong.

CHARLES RUSSELL.

JOHN BRUNYATE.

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