

GH4.G.2

45, 1961

IN THE PRIVY COUNCIL

No.51 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

ADEL BOSHALI Plaintiff Appellant
- and -

ALLIED COMMERCIAL
EXPORTERS LIMITED .. Defendant Respondent
- and -

ADEL BOSHALI Defendant Appellant
- and -

ALLIED COMMERCIAL
EXPORTERS LIMITED .. Plaintiff Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
19 FEB 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

63593

Rexworthy Bonser & Simons,
83/85 Cowcross Street,
London, E.C.1.
Solicitors for the Appellant.

IN THE PRIVY COUNCILNo.51 of 1959ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N:

ADEL BOSHALI Plaintiff Appellant
- and -

ALLIED COMMERCIAL
EXPORTERS LIMITED .. Defendant Respondent
- and -

ADEL BOSHALI Defendant Appellant
- and -

ALLIED COMMERCIAL
EXPORTERS LIMITED .. Plaintiff Respondent

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Affidavit in Support of Motion	25th September 1953
Order on Motion	26th October 1953
Certificate of Chief Registrar	16th November 1953
Affidavit of Service	4th December 1953

Description of Document	Date
Motion for Extension of Time	20th March 1954
Affidavit in Support	22nd March 1954
Order for Extension of Time	29th March 1954
Notes on Settlement of Record	20th April 1956
Certificate of Compliance with conditions	14th July 1956
Drawn up Order on Judgment	23rd February 1957
Motion and Affidavit for conditional leave to appeal to Privy Council	27th February 1957
Motion and Affidavit for stay of execution	6th March 1957
Court notes and Drawn up Order on Motion for conditional leave	11th March 1957
Court notes on Motion for stay of execution	13th March 1957
Affidavit of Means of Nizar Debs	16th May 1957
Bond for costs on appeal	16th May 1957
Court notes and Drawn up Order on Motion for final leave to appeal	10th June 1957

IN THE PRIVY COUNCIL

No.51 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

ADEL BOSHALI Plaintiff Appellant

- and -

ALLIED COMMERCIAL EXPORTERS LIMITED .. Defendant Respondent

- and -

10 ADEL BOSHALI Defendant Appellant

- and -

ALLIED COMMERCIAL EXPORTERS LIMITED .. Plaintiff Respondent

RECORD OF PROCEEDINGS

No. 1

PARTICULARS OF CLAIM IN SUIT 496/1953

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION

Suit No.496 of 1953

In the Supreme Court of Nigeria

No. 1

Particulars of Claim in Suit 496/1953,

23rd September 1953.

20 BETWEEN:

ADEL BOSHALI PLAINTIFF

AND

ALLIED COMMERCIAL EXPORTERS LTD. DEFENDANT

The Plaintiff says that by various letters and communications on or between the month of March and April, 1952 he placed an order with the Defendant firm for 85,000 yards of Spun Rayon as per sample contained in the Defendant's offer.

30

That from the aforesaid Order the Defendants purported to ship to the Plaintiff 35,466½ yards of the Order but in fact the Goods shipped were not in accordance with the Sample and they were

In the Supreme Court of Nigeria

No. 1

Particulars of Claim in Suit 496/1953, 23rd September 1953 - continued.

short in quantity and inferior in quality.

That the Defendants knew that the Plaintiff was a Trader and that the Goods were ordered with a view to resale at a profit.

The Plaintiff therefore claims from the Defendant the sum of £3,531. 8. 11d as damage and loss suffered by the aforesaid breach of contract.

Dated at Lagos this 23rd day of September, 1953.

Plaintiff's Address:- Care 9, Victoria Street, Lagos. 10

Defendant's Address:- Orient House, Granby Row; Manchester, 1.

(Sgd) John Taylor
PLAINTIFF'S SOLICITOR.
9, Victoria Street,
Lagos.

No. 2

Writ of Summons, 30th September 1953.

No. 2

WRIT OF SUMMONS

20

CIVIL SUMMONS

'U' 8318

Suit No. 496 of 1953

(Title as in No.1)

To Allied Commercial Exporters Ltd. of Orient House, Granby Row, Manchester, 1.

You are hereby commanded in His Majesty's name to attend this court at Tinubu Square, Lagos on Monday the 30th day of November, 1953, at 9 o'clock in the forenoon to answer a suit by Adel Boshali of c/o 9, Victoria Street, Lagos, against you. 30

The Plaintiff's claim against the Defendant is for the sum of £3,531.8.11d (As per particulars attached)

Issued at Lagos the 30th day of September, 1953.

(Sgd) O. Jibowu

PUISNE JUDGE.

In the Supreme Court of Nigeria

No. 2

Writ of Summons,
30th September
1953 -
continued.

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No. 3

COURT NOTES

No. 3

Court Notes,
4th January
1954.

10

MONDAY THE 4TH DAY OF JANUARY, 1954,
BEFORE THE HONOURABLE
MR. JUSTICE OLUMUYIWA JIBOWU,
PUISNE JUDGE.

Suit No.496/53.

J.I.C. TAYLOR for Plaintiffs.

G.B.A. COKER for Defendants.

Pleadings orders: 30 days to each side.

(Sgd) O. Jibowu

PUISNE JUDGE.

4/1/54.

20

No. 4

STATEMENT OF CLAIM

Suit No.496 of 1953

(Title as in No.1)

No. 4

Statement of
Claim,
2nd February
1954.

1. The Plaintiff says that as per letters and communications dating between the months March 1952 to April 1952 with special reference to 2 sales notes dated the 24/3/52 and 1/4/52 respectively the Plaintiff ordered 85,000 yards of Spun Rayon A.S. 1000 from the Defendant Company.

30

In the Supreme
Court of Nigeria

No. 4

Statement of
Claim,

2nd February
1954 -
continued.

2. That the said Goods were to be in accordance with a Sample despatched to the Plaintiff by the Defendants but that in fact the Defendants in breach of the aforesaid contract sent goods inferior to the sample in quality.

3. That further the Plaintiff found that the bales were not only inferior in quality but short in measurement with the result that sales to customers were returned to the Plaintiff with consequent loss to the Plaintiff. 10

4. That on the Plaintiff informing the Defendants of the above facts the latter assured the former that the goods were the same but that the "finish" of the goods was different.

5. The Plaintiff as a result of the above had the goods or samples thereof tested by the Chamber of Commerce Manchester and a Certificate dated the 15th day of October 1952 was received by the Plaintiff and on which the latter will rely at the hearing. 20

6. The Plaintiff on communicating with and interviewing the Defendants and or their agents received certain entreaties from the latter who further requested him to clear the balance of goods pending an endeavour to settle the dispute between the parties.

7. As a result of paragraph 6 above the Plaintiff cleared 35,466½ yards of the said goods which were short in quantity and inferior in quality and refused to clear more until the Defendants meet the Plaintiff's Claim of inferior quality and short quantity of the said goods. 30

8. That the Defendants are in the habit of selling Goods inferior in quality and short in quantity to Purchasers and the Plaintiff will lead evidence in support of same.

9. That the Defendants in spite of warning from the Plaintiff began to sell and did sell the balance of the order to various Purchasers.

10. That the Defendants knew at the time the contract was entered into that the Plaintiff was a Trader and that the Goods were ordered with a view to resale at a profit. 40

11. That the Plaintiff has suffered a loss of 7d. a yard on 35,466½ yards and has had to refund to Purchasers the sum of £246.19.0d because of the aforesaid short quantity and inferior quality of the said goods making a total of £1,281.8.11d.

12. That had the Plaintiff received the 85,000 yards according to the Sample both in quality and quantity he would have made a profit of 6d. a yard i.e. £2,250.

10 13. WHEREOF the Plaintiff claims as per writ of Summons.

Dated at Lagos this 2nd day of February, 1954.

(Sgd) John Taylor
PLAINTIFF'S SOLICITOR.

In the Supreme Court of Nigeria

No. 4

Statement of Claim,

2nd February 1954 - continued.

No. 5

STATEMENT OF DEFENCE

Suit No.496/53

(Title as in No.1)

No. 5

Statement of Defence filed 17th March 1954.

20 Save and except as hereinafter expressly admitted the Defendants deny each and every of the allegations of fact contained in the Statement of Claim as if the same were set out serially and specifically traversed.

2. The Defendants deny paragraphs 2, 3, 4, 6, 7, 8, 10 and put the Plaintiff to a very strict proof thereof.

30 3. The Defendants are not in a position to admit or deny paragraphs 5 and 12 of the Statement of Claim but will put the Plaintiff to the proof thereof.

4. With respect to paragraph 1 of the Statement of Claim the Defendants only admit that there was a contract by correspondence between them and the Plaintiff, for the sale and purchase of 85,000 yards Spun Rayon A.S. 1000 but deny all the other allegations of fact therein contained.

In the Supreme
Court of Nigeria

No. 5

Statement of
Defence filed
17th March
1954 -
continued.

5. With respect to paragraph 9 of the Statement of Claim the Defendants admit that for reasons hereinafter appearing they sold at considerable loss to themselves the balance of the goods uncleared by the Plaintiff, but deny that the Plaintiff ever warned them not to sell.

6. The Defendants aver that the goods sent by them to the Plaintiff were according to order and sample and that there was no breach of contract on their part. 10

7. The Defendants aver that when these goods arrived in lots, the Plaintiff stated that he had not the means to clear them and begged for and obtained the consent of the defendant to clear 4 lots against his own Promissory Notes.

8. That the Plaintiff was allowed this concession on the conditions that after selling these four lots he would employ the monetary proceeds thereof in clearing the remaining lots.

9. The Defendants aver that the Plaintiff after clearing the said goods and selling them at considerable profits to himself, dishonoured his own Promissory-Notes by non-payment, and these were protested against him accordingly. 20

10. The Defendants aver that the amounts due on these Promissory Notes have been made the subject of another action against the Plaintiff by them.

11. The Defendants aver that apart from dishonouring his own Promissory Notes, the Plaintiff further asked for the consent of the Defendants to clear the remaining lots of goods and on the Defendants refusing unless he paid up for the lots, the Plaintiff wrongfully refused to clear the remaining lots of goods. 30

12. The Defendants aver that as these goods were incurring rents and dues and wasting, they instructed their agent in Lagos to clear and sell same by auction and also advised the Plaintiff of this position accordingly.

13. The Defendants aver that the said goods which should have fetched them the amount of £3,392.1.10 (Three thousand three hundred and Ninety-two Pounds One shilling and Ten pence) 40

were sold by them for £2,966.9.5d (Two thousand Nine hundred and Sixty-Six Pounds Nine Shillings and Five pence) making a nett loss of £425.11.5d (Four hundred and Twenty-Five Pounds Eleven Shillings and Five pence).

14. The Defendants aver that in addition to this amount, they incurred the following expenses, that is to say:-

10	Insurance charges	£ 57. 1. -
	Customs Duty	1069. 9. 6
	Bank charges	4.12. 3
	Other incidental charges	<u>110. -. -</u>
		<u>£1241. 2. 9</u>

15. The Defendants have therefore suffered a total loss of £1,466.14.4d on the entire transaction and would counter-claim for £1,466.14.4d (One thousand Four hundred and Sixty-six Pounds Fourteen Shillings and Four pence) special and general damages for this breach of contract by non-acceptance by the Plaintiff.

16. The Defendants will contend that the Plaintiff's action is misconceived in law and in fact, that it is an abuse of the process of this Court and should be dismissed with substantial costs.

Dated at Lagos this day of March, 1954.

(Sgd) G.B.A. Coker
SOLICITOR TO DEFENDANTS.

Para 17 & 18 Added by Order of Court dated 21/1/55.

No. 6

30

AMENDMENT TO STATEMENT OF DEFENCE

Suit No. 496/53.

(Title as in No.1)

AMENDMENT TO THE STATEMENT OF DEFENCE
ALLOWED BY THE ORDER OF COURT: 21/1/55

17. The Plaintiff by an agreement dated the 15th day of October, 1952 has for valuable consideration in the sum of £500 paid to the Plaintiff by

In the Supreme
Court of Nigeria

No. 5

Statement of
Defence filed
17th March
1954 -
continued.

No. 6

Amendment to
Statement of
Defence filed
26th January
1955.

In the Supreme
Court of Nigeria

No. 6

Amendment to
Statement of
Defence filed
26th January
1955 -
continued.

the Defendants, agreed to forgo his right of action in respect of all claims relating to the goods which are the subject matter of this action, namely, the 85,000 yards of Spun Rayon A.S. 1000. The Defendants will rely upon this agreement.

18. The Plaintiff has failed to submit this case to arbitration according to the terms of the contract in writing consisting of two parts dated respectively 24/3/52 and 1/4/52. The Defendants will rely upon the said terms of contract.

10

(Sgd) E.A. Molajo
DEFENDANTS' SOLICITOR.

No. 7

Motion for leave
to file counter-
claim,
22nd May 1954.

No. 7

MOTION FOR LEAVE TO FILE COUNTERCLAIM

Suit No.496 of 1953

(Title as in No.1)

MOTION ON NOTICE
EX PARTE.

TAKE NOTICE that this Honourable Court will be moved on Monday the 7th day of June 1954, at the hour of 9 o'clock in the forenoon, or so soon thereafter as Counsel on behalf of the above named Defendants can be heard for an order for leave to file counterclaim against the Plaintiffs as per copy attached, and for such further order or orders as the Court may deem fit to make in the circumstances.

20

DATED at Lagos this day of May, 1954.

(Sgd) A. Molajo

30

For G.B.A. Coker
SOLICITOR TO DEFENDANTS.

On Notice to the Plaintiff,
c/o His Solicitor,
J.I.C. Taylor Esqr.,
Lagos.

AFFIDAVIT IN SUPPORT OF MOTION

Suit No.496 of 1953.

(Title as in No.1)

In the Supreme
Court of Nigeria

No. 8

Affidavit in
Support of
Motion,

22nd May 1954.

I, GEORGE BAPTIST AYODOLA COKER, Yoruba,
Legal Practitioner, of No.13, Idumagbo Avenue,
Lagos, in Nigeria, hereby make oath and say as
follows:-

- 10 1. That I am the Solicitor to the Defendants in this case.
- 2. That the action in the case is in respect of contract for the sale of goods.
- 3. That pleadings had been ordered and filed in the case.
- 4. That paragraphs 13 and 14 of the Statement of Defence read as follows:-

20 (13) The Defendants aver that the said goods which should have fetched them the amount of £3392.1.10 (Three thousand Three hundred and Ninety-two Pounds One shillings and Ten pence) were sold by them for £2966.9.5d (Two thousand Nine hundred and Sixty-six Pounds Nine Shillings and Five pence) making a nett loss of £425.11.5d (Four hundred and Twenty-Five Pounds Eleven Shillings and Five pence)

(14) The Defendants aver that in addition to this amount, they incurred the following expenses, that is to say :-

30	Insurance charges	£ 57. 1. -
	Customs Duty	1069. 9. 6
	Bank charges	4.12. 3
	Other incidental charges	<u>110. -. -</u>
		<u>£1241. 2. 9d</u>

- 5. That it is intended by the Defendants to file a Counterclaim as per copy attached and marked Exhibit "A"

In the Supreme Court of Nigeria

No. 8

Affidavit in Support of Motion,

22nd May 1954.- continued.

6. That this course will bring all the issues before the Court to be tried at one end the same time.

(Sgd) G.B.A. Coker
DEPONENT.

SWORN to at the Supreme Court Registry, Lagos this 22nd day of May, 1954

BEFORE ME

(Sgd) D.N. Adebona

COMMISSIONER FOR OATHS.

10

Suit No.496/53.

(Title as in No.1)

COUNTER-CLAIM

The Defendants counterclaim against the Plaintiff the sum of £1666.14.2d (One thousand Six hundred and Sixty-Six Pounds Fourteen Shillings and Two pence) being special and general damages for breach of contract for sale of goods by non-acceptance by the Plaintiff as per the following particulars:-

20

(a) Loss on resale of goods by Defendants as Plaintiff refused to accept	£ 425.11. 5
(b) Insurance charges	57. 1. -
(c) Customs Duty	1069. 9. 6
(d) Bank charges	4.12. 3
(e) Other incidental charges	<u>110. -. -</u>
	<u>£1666.14. 2d</u>

Dated at Lagos this day of May, 1954.

(Sgd) A. Molajo
for G.B.A. COKER
SOLICITOR TO DEFENDANTS.

30

Plaintiff's Address:- c/o His Solicitor,
9, Victoria Street, Lagos.

Defendants' Address:- c/o Their Solicitor, 13,
Idumagbo Avenue, Lagos.

In the Supreme
Court of Nigeria

No. 8

THIS IS THE EXHIBIT MARKED "A" REFERRED
TO IN THE AFFIDAVIT OF GEORGE BAPTIST
AYODOLA COKER SWORN AT LAGOS THIS
DAY OF MAY, 1954.

Affidavit in
Support of
Motion,

22nd May 1954 -
continued.

BEFORE ME,

(Sgd) D.N. Adebona

COMMISSIONER FOR OATHS.

10

No. 9

No. 9

COURT NOTES

Court Notes,
7th June 1954.

MONDAY THE 7TH DAY OF JUNE, 1954,
BEFORE HIS LORDSHIP
MR. JUSTICE ARTHUR SAMUEL EVELYN BROWN
ACTING PUISNE JUDGE.

Suit No. 496/53

(Title as in No.1)

MOTION for leave to file Counter-Claim.

MAJEKODUNMI for G.B.A. COKER for mover.

20 TAYLOR for opposer on notice states he has no
objection to motion.

BY COURT: Motion granted as prayed.

Pleadings ordered 14/14 days.

Adjourned 22nd and 23rd/6/54.

(Sgd) Evelyn Brown

ACTING PUISNE JUDGE.

7/6/54.

In the Supreme
Court of Nigeria

No.10

STATEMENT OF CLAIM ON COUNTERCLAIM

No.10

Suit No. 496/53.

Statement of
Claim on
Counterclaim
filed 15th June
1954.

(Title as in No.1)

1. The Defendants are general traders and exporters carrying on business in the United Kingdom.

2. The Defendants aver that as per letters and other correspondence between them and the Plaintiffs between the months of March and April, 1952 and thereabouts, the Plaintiff ordered from the Defendants 85,000 yards of Spun Rayon. 10

3. The Defendants aver that some months after the said order the Defendants sent down these goods in lots to the Plaintiff according to the Plaintiff's specification.

4. The Defendants aver that when these goods arrived in lots the Plaintiff stated that he had not the means to clear them and begged for and obtained the consent of the Defendants to clear 4 lots against his own Promissory Notes, on the condition that after selling these four lots he would employ the monetary proceeds thereof in clearing the remaining lots. 20

5. The Defendants aver that because the Plaintiff cleared the said four lots, but refused to pay for the remaining lots, and also refused to clear them.

6. The Defendants aver that as these goods were incurring rents and dues and wasting they instructed their agent in Lagos to clear and sell the same by auction and advised the Plaintiff of this both before and after the said sale. 30

7. The Defendants aver that the said goods which should have fetched them the amount of £3392.1.10 were sold by them for £2966.9.5d, thereby losing an amount of £425.11.5d.

8. The Defendants aver that apart from this loss on resale they also incurred other expenses on the clearance and sale of the said goods 40

amounting to £1241.2.9d as per particulars appearing hereinafter.

In the Supreme Court of Nigeria

No.10

9. The Defendants aver that the Plaintiff has committed a breach of his original contract by non-acceptance of these goods against Sight Drafts, which were presented to him and dishonoured by him by non-payment.

Statement of Claim on Counterclaim filed 15th June 1954 - continued.

10. The Defendants therefore claim the sum of £1666.14.2 as per Statement of Counter-Claim.

10

Dated at Lagos this day of June, 1954.

(Sgd) G.B.A. Coker
SOLICITOR TO DEFENDANT.

No.11

No.11

DEFENCE TO COUNTERCLAIM

Defence to Counterclaim,
30th June 1954.

Suit No. 496 of 1953

(Title as in No.1)

1. The Plaintiff admits paragraphs 1 and 2 of the Defendants' Counter-Claim.

20

2. The Plaintiff denies each and every allegation of fact contained in paragraphs 3, 4, 9 and 10 of the Defendants' Counter-Claim and puts the said Defendants to the very strict proof of such allegations of facts.

3. The Plaintiff states with regard to paragraph 5 of the Counter-Claim that same is meaningless and asks for it to be struck out.

30

4. That with regard to paragraph 6 the Plaintiff denies all allegations in respect of the goods wasting and rents and dues being incurred and that even if such was the case it was due to the Defendants breach of contract in not supplying the Goods according to quantity and quality.

5. That further the Plaintiff admits that the Defendants informed him that they were going to

In the Supreme
Court of Nigeria

No.11

Defence to
Counterclaim,
30th June 1954
- continued.

sell the goods, but that the Plaintiff immediately informed them that they had no right to sell same pending their agreement to meet up the Plaintiff's claim for shortage of quantity and inferiority in quality.

6. With regard to paragraphs 7 and 8 of the Defendants' Counter-Claim the Plaintiff says that he is in no position to deny or admit same and puts the said Defendants to their very strict proof. 10

7. That further even if such expenditures and loss were incurred it was as a result of the Defendants' breach of contract as contained in Suits 496/53 and 610/53.

8. That the Plaintiff has a Credit with the Defendants by way of deposit commission and credit on previous goods to the extent of £1843.18.11 as contained in the account attached as exhibit "A".

9. The Plaintiff avers that the Defendants are not entitled to their Counter-Claim. 20

Dated at Lagos this 30th day of June, 1954.

(Sgd) John Taylor

PLAINTIFF'S SOLICITOR.

EXHIBIT "A"

20th June 1951	Cash	R.No.363	150. - . -	
5th July "	"	" 396	200. - . -	
23rd August "	"		200. - . -	
2nd January 1952	Comm. on Goods		240.15. 1	
23rd August 51	"	"	96.18. 6	30
13th Sept. 51	"	"	179. - . 5	
13th Nov. 51	"	"	14.14. -	
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28th Jan. 52	"	"	107.19.11	
12th Feb. 52	"	"	288. 6. 5	
28th Jan. 52	"	"	51.11. 2	
30th Feb. "	"	"	53.14.11	
24th April "	"	"	184. 6.10	
25th June "	"	"	400. - . -	
7th May "	"	"	238. 2. 9	40

	3th Aug.	52	Comm. on Goods	92.19. 9	In the Supreme Court of Nigeria <u> </u> No.11 Defence to Counterclaim, 30th June 1954 - continued.
	15th "	"	" "	29.18. 7	
	15th "	"	" "	91.10.11	
	28th "	"	" "	39.13. 2	
	29th "	"	" "	10. 8. 4	
	26th "	"	" "	20. 6.11	
	22nd Sept.	"	" "	137.13. 3	
	18th "	"	" "	107. 8.11	
	15th Nov.	"	" "	44. -. 8	
10	17th "	"	" "	22.17.10	
	17th "	"	" "	24. -. 9	
	13th March	"	" "	250. -. -	
	15th Oct.	"	Discount on Goods	<u>500. -. -</u>	
				£3899.11. 6d	

AMOUNT RECEIVED FROM ALLIED COMMERCIAL

	29th Aug. 1952	By cheque	003382	£300
	19th Sept. "	" "	003461	500
		Difference of Goods		270
	12th Jan. 1953	By cheque	051548	500
20		One bill free of goods of AS1000		<u>485.12.7</u>
				<u>2055.12. 7</u>
		Balance	..	<u><u>£1843.18.11d</u></u>

No.12

PARTICULARS OF CLAIM IN SUIT 610/1953

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION.
UNDEPENDED LIST. Suit No. 610/1953.

No.12

Particulars of
Claim in Suit
610/1953 filed
17th November
1953.

BETWEEN

ALLIED COMMERCIAL EXPORTERS LTD. PLAINTIFFS

A N D

ADEL BOSHALI DEFENDANT

The Plaintiff's claim against the Defendant is for the sum of £967.9.2d (Nine Hundred and Sixty Seven Pounds Nine shillings and Two pence) being the value of goods sold and delivered by the Plaintiffs to the Defendant at the request of the Defendant and which amount the Defendant has

In the Supreme Court of Nigeria

not paid despite the several demands of the Plaintiffs.

No.12

Dated at Lagos this day of November, 1953.

Particulars of Claim in Suit 610/1953 filed 17th November 1953 - continued.

(Sgd) G.B.A. Coker
SOLICITOR TO PLAINTIFFS.

Plaintiffs' Address: c/o His/Their Solicitor, 13, Idumagbo Avenue, Lagos.

Defendant's Address: 19, Obun Eko Street, Lagos.

No.13

Affidavit, 17th November 1953.

No.13

A F F I D A V I T

Suit No. 610/1953.

10

(Title as in No.12)

AFFIDAVIT PURSUANT TO ORDER 3 RULE 9 R.S.C.

I, GEORGE BAPTIST AYODOLA COKER, Yoruba, Legal Practitioner, of No. 13, Idumagbo Avenue, Lagos, Nigeria, hereby make oath and say as follows :-

(1) That I am the Solicitor to the Plaintiffs in this case.

20

(2) That the claim is for the sum of £967.9.2d being the value of goods (Textiles) sold and delivered by the Plaintiffs to the Defendant at the request of the Defendant.

(3) That at the arrival of the goods in this country the Defendant took delivery of the goods against two Promissory Notes one for £480.14.5d and the other for £486.14.9d.

(4) That these Promissory Notes were dishonoured by non-payment at maturity by the Defendant and they were duly protested against him.

30

(5) That the Defendant has not paid the amount of the claim or any portion thereof despite the several demands of the Plaintiffs.

(6) That to the best of my knowledge and belief the Defendant has no defence whatsoever to this action.

(Sgd) G.B.A. Coker
DEPONENT.

Sworn to at the Supreme Court Registry, Lagos, this 17th day of November, 1953.

Before me

10

(Sgd) E. Ade. Bamgboye
COMMISSIONER FOR OATHS.

In the Supreme Court of Nigeria

No.13

Affidavit,
17th November
1953 -
continued.

No.14

WRIT OF SUMMONS

CIVIL SUMMONS 'U' 8389

Suit No. 610 of 1953.

(Title as in No.12)

No.14

Writ of Summons
in Suit
610/1953,
30th November
1953.

To Mr. A. BOSHALI of 19, Obun Eko Street, Lagos.

20

You are hereby commanded in His Majesty's name to attend this court at Tinubu Square, Lagos on Monday the 18th day of January 1954 at 9 o'clock in the forenoon to answer a suit by Allied Commercial Exporters Ltd. of c/o Their Solicitor, 13 Idumagbo Avenue, Lagos, against you.

30

The Plaintiff's claim against the Defendant is for the sum of £967.9.2d (Nine Hundred and Sixty seven Pounds Nine shillings and Two pence) being the value of goods sold and delivered by the Plaintiffs to the Defendant at the request of the Defendant and which amount the Defendant has not paid despite the several demands of the Plaintiffs.

Issued at Lagos the 30th day of November, 1953.

In the Supreme
Court of Nigeria

No.14

Writ of Summons
in Suit
610/1953,
30th November
1953 -
continued.

	£. s. d	
Summons	25. - . -	
Service	- . 3. -	
Mileage	<u> </u>	

(Sgd) O. Jibowu
PUISNE JUDGE.

£25. 3. -

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No.15

Motion to strike
out Suit,
28th December
1953.

No.15

MOTION TO STRIKE OUT SUIT

Suit No. 610/53.

(Title as in No.12)

TAKE NOTICE that this Honourable Court will be moved on Monday the 11th day of January 1954 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard for and on behalf of the above-named Defendant for an Order striking out the above-named Suit as not disclosing sufficient facts to sustain a cause of action and for such further or other order or orders as this Honourable Court may deem fit to make in the circumstances of the case.

10

20

Dated at Lagos this 28th day of December, 1953.

(Sgd) John Taylor
DEFENDANT'S SOLICITOR.

No.16

Affidavit in
Support of
Motion,
28th December
1953.

No.16

AFFIDAVIT IN SUPPORT OF MOTION

Suit No. 610/53

(Title as in No.12)

30

I, John Idowu Conrad Taylor, Barrister-at-Law and Solicitor, of the Supreme Court of Lagos

make oath and say as follows:-

In the Supreme
Court of Nigeria

No.16

Affidavit in
Support of
Motion,
28th December
1953 -
continued.

1. That I am a British Subject.

2. That I am the Solicitor to the Defendant in the above matter.

3. That on the 25th day of September 1953 I filed an action in this Honourable Court Suit No. 496 of 1953 claiming a sum of £3531.8.11d for breach of contract of sale of goods against the Plaintiffs.

10 4. That service outside jurisdiction has been effected on the said Plaintiffs according to the instructions of my Solicitors in the United Kingdom.

5. That in the present action the alleged date of Sale and date of delivery are not mentioned in the Writ or accompanying Affidavit.

6. That the alleged date of the 2 promissory Notes are not stated in the affidavit.

20 7. That the alleged date of dishonour by non-payment is not stated in the accompanying Affidavit.

8. That the Plaintiff has not shown that the action is not barred by the Statute of Limitation i.e. that the right of action if one exists is sustainable.

9. That it is impossible for me under such circumstances to file a defence for the reason stated in paragraphs 5, 6, 7, 8 and 10.

30 10. That further the goods referred to might be included in the Claim instituted as per paragraph 3 above.

Dated at Lagos this 28th day of December, 1953.

(Sgd) John Taylor

Sworn to at The Supreme
Court Registry this 5th
day of January, 1954

Before me,

(Sgd) E. Ade. Bamgboye
COMMISSIONER FOR OATHS.

In the Supreme
Court of Nigeria

No.17

NOTICE OF INTENTION TO DEFEND

No.17

Suit No. 610/1953.

Notice of inten-
tion to defend,

(Title as in No.12)

12th January
1954.

TAKE NOTICE that the Defendant to the above
cause intends to defend the said action.

Dated at Lagos this 12th day of January,
1954.

(Sgd) John Taylor

DEFENDANT'S SOLICITOR.

10

No.18

No.18

Affidavit in
Support,

AFFIDAVIT IN SUPPORT

13th January
1954.

Suit No. 610/1953

(Title as in No.12)

I, Adel Boshali of 19, Obun Eko Street, Lagos
a Syrian make oath and say as follows :-

1. That the affidavit of the Plaintiff's Soli-
citor has been read to me.

2. That I have a good defence to the action.

3. That as contained in my Counsel's affidavit
of the 28th December 1953 I took action against
the Plaintiff on the 25th September 1953 Suit
Number 496 of 1953 claiming £3531.8.11d for breach
of contract of Sale of goods.

20

4. That my Writ of Summons in the aforesaid
Suit is as follows :-

"The Plaintiff says that by various letters
and communications on or between the month
of March and April, 1952 he placed an order
with the Defendant firm for 85,000 yards
of Spun Rayon as per sample contained in
the Defendant's offer.

30

That from the aforesaid Order the Defendants purported to ship to the Plaintiff 35,466½ yards of the Order but in fact the Goods shipped were not in accordance with the sample and they were short in quantity and inferior in quality.

That the Defendants knew that the Plaintiff was a Trader and that the goods were ordered with a view to resale at a profit.

10

The Plaintiff therefor claims from the Defendant the sum of £3,531.8.11d as damage and loss suffered by the aforesaid breach of contract".

5. That as my Counsel Mr. J.I.C. Taylor stated in paragraph 10 of his affidavit above referred to the present claim on this action deals with part of the goods the subject matter of the above action.

20

6. That I am claiming damages for the fact that the goods shipped were not in accordance with the sample and were short in quantity and inferior in quality.

7. That that will be my defence to this action.

8. I therefore crave leave to defend the action and that this action be joined with my action as they are in respect of the same matter.

(Sgd) A. Boshali.

30

Sworn to at The Supreme Court
Registry Lagos this 13th day
of January, 1954.

Before me

(Sgd) Ola Scott.

COMMISSIONER FOR OATHS.

In the Supreme
Court of Nigeria

No.18

Affidavit in
Support,

13th January
1954 -
continued.

In the Supreme
Court of Nigeria

No.19

No.19

STATEMENT OF CLAIM

Suit No. 610/53.

Statement of
Claim,

(Title as in No.12)

28th January
1954.

1. At all times material to this action, the Plaintiffs are a Company incorporated in the United Kingdom, but having an agent in Lagos by name E.M. Battat.
2. In or during the year, 1952 the Defendant ordered from the Plaintiffs in England 5000 yards of Textiles to be shipped in series of consignments and/or lots. 10
3. The first consignment was shipped by the Plaintiffs to the Defendant in three lots and arrived in Lagos during the months of January, February and March, 1953.
4. On or about the 26th of February, 1953 the Defendant took delivery of Lot No.80/83 containing 5057 yards and costing £486.14.9d and executed a Promissory Note against the payment for same dated 26th February, 1953 and payable fourteen days thereafter. 20
5. On or about the 5th of March, 1953 the Defendant took delivery of Lot No. 95/98 containing 4994½ yards and costing £480.14.5d and executed a Promissory Note against the payment for same dated the 5th of March, 1953 and payable ten days thereafter.
6. The two promissory Notes were duly presented to the Defendant at maturity and they were both dishonoured by non-payment by the Defendant. They were duly protested against him for non-payment. 30
7. The Plaintiffs aver that they demanded these amounts totalling £967.9.2 from the Defendant, but he always kept on promising to pay without ever actually paying.
3. The Plaintiffs aver that the goods were sold and delivered by them to the Defendant at his request and that he duly took delivery of the goods and sold them. 40

9. Whereupon the Plaintiffs claim as per their writ of summons.

Dated at Lagos this 28th day of January, 1954.

(Sgd) E.A. Molajo
For G.B.A. Coker
SOLICITOR TO PLAINTIFF.

In the Supreme Court of Nigeria

No.19

Statement of Claim,
28th January 1954 - continued.

No.20

STATEMENT OF DEFENCE

SuitNo. 610 of 1953

(Title as in No.12)

No.20

Statement of Defence,
2nd February 1954.

10

1. The Defendant says with regard to paragraph 1 of the Plaintiff's Statement of Claim that while admitting the incorporation of the Plaintiff Company are in no position to admit or deny the other allegations and put the Plaintiffs to their strict proof.

20

2. That with regard to paragraph 2 of the Plaintiffs Statement of Claim the Defendant says that he did not order 5,000 yards but 85,000 yards of Textiles to be shipped in series of Consignments and or lots in or during the month of March and April, 1952.

3. The Defendant says with regard to paragraphs 3, 4, 5, 6, 7 and 8 of the Plaintiffs Statement of Claim that the Goods comprising lot No. 80/83 and 95/98 are all part and parcel of the goods ordered by virtue of Sales Notes of 24/3/52 and 1/4/52 totally 85,000 yards and ordered by Sample.

30

4. That of the said 85,000 yards, 15,000 yards are as follows: Quality As 1000 - 36" Dyed Rayon Crepe Grey Cloth of foreign Origin and 70,000 yards 36" dyed crepe quality As 1000 grey crepe foreign Origin.

5. That the aforesaid Goods were short in quantity and inferior in quality and were therefore not in accordance with the Sample on which the order for the goods was based.

In the Supreme Court of Nigeria

No.20

Statement of Defence,

2nd February 1954 - continued.

6. That the Defendant cleared 35,466½ yards of the said goods which were short in quantity and inferior in quality and refused to clear more until the Plaintiffs meet the Defendant's claim of inferior quality and short quantity as aforesaid.

7. That by virtue of the breach of Contract the Defendant has suffered damage to the tune of £3,531.8.11d for which a claim has been brought viz Suit No.496 of 1953.

8. The Defendant asks that both claims be consolidated by virtue of the above.

Dated at Lagos this 2nd day of February, 1954.

(Sgd) John Taylor
DEFENDANT'S SOLICITOR.

10

No.21

Court Notes,
21st January 1955.

No.21

COURT NOTES

FRIDAY THE 21ST DAY OF JANUARY, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

20

CONSOLIDATED SUITS NOS. 496/53 and 610/53.

ADEL BOSHALI vs. ALLIED COMMERCIAL EXPORTERS LTD.

JOHN TAYLOR for Plaintiff in 496 and Defendant in 610 -

MOLAJO for Defendant in 496 and Plaintiff in 610 -
TAYLOR calls Plaintiff in 496.

P.W.1.

MOLAJO applies to amend Statement of Defence in 496 by adding a new paragraph to read :-

30

"The Plaintiff by an agreement in writing dated the 15th day of October 1952 has, for valuable consideration in the sum of £500

paid to the Plaintiff by the Defendant firm Agreed to forego his right of action in respect of all claims relating to the goods which are the subject matter of this action namely the 35,000 yards of Spun Rayon A.S. 1000.

In the Supreme
Court of Nigeria

No.21.

Court Notes,

21st January
1955 -
continued.

The Defendant will rely upon this agreement."

Apply also to add another new paragraph to read:-

10

"The Plaintiff has failed to submit this case to arbitration according to the terms of the contract in writing consisting of 2 parts dated respectively the 24th March 1952 and the 1st April 1952. The Defendant will reply upon the said terms of this Contract."

TAYLOR:- As to 2nd application pleadings have been ordered and filed. Both parties have had recourse to the jurisdiction of the court. Action has been going on since 1953. Application involves undue delay.

20

Regarding the 1st part we have not seen any such agreement. Belated application:

MOLAJO:- We agree that this is without notice if the documents referred to have only come to my notice since the General Manager of the Defendant firm arrived in Nigeria on the 16th November 1954 - I was unable to see him until 2 weeks ago.

30

ORDER:- I allow the amendment sought but it is already a matter of amendment re terms in view of the fact that these amendments and additions to the Statement of Defence affect the consolidated actions down to the roots. It compels the Plaintiff to review his case.

The amendments are granted with costs awarded to the Plaintiff, Adel Boshali, which in these most unusual circumstances and likely delay, I assess in the sum of 25 guineas.

(Sgd) F.W. Johnston
PUISNE JUDGE.

40

ORDER:- The necessary adjournment is to Tuesday the 1st February and succeeding days for trial but I shall deal with the matter of alleged agreement to arbitrate on Friday 28th January as a preliminary point only: at 9 a.m.

(Sgd) F.W. Johnston
PUISNE JUDGE.

In the Supreme
Court of Nigeria

No.22

COURT NOTES

No.22
Court Notes,
28th January
1955.

FRIDAY THE 28TH DAY OF JANUARY, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

CONSOLIDATED SUITS NOS. 496/53 & 610/53.

ADEL BOSHALI vs. ALLIED COMMERCIAL EXPORTERS
LTD.

G.B.A. COKER and MOLAJO for Defendant.

10

TAYLOR for Plaintiff.

G.B.A. COKER:- We have pleaded Arbitration. If para 18 is struck out we have nothing to rely upon in putting in the agreement to refer the matter to Arbitration.

NOTE:- That Defendant must choose between making a submission to obtain the agreed arbitration or accept the suit and abandon any question of arbitration.

(Sgd) F.W. Johnston
JUDGE.

20

G.B.A. COKER - Will make the submission that the suit goes to arbitration with reference to para 18 of the Statement of Defence. We did not apply to stay the case. Refers para 17 Statement of Defence (as added by virtue of the last order).

SUBMISSION: Arbitration Agreement put in 2 Sales Notes. This in confirmation of a verbal agreement between the parties to submit to arbitration. We cannot state the date of the agreement.

30

TAYLOR - Our claim is wholly denied and a Counter-Claim has been filed. If there is an Agreement to submit a stay ought to be asked for. Refer Vol.I. Halsbury (Hailinan Page 445:- The conditions are an attempt to oust the jurisdiction. See para.946. Refer to 956 at 452:- Delivery of Defence is a step in the proceeding. Application is bad Para 18 should be struck out. See Arbitration order "before delivery of any pleadings or other step."

40

COKER:- Replies: My submission is that if

Plaintiff says there is a dispute he should go to Arbitration. We neither ask for suit to be stayed or struck out. Plaintiff was wrong to institute the suits. We plead Arbitration but we do not ask for a stay.

In the Supreme
Court of Nigeria

No.22

Court Notes,
28th January
1955 -
continued.

10

ORDER:- This matter which has been raised by the amended Statement of Defence. Must be regarded either as a submission that the suit be stayed by reason of an agreement by the parties to revert to Arbitration in the event of a dispute between them, or regarded as an attempt to do no more than to justify the retention of the paragraph which is now para 18 of the Statement of Defence.

20

MR. COKER has stated that he is not making an application for a stay of proceedings. Therefore since the suit is now to proceed to trial I regard para 18 of the Statement of Defence as unnecessary. No question of Arbitration can now arise as the suit - Consolidated Suits - stand at present.

It is unnecessary therefore to consider either the validity of the application in relation to the step already taken by the Defendant, or to examine the alleged Arbitration Agreement.

I STRIKE OUT PARA. 18 OF THE STATEMENT OF DEFENCE, with costs to the Plaintiff, in the sum of 5 guineas.

30

(Sgd) F.W. Johnston
PUISNE JUDGE.
28.1.55

TUESDAY THE 1ST DAY OF FEBRUARY, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

CONSOLIDATED SUITS NOS. 496/53 & 610/53.

ADEL BOSHALI vs. ALLIED COMMERCIAL EXPORTERS LTD.

TAYLOR for Plaintiff.

G.B.A. COKER - MOLAJO with him for Defendant.

40

Also for Plaintiff in suit 610 and TAYLOR
for Defendant in Suit 610.

Plaintiff's
Evidence.

No.23

EVIDENCE OF ADEL BOSHALI

P.W.1. Sworn, examined, states:-

No.23
Adel Boshali,
Examination.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

I am ADEL BOSHALI, Trader, Syrian. I live at Chappel Street 2 & 4 Yaba. I know the Defendant firm. In march 1952 and April 1952 I entered Agreement with Defendant for the 85,000 yards of Spun Rayon.

Produces the letter and the contract and sample. The letters of Contract and sample (admitted as Exhibit "A"(1) to (4). The price agreed was 1/10d c.i.f. Lagos.

The sample is the basis sample offered me by the Defendants upon which I contracted to purchase the 85,000 yards. 10

Later I received the shipping sample before the goods arrived. I saw that the shipping sample was not the same as the basic sample. I contacted Mr. Jack DALLAL, director of Defendant firm in Manchester. I told him of my discovery. He said that that was impossible because this was a sample of the same on what I ordered and this same is the basic sample. This conversation took place in Manchester in September 1952. I was not satisfied with this and I told DALLAL that I would like to send the sample to the Manchester Chamber of Commerce to be testified. 20

On the 3rd, 27th September 1952 I caused letter to be sent to Defendant by Solicitor. (Original produced by Defendant admitted as Exhibit "B") I received letter from my Solicitor enclosing copy of Defendants' reply (Admitted as Exhibit "C"). 30

Next I sent my basis and shipping samples to the Chamber of Commerce.

I do not know whether Defendants sent a sample to the Chamber of Commerce. They never informed me.

On 15th October 1952 Mr. Dallah asked me to go to his Office for an urgent matter. I went there. He said he did not want any dispute to arise between us, and said we should forget about Lawyers and the Chamber of Commerce. He asked me whether I had received a reply from the Chamber of Commerce and I said I had not. He then told me that he had examined his sample and found that the quality of the cloth was all right but that 40

the finish was a bit different from the basic sample. I told him I was not sure since I had not got my report as yet. He assured me that it was only the finish which was not the same and that I might find the same result - At this time there was an existing dispute between us regarding a shipment of 50,000 yards Spun Rayon (AS1000) An earlier contract - I produce the contract and Invoice - (Admitted as Exhibit "D" (1)-(2)) and I produce the agreement reached by both of us dated 15th October Vide para 17 of Statement of Defence and received prior to my receiving the result of the Chamber of Commerce test of the Samples in our new dispute (Admitted as Exhibit "E").

10

Subsequent to 15.10.52, three or 4 days later, I received test from the Chamber of Commerce. It was sent to A. Kahale at 82 Princes Street, Manchester in the (letter produced). The Report of the test was sent to A. Kahale because all my correspondence was addressed to A. Kahale because I had no fixed address in Manchester -

20

TO COURT:- While in Manchester I lived in Defendants' flats and then in a house.

(Referred to letter in his hand to which Mr.Coker has taken exception).

This is a letter written by the Chamber of Commerce - It is the report of the test. Nothing else was enclosed with it. (An Invoice admitted as Exhibit "F" - Not a report).

30

I produce now the Report which I received prior to receiving Exhibit "F" - The Report is admitted as Exhibit "G". (Report evidence above "Subsequent 3 or 4 days later").

Attached to the Certificate and Report are my samples which I sent for test. The blue one is the basis and the others are the shipping samples.

40

After I received the report I saw Mr. Dallal but instead I saw Mr. A. Dallal who is now in Court who is Defendants Sales Manager. He told me that Mr. J. Dallal was out so I told Mr.A.Dallal what the report stated and I had the Report with me.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

Mr. A. Dallal said he would not do anything because he did not know about the matter and W.J. Dallal was out. I showed him the report. He could not deal with it. I left. I did not return again because I was preparing to return to Lagos. I returned to Lagos at end of October or 1st week in November 1952.

On arrival I cleared 1 Bill of 4 bales of AS1000. I sold the lot to Messrs. HAOUCHAR & SON. On the 21st October 1952.

10

My agent keeps my Invoice book for me. He is N. Atrib. Now in Lagos. (Invoice book for identification) (Folio 15).

TO COURT - This sale of 4 bales was out of the 85,000 yards and totalled 5,045 yards.

CONTINUED - Price was £546.11.11d - After this I received a letter from Messrs. Haouchar -

NOTE AT THIS STAGE I must refuse to look at the Contents of Mr. Haouchar's letter: Mr. Haouchar can be a witness to whatever he had to say to the Plaintiff.

20

(Sgd) F.W. Johnston
JUDGE.

CONTINUES - As a result of what Mr. Haouchar wrote I asked him to return the goods to me.

TO COURT - I sold the 4 bales to Haouchar and Son by Sample. In this case the shipping sample - I received all of them back and I sent them a Credit Note.

Plaintiffs' letter from Mr. Haouchar is tendered for identification if Haouchar is called.

30

- After some time I cleared a further lot of about 30,000 yards and I sold some of it.

I had plenty of complaints from the people who purchased from me. The purchaser made their purchases in my shop on seeing their material. I display the goods in bundles stamped as to yardage.

I have a complaint in addition to the Chamber

of Commerce report. That is that the goods were short in yardage measurement. I sell to my customers in bundles as described on the stamp.

I sold some goods to Mr. Grizi also to Market women. (Refers to para 7 Statement of Claim).

I asked a Surveyor to come and measure the goods. As a result I received a certificate of Inspection which I have with me.

10 (COKER objects to its admission. It has not been pleaded:- Also Section 90 Evidence Ordinance) -

TAYLOR - We will call the Surveyor - Not tendering in view of Section 90.

Next I wrote to the Defendants in Manchester and I sent them a copy of the report. I wrote on the day after I received the report I telegraphed also. (Telegram admitted as Exhibit "H")

Also copy of letter to Defendants (admitted by consent as Exhibit "J"). Sent after the cable.

20 I received no reply to cable or to letter. I returned to England towards end of November 1952. After several visits to Defendants Offices I saw L. Brown, 1st Director of Defendants Firm. I told him all regarding inferior quality and Yardage shortage and purchasers complaints. He called A. Dallal and asked how the matter had occurred and that I was a good customer. The upshot of the interview was that Mr. Brown said that he could not do much in the absence of his partner but said that he would give me a credit note of £400 and would speak to J. Dallal and ask W. Naim his representative in Lagos to examine the goods in my shop. He gave me the proposed credit note. (Admitted as Exhibit "K").

30

On 31st December 1952 I received letter produced (Admitted as Exhibit "L"), from Defendants.

Mr. Naim came to my shop in February 1953. He is not in Lagos now. He was their representative in Lagos.

40 On the 8th January 1953 I received letter from Defendant (Admitted as Exhibit "M"). It is reply to my letter of 3rd January (Admitted as Exhibit "N").

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination --
continued.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,

Examination -
continued.

Naim examined part of the goods. The 1st bundle was short 3 yards. And it was in 2 pieces instead of being in one length.

The next one was also short according to the yardage stamp. I wanted to continue but Naim said that he was quite satisfied and would write to the Head Office and I would get the result.

Next on 23.2.53 I received this letter (Admitted as Exhibit "O") in reply to my letter of 20th February to them (Admitted as Exhibit "P").

10

I never received the result from Defendants of Mr. Naim's inspection.

On 6th March 1953 I wrote to the Defendants to press them and received a reply on 10th March.

(Plaintiff to Defendant admitted as Exhibit "Q" and Defendants' reply to Plaintiff admitted as Exhibit "R").

Exhibit "R" does not mention Naim's report. I had sent the Defendants a survey report under cover of a letter 7.XI.52 - registered.

20

(This is the matter of report on short length in pieces in the 4 bales referred to earlier).

- Copy by consent admitted with Report for Identification. (Exhibit "S" admitted).

Up to the time of taking this action I have not received any compensation from the Defendants for these shortages. I had cleared 35466½ yards, but I did not, in absence of Compensation from the Defendants clear the balance.

Defendants told me that I would have to clear the balance or they would sell them.

30

On 15 and 17 April I registered letter to Mr. Brown protesting against the sale. The Defendants sold the balance afterwards (Admitted as Exhibit "T" and Exhibit "U").

- I had been dealing with Defendants about 2 years before this transaction. The Defendants had to know what I do with the goods, namely, to sell them.

- (Para. 11 Statement of Claim) I lost 7d a yard on the 35466 $\frac{1}{2}$. Totalling £1034.9.11 and adding refunds to purchasers of £246.19.-. My total loss £1281.8.11d.

- I have sold at 1/9 these goods which cost me 2/4d a yard. Refers to Sales Invoices 36, 37 & 39 in Invoice book.

10 - If the 85000 yards had arrived up to sample and measurement my profit would have been up to 6d a yard. (Para. 12 Statement of Claim is amended accordingly to read £2125 instead of £2250 - Also amended now is para 15 of Defendants' Statement of Defence to read £1666.14.2 in lieu of £1466.14.4d).

(Sgd) F.W. Johnston
JUDGE.

EVIDENCE CONTINUES:

20 6d a yard profit is reckoned at buying at 2/4d and selling at 2/10d. I have no other goods of same quality - which I sold at 2/10d in my books -

Continuing tomorrow.

(Sgd.) F.W. Johnston
JUDGE.

WEDNESDAY THE 2ND DAY OF FEBRUARY, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE FREDERICK WILLIAM JOHNSTON
PUISNE JUDGE.

CONSOLIDATED SUITS NOS. 496/53 & 610/53.

30 ADEL BOSHALI vs ALLIED COMMERCIAL EXPORTERS LTD.

CONTINUED EVIDENCE OF PLAINTIFF.

40 As to Defendants' claim in Suit 610 - The two lots of cloth mentioned in paragraphs 4 and 5 of the Defendants Statement of Claim form part of the 85000 yards as to which I am claiming. These 2 lots were of same as the rest compared. Same defects. I gave the Defendants the 2 Promissory Notes in respect of these 2 lots. I made the notes before I took delivery. I found the goods defective after delivery.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,

Examination -
continued.

I had a Statement of Account from Defendants when I was in Manchester. Given by Mr. Dallal (Tendered). (Admitted as Exhibit "V").

G.B.A. COKER - objects that Exhibit "V" was given to Plaintiff only 2 weeks ago and it is marked "Without prejudice" by us and given - when effort was made to settle the case out of Court.

NOTE: That it becomes a minor of fact how and where this Statement got into the hands of Plaintiff - How it came to him, open, or marked "without prejudice" and subject to these considerations Mr. Taylor may proceed.

10

(Sgd) F.W. Johnston
PUISNE JUDGE.

EVIDENCE CONTINUED:

I refer to item of £486.14.9d in Exhibit "V". It is the agreement of one Promissory note (Note para. 4 in Counterclaim). My complaint is that it is debited. I hold credit notes which I tender - (Admitted as Exhibit "W" in one bundle of 26).

20

- Referred to para. 8 of Defence to Counter-claim in 496. (Credit of £1843.18.11d). I have this credit, and that item of £486.14.9d (Exhibit "V") has been debited to my account. I should not therefore be sued on it.

- I refer also to item £480.14.5d in Exhibit "V" a debit. This is the other Promissory note as to which I raise the same objection. I do not owe the Defendants anything.

30

- I wrote Defendants in 1953 about the Promissory notes in addition to Exhibit "Q" written in the same year.

Referred to Counter-Claim.

I dispute Insurance and Customs charges also Bank charges and the rest of the Counter-claim as well.

I have never received a detailed account from the Defendants. I asked for one at beginning of 1953. Defendants sent me a Statement of the total which was incorrect.

40

I would have sold the goods and made a profit if they had been in order -

In the Supreme Court of Nigeria

I know Sabbagh & Sons of Lagos and that Defendants had dealings with them.

Plaintiff's Evidence.

TAYLOR. This relates to para. 8 of Statement of Claim.

No.23

Adel Boshali,

COKER. Objects - This avers general character - Section 66 Evidence Ordinance. Evidence of other transactions irrelevant.

Examination - continued.

10 TAYLOR. We pleaded this to show that it is part of system of Defendants to sell goods not up to sample.

RULING: I disallow evidence relating to Contracts between the Defendants and others not parties to this suit. Apart from any question of relevance or otherwise, and having regard to the fact that there is no issue of fraud in this case, this suit might be prolonged interminably by the trial of issues, raised by evidence relating to such other

20

(Sgd) F.W. Johnston
PUISNE JUDGE.

EVIDENCE CONTINUES:-

I have been let down by the Defendants in respect of the Contract relating to goods A.S.100 - This was the dispute referred to at page 280.

Referred to Exhibit "E" and Exhibit "D(1) and (2)"
- Those goods were of Japanese origin which was not in the contract.

30 I protested about Exhibit "E" by letter written by my Solicitor on my instructions - (Original admitted as Exhibit "X").

Produces cable and letter dated 30th October and 1st November 1952. (Admitted as Exhibit "Y(1) and (2)").

In view of the letter Exhibit "Y(2)" I made a claim for shortages to Defendants and sent them the survey report. I did not know to which agreement the Defendants refer to in Exhibit "Y(2)".

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

COKER objects to the admission of Credit Notes held by Plaintiff.

Refers to para.8 Defence to Counter-Claim - He says it is pleaded there that the alleged total Credit with Defendants, claimed by Plaintiff, is on previous goods. He does not say that the sum of £1843.18.11 was agreed to be set off against the total of the 2 Promissory notes. He does not say how it is related. He has said this morning that he was annoyed because the total of the 2 Promissory notes was debited in the "without prejudice account". The question of Plaintiff's Credit with Defendants is not in issue at all.

10

TAYLOR: Exhibit "W" has been admitted. In Exhibit "W" we have put in evidence all the items set out in the annexure A to our Defence to the Counter-Claim. Excepting 2 items. One of the 25th June of £400 and the other of 13th March of £250.

RULING: I shall receive the 2 remaining items in the annexure to the Statement of Defence to Counter-Claim, as part of Exhibit "W" and leave the question of the effect of para.8 in this Statement of Defence to Counter-Claim to be assessed at a later stage.

20

(Sgd) F.W. Johnston
PUISNE JUDGE.

EVIDENCE IN CHIEF CONTINUED:

Refers Exhibit "T" - The reference to promissory Notes in this letter is to the 2 Notes subject of Defendants' Suit 610.

30

I produce Defendants' letter informing me of my account due to them (Admitted as Exhibit "Z").

The correct figure should read £2324.8.1 as my Credit balance, by deducting £400 sent to me on condition that the goods would be examined here and, on Mr. Naim's report, we would make the final settlement. They failed to send me the report. There has been no final settlement so that the sum of £400 should not be credited to my account. The sum of £400 can be regarded as compensation for what I was going to lose upon the 85,000 yards.

40

I took from the Defendants £500 paid by cheque when I was in Manchester. That was paid to me on my account but it has no connection with the matter in Exhibit "E". I deduct that £500 accordingly from the sum of £2324.8.1d which leaves me a final credit with the Defendants of £1824.8.1d.

In the Supreme Court of Nigeria

Plaintiff's Evidence.

No.23

Adel Boshali,
Examination -
continued.

10

REVERTING TO THE £400 - I am suing the Defendants on the entire Contract. If the Defendants had come to the Agreement with me in regard to the shortages I would not have taken this action.

CLOSSES EVIDENCE-IN-CHIEF

ORDER:- Because of the forthcoming W.A.C.A. Session interrupting this hearing I set the suits down for mention on Monday 28th February to fix the next adjourned hearing date.

(Sgd) F.W. Johnston
PUISNE JUDGE.

2nd February, 1955.

20

WEDNESDAY THE 16TH DAY OF NOVEMBER, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE MYLES JOHN ABBOTT
PUISNE JUDGE.

CONSOLIDATED SUITS NOS. 496/53 and 610/53.

ADEL BOSHALI vs. ALLIED COMMERCIAL EXPORTERS LTD.
ALLIED COMMERCIAL EXPORTERS LTD. vs. ADEL BOSHALI
RESUMED.

COUNSEL AS BEFORE.

30

P.W.1. ADEL BOSHALI, Syrian, sworn. 2 Chapel Street, Yaba. Trader. I know Defendants. I have had dealings with them since 1951. I received letter of offer with samples. I produce letter Exhibit "A", Sample Exhibit "AB" and my Order in reply Exhibit "A1" which has attached small samples for colour papers only, of other materials. First offer was 2/0³ per yard. I made a counter offer of 1/10d per yard. This was accepted. I received this letter Exhibit "A3". The paragraph (marked by Court "X") has nothing to do with this case. I replied to Exhibit "A3" with regard to the paragraph re AS1000. I replied insisting on my figure of 1/10. Then I received this sale Note Exhibit

40

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,

Examination -
continued.

"A3". Later I received this sale Note Exhibit "A4" and I agreed to buy this additional consignment.

Before goods arrived a shipping sample was forwarded to me here. At that time I was in U.K. and the shipping sample or part of them were sent on to me in Manchester by my agent here.

The shipping sample received by me were not of very good quality as Exhibit AB.

I went to see a Director, Mr. Dallal, of Defendants. I explained my complaint - goods not up to sample. He did not agree with me and said they must be the same. I showed him shipping samples and Exhibit AB. He still insisted that they were of same quality. I then left the office. 10

I consulted a Lawyer in Manchester. (By consent Solicitor's letter to Defendant is put in as Exhibit "B" (Intld. M.J.A.)).

I produce letter from my Lawyer with copy reply from Defendants Exhibit "C". 20

I then sent part of Exhibit "AB" and the shipping sample to Manchester Chamber of Commerce for testing.

Before the report came I was sent for by Dallal on 15.10.52. I went to see him. He asked if I had got report of test. I said no. He said he was about to go away and would like to settle the matter. I told him I could do nothing until I got report of test. Dallal said I need not worry about that because they had had their own tested and the test showed that the only difference was in the finish and there was no difference in quality. I asked for time to get my test report. He said it would be waste of time and he would not be back for 2 or 3 months and assured me that only the finish was different. He said he was prepared to settle the matter by reducing the bill in connection with another transaction by £500. This other transaction was AS.100 - 50,000 yards. There was a dispute about this transaction. I complained that these goods were found by me on delivery to be Japanese and that this origin had never been disclosed to me by Defendants. 30 40

I produce Sales Note and Invoice Exhibits "D1" and "D2" in reference to this other transaction.

I accepted the Defendants' offer of £500 to settle all disputes that I then knew, relying on Dallal's assurances, were then outstanding between us. I received this letter Exhibit "E" in confirmation of this arrangement. I signed a copy of this which I produce Exhibit "E1".

10 After a few days I received report of test which I had requested. This is the report and the bill therefor Exhibit "G" and "F".

I then went to Defendants' Office and met another Mr. Dallal. I told him what Exhibit "G" said but this Mr. Dallal said he knew nothing about the matter.

20 I then returned to Lagos. 4 Bales of the AS 1000 were cleared from Customs by my agent before I returned. These 4 bales were all confirmed in one Bill of Lading and as result of Exhibits "E" and "E1" I had told my agent in Lagos to clear these 4 bales. He sold them to A. Houchar & Sons of Lagos. I produce sales Invoice Exhibit 1. Houchar complained about the goods so they were returned to me.

I asked Steiner of Steiner & Co. to examine the goods. This is certificate received from him. Exhibit 2.

30 I sent Defendants a telegram. This is it (Exhibit "H"). No reply. I also sent a letter of which this (Exhibit "J") is a copy. No reply.

I went back to Manchester and to Office of Defendants. I asked for Dallal (1). He was not there.

40 I met Mr. Brown another Director and I explained everything to him. He asked Sales Manager why all this trouble had occurred, and Sales Manager said he knew nothing of my complaint. Mr. Brown said that as I had been a very good customer for some time, he didn't want to see me lose on the goods and offered to credit my account with £400 to cover part of the losses. I refused at first because Brown said he would not make a firm

In the Supreme Court of Nigeria

Plaintiff's Evidence.

No.23

Adel Boshali,
Examination -
continued.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Examination -
continued.

offer of this £400 without seeing Dallal (1) and he promised that when he saw Dallal (1) he would make a final settlement for me and would tell his Lagos agent to go to my shop to examine the goods and when he received his agent's report he would settle the matter. He asked me to help in clearing goods from Customs. As a result of his assurances and promises I agreed to return to Lagos and clear the goods and to accept the £400.

Before I returned to Lagos, I received this credit Note (Exhibit "K").

10

I expected to receive further credit on Brown having discussed with Dallal. I returned to Lagos and started to clear the goods. I produce a letter from Defendants about clearing the goods (Exhibit "L"). I produce my reply Exhibit "N" and Defendants reply thereto Exhibit "M".

I cleared 35466½ yards from customs to my shop. I had arranged with Defendants to clear £1000 worth of goods every 10 days and I gave promissory notes to Bank for the money, each payable 10 days after date.

20

Defendants representative came to my shop and examined the goods and promised to send his report to Manchester. I heard nothing from Defendants. I wrote them several times.

During this time the goods were lying in my store and I was unable to sell them and I was short of cash. I wrote to Defendants.

(At this stage by consent correspondence re Exhibits "O" - "Z" are put in (Intld. M.J.A.)).

30

Exhibit "Z" says that some bales were in more than one price and some were damaged.

1/10 per yard was price C.I.F. Lagos. After paying duty and expenses, the goods cost me 2/4d per yard. Duty is 4d per sq. yard or 15% ad valorem. Whichever is the greater.

I sold all the goods ultimately at 1/9d per yard: because quality was inferior I could get no more. I could not get a buyer at a higher price though I tried.

40

Had the goods been of proper quality I would have made a profit of 6d per yard. So I am claiming loss of profit on 85000 yards but I am only claiming for loss on 35466½ yards which include the goods specified on Exhibit 2.

In the Supreme
Court of Nigeria
Plaintiff's
Evidence.

I am also claiming £246.19.0 money refunded by me to purchasers from me because of goods being short in quantity.

No.23

Adel Boshali,
Examination -
continued.

10 I did not clear the balance of about 45000 yards, not all the 85000 yards were shipped. According to their Counter-Claim Defendants only cleared 35242½ yards. Original value £3392.1.10d. I don't know where balance of 10000 yards is. I never agreed to clearing of these goods by Defendants.

20 I don't agree with customs duty claimed by Defendants in para 14 of Statement of Defence. Correct duty would be £587.7.6d plus £40 customs rent. Duty calculated at 4d per yard. I say that because I cleared goods of the same kind myself I paid 4d per yard.

I did not protest when Defendants cleared the goods because I did not know about it.

Now I say I did protest.

I know that in Suit 610/53 Defendants here are claiming from me £967.9.2d for goods sold and delivered.

30 I admit signing the Promissory Notes in paragraphs 4 and 5 of Statement of Claim in 610/53. I have not paid either amount, because I knew Defendants owed me over £2000 for deposits and credits and as the goods were lying in my store and I could not sell them, I asked Defendants to debit my account with the amount of the two Promissory Notes. I accept that I had to pay this money.

I received Exhibits "V" from Sales Manager. This shows that I have been debited with the amount of the two Promissory Notes.

40 I say that ever after that, I have a credit with Defendants of about £900.

This Exhibit 3 is a copy of my letter asking for my Account to be debited with amount of the two Promissory Notes.

Adjourned 17.11.55. (Sgd) M.J. Abbott
PUISNE JUDGE.

In the Supreme
Court of Nigeria

Plaintiff's
Evidence.

No.23

Adel Boshali,
Cross-
examination.

THURSDAY THE 17TH DAY OF NOVEMBER, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE MYLES JOHN ABBOTT
PUISNE JUDGE.

CONSOLIDATED SUITS NOS.496/53 and 610/53.

ADEL BOSHALI vs. ALLIED COMMERCIAL EXPORTERS LTD.
ALLIED COMMERCIAL EXPORTERS LTD. vs. ADEL BOSHALI
RESUMED COUNSEL AS BEFORE.

P.W.1. RE-ENTER WITNESS BOX and is reminded of
Oath.

10

XX:

I see Exhibit "A.1". I deny I accepted AS
1000 and merely gave the Defendants the shades.
I did not cable, but I wrote, in reply to Exhibit
"A.1".

I remember giving evidence in this case be-
fore - when Johnston J. was trying it. I deny I
said then that Houchar came to my shop, examined
the goods and then bought them.

I did not sell to Houchar. My agent, Atrib,
did. I agree I told Johnston J. that the sale
then was by shipping sample.

20

I refunded Houchar's money to him because he
complained about the goods. He said they were
short in measurement. He asked me either to give
him a discount or to allow him to return the goods.
I preferred the latter course, which was adopted,
because the discount asked was too great. I be-
lieve he asked for a discount of 5d per yard.

Houchar's only complaint was shortage in
quantity. Houchar did ask for a discount.

30

I sold 4 bales to Houchar.

I cleared a total of 28 bales. I sold one
bale to GRIZI to begin with and then another one
later.

I sold some pieces to SABAH. I sold the
rest to the market women. They examined the mat-
terial before they bought. Many of them complained
of shortage in quantity, so I had to refund money
to them.

40

We sold to market women in pieces and bundles.

The total refunds to GRIZI and market women were £246.19.0. All sales to GRIZI and market women at 1/9d per yard.

I would make 6d per yard profit on Spun Rayon.

I can't remember if market was dull at time I sold. I agree that in this letter Exhibit 4 I said the market was dull. When I sold a year later it was rather better.

I have been in textile business several years.

I sent the samples to Manchester Chamber of Commerce.

I signed Exhibit "E.1" before I got Exhibit "G". I deny Exhibit "E.1" relates to anything more than a defect in finish.

I deny I got Exhibit "G" before signing Exhibit "E.1". I agree they are both dated 15.10.52 but I did not get Exhibit "G" until 3 or 4 days later because it was sent to an address where I used to pick up my mail once a week.

The £500 related to finish on AS 1000 and to other defects on AS 100.

I was in Manchester again in December 1952 when I got Exhibit "K". Exhibit "K" was given in respect of part of my claim for inferior quality. I knew then there was a shortage in quantity. I accepted Exhibit "K" on the faith of Mr. Brown's assurance that he would send his Lagos agent to my shop to investigate the alleged shortage and send him a report.

I don't agree with all figures on Exhibit "V". Some of them are not correct. I agree Exhibit "V" shows a figure of £400, and one of £500.

I deny that all claims have been settled between me and Defendants and that I am bringing this action because I can't pay my debts.

BY COURT: There are no judgment debts outstanding against me.

In the Supreme Court of Nigeria

Plaintiff's Evidence.

No.23

Adel Boshali,

Cross-examination -- continued.

In the Supreme Court of Nigeria

Plaintiff's Evidence.

No.23

Adel Boshali,

Cross-examination - continued.

BY COKER: I deny I have had another credit of £400 for travelling expenses.

This credit note Exhibit 5 is nothing to do with AS 1000. Those goods had not even been supplied. I first discovered a defect in AS 1000 when I received the shipping samples in September 1952 in U.K. I left Nigeria for U.K. by sea in July 1952.

I accept the £500 as settlement of claim on AS 100 and for part of defects (i.e. finish) on AS 1000. But I certainly don't accept the £400 in full settlement of other defects in AS 1000.

10

Defendants' agent inspected goods at my shop in February or March 1953.

I can't remember if after that I asked Defendants to let me clear further goods on credit.

I agree I signed promissory notes in favour of Bank. They were in favour of Defendants.

I agree I did not pay the Promissory Notes on their maturity. I deny Mr. Coker's clerk came to see me about the Promissory Notes. No-body protested the Promissory Notes against me.

20

I did not wait Defendants to clear the balance of the goods, but I was not prepared to clear them unless Defendants kept their promises to settle my claims against them.

I agree in Exhibit "H" I asked Defendants to clear the goods - I did so because the goods were faulty, both as to quantity and quality.

I knew about both defects when I sent Exhibit "H".

30

I agree I told Defendants on various occasions I was short of cash.

I have paid for 20 bales of AS 1000 - in cash for 16 bales and 4 credited to my Account and for 8 bales by Promissory Notes.

Adjourned 10 minutes.

(Sgd) M.J. Abbott
PUISNE JUDGE.

RESUMED. COUNSEL AS BEFORE.
WITNESS CONTINUES CROSS-EXAMINATION.

In the Supreme
Court of Nigeria

I agree Exhibit "Z" was handed to me personally in Manchester.

Plaintiff's
Evidence.

I agree goods in AS 1000 were of foreign origin. I agree it is possible that Defendants never physically handled the goods.

No.23

Adel Boshali,
Cross-
examination -
continued.

I first knew Defendants had sold the goods after the sale had taken place.

10 I know goods were incurring Customs rent, or store rent.

RX:

Re-examination.

This is the contract (Exhibit 6) relating to the transaction in respect whereof the credit on Exhibit 5 was allowed.

20 The correspondence (Exhibit 7) relates to Exhibit 6. When I sent Exhibit "H" I had only cleared 4 bales. After sending Exhibit "H" I cleared no more bales. I went to U.K. and further bales were cleared before my return, on my instructions, the balance being cleared after my return.

Defendants said they cleared 28 bales.

The figure of £2724.18.1 in Exhibit "Z" must be reduced by payments on credits to me by Defendants of £900.

Out of my sales of £1824.18.1 I told Defendants to deduct the amount of the two promissory notes.

FURTHER XX BY LEAVE:

30 I wrote this letter (Exhibit 8) in Oct. 1953.

NO FURTHER RX:

In the Supreme
Court of Nigeria

No.24

EVIDENCE OF CELESTINE OBURIRA

Plaintiff's
Evidence.

No.24

Celestine
Oburira,
Examination.

P.W.2. CELESTINE OBURIRA sworn. 100 Cemetery Street, Ebute-Metta. Clerk to Plaintiff for 12 years now. I remember consignment AS.1000. I know one Mr. NAIM. I remember seeing him once in Plaintiff's shop in connection with AS.1000. That was early in 1953. He talked to Plaintiff. I then brought a bundle of AS.1000, intact. I measured it and found it 3 yards short. I don't remember how many yards it was supposed to contain. That was the only bundle measured in front of Naim.

10

Cross-
examination.

XX:

I deny being told how many yards there should have been in this bundle. The bundle is marked on outside with total of purported yardage.

NO RX.

CASE FOR PLAINTIFF.

Defendants'
Evidence.

No.25

20

EVIDENCE OF ABONDI RAFAEL DELLAL

No.25

Abondi Rafael
Dellal,
Examination.

DEFENCE

COKER announces he will call evidence.

D.W.1. ABONDI RAFAEL DELLAL sworn. 129 Palatine Road Manchester. Manager of Defendants' Company.

I know Plaintiff. One of our customers. I know of contract for AS.1000.

Foreign origin or Exhibits "A.3" and "A.4" means what it says.

Goods remained in bond while they were in U.K. except when, with permission of Customs they were sent to the finishers on the understanding that they would thereafter be exported.

30

In this case as usual we asked the finishers to finish one piece first and let us have a sample for purposes of sale.

Presumably Exhibit AB was a portion of that sample.

Plaintiff made contracts with us and gave us dyeing instructions. Dyeing is part of the finishing.

When goods ready, Plaintiffs asked us to hold them for a while as he was not ready with them. We agreed. Then Plaintiffs said he could not in any case accept all goods at one time.

In the Supreme
Court of Nigeria

Defendants'
Evidence.

No.25

Abondi Rafael
Dellal,

Examination -
continued.

10 We were then having difficulty with Plaintiff over collection of our Accounts.

I saw Plaintiff when he came to Manchester in October. He complained about AS.1000. (Coker now seeks to adduce evidence of what happened at interview, but as he never put these matters to Plaintiff, I inform Coker I must decline to record that evidence (Intld. M.J.A.)).

20 I see Exhibit "E.1". We do not make settlement of part of a customer's claim. We always settle the whole thing.

The £500 was credited to Plaintiff's account. I see Exhibit "K". £400 credited to Plaintiff's Account. I see Exhibit "Z". He did not reply to it. We cleared the goods which Plaintiff failed to clear. We sold them. We told him that unless he cleared them, we would have to clear and sell them. We cleared 28 bales. Value £3,500.

	C.I.F. cost	£4100	Insurance	£57. 1. 0.
	Duty			1069. 9. 6.
30	Bank Charges			4.12. 3.
	Other expenses			<u>110. 0. 0.</u>
				1241. 2. 9.
				<u>4100.</u>
	Total Cost			5241. 2. 9.
	Goods at a loss of			<u>1666.14. 2.</u>
	Goods sold for			<u><u>3574. 8. 7.</u></u>

Plaintiff has not paid the two Promissory Notes. They have been debited to his Account.

40 I agree Plaintiff had on 16.12.52 a credit with us of £2724.18.1d but this is subject to his paying up all outstanding invoices but Exhibit "Z"

In the Supreme
Court of Nigeria

does not say so. We hoped it was understood.
We do business on that basis.

Defendants'
Evidence.

No.25

Abondi Rafael
Dellal,

Examination -
continued.

We have never agreed in writing that goods we sent to Plaintiff were inferior to the sample. (COKER here denies the correctness of Exhibit "G". I remind him that he told me yesterday, he accepted its correctness (Intld. M.J.A.)).

I don't remember if Plaintiff ever told us he was having to refund money to purchasers from him of these goods. He may have done. I deny Defendants are in breach of contract with Plaintiff.

10

Cross-
examination.

XX:

I say the goods supplied to Plaintiff were exactly as regards quality and finish, the same as Exhibit "AB".

We credited Plaintiff with £500 because we wanted to help him.

We credited him with £400 for the same reason.

20

But I agree we used the word claims in Exhibit "E". He made claims but we did not think they were but we thought we had better use the same terms as he did.

I agree we received Exhibit "B" from Plaintiff's Solicitor Exhibit "C" is our reply.

I don't know the result of the test referred to in Exhibit "C". I don't even know that any samples were sent for test.

My assertion that goods supplied were up to sample is based on mere assumption.

30

The 28 bales contained 35000 yards. I don't know how the figure of £1069.9.6d for duty is arrived at.

I agree duty on 25000 yards as per this our letter Exhibit "9" is £587.7.6d.

I accept that these 7 invoices (Exhibit 10) cover the 35000 yards cleared by us. C.I.F.value stated on each one. Total is £3392.1.10d.

I don't know details of this transaction, only my general outline. The figures I gave in Cross-examination-in-Chief were approximate.

I don't know exactly how much the goods were sold for.

Adjourned at this point to 18.11.55.

(Sgd) M.J. Abbott
 PUISNE JUDGE.

In the Supreme
 Court of Nigeria

Defendants'
 Evidence.

No.25

Abondi Rafael
 Dellal,

Cross-
 examination -
 continued.

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FRIDAY THE 18TH DAY OF NOVEMBER, 1955,
 BEFORE THE HONOURABLE
 MR. JUSTICE MYLES JOHN ABBOTT
 PUISNE JUDGE.

CONSOLIDATED SUITS NOS. 496/53 and 610/53.

ADEL BOSHALI v. ALLIED COMMERCIAL EXPORTERS LTD.
 ALLIED COMMERCIAL EXPORTERS LTD. v. ADEL BOSHALI.

RESUMED. COUNSEL AS BEFORE.

D.W.l. returns to witness box and is reminded of Oath.

XX CONTINUED:

20

Incidental expenses of £110.0.0 were made up:-

Insurance	45. 1. 0
Rent	56. 8. 0
Further Insurance	<u>10.11. 0</u>
	<u>£112. 0. 0</u>

There are also other charges - £144.15.0 for duty and charges on 4 bales: £106.16.2 for duty and charges on another 4 bales.

The £1069.9.6d I mentioned yesterday was not all duty. It is made up as follows :-

30

Insurance	£67. 4. 0
Rent	58. 8. 0
Insurance	9.17. 9
Commission and Postages	17.17. 0
Further disbursements by Bank	<u>10.15. 1</u>
	105.13.10

In the Supreme
Court of Nigeria

Defendants'
Evidence.

No.25

Abondi Rafael
Dellal,
Cross-
examination -
continued.

The actual amount of duty paid is £1069.9.6d less
£105.13.10d i.e. £963.15.8 - on the 28 bales
cleared by us - approx. 35000 yards.

We cleared the 28 bales at different times.

These (Exhibit 11) are copies of debit Notes
sent to Plaintiff.

The £57.1.0 shown for Issue on our Counter-
Claim is not all the insurance paid.

Now I see the Counter-Claim I agree that our
representative in instructing Mr. Coker made a lot
of mistakes. 10

Total paid for Insurance £122.10.9d.

I don't agree that Exhibit 9 item 4 was
bracketed with item 5 for duty purposes, although
I agree that duty on item 5 is double that on
item 1. I don't know why. I have tried to find
out from B.B.W.A. Lagos but could get no satis-
faction.

Nor do I agree that items 6 and 7 were lumped
together for duty purposes. My explanation is 20
the same as before.

I say there was duty collected on Item 4 -
£132.17.0.

My explanation is the same as before - that
I can give only the general outline about these
transactions. So far as increased duty is con-
cerned, there may have been a penalty added.

The customs sometimes add a penalty for delay
in clearance.

Duty paid on item 7 on Exhibit 9 was 30
£106.16.2d.

Plaintiff made several claims about these
goods. I agree that when we cleared the 28 bales,
Plaintiff was complaining to us about shortages.

We thought we had settled the matter by giv-
ing him credits of £500 and £400. After being
credited with £400 he was still claiming on the
ground of shortages. Up to date of Exhibit "K"

12.12.52 we had never heard anything about shortages.

Now I say I accept that Plaintiff told Mr. Brown about the shortages before 12.12.52.

I agree now that Exhibit "H" dated 31.10.52 mentions shortages.

I deny that a final settlement was to be made when full extent of shortages was ascertained.

10

I agree that after credit of £400 we sent our representative to examine the goods for shortages. We intended to make a further credit to Plaintiff if any was found.

Now I say the £400 was not a final settlement.

Our representative never forwarded us the report of his inspection. So we don't know if there were any shortages or not.

I agree Plaintiff refused to clear more goods unless we paid him his full claim. We never heard the extent of the claim.

20

Plaintiff sent us a copy of Exhibit 2. We were not satisfied with it so we told our agent to make an inspection.

When we told Naim to make an inspection we never replied. The whole matter was allowed to slide. I deny Naim sent us a report, or that we have done nothing because we did not want to meet Plaintiff's claim.

30

I remember when we started dealing with Plaintiff - in 1951. We always knew he bought to resell. I deny that from the beginning he has been claiming on us for defects in quality and quantity.

(MOORE seeks to put to witness a contract to show this last answer is untrue and to support para. 8 of Statement of Claim. COKER objects that this was never put to Plaintiff. MOORE says he does not press the point (Intld. M.J.A.)).

I agree that since we began doing business we have from time to time had to settle claims by him for defects in quantity and quality.

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Court of Nigeria

Defendants'
Evidence.

No.25

Abondi Rafael
Dellal,

Cross-
Examination -
continued.

In the Supreme
Court of Nigeria

Defendants'
Evidence.

No.25

Abondi Rafael
Della,

Re-examination.

RX:

I now say I saw the shipping sample and that it was identical in quality with Exhibit "AB". I am not an expert but I have some knowledge. I have been dealing in textiles for 5½ years.

When exhibit "A.1" was written, goods were in Manchester.

Our loss on selling the 28 bales was £425.11.5d. Exhibit "K" - the £400 was intended to cover the shortages as well. 10

Plaintiff has never told us of the specific amount he is claiming for shortages.

I have made enquiries at the B.B.W.A., Lagos, yesterday but without result so far.

I have not applied for a subpoena for the bank Official. I have given instructions for this.

BY COURT:-

When we issued Exhibit "K" we were satisfied there were shortages. 20

I now say that the £144.15.0 and the £106.16.2d represent the duty and charges on items 4 and 7 on Exhibit 9.

The £144.15.0d is made up of :-

Duty	£132.17. 0
Shortage	8. 0
Clearing	<u>11.10. 0</u>
	£144.15. 0

The £106.16.2d is all duty.

Our representative who instructed our Lawyer, is not coming to give evidence. 30

CASE FOR DEFENCE.

Adjourned 10 minutes.

(Sgd) M.J. Abbott
PUISNE JUDGE.

ADDRESSES BY COUNSELIn the Supreme
Court of Nigeria.No.26RESUMED. COUNSEL AS BEFORE.COKER addresses Court:Addresses by
Counsel,
18th November
1955.

10 SUIT 610/53 -- Amount admitted by Plaintiff. We
are therefore entitled to judgment.

Statement of Claim paragraphs 4, 5, 6 and 7.

Para. 7 promised to pay.

10 Statement of Defence paragraph 3 - I concede these
facts are true, but paragraph does not deny those
paragraphs of Statement of Claim.

ORDER XXXII R.9. No general denial in Statement
of Defence.

Defence now raised is that "Plaintiff" has a credit
with "Defendants". Including the total of the two
Promissory Notes by virtue of Exhibit "Z". Credit
expressed to be dependent on certain conditions.
Before Plaintiff can take advantage of it he must
satisfy Court he has complied with conditions.

20 In saying the two Promissory Notes have been
debited, Plaintiff is trying to establish a set-
off.

ORDER XXVI R.4. has not been complied with so he
can't do this. Court should not allow proviso
because (i) an averment that amounts due and pay-
able not denied (ii) amount of credit dependent
on conditions not yet fulfilled (iii) not specially
pleaded.

30 I say we need not in either actions, prove that
the Plaintiff had not the credit specified in
Exhibit "Z". Buller and Leake 10th Edition page
482.

SUIT 496/53:

Paragraph 11 of Statement of Claim - Arithmetic
slightly incorrect.

Contract governed by Sale of goods Act.

Plaintiff not on evidence, entitled to damages
claimed.

40 Contract in Exhibits "A3" and "A4". - Cloth of
foreign origin.

Plaintiff denied that goods in existence when he
ordered but Exhibit "A" says Defendants had the
cloth then.

Exhibit "A.2" - this shows that Plaintiff accepted
goods were in existence, of foreign origin and
that Defendants had only to dye the goods. See
conditions at back of Exhibits "A.3" and "A.4" -
last condition.

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No.26

Addresses by
Counsel,

18th November
1955 -
continued.

Claim of Plaintiff for defects in quality and quantity must be limited to the 35000 (odd) yards cleared by him.

As regards those not cleared by Plaintiff, he can only bring an action for non-delivery.

Sale of goods Act 1893 Section 51(1).

Exhibits "E", "E.1" and "K". Exhibit 2.

Plaintiff cannot accept part of a document and repudiate other part i.e. he can't accept £500 in full settlement and

Exhibits "E" and "E.1" create an estoppel.

Exhibit "K" I submit relates to shortages.

Cap. 63 Section 132(2).

Exhibit "P" - 20.2.53 - Therefore Exhibits "E" and "K" should be construed to mean exactly what they say.

When Plaintiff got Exhibit "K" he knew of defects in quality and quantity.

Correspondence after Exhibit "K" shows nothing to suggest that dispute had not been settled.

Exhibit "Q" - Plaintiff still asking for concessions.

Plaintiff began to complain for shortages when pressure was put upon him.

What is claim for shortages - All we have is Exhibit 2.

Did defects in quality or quantity warrant rejection?

All that Plaintiff can come for is breach of warranty.

Damages - Sale of goods Act ss 51 to 54.

Measure of damages is difference between contract price and sale price.

Goods sold to Houchar at 2/2d per yard.

Houchar complained of shortage. Why did Plaintiff take the goods back? Plaintiff should have given credit for shortages.

Finlay v. Kvik Hoo Tong (1929) I.K.B. 400 at page 411.

Plaintiff cannot claim for loss of profit.

Exhibit "4".

Counter-Claim - damages for non-acceptance.

Property in goods passed on advice of shipment.

Sale of goods Act 1893 Section 18 Rule 2.

" " " " " " 11(c).

Benjamin on Sale 8th Edition page 562.

Barker v. Agins 43 T.L.R. 751 at page 754.

Plaintiff has committed a breach regarding balance of goods cleared by us. Exhibits "H", "Y", "Y.2" and 3.

If Plaintiff refuses to clear the goods we must do so to minimise our damages. We then ask for damages for non-acceptance.

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MOORE in reply:

SUIT 610/53 - This is not an action on a promissory Note. (Coker. I never so contended).

Action for goods sold and delivered.

Statement of Defence paragraph 3.

Promissory Notes not tendered.

Statement of Defence paragraph 7.

Both cases should be taken together.

10 496/53 paragraphs 7 and 8 of Defence to Counter-Claim.

Suggests having debited Plaintiff's Account with the two Promissory Notes cannot now come and ask for payment in 610/53.

Claim in 496/53.

This was sale by sample. No doubt of inferior quality.

Defendant can't say result of this test if foreign origin exempted Defendants from responsibility why the test and efforts at settlement.

20 If any breach of condition that bulk shall correspond to sample, buyer entitled to reject. He did so by Exhibit "H".

Plaintiff says he then undertook to clear goods on faith of promise that he would be compensated.

Representative had no right to clear the 28 bales.

Agreement was that outstanding matters would be settled and then plaintiff would clear the goods.

D.W.L. has admitted that when Exhibit "K" was issued, he knew there were outstanding claims.

30 Plaintiff is not estopped by Exhibit "E" because it is impossible to say what part of the £500 is attributable to AS.1000.

Even when Exhibit "K" given there were still outstanding matters.

Damages - we have done everything to minimise our loss.

Houchar said he wanted to reject or a discount of 20%.

40 I concede there is no record of exact amount of shortages.

But nothing to disprove refunds alleged made by Plaintiff.

Plaintiff is entitled to loss of profit. Although market dull, Spun Rayon in demand.

Counter-Claim based on clearance by Defendants of 28 bales.

If Court thinks this was breach that disproves of Counter-Claim no evidence of Sale of goods or at what price. No evidence that £57.1.0d ever paid for insurance.

50

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Court of Nigeria

No.26

Addresses by
Counsel,

18th November

1955 -

continued.

In the Supreme Court of Nigeria

No.26

Addresses by Counsel,
18th November 1955 - continued.

Duty miscalculated. Defendants have failed to prove Counter-Claim. Where there is conflict between Plaintiff and D.W.L. Plaintiff should be believed.

C.A.V. Adjourned for judgment to 28.11.55.

(Sgd) M.J. Abbott
PUISNE JUDGE.

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Judgment,
2nd December 1955.

No.27

J U D G M E N T

FRIDAY THE 2ND DAY OF DECEMBER, 1955,
BEFORE THE HONOURABLE
MR. JUSTICE MYLES JOHN ABBOTT
PUISNE JUDGE.

10

Suit No.496/53 }
" " 610/53 } CONSOLIDATED.

BETWEEN:

ADEL BOSHALI PLAINTIFF

AND

ALLIED COMMERCIAL EXPORTERS LTD. DEFENDANTS

ALLIED COMMERCIAL EXPORTERS LTD. PLAINTIFFS

20

AND

ADEL BOSHALI DEFENDANT.

These are two consolidated actions. In Suit 496/53 Adel Boshali (throughout this judgment called "the buyer") claims from the Allied Commercial Exporters Ltd. (throughout this judgment called "the sellers") the sum of £3531.8.11 for damages for breach of contract, it being alleged that the sellers supplied goods both inferior in quality and short in measurement. As a result the buyer accepted some of the goods but refused to accept a substantial portion of the goods. 30

In consequence of this, and in the same action, the sellers counterclaim for £1666.14.2 being loss on the resale of the unaccepted goods plus various charges and expenses.

In Suit 610/53, the sellers claim from the buyer the sum of £967.9.2 for the price of goods sold and delivered.

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Judgment,
2nd December
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continued.

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There are thus three separate claims upon which I now have to adjudicate. It seems that the claim in Suit 610/53 can be separated from those in Suit 496/53. It emerged during the trial that the buyer had signed promissory Notes for the sum claimed in Suit 610/53 and had asked that the amounts due on these should be debited to his account with the sellers.

There is no claim by either side for any balance said to be due on an account stated. There was a good deal of evidence relating to the state of accounts between the parties but I do not find this material.

20

I deal first with Suit 610/53. The buyer admits that he owed the money claimed thereon and says as I have mentioned that he asked that his account with the sellers be debited with the amount of the two promissory Notes which he signed for the amount claimed.

The issue in Suit 610/53 thus is resolved into matters of account. The sellers do not agree, I gather, that they have received payment of the two notes. The sellers' witness says the buyer has not paid the amount of the two notes, but admits they have been debited to his account.

30

I repeat that nowhere in either suit is there to be found any claim by the sellers for any balance of account due to them from the buyer or vice versa. It seems to me that once the sellers admit that the amount of the two promissory Notes, together making up the sum claimed in Suit 610/53, has been debited against the buyer's account, the cause of action in that suit has gone. Therefore I hold that Suit 610/53 must be dismissed and the sellers must pay the costs, assessed at £10.10.0.

40

I now come to the claim and counter-claim in Suit 496/53 which cannot be disposed of so briefly. The claim, as I have said, is based upon the allegation that the goods supplied were not up to sample. In support of this allegation, the buyer produced Exhibit AB which is said to be the sample upon which he gave the order, referred to throughout the proceedings as AS.1000, and which resulted

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continued.

in the making of the contract evidenced by Exhibits "A3" and "A4".

I observe that Exhibit "AB" has attached to it a label marked "AS100 - 65,000". AS100 is the number of a previous transaction between the parties evidenced by Exhibit "D1" and I accept the evidence of the buyer (a) that it was on Exhibit "AB" that he gave his order in AS1000 (b) that it was from Exhibit "AB" that he took a portion which he submitted to the Manchester Chamber of Commerce. I may add that his evidence to this effect was never in any way challenged. I think the label is incorrectly marked in error - AS100 was a transaction covering 50,000 yards only while AS1000 is stated in Exhibit "A1" to be 65/70,000 yards in quantity and the figure of 65000 appears on the label.

10

Before the goods arrived, the buyer received a shipping sample, which seemed to him to be of inferior quality to that of Exhibit "AB".

20

He was then in the United Kingdom and at once went to see a Mr. Jack Dellal one of the sellers directors, and made a complaint. Mr. Dellal did not admit any difference in quality, so the buyer consulted a firm of solicitors in Manchester, who wrote to the sellers Exhibit "B" and obtained a reply which is the copy letter attached to Exhibit "C". This says that the sellers had submitted samples for testing.

Then the buyer submitted a piece of the order sample and pieces of the shipping samples to the Testing House of the Manchester Chamber of Commerce and as a result obtained Exhibit "G". This expresses the opinion that the delivery, or shipping, sample is inferior in quality to Exhibit "AB".

30

Before he received Exhibit "G", the buyer was sent for by Mr. Jack Dellal and went to see him. Dellal asked if the buyer had received the report from the Manchester Chamber of Commerce and the buyer said no. Dellal then said he was about to go away and wanted to settle the matter before he left. The buyer said he could do nothing until he received the report of the test. Dellal replied he need not worry about that because the sellers had had their own test

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made, which showed that the only difference was in the finish, there being no difference in quality. The buyer again asked for time to get his own test report. Dellal replied that this would be waste of time, and that he would be away 2 or 3 months and again assured the buyer that the only difference between the two samples was in the finish. Dellal added that he was prepared to credit the buyer with £500 on the account for another transaction and thus settle the matter. There was a dispute in connection with this other transaction and the buyer, relying on Dellal's assurances that the only difference between the order sample and the shipping sample was one of finish, accepted the offer of £500 and signed Exhibit "E.1", which was apparently, in the mind of the sellers at least, designed to conclude the matter once and for all.

10

I shall deal later with the question whether it effected its object or not.

20

Having signed Exhibit "E.1", the buyer later received Exhibit "G". The terms of this are obviously contrary to Mr. Dellal's assurances.

No objection to the admission of Exhibit "G" was made and no challenge of its contents advanced. Mr. Coker in examining D.W.1. sought to challenge its correctness but I told him I could not accept evidence from D.W.1. on that point (a) because Mr. Coker had said the previous day that he accepted its correctness and (b) because Mr. Coker never suggested to the buyer that there was anything wrong with the document.

30

The buyer went again to the sellers and there met a Mr. A.R. Dellal (D.W.1), and told him of the contents of Exhibit "G". D.W.1. however said he knew nothing about the matter.

The buyer then returned to Lagos where 4 bales of the textile had by then been cleared by his agent here, on the instructions of the buyer, given as a result of Exhibit "E.1". The agent sold the 4 bales to a Lagos firm - A. Houchar & Sons. This firm complained about the goods - that they were short in yardage. The sale price to Houchar was 2/2 per yard and Houchar demanded to be allowed to return the goods or to receive a discount of 5d per yard, or about 20%, on the ground of the shortage in yardage.

40

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continued.

The buyer declined to agree and took back the goods and refunded Houchar's money. He says he preferred this course because the discount asked for was too large and that Houchar's only complaint was of the shortage in quantity. That is not surprising, because there is nothing to show that Houchar bought on sample Exhibit "AB" or ever had any opportunity of seeing Exhibit "AB".

The buyer cleared a total of 28 bales (including those sold to and returned by Houchar). He disposed of the 28 bales to various purchasers at 1/9 per yard, but was obliged to make refunds to them out of the proceeds of sale owing to their complaints of shortages in quantity. The total of these refunds was £246.19.0 and I accept the buyer's evidence that he, in fact, made refunds to this amount. Whether he is entitled now to ask the sellers to reimburse him for those refunds is a question I will deal with later. The buyer next supported the averment in paragraph 12 of his Statement of Claim that he would normally make a profit of 6d per yard on the sale of this textile, i.e., on 85000 yards, a total sum of £2125.

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20

After his difficulties with Houchar, the buyer asked a Mr. Steiner, of Lagos, to examine the goods and Exhibit 2 is this gentleman's certificate. Mr. Coker made no objection to the admission of Exhibit 2 and did not challenge it in any way.

30

As a result of Exhibit 2, on the following day, the buyer sent a telegram (Exhibit "H") to the sellers making complaints. There was no reply to this or to a subsequent confirmatory letter sent three days later.

In December, 1952, the buyer went to Manchester again and saw a Mr. Brown one of the directors of the sellers. The buyer explained everything to Brown who sent for the Sales Manager. This person denied knowledge of any complaints. The upshot of the interview was that Brown offered to credit the buyer's account with £400 to cover part of the losses. This offer the buyer at first refused because Brown said he could not make it a firm offer without seeing Mr. Jack Dellal who was still away: Brown promised, however, that when he saw Dellal he would make a

40

final settlement for the buyer and would tell his Lagos agent to inspect the goods at the buyer's shop: that when he received his agent's report he would settle the matter.

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As a result of these assurances and promises, the buyer accepted the credit of £400 and received a credit note Exhibit "K". He says that he expected to receive a further credit when Brown had seen Dellal.

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continued.

10 The buyer returned to Lagos, and there ensured correspondence between the parties Exhibits "L", "N" and "M". Exhibit "M" is important as the sellers therein say they had instructed a Mr. NAIM to inspect the goods at the buyer's shop and report to the sellers.

20 The buyer says that the sellers agent did in fact come to his shop and carry out the inspection, promising to send his report to the sellers. The evidence of the visit and inspection by Naim is confirmed by the evidence of P.W.2. I am quite satisfied that Naim did make the inspection. If anything more were needed to satisfy me of this, there is the sellers letter (Exhibit "O") in which they say they were awaiting Naim's report.

30 Exhibit "R" is another letter from the sellers in which, at the end of the second paragraph, they clearly indicate their intention of making further financial concessions to the buyer, after the occurrence of certain events. I imagine the £500 referred to is that specified in Exhibit "E.1". This would seem to make it clear, apart from anything else, that the sellers did not regard this £500 as being in full settlement of all claims of whatever nature.

 In April, 1953, as a result of information received, the buyer wrote to the sellers notifying them that if they proceeded with the sale of goods uncleared by him, he would hold them responsible for all damage suffered as a result.

40 I do not think the buyer was entitled to take that standpoint. He had already disposed of a large quantity of the goods at a loss and his non-clearance of the balance must, in my judgment, amount to a rejection. If that he right, the buyer cannot legitimately protest if the sellers,

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continued.

following the buyer's rejection, try so far as possible, to recoup the losses they must inevitably suffer, whether by their own fault or not.

The buyer also told me that the landed cost to him of the goods was 2/4 per yard so that, selling at 1/9 per yard, he suffered a loss of 7d per yard, on the 35466½ yards sold by him. I calculate this loss to be £1034.8.6d as against £1034.9.11d claimed in paragraph 11 of the Statement of Claim.

10

It is convenient now to deal with the buyer's evidence on the counterclaim. He says that, according to this pleading, the sellers cleared 35242½ yards. He does not agree with the figure claimed by the sellers for customs duty - £1069.9.6d, and as will appear later, this figure is not the correct figure for customs duty. The buyer says the correct figure, in his view, should be £587.7.6d plus £40 customs rent. The £587.7.6d is calculated at the rate of 4d per yard on 35242½ yards.

20

At the end of his examination-in-chief, the buyer averred that he still has a credit of £900 or thereabouts with the sellers.

The most important portions of his cross-examination were the buyer's denials of having accepted either the credit of £500 or the credit of £400, or both, in full settlement of all claims for all defects whether in quality, quantity or anything else. The buyer also agreed that the goods were of foreign origin. This has reference to the last condition on the back of Exhibits "A.3" and "A.4".

30

The only witness for the defence was Abondi Rafael Dellal who turned out to be the Mr. Dellal who told the buyer in Manchester that he knew nothing about the matter. I must say I think he spoke the truth when he said that. His knowledge of the matter to judge from his evidence, was little more than fragmentary.

40

In reply to his counsel, the witness told me that the sellers never make settlements of part of a customer's claim, but always settle the whole thing, meaning, I gather, at one time. How

he can maintain that, in view of the two credits of £500 and £400 I do not know. Part at least of the £500, I am satisfied, was attributable to the defects in finish of AS1000 and there is no dispute that the £400 related in toto to this transaction.

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Judgment,

2nd December
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continued.

10 The witness next did his best to support the particulars of the sellers counter-claim - see p.19 of the suit file of Suit 496/53. This first attempt was not entirely successful and the witness became hopelessly confused over his figures. He did, however, speak to the items of £57.1.0d, £1069.9.6d, £4.12.3d and £110.0.0d.

In examination-in-chief, the witness finally admitted that the buyer might have told the sellers that he had to refund money to purchasers of the goods.

20 In cross-examination he began by averring positively that the goods supplied were, as regards quality and finish, exactly the same as Exhibit "AB". He then found difficulty in explaining why the buyers had been credited with £500 and finally said this was done to help the buyer and that the £400 credit was given for the same purpose.

D.W.L. cannot say what was the result of the test referred to in Exhibit "C" and does not even know that any samples were sent for test.

30 He next had to admit that his assertion that the goods were up to sample is based on mere assumption. Such an assertion is, therefore, quite valueless to the sellers.

He was then asked how the figure of £1069.9.6d, charged in the counter-claim for duty, was arrived at. He said he did not know.

40 He accepts that the seven invoices Exhibit "10" cover the 35000 odd yards cleared by the sellers - the total c.i.f. value being £3392.1.10d, but says he does not know more than the general outline of this transaction and that the figures he gave in examination-in-chief were only approximate. As to that I need only say that this Court does not make findings on "approximate" evidence where accurate evidence, as here, is readily available.

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Judgment,

2nd December
1955 -
continued.

During the adjournment which shortly followed the witness apparently took some trouble to look into this matter and the next morning was able to give details of the £110 charged in the counter-claim for incidental expenses. The details spoken to were:

Insurance	£45. 1. 0
Rent	56. 8. 0
Further Insurance	<u>10.11. 0</u>
	<u>£112. 0. 0</u>

10

The total, I observe, comes to £112.0.0, so, either the witness's figures, or those in the counter-claim, are inaccurate. I observe further that in the counter-claim there is an item "Insurance charges - £57.1.0d". Yet almost exactly half of the £112.0.0d is said to be also insurance charges. They should, it seems to me, appear under the correct heading.

The witness then mentioned two sums of £144.15.0d and £106.16.2d to which I will return in a moment.

20

It next appeared that figure of £1069.9.6d charged in the counter-claim for customs duty is not all duty. It is made up of duty, rent, still more insurance, commission, postages, and interest on disbursements by the Bank.

It is thus clear that none of items (b)(c) (d) and (e) in the counter-claim is correctly apportioned under the various heads. In fact, D.W.L. had to agree that the sellers representative, in instructing their Lawyer, made a lot of mistakes.

30

He was also asked about Exhibit 9 which sets out the duty payable by the buyer on 7 lots of 4 bales each (28 bales in all) cleared by the sellers. They there claim duty of £637.5.6d, but the witness told me that the duty claimed is in fact £963.15.8d, so this was yet another muddle which had to be explained.

It was suggested to the witness that items 4 and 5 on Exhibit "G" were bracketed together for duty purposes, the duty on item 5 being about double that on each of items 1, 2 and 3.

40

This the witness denied, and similarly denied that items 6 and 7 were bracketed together for duty purposes. He could not, however, explain why the duty on items 5 and 6 should be double that on each of items 1, 2 and 3 or why no duty was charged on items 4 and 7.

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Judgment,

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continued.

10 He later declared that duty was charged on item 4 - at £132.17.0d (part of the sum of £144.15.0d above mentioned) and on item 7 at £106.16.2d (the other sum above mentioned).

20 He repeated that he could give only the general outline of these transactions. His lack of knowledge becomes apparent when one does a little arithmetic. According to the witness the actual amount of duty paid was £963.15.8d and the sum of £637.5.6d quoted on Exhibit 9 should be increased by the addition of £144.15.0 duty and expenses paid on Item 4 and £106.16.2d duty paid on Item 7. Adding together those three sums, we get £838.16.8d - almost exactly £75 less than the figure which the sellers claim in respect of customs duty.

D.W.1. then contradicted himself about the date when the sellers first knew about the shortages, thus demonstrating his lack of knowledge of the transactions between the sellers and the buyer.

He had to admit that the credit of £400 was not a final settlement. That piece of evidence is vital.

30 Apparently Mr. NAIM never forwarded to the sellers the result of his inspection, so the sellers do not know if there were shortages or not. That being the case I accept the evidence, documentary and oral, adduced by the buyer, that there were shortages.

In re-examination, the witness said the sellers loss in re-selling was £425.11.5d, thus supporting item (a) of the counter-claim.

40 Throughout these proceedings, it has been assumed that the transaction here was a sale by sample, but in *Gardiner v. Gray* (171 E.R. 46) a sample was shown but Lord Ellenborough said it was not a sale by sample -

In the Supreme
Court of Nigeria

No.27

Judgment,

2nd December
1955 -
continued.

"The written contract containing no such stipulation, I cannot allow it to be superadded by parol ... The sample was not produced as a warranty that the bulk corresponded with it but to enable the purchaser to form a reasonable judgment of the commodity."

That is the case here. There is nothing in Exhibits "A.3" and "A.4" to show that this was a sale by sample and I therefore hold that this was a sale by description of specific or ascertained goods. 10

I am further satisfied, from the evidence, both oral and documentary, that the goods did not correspond with the description either as to quality or as to yardage. That, in my judgment, is a breach of the contract which entitled the buyer to reject all the goods. The counter-claim is based on the buyer's alleged breach of contract i.e. his non-acceptance of part of the goods. As, in my view he was entitled to reject them i.e. not to accept them, owing to a previous breach by the sellers, I hold that the counter-claim must fail and it is dismissed. Even if I had held otherwise, I should have had the greatest difficulty in holding that the counter-claim had been proved by D.W.1. His knowledge of the transaction is very small and his figures, in many instances, were grossly inaccurate. Had I found for the sellers on the counter-claim, I should have awarded them the sum of £425.11.5d only because the evidence in support of the other items is so unsatisfactory. 20 30

I now come to the claim which is for the sum of £3531.8.11d made up as follows :-

Loss on resale of 35,466 $\frac{1}{2}$ yards @ 7d per yard:-	£1034. 8. 6d	
Refunds to sub-Purchasers	246.19. 0	
Loss of profit on sale of 85000 yards @ 6d per yard	2125. 0. 0d	40
	<u>£3406. 7. 6d</u>	

The difference of £125.1.5d is due to the faulty arithmetic of the Statement of Claim.

In the first place, where the evidence of P.W.1. conflicts with that of D.W.1., I believe the evidence of the former.

In the Supreme
Court of Nigeria

No.27

Judgment,
2nd December
1955 -
continued.

10

Where the sale is by description, and the goods do not correspond with that description, the seller fails to comply, not with a warranty or collateral agreement, but with the contract itself, by breach of a condition precedent: (Sale of Goods Act, 1893, s.13 and see Benjamin on Sale 8th Edition pp. 304 and 305).

Here, the buyer accepted part of the goods and rejected the remainder. In my judgment, he elected to treat the breach of condition, as regards the accepted part of the goods, as a breach of warranty and the measure of damages, in relation to the part accepted, is regulated by the provisions of ss.53 and 54 of the Sale of Goods Act.

20

By virtue of these provisions and as, I am satisfied, the sellers knew the buyer was purchasing to sell again, I hold that the buyer is entitled to judgment for (a) the amount of his loss on re-sale, namely £1034.8.6d and (b) the £246.19.0d refunded to sub-purchasers.

30

As to the claim for loss of profit on the 85000 yards, I hold that the buyer is entitled to this also. The object of an award of damages in a case such as this is to put the party showing breach in the same position, financially at least, as he would have been had the breach not been committed. I accept the buyer's evidence that had the goods been of the quality contracted for, he would have made a profit of 6d per yard.

40

In the result then there must be judgment in Suit 496/53 for the buyer both on the claim with £78.15/- costs and £27.0.0d disbursements, and on the counter-claim with £15.15.0d costs. The claim in Suit 610/53 as I have said is dismissed and the buyer must have his costs of this assessed at £10.10.0d.

(Sgd) M.J. Abbott
PUISNE JUDGE.

In the Federal
Supreme Court
of Nigeria

No.28

NOTICE AND GROUNDS OF APPEAL

No.28

Notice and
Grounds of
Appeal,

17th February
1956.

IN THE FEDERAL SUPREME COURT OF NIGERIA

Suit Nos. 496/53 & 610/53.

BETWEEN:

ADEL BOSHALI .. PLAINTIFF/RESPONDENT

AND

ALLIED COMMERCIAL
EXPORTERS LTD. .. DEFENDANTS/APPELLANTS

AND

10

ALLIED COMMERCIAL
EXPORTERS LTD. .. PLAINTIFFS/APPELLANTS

AND

ADEL BOSHALI .. DEFENDANT/RESPONDENT

TAKE NOTICE that the Defendant/Appellants being dissatisfied with the decision of the Court contained in the judgment of the High Court (then Supreme Court) Lagos dated the 2nd day of December, 1955 do hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

20

AND THE APPELLANTS further state that the names and addresses of the person directly affected by the appeal are those set out in paragraph 5.

2. Part of the decision of the lower Court complained of :-

The whole

3. Grounds of Appeal :-

30

i. The decision is wrong in law in that the learned trial Judge misdirected himself in law and upon the facts in the following parts of his judgment, by which misdirection he came to a wrong conclusion on those facts and in law :-

(a) "It seems to me that once the sellers admit that the amount of the two promissory notes together making up the sum

claimed in Suit 610/53, has been debited against the buyers' account, the cause of action in that suit has gone."

In the Federal
Supreme Court
of Nigeria

No.28

Notice and
Grounds of
Appeal,

17th February
1956 -
continued.

10 (b) "The counter-claim is based on the buyer's alleged breach of contract i.e. his non-acceptance of part of the goods. As, in my view he was entitled to reject them i.e. not to accept them, owing to a previous breach by the sellers, I hold that the counter-claim must fail and it is dismissed."

20 (c) "Here, the buyer accepted part of the goods and rejected the remainder. In my judgment he elected to treat the breach of condition as regards the accepted part of the goods as a breach of warranty and the measure of damages in relation to the accepted, is regulated by the provisions of ss.53 and 54 of the Sale of Goods Act."

ii. The decision is wrong in that the learned trial Judge having held that the sale in issue was a sale by description and not a sale by sample, he should have dismissed the case of the Respondent which was based throughout on the premise that the sale was one by sample.

30 iii. The decision is wrong in that the Appellants having made out a case for the amounts due on the Respondent's Promissory Notes should have been given judgment for same since the Respondent never contended that he had paid this amount and since no account stated was before the Court.

iv. The decision is wrong in law in that the learned trial Judge having found that the Respondent accepted part of the goods should then have found him liable in damages for the non-acceptance of the balance as he was bound to do in law.

40 v. The decision is wrong in that the learned trial Judge wrongly awarded damages to the Respondent, in that :-

(a) the said damages were excessive and unreasonable.

In the Federal Supreme Court of Nigeria

No.28

Notice and Grounds of Appeal, 17th February 1956 - continued.

(b) the said damages were not supported by the evidence before the Court especially in respect of the uncleared part of the goods which the Respondent did not see and therefore could not testify as to their condition.

vi. FURTHER GROUNDS will be filed on the receipt of the Records of Appeal.

4. Relief sought from the Federal Supreme Court :-

10

That the Court may reverse the judgment of the High Court (then Supreme Court) and either enter judgment for the appellants on their own claims or send back the case for a retrial.

5. Person directly affected by the appeal :-

ADEL BOSHALI Victoria Street, Lagos. or 40, Ereko Street, Lagos.

Dated at Lagos this 17th day of February, 1956.

20

(Sgd) G.B.A. Coker

SOLICITOR TO APPELLANTS.

No.29

Motion to file additional Grounds of Appeal,

22nd December 1956.

No.29

MOTION TO FILE ADDITIONAL GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

Appeal No. FSC. 169/56

Between: ALLIED COMMERCIAL EXPORTERS LTD. Appellants

and

ADEL BOSHALI Respondent

30

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Monday the 7th day of January, 1957

at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Appellants can be heard for an Order granting the appellants leave to file and argue the additional grounds of Appeal set out in the annexure marked "Exhibit A" hereto and for such further and other order or orders as this Honourable Court may deem fit to make in the circumstances.

10 Dated at Lagos this 22nd day of December, 1956.

(Sgd) G.B.A. Coker
SOLICITOR TO APPELLANTS.

ON Notice to:-

The Respondent,
Adel Boshali, Esq.,
Thro' his Solicitors,
Messrs. David and Moore,
Lagos.

20

No.30

AFFIDAVIT IN SUPPORT

(Title as in No. 29)

I, GEORGE BAPTIST AYODOLA COKER, Yoruba, Legal Practitioner, of No.13, Idumagbo Avenue, Lagos, make oath and say as follows :-

30

1. That I am the Solicitor to the Appellants in this case.
2. That when judgment was delivered in the said case in the Court below I was not in Court and so did not listen to the judgment.
3. That when I filed my Notice of Appeal herein I did indicate that I was going to file further grounds of appeal when the records of appeal are available.
4. That on receipt of the Records of Appeal, I have perused same and have advised the appellants

In the Federal
Supreme Court
of Nigeria

No.29

Motion to file
additional
Grounds of
Appeal,

22nd December
1956 -
continued.

No.30

Affidavit in
Support,

28th December
1956.

In the Federal
Supreme Court
of Nigeria

No.30

Affidavit in
Support,

28th December
1956 -
continued.

that further grounds of appeal as set out in the annexure hereto and marked "Exhibit A" should be filed and argued by leave of this Honourable Court.

5. That the points raised in the Additional Grounds of Appeal were raised at the trial.

(Sgd) G.E.A. Coker
D E P O N E N T.

SWORN to at the Federal
Supreme Court Registry,
Lagos, this 28th day of
December, 1956.

10

BEFORE ME

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

Appeal No. FSC.169/56

(Title as in No. 29)

ADDITIONAL GROUNDS OF APPEAL

1. There was no or no sufficient evidence to support the learned Judge's finding that the goods did not correspond with the description.

20

2. There was no or no sufficient evidence to support the learned Judge's finding that the goods (meaning the goods of which delivery was taken by the buyers) did not correspond with the yardage.

3. Upon the evidence and in law the sellers were not in breach of their contract either as to description or yardage or at all.

4. The learned Judge misdirected himself and came to a wrong conclusion upon the facts and in law in holding that there was a breach of the contract which entitled the buyer to reject all the goods or alternatively that part of the goods of which the buyer did not take delivery.

30

5. The learned Judge failed to have any or proper regard to the last condition of the contracts Exhibits A3 and A4 whereas upon the evidence

and in law the sellers were and are entitled to rely upon such conditions and to judgment accordingly against the buyers upon the Statement of Claim.

In the Federal
Supreme Court
of Nigeria

No.30

Affidavit in
Support,
28th December
1956 -
continued.

6. The amount of damages awarded to the buyers was excessive upon the evidence and in law and/or the learned Judge misdirected himself as to the basis upon which the damages (if any) should have been assessed and awarded.

10 7. Upon the evidence and in law the non-acceptance of part of the goods by the buyer was a breach of contract upon the part of the buyer entitled to sellers to judgment upon their counter-claim in the sum of £425.11.5d.

20 8. The learned Judge was wrong in law in holding that "once the sellers admit that the amount of the two promissory notes together making up the sum claimed in Suit No.610/53 has been debited against the buyer's account the cause of action in that suit has gone."

9. Upon the evidence and/or the learned Judge's findings that "the buyer admits that he owed the money claimed therein" the sellers were and are in fact and in law entitled to judgment in the sum claimed in Suit No.610/53.

Dated at Lagos this 22nd day of December, 1956.

(Sgd.) G.B.A. Coker
SOLICITOR TO APPELLANTS.

30 This is the exhibit marked "A" in the affidavit of George Baptist Ayodola Coker sworn to this 28th day of December, 1956

BEFORE ME

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

In the Federal
Supreme Court
of Nigeria

No.31

COURT NOTES

No.31
Court Notes,
2nd, 7th, 8th
and 9th January
1957.

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
WEDNESDAY THE 2ND DAY OF JANUARY, 1957
BEFORE THEIR LORDSHIPS

OLUMUYIWA JIBOWU	AG. FEDERAL CHIEF JUSTICE
NAGEON DE LESTANG	FEDERAL JUSTICE
PERCY CYRIL HUBBARD	AG. FEDERAL JUSTICE

ALLIED COMMERCIAL EXPORTERS LTD. Appellants 10

vs.

ADEL BOSHALI Respondent

Dr. Coker for appellant Allied Commercial Ex-
porters Ltd.

Moore for Respondent A. Boshali.

Dr. Coker asks for adjournment till the 7th
January.

Adjourned to 7th January, 1957.

(Sgd.) O. Jibowu
AG. F.C.J.

20

7th January
1957.

MONDAY THE 7TH DAY OF JANUARY, 1957

Appeal from judgment of Abbot, J. dated the
2nd December, 1955.

Glidewell (Dr. Coker with him) for appellants.

David (Moore with him) for Respondent.

Motion for leave to file and argue Amended Grounds
of Appeal.

Glidewell moves.

David objects to ground 5 of the Amended Grounds
on ground that the point was not raised at trial. 30
His attention is drawn to page 78 of the Record
where the point was raised by Counsel. He with-
draws the objection.

Leave is granted.

The appeal is now heard.

Mr. Glidewell abandons the original grounds of
appeal which are accordingly struck out.

Glidewell opens the appeal. Two actions were consolidated for purpose of trial Suit 496/53 was based on a sale by sample there was a counter-claim in respect of goods shipped which Boshali rejected.

He refers to the Statement of Claim at pages 10 and 11.

Defence at pages 12 - 15.

Counter-claim is at pages 24 and 25.

10 Defence to counter-claim is at pages 26 and 27.

Claim in Suit 610/53 is at pages 31.

The Statement of Claim is at pages 38 and 39.

The claim in this action is for goods sold and delivered and not on Promissory Notes. Defence at page 40.

The only defence raised is that defendants had sued in another action.

He now refers to judgment at pages 82 - 96.

20 He hands over to the Court and to Counsel on the other side a list of exhibits in theonological order.

The important documents are A3, A4 and G.

He read Ex. A1 - AS1009 is not their contract.

There is no reference here to sample. Next is a letter of 12th March, 1952, Ex. 4, at page 189.

Then comes Ex. A2 at page 99, this is followed by

Ex. D1 at page 108, then comes Ex. A3 of 24/3/52,

at page 101. Conditions at back. He reads the last condition. He is taking a point on this later on.

30 Then follows Ex. A4, at page 103; Ex. 5 at 190 is not relevant. Then comes Ex. B, at page 105, Ex.C, at page 106, then follows. Then comes Ex. E at page 110 and Ex.E1 at page 111. Ex. G comes next - see pages 113-118.

He refers to page 115 section 8 Particulars of the test made are at page 117.

See opinion at bottom of page 118.

40 Then follows Ex. 2, at page 185. Then see Ex. H at page 119 cable from Boshali. Then follows Ex. Y2 at page 179. Then Ex. J at page 120. He refers to last paragraph at page 121, also to lines 10 and 21 of page 122, then comes Ex. S at page 138. He reads from line 12 of page 139, then follows Ex. K at page 124; then follows Ex. Z at page 182, then comes Ex. L, at page 125. Ex. N, at page 128, then follows: See 3rd paragraph also last paragraph of page 129. Then see Ex. N, at page 128. Ex. 8 follows at page 198 - he asked for further concession - market very dull. See Ex. P, at page 132, then

50 comes, Ex. O at page 130, Boshali had a credit as

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of Nigeria

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Court Notes,
2nd, 7th, 8th
and 9th January
1957 -
continued.

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and 9th January
1957 -
continued.

a cover against future transactions. This is followed by Ex. Q at page 134. Then comes Ex. R, at page 136. Note here that Allied Commercial Exporters refused to allow Boshali to use his credit to pay off his debt; then see Ex. 3, at page 187. The bills referred to are subject matter of Suit 610/53. Then follows Ex. T; at page 141, see lines 32 et seq. at page 141, last paragraph at page 143, this is followed by Ex. W, at page 147: he would not accept goods nor pay and yet wanted sellers to hold on. Then follows Ex. Y1, a cable, at page 178; and lastly Ex. X at page 174.

Ex. 1 was not copied.

Invoice to Houchar. See page 15 shows the note at the foot of the exhibit.

Evidence in the cases are at pages 58 - 81.

Page 58 Evidence of Boshali.

He reads evidence led at the trial. He shows out the figures on page 73 and goes on to line 24 of page 74.

What are the lines of the contract; Answer in Ex. A3 and A4.

There is no reference to sample in any of them; the only word used in the case is "Description". He submits that the learned Judge was right in holding that the contract was a contract by description and not by sample. The defendant accepted the sale Notes. Boshali's letter did not say he was buying the cloth offered according to the sample Ex. AB. Gardner v. Gray 171 ER 46 See page 613 of Benjamin on Sale 8th Edition; also page 64 Chalmers on Sale of goods Act, section 15(1) - Notes on.

He submits that there was no evidence what the word "Quality AS1000" on Exs. A3 and A4 denotes; and that they are part of the description. He states that there was no evidence to show what "AS1000" was. He submits that in the absence of evidence one cannot import "sample" into the contract under "Quality AS1000".

If the contract was contract by description, then no condition will attach to the contract under sections 13 and 14(2) of the sale of goods Act.

He submits that there was no evidence that the goods did not correspond with the description of the goods in Exs. A3 and A4. Ex. G, he submits, is no evidence on this point. Ex.S deals with the difference in the structures of certain samples.

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Supreme Court
of Nigeria

No.31

Court Notes,
2nd, 7th, 8th
and 9th January
1957 -
continued.

10 He submits, with respect, that the learned Judge was wrong by dealing with the case as if he had accepted the evidence that the sale was by sample. He submits that there was no evidence that the goods were inferior in quality to the description. He says the conduct of the appellant cannot be held to be on admission that there was a difference in the quality of the goods according to the description in the Contract Notes. He says that there was not evidence that the goods were not merchandisable under the description. In fact, there was evidence that the goods were of merchantable quality as they had been sold under the description. The complaint originally was in respect of shortage in yardage. He submits that there was no breach of contract at all. Regarding £246.19.0 claim from alleged shortage - no length of pieces or bundles are specified in Exs. A3 and A4.

20 Boshali's evidence was that he cleared 35,466 $\frac{1}{2}$ yards of the material to his shop. There is no evidence that a bundle contained so many yards of material. P.W.2. examined a bundle. He found so many yards of material, but he could not say how many yards the bundle are supposed to have contained. The court was not told what the purported yardage in a bundle was in any particular case. Boshali did not say the quantity of the materials he sold to Grazi, Sabah and the market women.

30 He submits that the plaintiff had failed to prove shortage in respect of sales to his customers. Ex. 2, he submits, has no relation to the supposed shortage for which the plaintiff claimed £246.19.0. He states that there was no evidence before the court as to what Naim discovered of what it was for the plaintiff to call evidence to show what he discovered.

40 He refers to Ex. A3, last condition, and says that the goods were of foreign in origin. This point he submits, was ignored by the learned Judge. The condition, he says, is a complaint far to the plaintiff's claim.

Regarding damages in suit 496/53, he submits that the learned Judge compiled damages on wrong bases.

- (1) with regard to 35,466 $\frac{1}{2}$ yards goods accepted.
- (2) damages with interest to goods not accepted.
- (3) damages of £246.19.0.

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continued.

The goods delivered and accepted, he gave 6d a yard for loss of payment and 7d per yard, for shortage. He refers to section 53 (2), of the sale of Goods Act.

He submits that the true basis of assessing damages is the difference between the price contracted and the market value at the time of delivery. Refers to Starler v Smith, 1920, 2KB 11, at 22.

Ex. G cannot be said to speak of the bulk of goods shipped. He refers to page 121, last paragraph, lost then was 2/2¹/₄d and not 2/4d claimed. He sold to Houchar for 2/2d per yard, as shown by Ex. 1., also see Ex. 4 at page 189 - Market was then dull and he was prepared to run a risk; See Ex. 8 at page 198, last paragraph, Ex. Q page 134. See page 65, from line 12 - 15. He submits that the Judge should not have accepted the "ipse dixit" of the witness that Boshali could have earned 6d profit per yard. He agrees that in principle, section 54 of the Act does apply.

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Adjourned to 8th January, 1957.

7/1/57.

(Sgd) O. Jibowu
AG. F.C.J.

8th January
1957.

8TH JANUARY, 1957.

Suit 169/1956.

Glidewell continues his arguments.

Re-damages in respect of goods not delivered.

He submits that two matters have to be established before the plaintiff could be entitled to damages, viz:

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- (1) that he had a right to reject the goods, and
- (2) he, in fact, rejected them.

See page 89, lines 1 - 10. This refers to Ex. U, at page 144. He says that notwithstanding Ex. H, the contract was still open. He submits that by Ex. U, Boshali intended to keep the contract open on his own terms. He says Ex. U referred to 4 bundles sold to Houchar. This exhibit, he submits, cannot be held to be a reproduction of the whole contract. He refers to evidence at page 62 lines 17 - 30, page 67 lines 5 - 8. He tried to keep the contract open on his own terms; page 68, lines 5 - 14. He says Boshali was blowing hot and cold. He submits: therefore that there was

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In the Federal
Supreme Court
of Nigeria

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Court Notes,
2nd, 7th, 8th
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continued.

no rejection of the contract on his part. Damages could be claimed in respect of goods which had not been rejected. It is common ground that the plaintiff Boshali had had £500 and £400 paid in respect of goods AS100 and AS1000, yet the Judge did not deduct this amount from the amount of damages awarded on this score. The damages of £246.19.0 - he submits that this was not proved. Counter claim for non-acceptance of some 35,000 yards of material. What is the position if this was no breach of contract on defendants' side and what is the position in respect of the goods not taken up by the plaintiff?

If no breach, it is clear that the goods were shipped and were passed in Lagos. The defendant had therefore complied with every obligation under the contract.

It was then for Boshali to take delivery and pay for them; that he did not do. The defendant was therefore entitled to claim damages for non-acceptance. If defendant was in breach - in respect of the goods taken up by Boshali, he submits that the defendant would still be entitled to damages on the counter claim.

Judge at page 89, was right in holding that the plaintiff could not object to the action taken by the defendant. He refers to page 94, lines 1 - 21. He submits that the learned Judge was in error in composing right to reject with rejection in fact.

If there was a breach in respect of the 35,466½ yards delivered, the buyer would have right to reject the rest of the goods. See 1934, 1 K.B. 148. *Dominion Coal v. Dominion Iron*; 1909, AC.293. By not taking up the remaining 35,000 yards of material (tendered to him) except on his own terms, he was committing a breach of the contract.

He says the Judge was right in holding as he did in line 7 at page 89. *Flrch v. Bewor* L.R. 9 C.P. 208. He showed an intention as buyer to be bound by the contract.

He says he agrees with the figure of £425 found by the Judge, if the court finds in his favour on this point.

Re-Suit 610/1953 - The Court has already been referred to this statement of Claim and the Defence filed. He refers to page 83 lines 1 - 29. The course of action was given said the learned Judge. He says it might be correct if he was sued as a plaintiff. There would then be on accord and satisfaction - The claim was for goods sold and delivered. See page 63 lines 1 - 9. There was

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of Nigeria

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continued.

correspondence to show that defendant refused to debit plaintiff's account with the amounts due on the two plts.

(N.B. His attention is called to items marked X on Ex. V; showing that the amounts due on the plaintiffs, had in fact, been debited to plaintiff's account. He says he agrees that that was so).

He says that the defence should have been that the amounts had been debited to his account, but did not do so.

10

Boshali could have had to meet his bills on the due date if he had no credit.

He says that the Judge was wrong as the pleadings were not amended. Should the Court be against him on this point, he asks that the Court should consider the question of costs in view of the state of the pleadings which were not amended.

N.B. The Court shows him Ex. AB, which bears a label endorsed AS100, 65000 yards. He is then asked if the AS100 referred to in Ex. A3 and A4 referred to the sample Ex. AB.

20

The Judge considered the number to be AS1000. He says that the learned Judge was not justified in holding that there had been a mistake on the label. He would not say that Ex. AB was not the sample marked AS1000. He says that the evidence is not strong enough to show that AB is AS1000.

He says now that the evidence is not strong enough to justify the conclusion that number AS100 on Ex. AB is a mistake. He refers to page 97. He says Ex. AB casts a doubt on the question whether the exhibit is the sample. He says that Ex. AB appeared to have been dyed that it is improbable it was sample of stock being sent out to be dyed to plaintiff's own colour. He submits that a further inference could be drawn from the evidence that there had been a mistake also as to the sample sent out. He says that whatever inference might be drawn from the sample AB could not damage his previous submissions as regards the nature of the contract.

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Davis is called upon:

He states that Ex. AB was the sample sent out. There could be no necessity for sending out sample of AS100 in which he had been dealing. He had not seen AS1000 before, hence a sample was sent for him to see. He referred to page 69, lines 16 -26. He submits that the original colour was grey. One piece was dyed and out of

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it a sample was sent. Ex. AB is the sample. This explains why Ex. AB is blue in colour. He refers to page 58, lines 34 - page 59 up line 4. He refers to Ex. A and says that J.S. Dellal wrote a letter Ex. A that is D.W.L. Throughout the case the defendant agreed that Ex. AB was the sample sent out. The case was conducted on the footing that AB was the sample sent out by the appellant. The defendant cannot at this stage be heard to suggest that Ex. AB was not a sample. The main question is, what is, what is the contract between both parties? He says this Court is on as good a position as the Court below to decide the question. He refers to Ex. A3 at page 101. Ex. A3 is just a confirmation of the contract, it is then for the Court to look into correspondence to see what the contract is. He submits that Ex. A3 does not contain all the facts. He says the letter A1 must be taken into consideration with Ex. A3 and A4. He says the contract was by sample and description. He refers to Ex. A2 at page 99. The defendant did not consider at Ex. A1 that they were appearing to sell the goods by sample. The Court had to look into the intention of the parties. This can be ascertained from Exs. A, A1, A2, A3, A4 and '4'. The defendant in their pleadings admitted in paragraph 6 of the Defence that it was on sale by sample. He refers to paragraph 1 of the Statement of Claim at page 10, also to paragraph 4 of the Defence at page 12. He submits that it was the intention of the parties that all the correspondence of sales Notes should be taken into consideration. The result of these shows sale by sample and description; although the case made in the Court below was that it was a sale by sample.

When Boshali went to Jack Dellal to complain about the goods, the defendant did not then say they sold goods by description and not by sample. He refers to Ex. B, at page 105, see reply at page 107. This was the time for the defendant to say that it was not a sale by sample. They sent the sample to be tested. He submits that this letter is a strong argument in favour of sale by sample, also. With respect to the learned Judge he was wrong in his finding that it was a sale not by sample but by description.

See Description in Ex. A3, at page 101. Quality AS1000 Grey cloth, foreign origin, to be dyed to your own shade. It was to make plaintiff know what AS1000 was, they sent him sample Ex. AB, dyed

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in order to see what it would look like when dyed.

He reads Section 13 of Sale of Goods Act. To avoid liability he submits the goods must conform to both the sample and the description.

What is the description? "Quality AS1000 is part of the description". What is that quality? Ex. AB.

The learned Judge had found that the goods were not in accordance with the contract. 10

Refers to Ex. G at page, 113 - 118, see Statement of Opinion at page 118. See page 60, lines 7-9. This Report was not challenged. Defendant admitted there was defect in the material as they were not up to the sample and so gave plaintiff £500 and £400 to offset it. See Ex. E and E.1 at pages 110 and 111.

If the goods were in conformity with the contract, why give the credits? It is not known what amount is allocated to this contract out of the £500 20

given on Ex. E. The only reason for giving this money was because the goods were not in conformity with the contract. It is an implied admission by John Dellal. Brown, another Director, gives the £400 credit in spite of the language used in Ex. E. Was the payment final? No - £400 more was given. This further sum was given obviously because the defendants were satisfied about the genuineness of the plaintiff's complaints. They instructed their Agent in Lagos to check the goods. See page 68, 30
line 24 - line 4 of page 69.

The measurement was done in the presence of defendants' Representative. He refers to Ex. 2 at page 185.

He sites Drimmond and Son v. Van Logen & Co. 1887, 12 - App. Cases, 284, at 291, 294, 297. He submits that the Judge was right in holding that the plaintiff did not get what he contracted for.

He agrees that sale Notes are a part of the contract and that they bear conditions on the back. 40
Origin of the cloth was not shown on Ex. AB. The defendant then failed to show the origin on the label attached to Ex. AB.

It was after the sale had been concluded before it was announced that the goods were of foreign origin.

He says that the defendants cannot now be heard to raise the question of origin and claim the protection of conditions on Exs. A3 and A4.

Boshali did not sign any of the Sales Notes. Is 50
Boshali bound by them? He submits that Boshali

does not know the manufacturers and had no contract with them. The defendants knew the manufacturers and could have got them joined. The defendants are obliged to carry out their agreements under the Sale of Goods Act.

He submits that the appellants had waved the conditions at the back of Ex. A3 and A4 by their conduct.

10 He submits that the evidence discloses a breach of contract on the part of the appellants. He submits that the Quality bargained for is AS1000 is with the sample Ex. AB.

The shipping samples show the different shades of the material being sent out. He submits that the shipping samples correspond with the bulk of goods shipped, but did not correspond with the original sample. He does not allege that defendants were being dishonest by sending out wrong shipping samples and therefore submits that the shipping samples must be taken as corresponding with the shipping sample.

20 If there was a breach, are the plaintiffs entitled to damages?

If the Court accepts the findings of the learned Judge that there was a breach on the part of the appellants, then what should be this question of damages? It is admitted by the defendants that they knew that plaintiff was buying to sale. He claims damages for breach of warranty with regard to goods accepted. With regard to the goods not accepted, he submits the plaintiff had the right to reject claims. The goods were shipped in lots or by instalments. He states the plaintiff could reject taking up further instalments if he was not satisfied with the instalments delivered. With regard to the goods accepted, he refers to section 53(2) of the Sale of Goods Act. What then is defendants' loss? The is in sub-section 3 of the section. The value of the goods he submits was 1/9d per yard. The goods cost him 2/4d per yard. He was entitled to at least 7d per yard to reimburse him. In Case the Defendant had no knowledge of a resale. In this case the seller knew the goods were going to be resold.

40 He refers to section 54 of the Act. He reads the Notes on the section. The plaintiff expected to make a profit of 6d per yard. He refers to Ex.4 at page 189. He says the plaintiff's evidence that he could have had 6d per yard profit was not refuted and was accepted by the Court. He agrees that the

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damages should have been reduced by the amount £400 already credited; but he says that there will be some difficulty with respect to the £500.

He agrees with the suggestion from the Court that the amount be split into two. This, he says, will not affect the account at page 145.

Re-goods not accepted - He says the plaintiff could not be compelled to accept the goods he did not order. He agrees that the plaintiff would not take delivery of the goods but he did not reject them. 10

He refers to section 37 of the Act. He submits that on the receipt of Ex. H at page 119, the defendants treated the goods as having been rejected, hence they sold.

Adjourned to 9th January.

(Sgd) O. Jibowu
AG. F.C.J.
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David continues his argument.

Were the remaining goods accepted or rejected? He submits they were not accepted by Boshali. He asks the Court to interpret the conduct of Boshali as a rejection. He says that there was evidence to justify the learned Judge's finding that he rejected the goods and he asks the Court to accept the finding. If this is done, then he is entitled to damages for breach of contract. With regard to the measure of damages he submits that 6d loss of profit stated by Boshali should in the absence of any evidence to the contrary be accepted. He refers to page 65, lines 4 - 16. This is all the cross-examination on the point. The appellant could have called evidence on refutation, but did not. 30

He cites _____ and Co. Ltd. vs. Walter and Co. Ltd. 1942. All E.R., 724, at 727. Re-claim for £246.19.0, he agrees that the only evidence was the "ipsi dixit" of the respondent, Boshali, which did not show how the amount was made up. He says the matter was one of fact and the learned Judge who saw the witness accepted his evidence. He admits that the evidence was weak and he does not wish to press it. 40

Re Counter Claim, it all depends on the question whether this Court accepts the submission that the goods had been properly rejected or not. If the breach was on the defendant's side, the counter claim then falls to the ground.

He submits the trial Judge arrived at the right conclusion on the point. Re suit 610/53, he says the claim was well founded but he submits that since the respondent's account had been debited with the amounts, he cannot sue again for the same amounts. He refers to page 145, see items marked 'X'. The two items are shown in the statements of claim in paragraphs 4 and 5. See page 70, lines 32 - line 4 of page 71. There was a credit of £2724.18.1. When the amounts on the plaintiffs were debited to the account, the account was reduced accordingly.

He agrees that the pleadings were defective. He submits that the learned Judge was right in his finding.

The appellant could have sued on the plaintiffs, but they did not do so, but wanted payment by debiting his account. With regard to damages, he would like to observe that there was no evidence of the market value of goods of the type in question.

Glidewell replies - He says the first point is whether this is a sale by sample. He says this sample cannot be imported into the contract. He says sample must be a term of the contract. He says mere exhibition of the sample does not make it a term of the contract. Gardner v. Gray. He says the mention of sample in Ex. A1 does not make the sample a term of the contract. He submits that the terms of the contract are the in Exs. A3 and A4. He says that in the absence of the words "in accordance with the sample submitted" or words to that effect, the sample was not incorporated into the contract. Attention is drawn to Ex. D1 at page 108 which contains "as sample attached". He submits that the shipping samples did not represent the bulk of goods shipped. In case of sale by sample, one has to prove that the bulk does not correspond with the sample. To prove that the bulk does not correspond with the sample, many samples taken from the bulk must be submitted for examination.

He submits that the shipping samples were not taken from the bulk of the materials shipped.

He invites attention to Ex. G page 118, see remarks

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under sample Test. He refers to page 117, Threads per inch Wasp & Waft and

He submits that there is no evidence as to the bulk. He therefore asks the Court to hold that the sample don't represent the bulk.

Conditions in Contract. He submits that there may be conduct which may amount to a waiver. He says there must be positive evidence from which a waiver can be inferred.

He submits that if the payment of compensation of £500 and £400 was taken as a waiver of the conditions of the back of Exs. A3 and A4, then the plaintiff must be considered as accepting the terms of payment, that it was in final settlement.

He says that - case is not contrary to the principles on which damages is to be assessed as submitted by him. He says the onus of proving the damages was on the respondents and that he had failed to submit evidence on which the reason of damages should have been assessed.

(Re Counter Claim, he says that it does not but in the mouth of the respondent) to say he could have rejected the contract and that he was not in breach because he kept this contract open. He submits that since the appellant had fulfilled his own side of the contract by sending the goods c.i.f. to Lagos, it was the duty of the respondent to accept or reject; he failed to accept the goods, he therefore was in breach.

Re Suit 610/53, he says that Ex. V is headed "without prejudice". He says that Ex. V shows that the respondent still owes on the PINS. He submits that there has been no payment of the money and the respondent did not plead payment.

(Sgd) O. Jibowu
AG. F.C.J.

C.A.V.

9/1/57.

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No. 32

J U D G M E N TIN THE FEDERAL SUPREME COURT OF NIGERIAHOLDEN AT LAGOSON SATURDAY THE 23RD DAY OF FEBRUARY, 1957,BEFORE THEIR LORDSHIPSIn the Federal
Supreme Court
of NigeriaNo. 32Judgment,
23rd February
1957.

OLUMUYIWA JIBOWU	FEDERAL JUSTICE
M.C. NAGEON DE LESTANG	FEDERAL JUSTICE
PERCY CYRIL HUBBARD	AG. FEDERAL JUSTICE
	<u>F.S.C. 169/1956</u>

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ADEL BOSHALI	Plaintiff/Respondent
v		
ALLIED COMMERCIAL EXPORTERS LTD.	Defendants/Appellants
AND		
ALLIED COMMERCIAL EXPORTERS LTD.	Plaintiffs/Appellants
v		
ADEL BOSHALI	Defendant/Respondent

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NAGEON DE LESTANG, F.J. This is an appeal from the decisions of the High Court of Lagos in consolidated actions Nos. 496 and 610 of 1953. In Action No. 496 of 1953 the plaintiff, now respondent, claimed damages for breach of contract for the sale of certain goods while the defendants, now appellants, counter-claimed for damages for non-acceptance of a portion of those goods. The respondent was successful both on the claim and on the counter-claim. In Action 610 of 1953 the appellants unsuccessfully claimed the price of goods sold and delivered to the respondent.

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Although as will be seen later the goods, the subject matter of action No. 610, were part of the goods accepted by the respondent in action No. 496, the two cases were in other respects quite distinct, and I propose to deal with them separately. I will begin with action No. 496.

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The appellants are a limited liability Company carrying on business in the United Kingdom. The respondent is a trader carrying on business in Lagos. The appellants had been doing business with the respondent for some time. On 10th October, sic. 1952, the appellants, in acknowledging an order for goods from the respondent, wrote this:-

"However, it occurs to us to mention that we have a stock of crepe spun, QUALITY AS1000 of approximately 55/70,000 yards which we thought you might prefer, to be dyed to your own shades, instead of the 50,000 yards AS100. This is a heavier quality and is very slightly dearer, namely, 2/0½d. per yard CIF. It is a much heavier cloth and worth much more than AS100 and as we have a larger quantity and it is a novelty cloth and can be dyed to your shades we thought you might prefer this. If you do prefer this please cable us immediately just saying "PREFER 65000 yards AS1000 CREPE" and we will immediately dye this instead of the 50,000 yards AS100." sic. 10 20

They enclosed in their letter a piece of material with a label pinned thereto reading "QUALITY AS100 quantity 65,000 yards origin blank". I shall hereinafter refer to this piece of material as the original sample. The learned Judge found that there was a mistake in the label in that AS100 should have read AS1000. There was, in my view, evidence upon which he could reasonably come to that conclusion, and I am accordingly not prepared to say that he was wrong in so doing. sic. 30
On 12th March, 1952, the respondent replied to the appellants' enquiry as follows:-

"With ref. to your sample, crepe spun Quality AS1000 of 65/70,000 yds. 36", I appreciate your offer but unfortunately the Africans here do not like such a crepe finish and prefer the plain, for I remember few month ago I bought from U.K. about 2,000 yds. @ 1/10d and it did not sell well and I had to clear it with very small profit, but if you could let me have it @ 1/10 CIF dyed to my own shade I should risk buying this large quantity." sic. 40

On 17th March, 1952, the appellants wrote again:-

"With reference to QUALITY AS1000 Crepe spun and your offer of 1/10d per yard CIF of this cloth,

if you can increase your offer to 1/11¹/₂d per yard CIF the same as AS100, we would be willing to accept your price for a quantity offered, but it is essential that you let us have your cabled reply to this."

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There is here a gap in the correspondence, but it is nevertheless obvious that two contracts were concluded between the appellants and the respondent under which the appellants agreed to supply to the respondent, who agreed to purchase, a total quantity of 85,000 yards of spun rayon. The terms of the contracts were embodied in two sale notes dated 24th March, 1952, and 1st April, 1952 (Exhibits A3 and A4). Those sale notes are in the form of a letter in substantially the same terms written by the appellants to the respondent, the material portions of which (extracted from Exhibit A4) read as follows:-

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"Subject to the conditions on the back hereof, we are pleased to confirm having sold to you goods as per particulars detailed hereunder.

Please note all correspondence concerning this transaction to be addressed to our MANCHESTER Office.

QUANTITY	15,000 yards.
DESCRIPTION	QUALITY AS1000 36" Dyed Rayon Crepe, grey cloth of foreign origin.
DELIVERY	5/6 weeks.
PRICE	1/10d. per yard CIF, plus 5% to be credited to you on payment of the bills. "

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On the back appears inter alia the following condition:-

"For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from the Manufacturers."

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Subsequently the appellants sent to the respondent shipping samples of the goods. These seems to the respondent to be inferior in quality to the original sample. Being in England at the time, he personally complained to the appellants,

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who assured him that there was no such difference in quality. Nevertheless, the respondent consulted solicitors, who wrote on his behalf that it appeared from the shipping samples that the bulk of the goods did not correspond with the original sample "on which the sale was based". The appellants replied a few days later that they "have submitted some samples to testing authorities to ascertain if there is any difference between the original sample shown to Mr. Boshali and the goods shipped."

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Meanwhile the respondent also submitted cuttings from the original and shipping samples to the Testing House of the Manchester Chamber of Commerce for testing. He also had an interview with the appellants at which a so-called settlement was arrived at under which the appellants agreed to "allow the respondent £500 in full settlement of all claims on all goods shipped and to be shipped including AS100, AS1000, etc.etc."

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On receipt of the result of the tests carried out by the Manchester Chamber of Commerce, which expressed the opinion that the shipping samples were on the average inferior to the original sample in respect of quality, the respondent complained verbally to the appellants, but received no satisfaction. He then returned to Lagos where, during his absence, the goods had been arriving for him. Some of them had been cleared by his agent and re-sold. There was apparently some trouble about the re-sale. The purchaser complained that the goods were short in yardage - that is to say that the actual yardage of the pieces was less than the yardage marked on them - and as a result the respondent took back the goods and refunded the purchase price. He in turn complained about the alleged shortage to the appellants and purported to reject the goods not cleared. The appellants denied any shortage and threatened to sell the goods and hold the respondent liable for any loss that might arise. A few days later the appellants agreed, subject to certain conditions which are not material here, to allow the respondent a further credit of £400. Thereafter the respondent took delivery of other consignments of goods. He failed, however, to take delivery promptly and he was allowed by the appellants to take delivery of certain consignments against pro notes instead of cash. To cut

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10 a long story short, of the goods shipped to the respondent, he accepted and took delivery of 35,466½ yards. He alleged that he disposed of them at a loss of 7d. per yard owing to their inferior quality and that he had to refund £246.19s. to various sub-purchasers because of the shortage in yardage as above stated. Since the appellants knew that he was purchasing for the purpose of re-sale, he also claimed loss of profit at the rate of 6d. per yard on the whole of the order. Such were his claims in action No.496/53 in respect of which he was completely successful.

As regards the balance of the goods, as will be seen later the respondent would neither accept nor positively reject them, and the appellants caused them to be sold and they fetched less than the contract price. This loss, including other expenses, was the basis of their counter-claim in the action.

20 The first question for decision in this appeal is whether the learned Judge was right in holding that this was a sale by description and not a sale by sample. Mr. Glidewell, for the appellants, sought to support the Judge's decision on this point, while Mr. David, for the respondent, contended that the sale was both by sample and by description. In my view, the decision of the learned Judge was right. Section 15(1) of the Sale of Goods Act provides that a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. The terms of the contracts in the present case are to be found in Exhibits A3 and A4 of which I have already quoted the material portions, and reference to them will show that there is no mention of any sample in them. Mr. David contended that the sale notes were not the contracts, but merely confirmation of the sales, that the terms of the contracts set out in them were not complete and that a further term that the sale was by sample had to be imported because the appellants' first offer contained a sample, and the respondent's counter offer expressly referred to that sample. In my view, the sale notes contained all the terms of the contracts and were sales by sample intended, a term to that effect would have been inserted in them. It is significant that in a previous contract between the parties relating to goods of quality AS100, the sale note relating thereto, which

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incidentally was produced in evidence by the respondent and which is in every other respect substantially the same as the sale notes in the present case, the words "as per sample attached" occur; thus making the sample a term of the contract. But this is by the way. It is well settled that the fact that in the course of the negotiations a sample is shown is not conclusive of the resulting contract being a sale by sample. Thus in Tye v. Fynmore, 14 R.R.809, where the seller exhibited a sample of "sassafras wood" and the buyer accepted it, and had skill in the article, and the seller then in the sale note described the goods to be "fair merchantable sassafras wood" it was held not to be a sale by sample but a sale by description, with express condition that the wood should be what was understood by sassafras wood. So also in Gardiner v. Gray, 16 R.R.764, the sale was of goods described in the sale note which did not refer to any sample as waste silk. A sample was shown, but it was held not to be a sale by sample. So in the present case, although a sample was exhibited at the inception of the negotiations, as the final contracts, as evidenced by the sale notes, contained no reference to a sample, the sales were not, in my view, sales by sample. 10 20

The next question is whether, assuming the sales to be sales by description, there was any breach on the part of the appellants. On this question the Judge said:- 30

"I am, however, satisfied, from the evidence, both oral and documentary, that the goods did not correspond with the description either as to quality or as to yardage". With respect to the learned Judge, I have been unable to find any evidence whatever on the record that the goods did not correspond with the description, and indeed the total absence of evidence on this point is not surprising because it was never the respondent's case that the goods did not correspond to the description. His case was that it was not according to sample, and to establish them he relied entirely on the report of the tests made by the Testing House of the Manchester Chamber of Commerce, Exhibit G. I can only assume that the learned Judge based his finding that there was breach of description on the result of that test, in which case, in my view, he has wrongly treated 40

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10 a breach relating to sample as being the same as a
breach of description. Moreover, a careful
examination of Exhibit G will show that it merely
deals with samples. It says in effect that the
shipping samples are to some extent inferior in
quality to the original sample. It does not go
further than that. It certainly does not say
that the goods supplied are inferior to the ori-
ginal sample. Indeed it expressly states at the
bottom of the last page of the certificate: "This
certificate refers only to the samples submitted
and not to the bulk from which they were drawn".
Therefore, even if this were a sale by sample,
the certificate upon which the respondent relied
did not and could not establish that the bulk of
the goods did not correspond to the sample, a
matter which had to be proved to render the appel-
lants liable in such a contract. A fortiori it
does not prove a breach of description. Mr. David
20 argued that the shipping samples must be assumed
to be identical with the bulk of the goods. I do
not think that any such assumption can be made
and I know of no authority for it. Mr. David
further contended that the two payments of £500
and £400 respectively, which the appellants made
to the respondent as a result of the so-called
settlements, are implied admissions that the goods
were inferior in quality. I am unable to agree.
30 There is nothing in the correspondence produced to
indicate that the appellants ever admitted that
the goods supplied were inferior.

40 The respondent alleged in his statement of
claim that the goods supplied were short in quan-
tity - that is to say that the actual lengths of
the pieces of cloth were shorter than the yardage
marked on them. There was evidence from a check
made on behalf of the respondent from which it
would appear that there was some shortage but that
the difference was less than $\frac{1}{2}\%$. The learned
Judge found, as I have already stated "that the
goods did not correspond with the description
either as to quality or as to yardage". It is
perfectly clear from Exhibits A3 and A4 that the
contracts were to supply a total quantity of
85,000 yards. There was no term that the pieces
should be of any given length. It follows,
therefore, that the small discrepancy between the
marked yardage and the actual yardage of the
pieces could not constitute a breach of contract.

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If I am correct in my view that this was a sale by description, and that there was no evidence that the goods did not correspond to the description, this appeal must succeed, but I think that this appeal also succeeds on the 5th ground of appeal, which reads as follows:-

"The learned Judge failed to have any or proper regard to the last condition of the contracts, Exhibits A3 and A4 whereas upon the evidence and in law the sellers were and are entitled to rely upon such conditions and to judgment accordingly against the buyers upon the statement of claim." 10

It is common ground that the goods here are of foreign origin, and, therefore, prima facie effect must be given to this condition in the sale notes which I have already quoted and which protects the appellants from liability. It may be thought that the condition is harsh, but this is not a good reason for not enforcing it because in a contract it is left entirely to the parties to make whatever agreement they please, and the Courts will not refuse to enforce them unless they are illegal or for an unlawful purpose or against public policy. Mr. David has argued that the appellants must be deemed to have waived that condition or that they are estopped from relying on it. There is no foundation for these arguments and I cannot see any substance in them. 20

Should, however, the case go further, and it is found that I am wrong in my conclusions, I will now deal with the question of damages on the assumption that the goods supplied were both inferior in quality to the goods contracted for and not according to sample. The respondent obtained damages under three heads: 30

1. in regard to the goods accepted, the difference between the contract price and the price at which he re-sold the goods;
2. loss of profit at the rate of 6d. per yard in regard to the goods both accepted and not accepted; 40
3. £246.19s. which he alleged he had to pay as compensation to his sub-purchasers owing to the shortage of yardage.

As regards (1) the measure of damage in such a case is laid down in Section 53, sub-sections (2) and (3) of the Sale of Goods Act thus:-

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"(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events, from the breach of warranty.

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(3) In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they answered to the warranty."

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The breach alleged in the present case was a breach of warranty of quality. Therefore, the measure of damage is as stated in Section 53(3). There was no evidence of the value of the goods at the time of delivery if they had answered to the warranty, and there was, therefore, no basis upon which damages could have been calculated.

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The price which the respondent paid for the goods is not evidence of their market value at the time of delivery. It is common knowledge that prices fluctuate, and it often happens that buyers have to sell goods at a loss. I am, therefore, of opinion that the respondent failed to prove any damage under this head. It has, moreover, been argued that the Judge was in any event wrong to accept the respondent's evidence that the re-sale price was 1/9d. per yard when the evidence established conclusively that the first re-sale was at 2/2d. (see Exhibit 1). It is true that this sale was later cancelled and that the respondent took back the goods, but since the sub-purchasers' complaints did not concern the quality of the goods but an alleged shortage of yardage, the price which he was prepared to pay is a good indication of the value of the goods on the market at the time. It was also pointed out that on the respondent's own showing, the market was very dull both at the time of the entering into the contracts and at the time of the delivery of the goods.

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These two matters are not expressly referred to in the judgment, but in my view they are very relevant to the question of damages. Even if the proper measure of damage was applied, the difference between the purchase price and the sale price

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continued.

should have been in the region of 2d. per yard and not 7d. as allowed by the learned Judge.

As regards (2), (loss of profit), since the appellants knew that the respondent was buying to re-sell, any loss of profit on re-sale would be proper damage. It was, however, contended that loss of profit was not proved here. I entirely agree. The learned Judge appears to have disregarded all the evidence relating to the dullness of the market at the relevant times and accepted blindly the ipse dixit of the respondent that he would have made a profit of 6d. per yard. Damages must be proved, and to establish loss of profit, it is not in my view sufficient for a party to say "I expected to make so much profit", especially when he had to admit that the market was dull and there was evidence that he might have been speculating. It is also necessary to point out that a claim in respect of loss of profit would not lie in regard to the unaccepted goods unless they had been properly rejected. The learned Judge found that "his (respondent's) non-clearance of the balance must amount to a rejection". I think, with respect, that this finding is plainly wrong in view of the respondent's letter to the appellants on the 17th April, 1953, in which these passages occur:-

10

20

"You know that I did not reject the goods, but I am waiting for the settlement of the dispute on this goods of which your firm failed to meet my claims in time and keeping me waiting up to date.

30

Take notice that if you sell this goods before we come to a settlement of my claim, you will be alone responsible for every damages, losses and expenses whatsoever, and you will be bound to meet any right claim I will make against you in the future."

Furthermore, in his evidence the appellant said this:

40

"I never agreed to the clearing of the goods by the defendants", and his attitude is clearly shown in the following passage in his evidence:

"I did not want defendants to clear the balance of the goods, but I was not prepared to clear

them unless the defendants kept their promises to settle my claims against them". In other words, he was sitting on the fence, neither being prepared to accept nor reject the goods. There can be no rejection in such circumstances.

In the Federal
Supreme Court
of Nigeria

No. 32

Judgment,
23rd February
1957 -
continued.

10 As regards (3), here again the learned Judge accepted the ipse dixit of the respondent that he had had to pay this amount as compensation to his sub-purchasers, who complained of shortage of yardage. For the same reason this item of damages was not proved and should not have been allowed.

20 Before leaving this question of damages, I should like to add that in assessing the damages the learned Judge ought in any event to have made allowance for the two sums of £500 and £400 credited to the respondent under the two settlements. There is no dispute about that, and Mr. David has suggested that the sum of £650 should in any case have been deducted.

I now pass to the counter-claim. The learned Judge dealt with the counter-claim in these words:

30 "The counter-claim is based on the buyer's alleged breach of contract; i.e. his non-acceptance of part of the goods. As, in my view, he was entitled to reject them, i.e. not to accept them, owing to a previous breach by the sellers, I hold that the counter-claim must fail and it is dismissed. Even if I had held otherwise, I should have had the greatest difficulty in holding that the counter-claim had been proved by D.W.I. His knowledge of the transaction is very small and his figures, in many instances, were grossly inaccurate. Had I found for the sellers on the counter-claim, I should have awarded them the sum of £425.11.5d. only because the evidence in support of the other items is so unsatisfactory."

40 It is, of course, obvious that if there was no breach of contract the appellants were entitled to succeed on their counter-claim to the extent of £425.11.5d. They did not dispute the finding that they had not proved their claim beyond this amount. It is, however, contended that even if they were in breach, they were nevertheless entitled to succeed because although the respondent would have had a right to reject, he did not in fact exercise

In the Federal
Supreme Court
of Nigeria

No.32

Judgment,

23rd February
1957 -
continued.

that right and reject. In my view this contention is sound. By delivering the goods the appellants fulfilled their obligations under the contract. It was up to the respondent to either accept or reject the goods. Having done nothing, he rendered himself liable to be sued for the price of the goods, and the only course open to him was to claim a reduction in the price due to the breach, but he could not, in my view, refuse to pay the price on the ground that he could have rejected the goods had he chosen to do so.

10

I now turn to action No. 610 of 1953. This was clearly an action for goods sold and delivered. It arose in this way. The respondent was unable to pay cash for the goods consigned to him by the appellants under the contracts, the subject matter of action No.496 of 1953. The appellants allowed him to clear certain consignments on his giving two pro notes instead of paying cash. He failed to meet them when they fell due. They were accordingly debited to his account with the appellants. The respondent admitted at the trial that he had not paid the amount of the pro notes. The Judge held, however, that "once the sellers admit that the amount of the two promissory notes ... has been debited against the buyer's account, the cause of action in that suit has gone". With respect, I do not think that it is so. Quite apart from the fact that the defence of satisfaction was not pleaded, I cannot see how the mere debiting of an account with the amount of a debt can discharge that debt. It is true that in the instant case the appellants held some funds for the respondent on deposit, and if it had been shown that the amount of the debt had been debited against those funds, it might have been held that the cause of action had gone, but there is here nothing to show that such is the case. On the contrary, the respondent did request the appellants to debit the amount in the promissory notes from his credit, but the appellants refused to do so. In my view, there was no defence to the appellant's claim, and judgment ought to have been entered for them with costs.

20

30

40

In the result the appeal is allowed. The respondent's claims in action No. 496 of 1953 are dismissed with costs assessed at 50 guineas, and judgment is entered for the appellants on their counter-claim in the sum of £425.11.5d. with costs

assessed at 40 guineas. In action No. 610 of 1953 judgment is entered for the appellants in the amount claimed therein with costs assessed at 40 guineas. The appellants will have the costs of this appeal which are assessed at 85 guineas.

In the Federal Supreme Court of Nigeria

No.32

Judgment,
23rd February
1957 -
continued.

(Sgd) M.C. Nageon de Lestang,
F.J.

I concur.

10

(Sgd) O. Jibowu,
F.J.

I concur.

(Sgd) Percy C. Hubbard,
Ag. F.J.

No.33

No.33

ORDER ON APPEAL

Order on Appeal,
23rd February
1957.

SATURDAY THE 23RD DAY OF FEBRUARY, 1957.

BEFORE THEIR LORDSHIPS

20

OLUMUYIWA JIBOWU
NAGEON DE LESTANG
PERCY CYRIL HUBBARD

FEDERAL JUSTICE
FEDERAL JUSTICE
AG. FEDERAL JUSTICE.

Suit No. 169/1956.

(Title as in No. 32)

The Judgment of the Court is delivered by De Lestang, F.J.

30

Order - Appeal in Suit 496 of 1953 is allowed. Judgment of the Court below is set aside and plaintiff's action is dismissed with 50 guineas costs; and judgment is entered for the defendants with 40 guineas costs on the counter claim. In suit 610 of 1953, the appeal is allowed; judgment of Court below is set aside and judgment is entered for the appellants for £967.9.2. and 40 guineas costs.

The appellant is allowed costs of their appeal which we fixed at 85 guineas.

(Sgd) O. Jibowu F.J.
23/2/57.

In the Federal
Supreme Court
of Nigeria

No.34

ORDER FOR STAY OF EXECUTION

No.34

Suit Nos.496 & 610/1953
F.S.C.169/1956.

Order for stay
of Execution,

13th March
1957.

Between.

Adel Boshali Applicant

versus

Allied Commercial Exporters
Limited Respondents

And

10

Allied Commercial Exporters
Limited Respondents

versus

Adel Boshali Applicant

Sgd. S.Foster Sutton
CHIEF JUSTICE OF
THE FEDERATION.

Wednesday the 13th day of March, 1957.

UPON READING the application for an order
for stay of execution pending the determination
of appeal and the affidavit sworn to on the 6th
day of March, 1957; filed by the Applicant and
after hearing Mr. O. Moore of counsel for the
Applicant and Mr. O. Esan of counsel for the Res-
pondents.

20

IT IS ORDERED that stay of execution be
granted and that the Applicant shall undertake
not to withdraw the sum of £2,000 now deposited
on his account with the Respondents pending the
determination of the appeal to the Judicial Com-
mittee of the Privy Council:

30

AND THAT the costs of £3.3.0d on this appli-
cation shall abide the result of the appeal.

Sgd. W.A. Duffus
CHIEF REGISTRAR.



101.

No.35

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

In the Federal
Supreme Court
of Nigeria

No.35

Suit Nos.496 & 610/1953
F.S.C.169/1956.

Order granting
final leave to
appeal to Her
Majesty in
Council,
10th June 1957.

Between:

	Adel Boshali	..	..	Applicant
			and	
10	Allied Commercial Exporters Limited	..	..	Respondents
			and	
	Allied Commercial Exporters Limited	..	..	Respondents
			and	
	Adel Boshali	..	..	Applicant

Monday the 10th day of June, 1957.

20 UPON READING the application herein for an order for final leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated the 23rd day of February, 1957, and the affidavit sworn to and filed on the 28th day of May, 1957, by the Applicant, and after hearing Mr.F.M.Solanke of counsel for the Applicant and Mr. Olu Alakija of counsel for the Respondents:

IT IS ORDERED that final leave to appeal be and is hereby granted to the Applicant.

Intld. F.O.L.

AG. CHIEF REGISTRAR.



ExhibitsE X H I B I T S

A.1

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Boshali,

10th March
1952.

EXHIBIT "A.1"

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOSHALI

ALLIED COMMERCIAL EXPORTERS LTD.

Directors. Secretary
L. BROWN R.M.HANMAN.
J.S. DELLAL

ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1. 10
March 10th 1952.

OUR REF
GRAMS & CABLES JSD/DJ.
"ODYSSEY" MANCHESTER

CODES
BENTLEYS ABC 6TH EDIT.

TELEPHONES
2488 YOUR REF
CENTRAL 2489
2480

Messrs. Adel Boshali,
P.O. Box 91, 20
Lagos,
NIGERIA.

Dear Sirs,

We thank you for your cable of the 9th read-
ing as follows:

"YOURS DATED 3RD RECEIVED WITH THANKS PLEASE
BOOK QUALITY AS100 50000 YARDS ALSO SMRYNA
PRYRAMID 5000 YARDS LETTER POSTED"

In accordance with your instructions we have
accordingly reserved for you 50,000 yards of AS100 30
dyed to your own shades. However, it occurs to
us to mention that we have a stock of crepe spun,
QUALITY AS1000 of approximately 65/70,000 yards
which we thought you might prefer; to be dyed to
your own shades, instead of the 50,000 yards AS100.
This is a heavier quality and is very slightly
dearer namely, 2/0½d per yard CIF. It is a much
heavier cloth and worth much more than AS100 and
as we have a larger quantity and it is novelty 40
cloth and can be dyed to your shades we thought
you might prefer this. If you do prefer this
please cable us immediately just saying "PREFER
65000 YARDS AS1000 CREPE" and we will immediately
dye this instead of the 50,000 yards AS100.

With reference to SMRYNA and PYRAMID 5,000 yards we are reserving this and are awaiting your letter which is already posted.

We hope that you have paid all the outstanding bills and look forward to receiving your cable confirming this.

Assuring you of our best attention at all times, Dear Mr. Boshali.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LIMITED
(Sgd) ?
DIRECTOR.

LONDON OFFICE: 38, UPPER GROSVENOR STREET, W.1.
TEL. MAYFAIR 1972 & 5408.

Exhibits

A.1

Letter from Allied Commercial Exporters Ltd. to Adel Boshali,

10th March 1952 - continued.

10

EXHIBIT "4"

4

LETTER FROM A. BOHSALI TO ALLIED COMMERCIAL EXPORTERS LTD.

Letter from A. Bohsali to Allied Commercial Exporters Ltd.,

12th March 1952.

ADEL BOHSALI

Cables: "ADELSALI"
Branch:
P.O. Box 145
MARINA CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
LAGOS.
12th March 1952.

20

The Allied Commercial Exporters, Ltd.,
Manchester, 1.

30

Dear Sir,

I received your letter dated 9th inst. and samples.

I have to thank you for your reservation of 50,000 yds dyed spun, 36", I forwarded my colours last week, I hope you received same.

With ref. to your sample, crepe spun Quality AS1000 of 65/70,000 yds 36", I appreciate your offer but unfortunately the Africans here do not like such a crepe finish and prefer the plain, for I remember

Exhibits

4

Letter from A. Bohsali to Allied Commercial Exporters Ltd.,
12th March 1952 - continued.

few month ago I bought from U.K. about 2,000 yds @ 1/10d and it did not sell well and I had to clear it with very small profit, but if you could let me have it @ 1/10 CIF dyed to my own shade I should risk buying this large quantity.

The market here is extremely dull and heavy quantities of Jap. & Italian goods are spoiling our market due to their very low prices, and the customers are not offering any price for any goods, so if there is a delay from me it will be unavoidable due to this reason, but I assure you I will do my utmost to clear your bills as soon as possible.

10

Yours faithfully,
(Sgd) A. Bohsali

RECEIVED
17MAR1952
Ansd....

A.2

Letter from Allied Commercial Exporters Ltd. to Adel Bohsali,
17th March 1952.

EXHIBIT "A.2"
(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS LTD. TO ADEL BOHSALI

20

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS.
L. BROWN
J.S. DELLAL

SECRETARY:
R.N. HANMAN

YOUR REF. OUR REF.
 JSD/DJ.

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODES
BENTLEYS A.B.C. 6TH EDIT.

ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1.
March 17th 1952.

30

TELEPHONES
 2488
CENTRAL 2489
 2480

Messrs. Adel Bohsali,
P.O. Box 91,
Lagos,
NIGERIA.

40

Dear Sirs,

Thank you for your letter of the 12th instant.

With reference to the 50,000 yards Dyed Spun 36" we have put these goods into dye immediately and they should be ready within the next 3/4 weeks. We herewith enclose our sale note and please be good enough to sign one copy and return same to us.

Exhibits

A.2

Letter from
Allied Commercial Exporters
Ltd. to Adel
Bohsali,

17th March
1952 -
continued.

10

With reference to QUALITY AS1000 Crepe spun and your offer of 1/10d per yard CIF of this cloth, if you can increase your offer to 1/11 $\frac{1}{4}$ d per yard CIF the same as AS100, we would be willing to accept your price for a quantity offered, but it is essential that you let us have your cabled reply to this.

You will note that we have put the contract AS100 as 1/11 $\frac{1}{4}$ d per yard and settle the difference between us as we offered these goods at 1/11 $\frac{1}{2}$ d per yard. We are sure this is acceptable to you as we ourselves are losing money on this.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LIMITED

20

(Sgd) J.S. Dellal

DIRECTOR.

P.S. With reference to our qualities SMRYNA and PYRAMID we regret to say that we cannot guarantee that this will be divided equally in five border designs and one Pyramid. As we think the market is down we do not think it is worth while taking a risk as this was a clearing line and we have decided not to take your order as you may not be satisfied with the designs.

30

LONDON OFFICE: 38 UPPER GROSVENOR STREET, W.1.
TEL. MAYFAIR 1972 & 5408.

Exhibits

A.3

Letter from
Allied Commer-
cial Exporters
Ltd. to A.
Bohsali,
24th March
1952.

EXHIBIT "A.3"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

SALES NOTE

LONDON MAYFAIR 5408

TELEPHONES:

MANCHESTER CENTRAL 2488 (3 LINES)
4104 EXT 21.

ODYSSEY, LONDON 10

CABLES:

ODYSSEY, MANCHESTER

CODES: BENTLEYS A.B.C.
6TH EDITION

ALLIED COMMERCIAL EXPORTERS LTD.
MANUFACTURERS EXPORTERS AND IMPORTERS

MANCHESTER OFFICE: ORIENTHOUSE, GRANBY ROW,
MANCHESTER;

LONDON OFFICE: 38 UPPER GROSVENOR ST. LONDON, W.1.

DIRECTORS:

20

L. BROWN

J.S. DELLAL Your Ref. Our Ref:

SECRETARY: JSD/DJ March 24th 1952.

R.M. HANMAN.

Messrs. Adel Bohsali,
P.O. Box 91,
Lagos, NIGERIA.

Dear Sirs,

Subject to the conditions on the back hereof,
we are pleased to confirm having sold to you goods 30
as per particulars detailed hereunder.

Please note all correspondence concerning
this transaction to be addresses to our MANCHESTER
Office.

QUANTITY 70,000 yards approx.

DESCRIPTION 36" dyed crepe, QUALITY AS1000, grey
cloth foreign origin, to be dyed to
your own shades.

DELIVERY shipment 5/6 weeks.

PRICE 1/10d per yard CIF.

40

TERMS 5% Commission

PACKING

Yours faithfully,
per pro. ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) J.S. Dellal

ASSOCIATED COMPANY: AMERICAN GENERAL SUPPLY CORPN.
18, WEST 27TH STREET, NEW YORK, U.S.A.

CONDITIONS

Delivery cannot be guaranteed on account of circumstances brought about by War, and this order can not be cancelled on account of this or any similar reason, without our consent.

We are under no liability whatever for non-shipment or non-delivery arising from circumstances out of our control, war, fire, strikes, lock-outs, inability to obtain raw material, or accidents at the factory, or for non-arrival or late arrival, from perils of the seas, accidents or fire to the ship or goods en route to destination or quarantine or stoppage of the Suez Canal.

Claims or complaints in respect of goods herein agreed to be sold must be received by us within 5 days of the arrival of the goods at the port of discharge, and no claims will be entertained after this date.

Any dispute arising out of this contract to be referred to the tribunal of Arbitration of the Manchester Chamber of Commerce only.

For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from, the Manufacturers.

EXHIBIT "A.4"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

SALES NOTE

LONDON MAYFAIR 5408

TELEPHONES:

MANCHESTER CENTRAL 2488 (3 LINES)
4104 EXT 21

ODYSSEY, LONDON

CABLES:

ODYSSEY, MANCHESTER.

CODES: BENTLEYS A.B.C.

6TH EDITION.

ALLIED COMMERCIAL EXPORTERS LTD.
MANUFACTURERS EXPORTERS AND IMPORTERS

Exhibits

A.3

Letter from
Allied Commercial Exporters
Ltd. to A.
Bohsali,

24th March
1952 -
continued.

A.4

Letter from
Allied Commercial Exporters
Ltd. to Adel
Bohsali,

1st April
1952.

Exhibits

A.4

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
1st April
1952 -
continued.

MANCHESTER OFFICE: ORIENT HOUSE, GRANBY ROW,
MANCHESTER;
LONDON OFFICE: 38 UPPER GROSVENOR ST. LONDON, W.1.

YOUR REF.

OUR REF.

JSD/DJ.

April 1st 1952.

DIRECTORS:

L. BROWN

J.S. DELLAL

SECRETARY:

R.M. HANMAN.

10

Messrs. Adel Bohsali
P.O. Box 91,
Lagos,
NIGERIA.

Dear Sirs,

Subject to the conditions on the back hereof,
we are pleased to confirm having sold to you goods
as per particulars detailed hereunder.

Please note all correspondence concerning
this transaction to be addressed to our MANCHESTER
Office.

20

QUANTITY 15,000 yards.
DESCRIPTION QUALITY AS1000 36" Dyed Rayon Crepe,
grey cloth of foreign origin.
DELIVERY 5/6 weeks
PRICE 1/10d per yard CIF, plus 5% to be credited
to you on payment of the bills.

TERMS

PACKING

Yours faithfully,

per pro. ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) J.S. Dellal

30

ASSOCIATED COMPANY: AMERICAN GENERAL SUPPLY CORPN.
18, WEST 27th STREET, NEW YORK
U.S.A.

Delivery cannot be guaranteed on account of
circumstances brought about by War, and this order
can not be cancelled on account of this or any
similar reason, without our consent.

We are under no liability whatever for non-
shipment or non-delivery arising from circumstances 40
out of our control, war, fire, strikes, lock-outs,
inability to obtain raw material, or accidents at
the factory, or for non-arrival or late arrival,

from perils of the seas, accidents or fire to the ship or goods en route to destination or quarantine or stoppage of the Suez Canal.

Claims or complaint in respect of goods herein agreed to be sold must be received by us within 5 days of the arrival of the goods at the port of discharge, and no claims will be entertained after this date.

10 Any dispute arising out of this contract to be referred to the tribunal of Arbitration of the Manchester Chamber of Commerce only.

For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from the Manufacturers.

Exhibits

A.4

Letter from Allied Commercial Exporters Ltd. to Adel Bohsali,

1st April 1952 - continued.

EXHIBIT "5"

(BY DEFENCE)

CREDIT NOTE FOR £400

CREDIT NOTE.

5

Credit Note for £400,

25th June 1952.

20 Telegrams: "Odyssey" Manchester.
Code: Bentley's A.B.C. 6th Edition.

ALLIED COMMERCIAL EXPORTERS LTD.
MANUFACTURERS, EXPORTERS & IMPORTERS
ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1.

m/s. A. Bohsali, Lagos. 25th June, 1952.

INVOICE NO.

30 General allowance for all goods £400. - . -
shipped and unshipped, documents of which have already been presented, and the goods unshipped which an AS1000 crepes 85,000 yards to be shipped in several lots shortly as required.

INVOICE YARDAGE AND DELIVERED YARDAGE IDENTICAL

40 PRICE CORRECT
EXTENSION - CHECKED
STOCK BOOK
S.I. No. 70/111.

Exhibits

"B"

Letter from
March, Pearson
& Green to
Allied Commer-
cial Exporters
Ltd.,
23rd September
1952.

EXHIBIT "B"

(BY PLAINTIFF)

LETTER FROM MARCH, PEARSON & GREEN TO
ALLIED COMMERCIAL EXPORTERS LTD.

MARCH, PEARSON & GREEN, 1, CENTRAL STREET,
SOLICITORS. (Formerly Dickinson
Street West)
JAMES D. GREEN, M.A., LL.M. ALBERT SQUARE,
NIEL G.C. PEARSON, M.A. MANCHESTER, 2.
H.C.R. PEARSON, M.A.

TELEGRAMS: "FLEETNESS" 23rd September, 1952. 10
MANCHESTER

TELEPHONES: 0655) BLACKFRIARS.
0656)

NP/JM:

Dear Sirs,

We have been consulted by Messrs. Adel Bohsali of Lagos Nigeria with reference to two Contracts for the sale by you of 85,000 yards approximately of 36" dyed crepe Quality AS1000 grey cloth foreign origin to be dyed to our clients own shades. This was a sale by sample. It now appears from the shipping sample supplied by you that the bulk of the goods does not correspond with the original sample on which the sale was based. As our clients have not accepted delivery of any part of the contract they are entitled to reject your delivery or alternatively to claim damages from you for breach of Contract. As we observe a clause in your Sales Note providing for Arbitration by the Manchester Chamber of Commerce we write to suggest that unless you are prepared to take the goods back at once the matter should be forthwith referred to Arbitration. Please let us hear from you or your Solicitors by return of post. 20 30

Yours faithfully,

(Sgd) ?

Allied Commercial Exporters Ltd.
Orient House
Granby Row,
MANCHESTER, 1.

RECEIVED
24 SEP. 1952.

Ansd...

40

EXHIBIT "C"
(BY PLAINTIFF)

Exhibits
C

LETTER FROM MARCH, PEARSON & GREEN TO
ADEL BOHSALI WITH ENCLOSURE

Letter from
March, Pearson
& Green to Adel
Bohsali with
enclosure,
2nd October
1952.

MARCH, PEARSON & GREEN,
SOLICITORS.

1, CENTRAL STREET,
(Formerly Dickinson
Street West)
ALBERT SQUARE,
MANCHESTER, 2.

JAMES D. GREEN, M.A., LL.M.
NIEL G.C. PEARSON, M.A.
H.C.R. PEARSON, M.A.

2nd October, 1952.

10

TELEGRAMS: "FLEETNESS", MANCHESTER.

TELEPHONES: 0655 }
0656 } BLACKFRIARS.

NP/JM:

Dear Mr. Bohsali,

I enclose a copy of a letter from Allied Com-
mercial Exporters Ltd. from which you will see they
have now replied to my letter. I think we should
wait a little time before we go further because if
they have gone to the Testing House the result will
not be through immediately.

20

Yours sincerely,
(Sgd) ?

A. Bohsali Esq.,
C/o A. Kahale,
82, Princess Street,
MANCHESTER.

C O P Y

ALLIED COMMERCIAL EXPORTERS LTD.

30

ORIENT HOUSE
Granby Row,
Manchester, 1.
October 1st 1952.

Messrs. March, Pearson & Green,
1, Central Street,
Manchester, 2.

Dear Sirs,

Thank you for your letter of the 23rd Septem-
ber re Adel Bohsali.

40

With reference to QUALITY AS1000, we have
submitted some samples to testing authorities to

Exhibits

C

Letter from
March, Pearson
& Green to Adel
Bohsali with
enclosure,

2nd October
1952 -
continued.

ascertain if there is any difference between the original sample shown to Mr. Bohsali and the goods shipped. We will revert back to this question in a few days time.

Yours faithfully,

Allied Commercial Exporters Limited.

E

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

15th October
1952.

EXHIBIT "E"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

10

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS,
L.BROWN
J.S.DELLAL

SECRETARY:
R.M.HANMAN

ORIENT HOUSE,
GRANBY ROW;
MANCHESTER, 1.

GRAMS & CABLES:
"ODYSSEY" MANCHESTER
CODES

October, 15th
1952.

BENTLEYS A.B.C. 6 EDIT.
TELEPHONES

CENTRAL 2488
2489
2480

YOUR REF.

OUR REF:
JSD/DJ.

20

A. Bohsali; Esq.,
P.O.Box 91,
Lagos,
NIGERIA.

Dear Sir,

At a meeting this morning in our office between Mr. Bohsali and the writer it was agreed between us that we would allow you the sum of £500 in full settlement of all claims on all goods shipped and to be shipped, including AS100, AS1000 etc., etc. This settlement is absolutely final and it is agreed that no more claims will be considered or forthcoming.

30

As requested by Mr. Bohsali, we will arrange to credit your account with this £500 and release

one set of documents of AS1000 free to your Lagos office and debit your account with the approximate amount of this set of document.

Both parties will sign one copy of this letter to signify full agreement and you will also agree to clear all bills in a period of two months.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) J.S. Dellal
DIRECTOR.

Exhibits

E

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
15th October
1952 -
continued.

10

EXHIBIT "E.1"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

E.1

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
15th October
1952.

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:
L. BROWN
J.S. DELLAL

SECRETARY:
R.M.HANMAN.

ORIENT HOUSE,
Granby Row,
Manchester, 1.

20

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODES

October 15th, 1952.

BENTLEY'S A.B.C. 6TH EDIT.
TELEPHONES

2488
CENTRAL 2489
2480

YOUR REF.

OUR REF.
JSD/DJ.

30

A. Bohsali, Esq.,
P.O. Box 91,
Lagos,
NIGERIA.

Dear Sir,

At a meeting this morning in our office between Mr. Bohsali and the writer it was agreed between us that we would allow you the sum of £500 in full settlement of all claims on all goods shipped and to be shipped, including AS100, AS1000 etc. etc. This settlement is absolutely final and it is agreed that no more claims will be considered or forthcoming.

40

As requested by Mr. Bohsali, we will arrange

Exhibits

E.1

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

15th October
1952 -
continued.

to credit your account with this £500 and release
one set of documents of AS1000 free to your Lagos
office and debit your account with the approximate
amount of this set of document.

Both parties will sign one copy of this let-
ter to signify full agreement and you will also
agree to clear all bills in a period of two months.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.,
(Sgd)

DIRECTOR.

10

We confirm that we agree to the above.

(Sgd) A. BOHSALI
" J.S. DELLAL

J. Dellal (Allied Commercial Exporters Ltd.)

G

Report of Test,
15th October
1952.

EXHIBIT "G"

(BY PLAINTIFF)

REPORT OF TEST

MANCHESTER CHAMBER OF COMMERCE

(L.S.)	TESTING HOUSE	ENTRY NO.	
X Stamp	BM AND LABORATORY	317396	20
		Prog.No.	
		347490.	

TEMPORARY ADDRESS:

10, Barlow Moor Road,
DIDSBURY.

MANCHESTER, 20. 15th Oct. 1952.

Submitted by Messrs. Adel Bohsali,
Description of Samples Seven Cuttings of Spun
Rayon Fabric.

CERTIFICATE OF EXAMINATION

30

SEE ATTACHED
PARTICULARS OF EXAMINATION
AND STATEMENT OF OPINION.

SAMPLE TEST ONLY

SEE BACK. +

It is hereby certified that the above is a correct
return of the tests made of the samples referred
to, in testimony whereof the Seal of the Manchester
Chamber of Commerce has been affixed this 15th
day of October, 1952. (X Seal)

(Sgd) ?

Director

40

REGULATIONS.

Exhibits

G

Report of Test,
15th October
1952 -
continued.

All samples and goods are received and dealt with under the following terms and conditions, and the services of the Testing House are rendered upon the basis that such terms and conditions constitute an express agreement between the Chamber and any person, firm, company, department, or Association requesting the service of the Testing House.

- 10 1. The Testing House is open for the reception of samples daily, from Mondays to Fridays, from 9-30 a.m. to 5-0 p.m., and on Saturdays from 9-30 a.m. to 11-30 a.m., except on holidays.
- 20 2. Payment of all charges must be made by the sender before the certificate of examination is issued, but deposit accounts may be opened by payment of a sum of not less than five pounds, in which case the charges are debited to the account, and a statement rendered monthly.
3. The Chamber, its Officers and Servants, will not be responsible for loss or damage, however caused, to goods and/or samples whilst in the possession or under the control of the Testing House.
- 30 All tests and examinations are undertaken and carried out upon the condition that no responsibility of any kind whatsoever shall attach to the Chamber or to any of its Experts, Officers or Servants, for any errors, misdescription, or miscalculations; nor for, or in respect of, or arising out of the examinations, tests, certificates, reports, and/or findings given by, or issued from the Testing House.
4. Interested parties, at the Director's discretion, will receive permission to be present during the testing of samples.
- 40 5. All samples or goods must be delivered to and removed from the Testing House by the party ordering the test, but they may be forwarded by post at the sender's expense on his request.

Exhibits

G

Report of Test,
15th October
1952 -
continued.

6. The Director may refuse any samples or goods for testing which in his opinion are unsuitable by reason of their size, weight, packing, or for any other reason that in his opinion might render the test unreliable.
7. Samples sent by post must be accompanied by payment of charges, together with cost of postage for certificate.
8. Samples found to be too small to give a reliable result may be accepted for testing, but the certificate of examination will be endorsed "Sample below regulation size". 10
9. It is recommended that numbers or letters, rather than names of firms, be attached to samples for purposes of distinction from each other.

STATEMENT OF OPINION - In order to provide a ready means of settling differences between spinners, manufacturers, finishers, producers or merchants, the Director of the Testing House is authorised to state his opinion as regards questions submitted to him. 20

The charges for the above service cannot be definitely fixed beforehand, but in no ordinary case will they be less than one guinea. Any consequent tests or analyses will be charged extra.

SIZE OF SAMPLES of Cotton, Yarn, and Cloth - Unless samples of cloth sent for testing counts of weft, or warp and weft, contain two square yards, the certificate of testing will be endorsed "Sample below regulation of RAW COTTON, YARN, etc., to be tested for MOISTURE should be sent in the tin cases supplied by the Testing House for the purpose; they should weigh at least 1 lb. each. 30
IF BUNDLED YARNS are to be tested a whole bundle should be sent.

+ WHEN LARGE QUANTITIES of material require or are in dispute, it is strongly recommended that samples for testing should be selected from bulk by a representative of the Testing House, and ONLY when this is done can a certificate refer to the entire lot or consignment in question. 40

SPECIAL QUOTATIONS are given when large numbers of samples requiring the same test are submitted at the same time.

Exhibits

G

Report of Test,
15th October
1952 -
continued.

DUPLICATES of certificates may be obtained at a charge of from two shillings upwards on the written order of the firm to whom the certificate was issued.

10 CERTIFICATES issued by the Testing House refer only to the samples submitted, not to the bulk from which they were drawn, unless otherwise stated.

USE OF CERTIFICATES - Certificates are supplied on the understanding that they are not to be used for purposes of advertising.

MANCHESTER CHAMBER OF COMMERCE
TESTING HOUSE and LABORATORY.

Entry No. 317396
Prog. No. 347490

Reference BM (Stamp) 15th October 1952.

20

PARTICULARS OF EXAMINATION
A N D
STATEMENT OF OPINION

SEVEN CUTTINGS OF SPUN RAYON FABRIC

<u>Marked</u>	.....DELIVERY SAMPLES.....			
	<u>BASIS</u>	<u>PINK</u>	<u>WHITE</u>	<u>CREAM</u>
Approximate dimensions, inches	36 x 6 $\frac{1}{4}$	5 $\frac{1}{2}$ x 4 $\frac{1}{4}$	5 $\frac{1}{2}$ x 4 $\frac{1}{4}$	5 $\frac{1}{2}$ x 4 $\frac{1}{2}$
Weight per square yard, ounces	5.50	4.79	4.84	5.15
30 Foreign matter per cent	0.8	1.6	0.9	1.4
Weight per square yard, pure, ounces	5.46	4.71	4.80	5.08
Threads per inch, warp	63.4	60.9	59.5	63.9
weft	60.0	56.8	55.3	57.0

<u>Exhibits</u>	<u>Marked</u>	<u>BASIS</u>	<u>PINK</u>	<u>WHITE</u>	<u>CREAM</u>	
G Report of Test, 15th October 1952 - continued.	Counts of dyed yarn after removal of foreign matter. Cotton System.	warp	20.4	21.4	20.2	20.8
		weft	15.7	15.4	15.9	14.9
	Crimp, per cent,	warp	8	2	3	2
		weft	18	12	16	16
	Composition,	warp	All Viscose Rayon Staple 10			
		weft	Fibre			
	Effective length of staple, inches	warp	1.63	1.66	1.66	1.66
		weft	1.63	1.63	1.66	1.66
	Filament denier,	warp	1.6	1.5	1.6	1.4
		weft	1.6	1.4	1.5	1.5

Before testing, the samples were exposed for a period of 6 hours in an atmosphere of 65 to 70 per cent Relative Humidity.

MANCHESTER CHAMBER OF COMMERCE

317396 TESTING HOUSE & LABORATORY Sheet No. 20
347490DELIVERY SAMPLES.....².....

<u>Marked</u>	<u>Purple</u>	<u>Pink</u>	<u>Slate</u>	<u>AVERAGE</u>	
Approximate dimensions, inches	5½ x 4	3½ x 3½	5½ x 4¼	-	
Weight per square yard, ounces	5.16	4.48	4.29	4.79	
Foreign matter, per cent	1.5	1	1.3	1.3	
Weight per square yard, pure, ounces	5.08	4.43	4.23	4.72	
Threads per inch,	warp weft	61.9	61.8	62.4	61.7
		57.7	57.7	57.2	57.0

<u>Marked</u>		<u>Purple</u>	<u>Pink</u>	<u>Slate</u>	<u>AVERAGE</u>	<u>Exhibits</u>
Counts of dyed yarn after removal of foreign matter. Cotton System.	warp	22.5	23.3	21.8	21.6	G Report of Test, 15th October 1952 - continued.
	weft	14.6	18.2	19.7	16.5	
Crimp, per cent,	warp	4	3 $\frac{1}{2}$	3	3	
	weft	14 $\frac{1}{2}$	17	13 $\frac{1}{2}$	15	
10 Composition,	warp weft	All Viscose Rayon Staple Fibre				
Effective length of staple inches	warp	1.69	1.66	1.66	1.67	
	weft	1.66	1.66	1.66	1.66	
Filament denier,	warp	1.5	1.5	1.5	1.5	
	weft	1.5	1.4	1.6	1.5	

Before testing, the samples were exposed for a period of 6 hours in an atmosphere of 65 to 70 per cent Relative Humidity.

STATEMENT OF OPINION

20 The foregoing test results show the delivery samples to be, on the average, 13 $\frac{1}{2}$ per cent lighter in pure weight than the basis pattern.

This difference appears to be due to the delivery samples containing fewer warp and weft threads per inch, with lower yarn crimp, and slightly finer yarns than the basis.

We should regard the delivery samples, on the average, as being inferior to the basis pattern in respect of quality.

30

SAMPLE TEST.

This Certificate refers only to the samples submitted and not to the bulk from which they were drawn.

(Sgd) ?

DIRECTOR.

Marks: A. B. C. 9/12 Lagos; Nigeria.
P. S. C.

Exhibits

2

Invoice: 8th August, 1952.

Certificate of
Inspection,

Inspection: We certify herewith that out of bales
No.10 and 12 we have measured 19 bun-
dles material and found the lengths
to be:

30th October
1952 -
continued.

	<u>Yardage Marked</u>	<u>Pieces Per Bundle</u>	<u>Actual Yardage</u>
10	38	1	37.17 $\frac{1}{2}$ "
	34 $\frac{1}{2}$	3	32.35"
	42	1	42 2 stains
	31 $\frac{1}{2}$	2	30 $\frac{1}{2}$
	39	2	36
	38 $\frac{1}{2}$	1	38 $\frac{1}{2}$
	40	1	39.17"
	46	2	45.21"
	37	1	37
	38	1	38
20	44	2	43.13"
	39	1	38 $\frac{1}{2}$
	38	1 2-plcs.dmgd	37 2/3
	32	1	32
	42	1	42
	40 $\frac{1}{2}$	1	40 $\frac{1}{2}$
	38	1	37.24"
	36	1	35.27
	39	1	38.21" dmgd at end

30 Responsibility: This certificate has been carried
out to the best of our knowledge
and ability but without responsi-
bility either for us or for the
General Superintendence Co. Ltd.,
whom we represent.

Date of Inspection: 30th October, 1952.

Yours faithfully,
F. STEINER & CO. LTD.
AGENTS FOR

40 GENERAL SUPERINTENDENCE CO.LTD.

(Sgd) F. Steiner.

Lagos, Nigeria,
British West Africa.

30th October, 1952.

Exhibits

H

Telegram from
Bohsali to
Odyssey,
Manchester,
31st October
1952.

EXHIBIT "H"

TELEGRAM FROM BOHSALI TO
ODYSSEY, MANCHESTER

POST OFFICE
CABLE & WIRELESS

RECEIVED PARTICULARS VIA IMPERIAL

The first line of this Telegram contains
the following particulars in the Order
named:

Prefix Letters and Number of Message,
Office of Origin, Number of Words,
Date, Time handed in and Official
Instructions, if any

10

By

TAML41 TLWA988 LAGOS 96/94 31 1112 31.10.52
= LT = ODYSSEY MANCHESTER =

CLEARED ONE BILL AS1000 BALES 9/12 PER HENDU HALL
UPON SELLING FOUND TWO OR THREE PIECES IN MOST
BUNDLES INSTEAD OF FULL PERFECT PIECE ALSO UPON
MEASURING YARDAGES IS SHORT OF MOST BUNDLES STOP
OBTAINING CERTIFICATE STOP CANNOT SELL THESE GOODS
IF WE DO WE LOSE OUR REPUTATION STOP FOR SUCH
CIRCUMSTANCES CAN NOT HONOURE ANY OF AS1000 BILLS
INFORMING BANK STOP AS SOME GOODS ALREADY LANDED
NOTE THAT OUR SELVES NO MORE RESPONSIBLE FOR ANY
DAMAGE LOSS OR EXPENSES OCCURE ON THESE GOODS
SUGGEST ARRANGE CLEAR GOODS YOUR SELVES = BOHSALI.

20

Y.2

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

1st November
1952.

EXHIBIT "Y.2"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

30

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:
L.BROWN
J.S.DELLAL

SECRETARY:
R.M.HANMAN

ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1.
1st November 1952.

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODE:
BENTLEY'S A.B.C. EDIT.

TELEPHONES

	2488		
CENTRAL	2489	YOUR REF.	OUR REF.
	2480		LB/MM

Messrs. A. Bohsali
P.O. Box 91,
Lagos,
Nigeria.

Dear Sirs,

10 We are in receipt of your cable reading as follows :-

'CLEARED ONE BILL AS1000 BALES 9/12 PER HENDU HALL UPON SELLING FOUND TWO OR THREE PIECES IN MOST BUNDLES INSTEAD OF FULL PERFECT PIECE ALSO UPON MEASURING YARDAGES IS SHORT OF MOST BUNDLES STOP OBTAINING CERTIFICATE STOP CANNOT SELL'.

20 Mr. Dellal is at the moment on the Continent but in the light of the settlement we made in the letters we exchanged on 15th October we are indeed surprised to see your cable. The agreement made, you will remember, was to credit you with £500 in full settlement of all claims on all goods shipped and to be shipped. This letter also makes it abundantly clear that the settlement is "absolutely final" and that "no more claims will be considered or forthcoming".

30 Although in the light of the above agreement we repeat that we are surprised in receiving your cable we hasten to assure you that any question of shortage of yardage is a claim which we will always entertain. In the particular bundles to which you refer it may be that there is a shortage of yardage and this, without prejudice, we are prepared to consider despite the agreement made. We feel it most important to remind you that these goods were made up by packers and not ourselves but we are quite prepared to concede that the makers-up may have cut out defective pieces and therefore resulting in shortage in the yardage.

40

For such shortage we will be prepared to reconsider the matter, but commenting on your cable we certainly do not appreciate your extravagant language concerning the loss of your reputation. Neither do we think your lengthy statement about accepting no more responsibility is in any way called for.

Exhibits

Y.2

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

1st November,
1952 -
continued.

Exhibits

Y.2

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

1st November
1952 -
continued.

We have always tried to deal with you as fairly and helpfully as possible. Any differences which may have arisen between us have been caused through circumstances beyond our control. Despite this fact we have at all times tried to meet you. When however you cable us in these terms you leave us no alternative than to remind you firstly of the agreement you have made with us which precludes any further claim and secondly that we must formally advise you that we intend to take the necessary steps to preserve our interests in this matter and if this should in any way involve our taking over or selling any of the goods we will claim from you all loss or damage which may be sustained.

10

Reluctantly we are compelled to say that as from today we must hold you responsible for any losses, damages and expenses which are accruing as a result of your failure to honour your undertaking with us and in particular meeting the bills.

20

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.

(Sgd) A.R. DELLAL.

P.S. Since dictating this letter we have spoken to our packers. They deny that there can be any shortage; any cut-outs (which they say were negligible) have been taken into account and the correct yardage has been sent without shortages. Any removal of cloth and in fact the whole making up has been strictly in accordance with established Commercial Practice here by a reputable packers, as they emphasize that more than 90% of the goods at least are in one full length piece.

30

EXHIBIT "J"
(BY PLAINTIFF)

LETTER FROM ADEL BOHSALI TO
ALLIED COMMERCIAL EXPORTERS LTD.

ADEL BOHSALI

Banker
Bank of British West
Africa Ltd.,
Marina Lagos.

CABLES "ADESALI"
Branch:-
P.O. Box 145
MARINA CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
Lagos.
3rd November, 1952.

10

The Allied Commercial Exporters, Ltd.,
Manchester.

Dear Sirs,

This is to confirm my telegram dated 31st
Oct. 1952 Odyssey MANCHESTER

20

CLEARED ONE BILL AS1000 BALES 9/12 PER HENDUU HALL
UPON SELLING FOUND TWO OR THREE PIECES IN MOST
BUNDLE INSTEAD OF FULL PERFECT PIECE ALSO UPON
MEASURING YARDAGES IS SHORT OF MOST BUNDLES STOP
OBTAINING CERTIFICATE STOP CANNOT SELL THESE GOODS
IF WE DO WE WILL LOSE OUR REPUTATION STOP FOR SUCH
CIRCUMSTANCES CANNOT HONOUR ANY OF AS1000 BILLS
INFORMING BANK STOP AS SOME GOODS ALREADY LANDED
NOTE THAT OUR SELVES NO MORE RESPONSIBLE FOR ANY
DAMAGE LOSS OR EXPENCES OCCURE ON THESE GOODS
SUGGEST ARRANGE CLEAR GOODS YOUR SELVES. BOHSALI.

30

When I was in Manchester Mr. Jack Dellal asked
me to settle the dispute of AS1000 at once as he
was going abroad, and he told me that the result
of examining the goods was very little, and it is
only the finish of the goods was a little differ-
ent from the original one and he suggested giving
me some discount on it and I accepted according
to his words for I trust Mr. Dellal and believe
his word; but later on I found that the quality
of AS1000 he shipped to me was 13½ per cent infer-
ior than the basis sample of which we ordered the
goods, not only the finish as he said, and that is
the result I received afterward according to the
certificate I received from the Chamber of Commerce

40

Exhibits

J

Letter from
Adel Bohsali to
Allied Commer-
cial Exporters
Ltd.,

3rd November
1952.

Exhibits

J

Letter from
Adel Bohsali to
Allied Commer-
cial Exporters
Ltd.,

3rd November
1952 -
continued.

(testing house) afterward, now it seemed to me that Mr. Dellal did not tell me the Actual result of examining the goods, and that was unfair from Mr. Dellal, Your firm is one of big one in Manchester, and you should tell the truth, not to misdirect me as I am one of your good customers.

Also, we arrange that I will proceed to Lagos to dispose of the goods and you offered every help and promised to instruct your banker in Lagos to clear all the goods from the custom to the bank store, and I will clear the goods from the bank one after the other against promissory note 15 days for each bill about £1000. But when I arrived Lagos I found that you failed to do so, and only small part of the goods was cleared from the custom by the bank.

10

Upon receiving the first bill bales number 9/12 of AS1000, I sold some of it at 2/- (two shillings) per yard, with loss of 2½d each yard, but customer returned the goods, for upon examining the goods they found that good part of it short in yardage, many odd once and some damages, to please our customer we had to give them discount to enable them to sell the goods without loss, and that apart of all the trouble we had, even some customers were ready to report this matter to the police, and that gave us very bad reputation, and customers have no more confidence in our goods, because most of the goods we bought from you before and we sold, customer reported and complained of bad packing and some shortage in yardages.

20

30

You are aware that I am buying from you perfect goods of which we ordering, not second class goods and fents for the fact that the item of AS1000 is imperfect, and as not the one we ordered, also short in yardages, odd ones in many bundles, and some damage, and cannot sell to our customer as we do not want to have bad reputation, therefor I reject these goods, and take notice that I am not responsible for any damage, expenses or any thing occurred on these goods, and all risk will be on you, and as some of it already landed and are in the Queen's warehouse due rent, I advise you to arrange to clear them from the custom at once or some of them might be sold in auction.

40

As I was dealing with your firm over 18 months and bought big quantities of goods, but we suffer big losses on it and we had so many complaints from customer, and nearly lost our good name, we decide to stop dealing with your firm.

Also as I am returning to U.K. next week or so, I take you responsible for all damages, and expenses, of which I will claim when I arrive in Manchester.

10 Also to inform you that I have paid for all the bill of dyed spun AS100 of 1/6 $\frac{1}{2}$ CIF also all the Waffle of 1/9 CIF, and the only one remain is one bill of about £1800 in British & French bank, of which I would like to clear before I return to U.K. therefore as my outstanding net is about £1800, please inform British and French Bank, Lagos to hand to me this bill free, and please debit my account with it, and the remain-
20 ing balance of my account debit me with the one free bill of AS1000 of which I received in Lagos, and what ever balance remain for you let me know I will pay it to the bank in your name, and if you fail to do so within sevendays I will return to U.K. and you will be responsible of every damage, loss and expenses.

A copy of this letter will be forwarded to the board of Chamber of Commerce, Manchester, when I arrive there.

30 The inspection certificate of AS1000 bale 9/12 is in our hand, No. 1365 Dated 30th October, 1952.

Yours faithfully

A. Bohsali.

Exhibits

J

Letter from
Adel Bohsali to
Allied Commer-
cial Exporters
Ltd.,

3rd November
1952 -
continued.

Exhibits

S

Letter to Allied
Commercial Ex-
porters Ltd.,

7th November
1952.

EXHIBIT "S"
(BY PLAINTIFF)

LETTER TO ALLIED COMMERCIAL
EXPORTERS LTD.

ADEL BOHSALI

Banker:
Bank of British
West Africa
Marina, Lagos.

Cables "ADESALI"
Branch:
P.O. Box 145
MARINA CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
Lagos.
7/11/52.

10

The Allied Commercial Exporters, Ltd.,
Manchester.

Dear Sirs,

Thank you for your letter reference LB/MM
of the 1st November, 1952.

I was aware of the letter of the 15th October, 1952 wherein you allowed me £500 in full settlement of all claims on all goods shipped and to be shipped, including AS100 & AS1000. etc. etc., but at that time we were discussing about the goods you shipped to me before and the finish crepe spun (of which Mr. Dellal assured me that he examined the goods and it was only the finish of same was a bit different of what we ordered) not the quality of the goods. 20

As contained in paragraph 2 of my letter of the 3rd Nov. I have now found out that the goods of AS1000 you shipped to me is 13% inferiore to the quality we ordered, and you know the quality of the goods is more important than the finish of the goods, also there are many complain on this goods of being imperfect, as you find out in the certificate which I inclose herewith. 30

I have to point to you that I am buying perfect goods from you according to our contract, and not second goods, and I am not bound to accept such goods like that, and can not afford loss on it. 40

I like to do my best to help in any way but now can not with the condition of that goods, also

you never before shipped the goods to us as per our contract and we had many despute on that, and the prevoice cases will prove that, apart of the big loss I suffer on that goods, and the waste of time, now you supply me with inferiore quality than the one I ordered from you as per contract, I am not your agent or your slave to get reed of your bad stock on my account.

10 Also when I was in Manchester, you promised me every help, and that you instructed your bank to clear the goods from the custom to the bank store, and I can clear the goods from the bank by instalment, but when I arrived Lagos I found that you did not carry on with your promise, and now in your letter dated 1st November, you asking me to clear the goods from the custom myself or I will be responsible for it, well how can I clear the goods if you did not keep your promise, also how
20 could I get all that money to pay for the goods if I do not sell any of it yet.

You wanted me to honoure your bills, but did you honoure contract with me? how can I accept the goods if you did not supply me with the right one I ordered from you.

In your letter 1st Nov. you said that you will take step to sell the goods and I will be responsible for the loss, you may do so if you shipped to me the right and perfect goods I ordered and if I refuse to pay for it, but as you goods you shipped
30 to me are inferiore from the one we bought from you, and the matter in despute with you, you can not do that, and if you do it will be on your own risk, and I can claim from you my right.

On the other way, I am still ready to help and honoure your bills if you are ready to consider the condition of the goods, also to carry out with your promise of clearing the goods from the custom (which is very important) whilst the negotiation for a settlement is going on between us, and I want your
40 assurance of doing so, and if you fail I am no more responsible, and all risk will be on you.

I hope we shall be able to settle this matter without refering it to the Chamber of Commerce, Manchester.

Yours faithfully

Exhibits

S

Letter to Allied
Commercial Ex-
porters Ltd.,
7th November
1952 -
continued.

Exhibits

K

Credit Note for
£400,

12th December
1952.

EXHIBIT "K"

(BY PLAINTIFF)

CREDIT NOTE FOR £400

CREDIT NOTE

Telephone:
Cen. 2488

Telegrams: "Odyssey",
Manchester;
Code: Bentley's A.B.C.
6th Edit.

ALLIED COMMERCIAL EXPORTERS LTD.

MANUFACTURERS, EXPORTERS & IMPORTERS.
ORIENT HOUSE, GRANBY ROW,
MANCHESTER, 1.

10

M/s. Bohsali

Manchester

12th December 1952.

INVOICE NO.

All claims of As 1000
Subject your payment
immediately of approx
£7500 of the value of
which also £1830 approx
and 2 sets of poplin
totalling £900 is paid
within 8 weeks
otherwise all concessions
will be cancelled.

£400. - . -

20

(Sgd) ?

EXHIBIT "Z"
(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:	SECRETARY:	ORIENT HOUSE,
L.BROWN	R.M.HANMAN.	GRANBY ROW;
J.S.DELLAL		MANCHESTER,1.

December 16th 1952.

10

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODE

BENTLEY'S A.B.C. 6TH EDIT.
TELEPHONES.

	2488		
CENTRAL	2489	YOUR REF.	OUR REF.
	2480		LB/DJ.

20

A. Bohsali, Esq.,
P.O. Box 91,
Lagos,
Nigeria.

Dear Sir,

We now confirm our agreement of the 12th instant concerning settlement of your account.

It was agreed between us that you will settle all your outstanding commitments withus within a period of eight weeks from the 12th December 1952.

30

In consideration of the foregoing we have made you further special allowances of £400 (for which you have credit note) and also waived one Debit Note for interest and more than 50% of another Debit Note for interest; Credit Notes for these two interest concessions viz £76.3.11d and £48.5.4d are enclosed herewith. The effect of the allowances made which we repeat are dependent upon your completing your outstanding commitments to us, within the next eight weeks is that you will have with us a credit balance of £2724.18.1d.

40

To help you satisfactorily to complete your account we confirm our agreement to hand you two sets of bills at a time, free of charge granting you credit for ten days against promissory note. In effect this will mean that we are releasing documents to you at intervals of ten days. As

Exhibits

Z

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

16th December
1952.

Exhibits

Z

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

16th December
1952 -
continued.

requested we will begin with the releasing of documents with the Bank of British West Africa who have 6 sets of AS1000 as now set forth:

ACE/67/52	£495.11.10.	ACE/98/52	£480.14. 5.
ACE/68/52	£487.11. 1.	ACE/99/52	£504.14. 9.
ACE/69/52	£484.15. 3.	per s.s. Texolstroom/	
ACE/70/52	£492.14. 1.	Congstroom boats not arrived.	

Goods already in bank stores.

10

We will then continued with the 9 sets of AS1000 all documents for which are with Barclays Bank as follows :

ACE 83/52	£486.14. 9)	per s.s. EBOE	
ACE 84/52	£479. 2. 8)	goods not arrived yet.	
ACE/47/52	£500. 0. 5.	ACE/79/52	£487.10. 1.
ACE/48/52	£481. 0. 2.	ACE/80/52	£472. 6. 0.
ACE/49/52	£486. 1. 3.	ACE/82/52	£473. 9. 1.
		ACE/81/52	£491.14.10.

Goods already arrived at Bank stores.

20

Whilst we suggest we release the goods at approximately ten days intervals we need hardly say we will release these earlier should you be able to pay earlier than the ten days credit already allowed. We will endeavour to arrange that your maximum promissory note or notes at any one time shall be approximately £1000.

It is clearly understood between us that should you fail in your promise to pay at ten day intervals then your credit balance with us will be reduced by £250 despite the fact that you may still complete your whole commitments within the eight weeks.

30

In regard to the two sets bills number 89 and 90 for £656.18.2d and £267.15.0. respectively per s.s. TAMELE we understand that these goods have arrived and are about to be entered in the Barclays Bank stores. We confirm your promise to settle these two items immediately.

We shall be glad if you would formally confirm receipt of this letter and that everything is agreed to by you and is in terms of the arrangements we made. We might add for your general

40

information that we have already given instructions through our bank to Barclays and the Bank of British West Africa to commence release of the documents for AS1000 in terms of our arrangement. For your ready reference we are attaching statement of your account hereto.

10 We would like to express our personal pleasure at the fact that we appear to have now placed your account on a satisfactory basis. It is a matter of deep regret to this Company that we should have had difficulties and we trust that with mutual co-operation and understanding on both sides we will not only satisfactorily dispense with the outstanding accounts but will be able to conclude mutually satisfactory and pleasant business in the future.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LIMITED
(Sgd) L. Brown
DIRECTOR.

20 Statement enclosed.

EXHIBIT "L"
(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:
L. BROWN
J. S. DELLAL

SECRETARY:
R. M. HANMAN

ORIENT HOUSE,
GRABY ROW,
MANCHESTER, 1.
31st December, 1952.

30 GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODE

BENTLEY'S A.B.C. 6TH EDIT.
TELEPHONE:

CENTRAL 2488 YOUR REF. OUR REF.
2489
2480

Adel Bohsali Esq.,
28, Sedgeley Road,
Manchester, 8.

40 Dear Mr. Bohsali,

Your letter addressed to the company of the 29th inst, has been read by me. Because I am

Exhibits

Z

Letter from
Allied Commercial Exporters
Ltd. to Adel
Bohsali,

16th December
1952 -
continued.

L

Letter from
Allied Commercial Exporters
Ltd. to Adel
Bohsali,

31st December
1952.

Exhibits

L

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
31st December
1952 -
continued.

most desirous of continuing the friendly basis on which we have now established your account I am writing you myself on the points you now raise.

So far as the release of documents is concerned we have advised the bank without any delays on our part to release the documents. If there has been any postal or other delays these have been quite beyond our control. As a happy solution to this matter I suggest you let me know exactly when your partner gets the release of the first two sets of documents. When you give me this information together your assurance that the bills will be cleared within ten days thereafter then we can discuss how much longer we need extend the 8 weeks at present being allowed. Above all I want to know how this delay in release has arisen so that we can avoid it in the future.

10

On the subject of shortages I will write Mr. Naim but I trust you will not delay any inspections to await his arrival in case he may not be available just when you need him. In short we will accept Surveyor's report should Mr. Naim not be there. Perhaps your partner will try to keep in touch with Mr. Naim on this matter?

20

May I take this opportunity of sending you my warmest good wishes for every happiness and prosperity during the coming year. I hope we may do much mutually profitable and satisfactory business together.

30

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) L. Brown
DIRECTOR.

LONDON OFFICE: 38, UPPER GROSVENOR STREET, W.1.
TEL. MAYFAIR 1972 & 5408.

EXHIBIT "N"
(BY PLAINTIFF)

LETTER FROM A. BOHSALI TO MR. BROWN

ADEL BOHSALI

28, Sedgley Rd.,
H. Crumpsall,
M/c 8.

CABLES "ADESALI"
Branch:
P.O. Box 145
MARINE CALABAR
HEAD OFFICE:
19, Obun Eko Street,
P.O. Box 91,
LAGOS.

3rd Jan. 1953.

Exhibits

N

Letter from A.
Bohsali to Mr.
Brown,

3rd January
1953.

10

Dear Mr. Brown,

I take this opportunity to wish you happy and prosperous new year.

I received your kind letter dated 31/12/52 of which I thank you very much.

20

With regard of the shortage of which you refer in your letter that you will inform Mr. Naim in Lagos to examine when we clear the goods of AS1000 and if Mr. Naim will not be there you will only accept a Surveyor's report.

30

Dear Mr. Brown, I have to bring to your attention that as you well know the quantity of AS1000 is too large and they are over 64 bales, and it will be impossible for us to clear all in one time and open them all to be examined by Surveyor, as we are clearing 2 bills after the other, we cannot ask a Surveyor to come every time for if we do it will be waste of time and they will be in bad condition if we examine them all at once, also the Surveyor charge will be too high of which we cannot afford, the best thing to be done is to inform Mr. Naim to be in present at the times we clear the goods, and if he will not be in town we can call some of the well known merchant in Lagos to be in present when we open the goods and if there will be any shortage they will give us certificate for it, and I hope that will be to your satisfaction.

40

I want some dyed spun 36" also dyed 1023. and 54" stipped and dyed spun suiting, if you have any in stock please let me know.

Thanking you for your good co-operation.

Yours faithfully
(Sgd) A. Bohsali.

Exhibits

M

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

8th January
1953.

EXHIBIT "M"
(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:
L.BROWN
J.S.DELLAL

SECRETARY:
R.N.HANMAN

ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1.

8th January, 1953.

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODE

BENTLEY'S A.B.C. 6th Edit.

TELEPHONES:

2488
CENTRAL 2489
2480

YOUR REF.

OUR REF.
ARD/MM

M/s. Adel Bohsali
28 Sedgley Rd.,
H. Crumpsall,
Manchester, 8.

Dear Sirs,

We thank you for your letter dated 3rd January and we have instructed Mr. Naim to do his best to call at your place and to inspect the length of the yards of AS1000 together with a Surveyor if possible. We do not insist that every bundle should be inspected but we would like the bulk of the goods to be inspected by the Surveyor and J. Naim. On the light of the last report you have submitted there was a shortage of about 1% on part of the last lot you have cleared which seems to us very little.

As regards your enquiry about 36" dyed 1025 and 54" spun suitting kindly call at our above address as we have suitable offers available from stock to be dyed to your own shades. We can also offer you one or two other lots if you think they are of interest.

Meanwhile, assuring you of our best attention.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) A.R. Dellal

LONDON OFFICE: 38 UPPER GROSVENOR STREET, W.1.
TEL. MAYFAIR 1972 & 5408.

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EXHIBIT "8"
(BY DEFENCE)

LETTER FROM A. BOHSALI TO ALLIED
COMMERCIAL EXPORTERS LTD.

ADEL BOHSALI

Cables: "ADESALI"
Branch:
P.O. Box 145
MARINA CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
LAGOS.

12th Feb. 1953.

The Allied Commercial Exporters, Ltd.,
Manchester.

Dear Sir,

With reference to your letter dated 7th inst.
this is to inform you that the outstanding one
bill of AS1000 value £492/14/1 was paid yesterday
also the remaining bill of popline £267 was paid
since last week as I promised you before.

The remaining 2 bill of AS1000 which are in
B.B.W.A. will be clear later, because the S.S.Eboa
arrived Lagos last week and I prefer to clear same
from the custom as soon as possible and when I
clear finish of them I will clear the 2 remaining
in B.B.W.A. then I will make an arrangement to
clear all the balance of AS1000 at once.

The goods of AS1000 which arrived by the S.S.
Eboa are through Barclays Bank, so will you please
ask the bank to give me same against 2 weeks and
thanks.

The market is very dull here and I am trying
very hard to finish of the goods of AS1000.

Yours faithfully,
(Sgd) A. Bohsali.

Exhibits

8

Letter from A.
Bohsali to
Allied Commer-
cial Exporters
Ltd.,

12th February
1953.

10

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Exhibits

P

Letter from A.
Bohsali to
Allied Commer-
cial Exporters
Ltd.,

20th February
1953.

EXHIBIT "P"

(BY PLAINTIFF)

LETTER FROM A. BOHSALI TO ALLIED
COMMERCIAL EXPORTERS LTD.

ADEL BOHSALI

Bank of British
West Africa
Marina Lagos.

Cables "ADESALI"
Branch:
P.O. Box 145
MARINA CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
LAGOS.

10

RECEIVED

23 FEB 1953

Ansd.....?

20th Feb. 1953.

The Allied Commercial Exporters Ltd.,
Manchester, 1.

Dear Sirs,

With reference to your letter of the 16th inst. this is to inform you that cancellation of the promisory note with B.B.W.A. & Barclays Bank had affected my sale very much, sorry to say that I did not understand your attitude at all, you promise some thing then you withdraw it again, and after that you ask me not to delay the payment, you know very well that all promisory note will be paid according to our arrangement, and if there was few days delay it was due to the dull market after Christmas, and that is not good reason for you to stop the promisory note, and it is not nice before the bank too.

20

30

I have had settle the outstanding amount over 10 days now, and if you did not make any cancellation I would have cleared another 2 bills and payment was made by now, but what you did it caused more delay for both of us, and I lost one of the good customer who was ready to buy about six bales if I cleared the goods in time.

If you do not trust me for £1000. I have to remind you that my balance with you is over £2224. and you are 100% cover; also to let you know that when we sign a cheque, promisory note or a

40

10 contract, we always honour our signature, but you did not even honour one of your contracts especially the one of AS1000, as you well know, when we came to an arrangement how to settle this case we both agreed, but few days delay made you withdraw your promise but have you consider our position of this goods and how much we are losing on them, is over 25% and all that because you did not honour your contract to deliver the right goods, if you are fair enough you will try for more help to assist us to sell this goods there fore I do not feel that I am no more responsible for any delay but you.

With reference to the shortage, Mr. Niam called to me and he examine part of the goods, please write to him for report as I want to settle that at once, awaiting your reply.

Yours faithfully,
(Sgd) A. Bohsali.

Exhibits

P

Letter from A. Bohsali to Allied Commercial Exporters Ltd.,
20th February 1953 -
continued.

20

EXHIBIT "O"
(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:
L. BROWN
J. S. DELLAL

SECRETARY:
R. M. HANMAN

ORIENT HOUSE,
GRANBY ROW;
MANCHESTER, 1.
23rd February 1953.

GRAMS & CABLES:
"ODYSSEY" MANCHESTER
CODES

BENTLEY'S A.B.C. 6th Edit.

TELEPHONES:

CENTRAL 2488
2489
2480

YOUR REF.

OUR REF.
ARD/MM

Messrs. Adel Bohsali
19, Obun Eko St.,
P.O. BOX 91,
Lagos.

40 Dear Sirs,

We thank you for your letter of 20th February as regards AS1000. We have already informed you before that we have reinstated a promissory note

O

Letter from Allied Commercial Exporters Ltd. to Adel Bohsali,
23rd February 1953.

Exhibits

0

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
23rd February
1953. -
continued.

for 15 days instead of 10 days as required for one promissory note at a time starting with the nine set of Barclays Bank and then 2 sets of B.B.W.A. We have already informed you of the reason why we cancelled our previous instructions due to the fact that you have dishonoured the bill. We have also told you that the Bank will take a very poor view of this matter as a promissory note should be paid on the date due with 3 days of grace. Failing this the Bank will reserve right to take all actions. Realising this and from the statement we have received from the Bank we have been alarmed and have had to take same. Please forgive us if we were wrong and we hope that nothing serious has gone wrong. We have noted from your previous letters that you have paid some of the bills against payment and we are awaiting to receive same.

10

We hope that as per your promise you will be able to clear all the lot very early in March so that we can arrive to an arrangement as regards the balance which will be standing to your credit and future business. We have already given you a further period with a view that you will be able to settle all the bills by then.

20

We would like to remind you that our agreement has come into force since 12th December. We hope that by March no bill will be left unpaid. This period which has been allowed to you is more than fair. We hope to continue our goods relations together.

30

We are now awaiting a report from Mr. J. Naim as regards the shortage of some of the AS1000.

We hope there is nothing serious on this shortage and we are taking the matter up again with our makers-up.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) A.R. Dellal.

EXHIBIT "Q"
(BY PLAINTIFF)

LETTER TO ALLIED COMMERCIAL
EXPORTERS LTD.

Exhibits

Q

Letter to
Allied Commer-
cial Exporters
Ltd.,

6th March 53.

6th March
1953.

The Allied Commercial Exporters, Ltd.,
Manchester, 1.

Dear Sir,

10 This is to inform you that to-day I received
from B.B.W.A. as you request one bill for £480/14/5
of the S.S. Congstroom, and from Barclays Bank one
bill for £486/14/9 but I want to draw your atten-
tion that the one bill I received from Barclays
bank of S.S. Eboe were 2 bales out of 4 badley wet
and damaged by sea water, and as I understand from
my clerk that there 2 bales again out of 4 remain-
ing in the custom are also damaged with water, you
remember that some time ago I asked you to instruct
Barclays to release this goods to me in time but
20 you failed, now as it is impossible for me to clear
this goods from the custom due of bad market and
short of cash; please see that you instruct the
bank or Mr. J. Nain to clear this one bill of 4
bales from the custom immediately and if you do so
you will be able to claim the damage from the
insurance before it is too late, and I will not
take the responsibility of any damage or I suggest
that you allow me this bill free and debit my
30 account with it, if you do so we will avoid lot of
losses.

Also I should like to inform you that as the
market now is very dull and there is no buyer, I
think if you let me use part of my deposit with
you it will help a lot and give me the chance to
clear all shortly.

With reference to the shortage of this goods
I hope that you have the report from Mr. J. Nain
and expect to hear from you very soon and by the
return mail.

Yours faithfully,

Exhibits

R

EXHIBIT "R"

(BY PLAINTIFF)

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

ALLIED COMMERCIAL EXPORTERS LTD.

10th March
1953.

DIRECTORS:
L. BROWN
J.S. DELLAL

SECRETARY:
R.M. HANMAN

ORIENT HOUSE,
GRANBY ROW,
MANCHESTER, 1.

GRAMS & CABLES
"ODYSSEY" MANCHESTER
CODES

March 10th, 1953.

10

BENTLEY'S A.B.C. 6TH EDIT.

TELEPHONES:

2488

CENTRAL

2489

YOUR REF.

2480

OUR REF.
ARD/DJ.

A. Bohsali Esq.,
P.O. Box 91,
Lagos,
NIGERIA.

20

Dear Sir,

We thank you for your letter of the 6th March and regret to inform you that as much as we want to finish the matter of the AS1000, we regret that we are not in a position at the moment to give the third bill against promissory note. However, please do your best to have these two bills with B.B.W.A. and Barclays Bank, cleared as soon as possible, and payment effected in due course.

As regards your statement that the goods are wet, damaged etc., please make sure that a Survey report is being made and that these goods are only being opened in front of the Lloyds inspector so that if the goods are mildewed etc. the claim will be made immediately, as soon as we receive the relative insurance certificate and Lloyds report and you provide all other documents when we will lodge them with the Insurance Company for immediate settlement. Similarly please try to get Survey report for the goods if they are short in length, which could only be an insignificant figure. You will remember that we have already paid you £500 from your deposit as a good gesture

30

40

but we would rather leave the matter of giving you further amount until a few more documents are paid.

Exhibits

R

Assuring you of our best attention at all times.

Letter from Allied Commercial Exporters Ltd. to Adel Bohsali,

10th March 1953 - continued.

Yours faithfully,
ALLIED COMMERCIAL EXPORTERS LIMITED
(Sgd) B.F. SNILLITO.

10

P.S. You have been referring in your above letter that you are putting the blame on us for the delay of clearing these documents. Please note, as you might have forgotten that we have only sold these goods for payment at sight and if we have given you any other favourable payments afterwards such as promissory notes, deferred payments for a year or more, we have only done so to show our good gesture and not so that you will write us afterwards blaming us because we have not released these goods to you at any time free of charge.

20

We thank you for your enlightening us that we can always at any time release goods to you free of charge but we are afraid that we are not at the moment considering same.

What about clearing the bill which is threatened by confiscation?

(Intld.) B.F.S.

EXHIBIT "3"

(BY PLAINTIFF)

LETTER TO ALLIED COMMERCIAL EXPORTERS LTD.

3

Letter to Allied Commercial Exporters Ltd.,

16th March.

30

16th March

Allied Commercial Exporters Ltd.
Manchester, 1.

Dear Sirs,

I thank you for your letter dated 10th inst. with reference to the 2 bills I received from B.B.W.A. & Barclays bank, against promissary note, I am regret to inform you that I am unable to meet

Exhibits

3

Letter to
Allied Commer-
cial Exporters
Ltd.,

16th March
- continued.

the payment of same as I did not sell the goods yet, and I have no cash with me, so as my remaining balance form me still with you, I suggest that you will please debit me with the sum of £967/9/2 being the value of the 2 bills I received from both bank, 1 bill £480/14/5 from E.B.W.A. & 1 Bill £486/14/9 from Barclays bank, as my balance is £2224/18/1, if you debit my a/c with the 2 bills it will reduce my account to £1256/8/11. please inform the bank.

10

With reference to the shortages, this is to inform you that I am not in a position to afford any more expences on this goods, as I already lost big sum on your goods and nearly all my capital, and believe me it is all on your bad consiment and delivery; and if there will be no way to sell this goods, can not meet the payment of this goods, as I have left no capital even to manage my small transactions.

Your representative Mr. Joseph Naim came to my store and examined some of the goods, and he promised to send his report to you, and if you are not satisfied with that and you wish to call a surveyor to examine all the goods it will be on your expences, and I will not accept the goods any more, for as you know the goods already bad and if we open them to be examined and measured again the condition of the goods will be and cannot sell them as there will be no good made-up for them.

20

30

With reference to the remaining bill now in the custom of S.S. Eboe, I am sorry I have no money to clear same to give me this free against my account, if not please inform your banker or your representative, Mr. Naim to clear same from the custom.

Yours faithfully,

EXHIBIT "T"
(BY PLAINTIFF)

Exhibits

T

LETTER FROM A. BOHSALI TO MR. BROWN

Letter from A.
Bohsali to Mr.
Brown,

15th April
1953.

ADEL BOHSALI

Banker:
British Bank of West
Africa.
Lagos.

Cables:
Branch:
P.O. Box 145
MARINA, CALABAR
Head Office:
19, Obun Eko Street,
P.O. Box 91,
LAGOS.

10

Mr. L. Brown,
Director,
Allied Commercial Exporters Ltd.,
Manchester, 1.

15th April, 1953.

Dear Sir,

20

I have to thank you for your letter dated 10th inst., and I am glad that you returned home safely.

30

With regard our dispute over the goods of ASLOCO, believe me Mr. Brown, that I did not fail to keep my promise, but when I returned to Lagos, I immediately paid for the out-standing promisory note, and when I asked the bank to deliver another one to me he said that he received instruction from your office not to give me any more goods against promisory note, so I have to write to your office again and waited over 2 week before I got a reply from them that they instructed the again to give me another one, and when the time due for me to pay for them and receive another again, the bank informed me that he received new instruction from your office not to give me any more goods accept against payment, and no more against promisory note, I was very disappointed then and did not pay for the promisory of which I asked your office to debit my account, and really I do not understand the way you treated me or if you think (I mean your manager) that we are playing small boys game, due to all that I suffer heavy loss in time and in money, also if your firm will not trust me for some little think like that and can not help me to sell the bad goods he shipped to me,

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Exhibits

T

Letter from A.
Bohsali to Mr.
Brown,

15th April
1953 -
continued.

then I have to remind you that my outstanding balance with you will cover that, also I do not see why I should not use part of my money with it will help a lot as I can not sell your goods due to the bad fault as you well aware, I have wrote several time to your firm on that subject but no satisfactory reply came from them.

Also as you remember in our meeting together, you promised me to meet my claim for the shortages of the goods, and you asked me time as you want to write to your representative Mr. J. Naim at Lagos and ask him to examine the goods himself and send his report to you, but it took some time before Mr. Naim called to my store and examined the goods and he was satisfied, and promised me that he will send his report to you at once, and he also assured me that you will meet my claim as it is alright, so I waited and waited up to now and nothing was mention about that claim, and nothing then done about it.

10

20

Also to inform you that I still have big quantity of this goods of which I can not sell for its fault and customers are complaining much about it.

Your new representative Mr. Batit called to my shop many time and I explain and showed him every thing, he promised that he will try his best to settle this despute soon and to my satisfaction, so I am waiting for the best you can do.

Also to let you know that I am still ready to take the delivery of the goods if you are ready to meet me with my claims, and until then I want you to remember your promised and your kind help, and all the delay before was not my fault.

30

And for the last time I repeat that I am ready to clear and pay for the remaining goods of AS 1000 if you are ready to meet me with my claim in the right way, or if not I will not be responsible for any damages, expences or anything whatsoever will occure on this goods.

40

Yours faithfully,

A. Bohsali.

EXHIBIT "U"
(BY PLAINTIFF)

LETTER FROM A. BOHSALI TO ALLIED
COMMERCIAL EXPORTERS LTD.

ADEL BOHSALI

Banker:
Bank of British West
Africa
Marina Lagos.

Cables:
Branch:-
P.O. Box 145
MARINA CALABAR
Head Office:-
19, Obun Eko Street,
P.O. Box 91,
LAGOS.

17th April 1953.

The Director,
Allied Commercial Exporters, Ltd.,
Manchester, 1.

Dear Sir,

20 With reference to my letter dated 15th inst., this is to inform you that to-day I understand here that your representative Mr. Batit, is offering to the Market here the sell of the goods of dyed crepe spun AS.1000, and he asking for it 1/5 per yds duty paid.

You know that I did not reject the goods, but I am waiting for the settlement of the despute on this goods of which your firm failed to meet my claims in time and keeping me waiting up to date.

30 Also remember that I have cleared of this goods over 35,000 yds and suffered heavy losses on them, and still I have in my stock over 10,000 yds not yet sold.

Take notice that if you sell this goods before we come to a settlement of my claim, you will be alon responsible for every damages, losses, and expencess whatsoever, and you will be bound to meet any right claim I will make against you in the future.

Yours faithfully,

Exhibits

U

Letter from A.
Bohsali to
Allied Commer-
cial Exporters
Ltd.,

17th April
1953.

Exhibits

9.

Invoice,
27th April
1953.

EXHIBIT "9"
(BY PLAINTIFF)

I N V O I C E

ALLIED COMMERCIAL EXPORTERS LTD.

DIRECTORS:	SECRETARY:	ORIENT HOUSE,
L. BROWN	R.M. HANMAN	GRANBY ROW;
J.S. DELLAL		MANCHESTER, 1.

GRAMS & CABLES
"ODYSSEY" MANCHESTER

CODES
BINTLEY'S A.B.C. 6TH EDIT.

TELEPHONES:			
	2488		
CENTRAL	2489	YOUR REF.	OUR REF.
	2480		

Collection No. ACE/48/52 - £481.-.2.

Customs Duty	.. ..	£83. 5.10.	
Customs Rent	.. ..	6. 8. --	
Transport	.. ..	16. --	
Labour	.. ..	8. --	
		<u> </u>	90.17.10.

Collection No. ACE/47/52 - £500.-.5.

Customs Duty	.. ..	£86.11. 8.	
Customs Rent	.. ..	6. 8. --	
Transport	.. ..	16. --	
Labour	.. ..	8. --	
		<u> </u>	£ 94. 3. 8.

Collection No. ACE/49/52 - £486.1.3.

Customs Duty	.. ..	£84. 3. 4.	
Customs Rent	.. ..	6. 8. --	
Transport	.. ..	16. --	
Labour	.. ..	8. --	
		<u> </u>	£ 91.15. 4.

Collection No. ACE/79/52 - £487.10.1.

Transport	.. ..	16. --	
Labour	.. ..	8. --	
Stacking	.. ..	£ 1. 4. --	
		<u> </u>	£ 2. 8. --.

Exhibits

X

EXHIBIT "X"
(BY PLAINTIFF)

Letter from
R.A. Nedd to
Allied Commer-
cial Exporters
Ltd.,

26th May 1953.

LETTER FROM R.A. NEDD TO ALLIED
COMMERCIAL EXPORTERS LTD.

R.A. NEDD, LL.B. (Lond.)

SOLICITOR & ADVOCATE

Of Supreme Court of Nigeria
British West Africa

Telephone No. 23257.
LAGOS.

22, Tinubu Square,
LAGOS, NIGERIA,
British West Africa.

10

26th May, 1953.

Gentlemen,

I have the honour to refer to previous correspondence between yourselves and Messrs. A. Bohsali on the subject of his claim in respect of goods comprising AS1000. I have been instructed to take such steps as I may deem necessary to make you realise that it is unwise for you (1) to ship goods inferior in quality to those contracted for (2) to shortship goods (3) to ship goods in disconnected pieces instead of in whole complete bales as contracted for (4) to make deliberate misrepresentations as to the quality of the goods.

20

Before, however, I proceed to legal action (which, of course would be started in this country) or to take such other action as may cause you loss of trade, I feel that I should give you an opportunity of righting the wrong which you have done. I should mention parenthetically, that the claim to which I am now addressing myself is ONLY ONE of many which my client has against you, all of which claims are suggestive of the fact that your firm seems to make a practice of this type of business dealing of which my client has been a victim.

30

2. I shall deal historically with this matter in the hope that you will see it as I see it and as I am sure a Court of Justice, in full possession of the facts, would also see it.

40

3. By virtue of your letter JDS/DJ of the 24th

March, 1952 you contracted to supply my client with 70000 yards crepe spun of agreed colours and quality at a price of 1/10 per yard CIF. Your sales note of the 1st April, 1952 contracted for the supply of a further 15000 yards of the same goods.

Exhibits

X

Letter from
R.A. Nedd to
Allied Commer-
cial Exporters
Ltd.,

26th May 1953.
- continued.

10 Subsequent to the conclusion of the contract my client discovered that the quality of the goods supplied was inferior to that contracted for. The delivery samples and the basic pattern were submitted for testing. Prior to the receipt by my client of the result of the test and on the occasion of a visit by him to Manchester, he interviewed your Mr. J. Dellal who expressed anxiety to have the matter settled, to achieve which he made a deliberate mis-statement of fact to the effect that it was not the quality which was inferior but that it was merely the finish which was bad. With the aid of this mis-representation your Mr. Dellal induced my client to sign a letter dated 15th October, 1952 purporting to absolve your firm all future claims in consideration of your crediting him with the sum of £500. I quote the relevant portion of the letter for facility of reference:

20 "At a meeting this morning in our office
"between Mr. Bohsali and the writer it was
"agreed between us that we would allow you
"the sum of £500 in full settlement of all
30 "claims on all goods shipped and to be
"shipped, including AS100, AS1000 etc, etc.
"This settlement is absolutely final and it
"is agreed that no more claims will be con-
"sidered or forthcoming."

You will appreciate (or if you do not, your Solicitors will) that a letter of such nature obtained by the means adopted by your Mr. Dellal is of no effect in law.

40 4. To make matters worse, not only did you ship goods of inferior quality but you shipped bales made up of several pieces each piece being short by from one yard to three yards.

5. It is significant that (1) your representative in Lagos has been trying to sell the same material at 1/5 per yard and (2) you saw fit to abrogate the letter of the 15th October by crediting my client with a further sum of £400 in respect of AS1000.

Exhibits

X

Letter from
R.A. Nedd to
Allied Commer-
cial Exporters
Ltd.,
26th May 1953
- continued.

It is, I think, unnecessary for me to point out that my client's account with you shews a credit balance of £2240.

This is according to your own figures.

6. I am to state that it is my intention to institute Legal proceedings against you within fourteen days of the date of this letter. Should it be your wish that this matter be settled amicably, I shall require to demonstrate your desire by placing to the credit of Mr. Bohsali's account not less than £2000 pending the completion of any negotiations you might like to start with me. This amount does not include damages for loss of trade suffered by my client resulting from your breach of contract.

10

7. I shall address you separately on the other claims referred to in sub-paragraph (2) of paragraph 1 above.

Yours faithfully,
(Sgd) R.A. Nedd.

20

Allied Commercial Exporters Ltd.,
Manchester.

Y.1

Telegram from
Odyssey to
Adesali Lagos.

EXHIBIT "Y.1"

(BY PLAINTIFF)

TELEGRAM FROM ODYSSEY TO ADESALI LAGOS

CABLE & WIRELESS LIMITED
(Incorporated in England) 5/-168

Printed in England. Aug. 1943.
(20,000 pads).

The first line of this telegram contains the following particulars in the order named:-
Prefix Letters and Number of Message. Office of Origin, Number of words, Date, Time handed in and Official instructions - if any.

30

Circuit	Clerk's Name	Time Received
TAWL528	TMAL36	MANCHESTER 55/54 29 1437

= LT = ADESALI LAGOS =

YOURS 28TH INSIST YOU CLEAR SWEDISH LOT L 1800

IMMEDIATELY STOP ALSO CLEAR AS PROMISED AS1000
 AS BANK SAY CUSTOMS MAY SELL BY PUBLIC AUCTION
 IF NOT CLEARED SOON STOP IF YOU HAVE ANY CLAIMS
 FOR SHORTAGES THESE CAN BE CLEARED UP AFTER WE
 RECEIVE SURVEY CERTIFICATE STOP CABLE URGENT =
 ODYSSEY.

Exhibits
 Y.1
 Telegram from
 Odyssey to
 Adesali Lagos -
 continued.

EXHIBIT "V"
 (BY PLAINTIFF)
 STATEMENT OF ACCOUNT

V
 Statement of
 Account.

WITHOUT PREJUDICE

10		£12332.15. 9	1952 B/F	7698. 6. 3
	1952 To goods	628.10. 0		20. 6.11
		2. -. 6		39.13. 2
		485.14.11		10. 8. 4
		483.13. 6		
		469. 9. 6		<u>7768.14. 8</u>
		484.13.11		752. 4.10
		773. 1. 3		1. 0. 0
		300		107. 8.11
		<u>1017.16.11</u>		1017. 6. 8
				10. 3
20		16,977.15. 5		
		295.15. 6		1001. 0. 4
		495.11.10		1. 0. 0
		487.10. 1		772.13. 6
		492.14. 1		7. 9
		484.15. 3		137.13. 3
		500.		1731. 3. 4
		487.10. 1		1. 0. 0
		472. 6. .		484.10. 7
		491.14.10		2. 6
30	Promisary	473. 9. 1		500. 0. 0
	NOTE - X	486.14. 9		628. 7. 6
	X	479. 2. 8		2. 6
				485.12. 5
		<u>22624.19. 7</u>		2. 6
		4.15. 7		483.11. 0
		76.13.11		2. 6
		2. 5. -		469. 7. 0
				<u>2. 6</u>
		22708.14. 1		16344. 4. 6

<u>Exhibits</u>		267.15. 0	295.15. 6	
V	Promisary	656.18. 2	44. 0. 8	
Statement of	NOTE - X	480.14. 5	24. 0. 9	
Account -	X	504.14. 9	22.17.10	
continued.		<u>500. -. -</u>	400. 0. 0	
		15.	76. 3.11	
		624. 9. 3	<u>48. 5. 4</u>	
		12.	656.15. 8	
		637. 5. 6	2. 6	
		144.15. 0	1829. 3. 0	10
		1. 7. 0	983. 1.11	
		3. 5. 3	484.15. 3	
		106.16. 2	492.14. 1	
		180.12.10	267.12. 6	
		45. 1. 0	2. 6	
		110. 0. 0	323.19. 4	
	Part amounts	450.	474.14. 0	
	paid to	(30.	387. 3. 5	
	solicitors	(27.	493. 2. 6	
		<u> </u>	110. 2. 1	20
		27506. 8. 5	1654.12. 6	
		25606. 7.10	<u>193. 2. 1</u>	
		<u>1900. -. 7</u>	£25606. 7.10	

Amount due to ACE plus, interest charges, loss of profit, Lawyers fees (2 promisory notes about £980/-) etc. Breach of contract. All "Proves Sales".

7
Telegram from
Odyssey to
Naim and other
documents.

EXHIBIT "7"
(BY PLAINTIFF)

TELEGRAM FROM ODYSSEY TO NAIM
TELEGRAM FROM BOHSALI TO ODYSSEY
LETTER TO ALLIED COMMERCIAL EXPORTERS LTD.
SALES NOTE. ALLIED COMMERCIAL
EXPORTERS LTD. TO ADEL BOHSALI.

CABLE
VIA IMPERIAL

The first line of this Telegram contains the following particulars in the order named: Prefix Letters and Number of Message, Office of Origin, Number of Words, Date, Time handed in and Official Instructions - if any.

CIRCUIT CLERK'S NAME TIME RECEIVED.
TAWL214 TMA206 MANCHESTER 49/47 3 1715 =

LT NAIM CARE RASMETCO LAGOS =

Exhibits

7

YOURTEL 2ND LETTER 29TH BOHSALI SUITING CONTRACT
NOT MENTIONED TWO COLOURS STOP HOWEVER ACCEPT
ISSUING CREDIT NOTE L 400 ALLOWANCE SUITING AND
36 INCH RAYON BUT TRY SETTLE FOR LESS PROVIDED
BOHSALI PAYS ALL OUTSTANDING DRAFTS IMMEDIATELY L
9300"15/8D EIGHT DRAFTS = ODYSSEY.

Telegram from
Odyssey to
Naim and other
documents -
continued.

Form for Reduced Rate Plain Language Telegram

10

C
CABLE AND WIRELESS
W
(Incorporated in England)

STAMP AND DATE No. Charge Clerk's Name, No.
and Circuit and
Time forwarded.

Time

Official instructions
Instructions "Via Imperial" No. to be
Words. Signalled.

20 NOTICE.- This Telegram cannot be accepted unless the declaration at the foot of the Telegram is previously filled in and signed by the Sender. The indication LC, DLT, NLT or GLT must be inserted between the double hyphens before the address of this Telegram which indication is charged for as one word.

TC = GLT =
ODYSSEY MANCHESTER

30 REGRET TO REJECT ALL GOODS ARRIVED BY ZUES FOR BREACH OF CONTRACT STOP YOUR SALE NOTE DATED 18 DECEMBER SAID 10,200 YARDS OF 4 DESIGN BUT YOU SHIPPED 14781 STOP CHECK SUITING YOUR SAMPLES WERE OF 2 COLOURS BUT YOUR SPECIFICATION SHOWED ONLY ONE STOP I AM READY TO ACCEPT GOODS AS CONTRACT STOP I AM NOT RESPONSIBLE FOR ANY DAMAGE ON THIS GOODS IF YOU DONT ARRANGE TO CLEAR FROM CUSTOM IMMEDIATELY BOHSALI

40 I hereby declare that the text of the above Telegram is entirely in plain language the language used being +), that it is written in accordance with the general usage of the language, and that it does not bear any meaning other than that which appears on the face of it.

Exhibits

7

Telegram from
Odyssey to
Naim and other
documents -
continued.

I request that the Telegram may be forwarded on
the faith of the foregoing declaration and sub-
ject to the conditions printed on the back hereof
by which I agree to be bound.

Signature of Sender.....Telephone No.
Address.....
(Not to be telegraphed) + State here the
language used.

CABLE AND WIRELESS LIMITED
(Incorporated in England)

10

OFFICE STAMP.

CASH MESSAGE No. 6931 CABLE &
WIRELESS.

No. 98990519....21 MAY 52
LAGOS

RECEIVED FOR TELEGRAM TO

LT 77 WDS

MANCHESTER

BOHSALI the sum of:- £1.18.6d

For CABLE AND WIRELESS LIMITED,

ONLY THE COMPANY'S OFFICIAL RECEIPT WILL BE
RECOGNISED.

20

Claim No.4 70

21st May 52

The Allied Commercial Exporters Ltd.,
Manchester, 1.

Dear Sir,

This to confirm my telegram of today's date
rejecting all goods supposed to be shipped by S/S
Messina and Arrived by S/S Zues last March.

Breach of Contract.

30

In your sale note dated 18th December 1951,
you sold to me the following goods:

Quality	3761,	36"	4000 yds	@ 2/3	CIF
"	3777	32"	3200	'	'
'	3757/8	36"	3000	'	'
			<u>10200</u>	yds	

but you shipped to me 14781 yds as follows:

Quality	3761	36 "	4509 yds
	3777 &		
	3757	32 "	3621
	3757/8	36 "	<u>6651</u>
			14781 yds

Exhibits

7

Telegram from
Odyssey to
Naim and other
documents -

continued.

extra of 4581 yds.

10 Your sale note dated 17th December, 1951, you sold to me 5,000 yds of check suiting @ 4/11 CIF as per sample forwarded to me of 2 colours, but your specification show only one colour, for the fact that these goods are not according to our contract, I have to reject them and to let you know that I can not clear them from the custom, and I take no responsibilities of any damage will happen as these goods been for long time in the custom, and I advise you to arrange to clear these goods from the custom immediately.

20 Also to bring to your attention that when you offered your sample of quality AS100 50,000 yds @ 1/11½d CIF you did not mention to me as usual that this grey was of Japanese origin, but said that you have 50000 yds of your own grey, and how can I know that it is of Japanese origin if you did not say so, I accepted your price of 1/11½ for it was the price for English spun.

30 The price of Japanese spun No 9 was 1/6 In March and we have in big quantities here, and I was able to buy it here and no need to order from you, but I prefer English spun for it sell higher than the Japanese 4d to 6d each yds that is why I bought your grey, and never thought that you can do so to any clients of your big firm, I am very much disappointed, and had suffer big loss by dealing with you and waste of time.

I expect that you sent me the samples of the dyed spun as required.

Exhibits

7

Telegram from
Odyssey to
Naim and other
documents -
continued.

SALES NOTE

TELEPHONES: LONDON, MAYFAIR 5408 Cables: ODYSSEY, LONDON
MANCHESTER CENTRAL 2488 (3 LINES) ODYSSEY,
4104 EXT 21 MANCHESTER
CODES: BENTLEY'S A.B.C.
6TH EDITION

ALLIED COMMERCIAL EXPORTERS LTD.

MANUFACTURERS, EXPORTERS AND IMPORTERS

DIRECTORS:	MANCHESTER OFFICE:	10
L.BROWN	ORIENT HOUSE,	
J.S.DELLAL	GRANBY ROW,	
	MANCHESTER, 1.	
SECRETARY:	LONDON OFFICE:	
R.M.HANMAN.	38 UPPER GROSVENOR ST.	
	LONDON, W.1.	
YOUR REF.	OUR REF.	
	JSD/DJ.	December 18th 1951.

Messrs. Adel Bohsali,
P.O. Box 91,
Lagos,
NIGERIA 20

Dear Sirs,

Subject to the conditions on the back hereof,
we are pleased to confirm having sold to you goods
as per particulars detailed hereunder.

Please note all correspondence concerning
this transaction to be addressed to our MANCHESTER
OFFICE.

QUANTITY	QUALITY	3761	36"	4,000 yards	30
	"	3777	32"	3,200 yards	
DESCRIPTION	"	3757/8	36"	<u>3,000</u> yards	
				10,200 yds.	

Goods of Swedish origin.

DELIVERY first available steamer from Gothenburg
to Lagos.

PRICE 2/3d per yard CIF.

TERMS payment against documents.

PACKING

Yours faithfully,
per pro. ALLIED COMMERCIAL EXPORTERS 40
(Sgd) ? LTD.

ASSOCIATED COMPANY: AMERICAN GENERAL SUPPLY CORPN.
18, WEST 27TH STREET, NEW YORK, U.S.A.

CONDITIONS

Exhibits

Delivery cannot be guaranteed on account of circumstances brought about by War, and this order can not be cancelled on account of this or any similar reason, without our consent.

7

Telegram from
Odyssey to
Naim and other
documents -
continued.

10

We are under no liability whatever for non-shipment or non-delivery arising from circumstances out of our control, war, fire, strikes, lock-outs, inability to obtain raw material, or accidents at the factory, or for non-arrival or late arrival, from perils of the seas, accidents or fire to the ship or goods en route to destination or quarantine or stoppage of the Suez Canal.

Claims or complaints in respect of goods herein agreed to be sold must be received by us within 5 days of the arrival of the goods at the port of discharge, and no claims will be entertained after this date.

20

Any dispute arising out of this contract to be referred to the tribunal of Arbitration of the Manchester Chamber of Commerce only.

For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from, the Manufacturers.

Exhibits

D.1

Letter from
Allied Commer-
cial Exporters
Ltd. to Adel
Bohsali,
17th March
1952.

EXHIBIT "D.1"

(BY PLAINTIFF)

LETTER FROM ALLIED COMMERCIAL EXPORTERS
LTD. TO ADEL BOHSALI

SALES NOTE

TELEPHONES:

LONDON MAYFAIR 5408
MANCHESTER CENTRAL 2488 (3 LINES)
4104 EXT 21

CABLES: ODYSSEY, LONDON 10
ODYSSEY,
MANCHESTER.
CODES: BENTLEY'S A.B.C.
6TH EDITION.

ALLIED COMMERCIAL EXPORTERS LTD.
MANUFACTURERS EXPORTERS AND IMPORTERS

DIRECTORS: MANCHESTER OFFICE;
L.BROWN ORIENT HOUSE,
J.S.DELLAL GRANBY ROW, 20
MANCHESTER, 1.
SECRETARY: LONDON OFFICE:
R.M.HANMAN. 38 UPPER GROSVENOR ST.
LONDON, W.1.

YOUR REF: OUR REF:
JSD/DJ. March 17th 1952.

Messrs. Adel Bohsali,
P.O. Box 91,
Lagos,
NIGERIA. 30

Dear Sirs,

Subject to the conditions on the back hereof,
we are pleased to confirm having sold to you goods
as per particulars detailed hereunder.

Please note all correspondence concerning
this transaction to be addressed to our MANCHESTER
Office.

QUANTITY 50,000 yards.

DESCRIPTION 36" Dyed Spun, QUALITY AS100, dyed
over shades sent to us with your letter of 40
the 10th March as follows: 5000/WHITE
5000/Cream 10,000/Salmon Pink 5000/Green
5000 Purple 5000/Blue 5000/Pink
10,000 yds. DARK PINK as sample attach

DELIVERY within 4/5 weeks.

PRICE 1/11½d per yard CIF plus 5% commission to be re-credited to you upon payment of the bills.

TERMS

PACKING

Exhibits

D.1

Letter from Allied Commercial Exporters Ltd. to Adel Bohsali,

17th March 1952 - continued.

Yours faithfully,
per pro. ALLIED COMMERCIAL EXPORTERS LTD.
(Sgd) ?

ASSOCIATED COMPANY: AMERICAN GENERAL SUPPLY CORPN.
18, WEST 27TH STREET, NEW YORK
U.S.A.

10

CONDITIONS

Delivery cannot be guaranteed on account of circumstances brought about by War, and this order can not be cancelled on account of this or any similar reason, without our consent.

20

We are under no liability whatever for non-shipment or non-delivery arising from circumstances out of our control, war, fire, strikes, lock-outs, inability to obtain raw material, or accidents at the factory, or for non-arrival or late arrival, from perils of the seas, accidents or fire to the ship or goods en route to destination or quarantine or stoppage of the Suez Canal.

Claims or complaints in respect of goods herein agreed to be sold must be received by us within 5 days of the arrival of the goods at the port of discharge, and no claims will be entertained after this date.

30

Any dispute arising out of this contract to be referred to the tribunal of Arbitration of the Manchester Chamber of Commerce only.

For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from the Manufacturers.

