

27, 1955

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UNIVERSITY OF LONDON  
W.C. 1

No. 34 of 1954. -4 JUL 1956

# In the Privy Council.

INSTITUTE OF ADVANCED  
LEGAL STUDIES

43595

## 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 First Respondent.

RECORD.

1. This is an Appeal by Special Leave granted by Order in Council p. 19.  
dated the 19th day of November, 1953, from a Judgment of the West  
African Court of Appeal (Foster Sutton, P., Verity, C.J., and Coussey, J.A.)  
delivered on the 17th day of November, 1952, dismissing with costs the p. 19.  
Appellants' Appeal from the Judgment of the Supreme Court of Nigeria  
(Robinson, J.) delivered on the 8th day of May, 1951, dismissing the pp. 12-14.  
action brought by the Appellants against the Respondents.

20 2. The Appellants by their Writ of Summons in the above action  
sought to obtain an injunction against the First Respondent prohibiting  
him from proceeding with the registration of a change of the Second  
Respondents' name to the "African Chamber of Commerce."

3. The following facts were either admitted in the Pleadings by the  
First Respondent or proved at the hearing of the action on the 14th day of  
February, 1951 :—

(1) The Appellants were an Association established for the p. 2, l. 18.  
purposes of (*inter alia*) the promotion of Trade and Commerce in  
Nigeria and under their Articles any person, firm or company  
30 established in trade in the Western Provinces of Nigeria and the  
Colony of Lagos would become a member of the Association. p. 13, l. 17.

p. 7, l. 36.

(2) On the 23rd day of June, 1950, the Appellants were incorporated under the provisions of the Company Ordinance of Nigeria.

(3) Before their said incorporation there had been for many years an Association known as the "Lagos Chamber of Commerce," to which the Appellants were the successors.

p. 8, l. 5.

p. 9, l. 4.

(4) Most of the big companies in Nigeria were members of the Association and the members were of many different nationalities. Nineteen member companies were wholly owned or managed and directed by Africans. 10

p. 9, l. 13.

p. 10, l. 2.

(5) Many letters inaccurately addressed were delivered to the Appellants and accepted by them and a substantial proportion of these were addressed to "Secretary, Chamber of Commerce, Lagos."

p. 3, l. 8.

(6) On the 26th day of June, 1950, the Appellants' Solicitors were notified by the First Respondent that an application had been made to him by the Second Respondents for the registration of their Association under a different name, namely, "African Chamber of Commerce" and asked whether they (the Appellants) had any objection to the proposed registration. 20

p. 9, l. 17.

(7) On the said date the Appellants objected to the said registration but in spite of their said objection the First Respondent wrote on the 2nd August, 1950, to the Appellants as follows:—

Ex. H, p. 23.

"The Lagos Chamber of Commerce (Incorporated).

With reference to your letter No. 248 of the 10th ultimo, I have to state that after further considering the matter I have arrived at the conclusion that the name 'African Chamber of Commerce' does not so nearly resemble the above-mentioned name 'as to be calculated to deceive.'

2. In the circumstances, I am proceeding with the registration of the change of name of the 'Association of Merchants & Industrialists' to 'African Chamber of Commerce.' If, however, your Company is aggrieved by this registration, you are at liberty to apply to the Court for an Order that the registration be invalidated." 30

4. During the course of his evidence on behalf of the Appellants, Robert Christopher Irving, a Director of Apex Limited who acted as Secretaries and Treasurer of the Appellants said under cross-examination on behalf of the First Respondent—

p. 9, l. 27.

"I object to 'Africa or African Chamber of Commerce.' The real objection is 'Lagos.' Anything addressed to Lagos and Chamber of Commerce should come to us." 40

5. The sole point argued on behalf of the Appellants was that the First Respondent was wrong in asserting in his letter of the 2nd August (set out in paragraph 3 (7) above) that the Second Respondents' proposed name

did not so nearly resemble the Appellants' name as "to be calculated to deceive" and that therefore the registration of the proposed name was prohibited under Section 9 (1) (a) of the Companies Ordinance (Laws of Nigeria, 1948, cap. 38). Section 9 (1) (a) provides :—

10 " 9 (1). 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 when the Company  
 in existence is in the course of being dissolved and  
 signifies its consent in such manner as the Registrar  
 requires."

\* \* \* \* \*

The remaining relevant parts of Section 9 are set out in the Annexe hereto.

6. On the 8th day of May, 1951, the learned Trial Judge delivered Judgment. In the course of his Judgment he said :—

20 " The Plaintiffs object under Section 9 (1) of Cap. 38 to the  
 registration of the Association under the name ' African Chamber  
 of Commerce ' on the ground that such a name so nearly resembles  
 that of the Plaintiffs as to be calculated to deceive and that its use  
 in the Western Provinces and the Colony of Lagos would lead to  
 confusion. To substantiate that two bundles of addressed envelopes  
 (Exhibits ' F and G ' ) may be about 200 of them from all over the  
 world were put in. Very very few were correctly addressed, the  
 big majority were addressed ' The Chamber of Commerce, Lagos, '  
 which address is also favoured by the Government Printer. The  
 argument runs that most of those letters from foreign correspondents  
 contained serious enquiries about the chances and statistics of  
 establishing trade in Nigeria and that they were intended for the  
 old-established Chamber which had been founded in 1888. If the  
 Association is permitted to be registered with an address in Lagos  
 30 then there is no reason why the letters should not all go to them to  
 the detriment and embarrassment of the Plaintiffs, and also, I  
 think, possibly to the detriment of the foreign enquirers if the  
 Association is only confining itself to trade amongst Africans,  
 because the letters might never get answered. If that happened,  
 it could be injurious to trade in Nigeria generally." p. 13, l. 27.  
 p. 13, l. 45.

7. The learned Judge then stated that the ordinary practice was to have a Chamber of Trade for each centre and that it was contrary to " all commercial practice " and " good sense " for one locality to have more than one Chamber. The learned Judge then continued :—

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  
 p. 14, l. 6.

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 to deceive. If the 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 10 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.”

p. 14, l. 27.

8. The learned Judge then held that the Appellants were not entitled to the injunction sought and that the case should be dismissed. The first Respondent did not ask for costs against the Appellants. The 20 second Respondents asked for costs and were awarded 10 guineas costs against the Appellants.

9. On the 10th day of May, 1951, the Appellants filed a Notice of Appeal to the West African Court of Appeal on the grounds that :—

p. 16, l. 8.

(1) The learned trial Judge erred in law in holding that the words “ Chamber of Commerce ” are descriptive and thereby came to a wrong decision.

(2) The learned trial Judge was wrong in holding that the name sought to be registered by the second Defendants (Respondents) did not so resemble the name in which the Plaintiffs (Appellants) are 30 registered as to be calculated to deceive and thereby came to a wrong decision.

10. The West African Court of Appeal dismissed the Appeal without calling on the first Respondent. In his Judgment (in which the other learned Justices of the Court of Appeal concurred) the learned President said :—

p. 17, l. 26.

“ In the Court below the Registrar of Companies contended that the words ‘ Chamber of Commerce ’ constitute a generic designation for particular associations or bodies of persons and therefore cannot be exclusively claimed by one association or body 40 of persons. He argued, therefore, that if the second Respondent Company satisfied the requirements of Section 21 (1) of the Companies Ordinance, Cap. 38, as in his view it had, it was entitled to registration under the new name, and he drew attention to the provisions of Section 9 (1) (b) of the Ordinance which provides that no company shall be registered by a name which 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 (1) of the Ordinance without the addition of the word 'Limited' to its name. Finally, he submitted that it was his duty to ignore the words 'Chamber of Commerce' and determine whether the word 'African' so nearly resembles the word 'Lagos' as to be calculated to deceive, which he submitted was not the case.

10 Appellant's Counsel argued that the new name under which the Association of Merchants and Industrialists sought to be registered does so nearly resemble the name of the Appellant organisation as to be calculated to deceive, that Section 9 (1) (a) of the Companies Ordinance, which prohibits registration in such circumstances applies, and that registration should, therefore, be refused. He further argued that the word 'African' is only distinctive when separated from the words 'Chamber of Commerce,' that in considering the tendency of the new name to deceive regard must be had to the place where it is to be used, that is to say Lagos, that 'African' and 'Lagos' are both words of the same nature, 20 Lagos being in Africa, and that the use of the word 'African' in conjunction with the words 'Chamber of Commerce' is calculated to deceive the numerous firms abroad who from time to time make trade enquiries through the Appellants.

The learned Trial Judge accepted the contentions put forward by the Registrar of Companies and declined to grant the injunction prayed.

30 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.

40 It follows that, in my opinion, the decision appealed against was right, and ought to be affirmed. I would, therefore, dismiss this appeal with costs.

During the course of his judgment the learned trial Judge embarked upon a dissertation regarding the undesirability of having more than one Chamber of Commerce in the same locality and asserted that it is the ordinary practice and good sense not to do so. The observations were not necessary for the decision in this case and I only refer to them lest it be thought that in agreeing with his decision I also agree with the observations I have referred to, because such is not the case."

11. By Order in Council dated the 19th day of November, 1953, the Appellants were granted leave to appeal against the order of the West African Court of Appeal upon condition that the Appellants deposited the sum of £400 as security for costs.

12. By Petition filed on the 6th day of January, 1955, the Appellants prayed that the said condition having been complied with, Her Majesty in Council should take the Appeal into consideration.

The First Respondent submits that the Appeal should be dismissed for the following (among other)

## REASONS

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- (1) BECAUSE the proposed name of the Second Respondents does not so nearly resemble the Appellants' name as to be calculated to deceive as provided by Section 9 (1) (a) of the Companies Ordinance.
- (2) BECAUSE the Appellants' contentions, if correct, would prevent the registration of any name which included the words "Chamber of Commerce" to any company which had a postal address in or near Lagos and it is submitted that that result would be wrong.
- (3) FOR the reasons given in the judgment of the learned 20 Trial Judge.
- (4) FOR the reasons given in the judgment of the West African Court of Appeal.

D. A. GRANT.

## ANNEXE.

## COMPANIES ORDINANCE.

LAWS OF NIGERIA, 1948. Cap. 38.

9. (1) 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 when 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 the Ordinance without the addition of the word " Limited " to its name
- (c) contains the words " Building Society."

\* \* \* \* \*

(4) Any company may by special resolution, and with the approval of the Registrar, change its name.

(5) When a company changes its name the Registrar shall enter the new name in the register in the place of the former name and shall issue  
20 a certificate of incorporation altered to meet the circumstances of the case.

\* \* \* \* \*

21. (1) Where it is proved to the satisfaction of the Registrar that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object and intends to apply its profits (if any) or other income in promoting its objects and to prohibit the payment of any dividend to its members, the Registrar may by licence direct that the Association be registered as a Company with limited liability without the addition of the word " Limited " to its name and the Association may be registered accordingly.

**In the Privy Council.**

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**ON APPEAL**  
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**CHARLES RUSSELL & CO.,**  
37 Norfolk Street,  
Strand, W.C.2,  
*Solicitors for the First Respondent.*