

1967/25

IN THE PRIVY COUNCIL

No. 21 of 1966

---

ON APPEAL FROM  
THE COURT OF APPEAL FOR EASTERN AFRICA

---

B E T W E E N:

1. KHALED ABDUL LATIF AL HAMAD
  2. AHMED ABDUL LATIF AL HAMAD
  3. YOUSUF ABDUL LATIF AL HAMAD
  4. ALI ABDUL LATIF AL HAMAD
  5. ABDULLA ABDUL LATIF AL HAMAD
- (Plaintiffs) Appellants

- and -

<sup>A</sup>  
ATHENAS BROS. (ADEN) LIMITED  
<sub>F</sub>  
(Defendants) Respondents

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R E C O R D   O F   P R O C E E D I N G S

---

T. L. WILSON & CO.,  
6, Westminster Palace Gardens,  
Artillery Row,  
London, S.W.1

Solicitors for the Appellants.

GORDON, DADDS & CO.,  
80, Brook Street,  
London,  
W.1

Solicitors for the Respondents.

CLASS MARK

ACCESSION NUMBER

91413

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
15 MAR 1968  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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ON APPEAL FROM  
THE COURT OF APPEAL FOR EASTERN AFRICA

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B E T W E E N:

1. KHALED ABDUL LATIF AL HAMAD
  2. AHMED ABDUL LATIF AL HAMAD
  3. YOUSUF ABDUL LATIF AL HAMAD
  4. ALI ABDUL LATIF AL HAMAD
  5. ABDULLA ABDUL LATIF AL HAMAD
- (Plaintiffs) Appellants

- and -

ATHANAS BROS. (ADEN) LIMITED  
(Defendants) Respondents

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R E C O R D            O F            P R O C E E D I N G S

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"L"	Same as Exhibit "G.(5)"	19th March, 1963
"K"	Same as Exhibit "G.(4)"	9th January, 1963
"J"	Same as Exhibit "G.(3)"	31st December, 1962

ON APPEAL FROM  
THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N:

- 1. KHALED ABDUL LATIF AL HAMAD
  - 2. AHMED ABDUL LATIF AL HAMAD
  - 3. YOUSUF ABDUL LATIF AL HAMAD
  - 4. ALI ABDUL LATIF AL HAMAD
  - 5. ABDULLA ABDUL LATIF AL HAMAD
- (Plaintiffs) Appellants

10

- and -

ATHANAS BROS. (ADEN) LIMITED  
(Defendants) Respondents

RECORD OF PROCEEDINGS.

No. 1  
PLAINT

In the Supreme  
Court of Aden

IN THE SUPREME COURT OF ADEN  
In its original Civil Jurisdiction  
Civil Suit No. 511 of 1963

No. 1  
Plaint

20

- 1. KHALED ABDUL LATIF AL HAMAD  
C/o, Khaled Abdul Latif Al Hamad & Bros.,  
P.O. Box No. 185, KUWAIT.
- 2. AHMED ABDUL LATIF AL HAMAD,  
C/o, Khalid Abdul Latif Al Hamad & Bros.,  
P.O. Box 185, KUWAIT.
- 3. YOUSUF ABDUL LATIF AL HAMAD,  
C/o, Khalid Abdul Latif Al Hamad & Bros.,  
P.O. Box 185, KUWAIT
- 4. ALI ABDUL LATIF AL HAMAD,  
C/o, Khalid Abdul Latif Al Hamad & Bros.,  
P.O. Box 185, KUWAIT.
- 5. ABDULLA ABDUL LATIF AL HAMAD,  
C/o, Khaled Abdulatif Al Hamad & Bros.,  
P.O. Box 185, KUWAIT. Plaintiffs

23rd November  
1963

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VERSUS

ATHANAS BROS. (ADEN) LIMITED a private  
limited Company, registered in Aden having  
its registered Office at Esplanade Road,  
Crater, Aden. Defendants

In the Supreme  
Court of Aden

No. 1  
Plaint

23rd November  
1963  
(Contd.)

THE PLAINTIFFS above named STATE as follows:-

1. The Plaintiffs are brothers and carry on business in partnership inter alia in the firm named and style of KHALED ABDUL LATIF AL HAMAD & BROS. at Kuwait as general merchants and Commissioner Agents and Importers and Exporters.

2. The Defendants are a private Limited Company incorporated and registered at Aden under the Indian Companies Act as amended in 1936 as applicable in Aden, carrying on business inter alia as general merchants and commission Agents exporters and importers. The First Directors of the Defendant Company being (a) Mr. George Ch. Athanassa-Copoulo; (b) Mr. Andrew Ch. Athanassa-Copoulo; (c) Mr. Constantine Ch. Athanassa-Copoulo and (d) Mr. Michael Ch. Athanassa-Copoulo of whom Mr. George Ch. Athanas Copoulo retired from the Company and ceased to be Director and shareholder thereof since 1954.

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3. On or about 20th January, 1954 the Aden Bottling Co. Ltd., was registered as a Private Limited Company under the Indian Companies Act 1936 as applicable in Aden for the objects, inter alia, to manufacture buy, sell, distribute, bottle and otherwise deal in essences, mineral and aerated waters beverages and other liquid of every description in Colony (now State) of Aden and elsewhere.

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4. The Plaintiff No. 1 herein was one of the First Directors of the said Aden Bottling Co. Ltd. other First Directors being (a) Michael Ch. Athanassacopoulo, (b) Andrew Ch. Athansassacopoulo and (c) Constantine Ch. Athanassacopoulo who (a, b and c) are also the Directors of the Defendant Company. There was one Mr. C. Ireland as the First Director who resigned as from 25th November, 1958 and also ceased to be shareholder as from the 13th June, 1959.

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5. At all times material to the suit each of the Plaintiffs in the individual capacity held and still holds 500 ordinary shares of E. A. Shs.100 each in the said Aden Bottling Co. Ltd. as per particulars given below:-

40

Khaled Abdul Latif Al Hamad Plaintiff No.1  
 Script No. Shares Nos. 4381 to 4880  
 Ahmed Abdul Latif Al Hamad Plaintiff No. 2  
 Script No. Shares Nos. 8001 to 8500  
 Yousuf Abdul Latif Al Hamad Plaintiff No. 3  
 Script No. Shares Nos. 8501 to 9000  
 Ali Abdul Latif Al Hamad Plaintiff No. 4  
 Script No. Shares Nos. 9001 to 9500  
 Abdulla Abdul Latif Al Hamad Plaintiff No.5  
 Script No. Shares Nos. 9501 to 10,000

In the Supreme  
Court of Aden

No. 1

Plaint

23rd November  
1963  
(Contd.)

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6. As a result of disputes and differences which arose between the Defendant and their Directors (who are the only Directors, over and above the Plaintiff No. 1 in the said The Aden Bottling Co. Ltd.) on the one hand and the Plaintiffs on the other an agreement was arrived at between the Plaintiffs and the Defendants whereby the Plaintiffs as sellers agreed to sell to the Defendants all their said shares in the said Aden Bottling Co. Ltd., described hereinabove and the Defendants agreed to purchase from the Plaintiff the said shares at a total price of £stg.40,000 on the terms and conditions mentioned in writing dated 8th August 1962, hereto annexed and marked Ex. 'A' is the said writing which is dated 8th August, 1962 and which has been signed by the Defendants on the said date and which has been latter on signed by the Plaintiffs as hereinafter mentioned.

7. Clauses 2, 3, 4, 5 and 6 of the said Agreement provided as follows:

CL.2: The Buyers agree to pay for the said shares a sum of £40,000 in the following manner namely on the signing of this agreement and of forms of share transfer £28,000 (twenty eight thousand pounds) to be paid into the account of Khalid Abdul Latif Al Hamad at the Midland Bank, London. Thereafter by twelve monthly instalments of £1,000 (One thousand pounds) the first such instalments to be paid one month after the payment of the £28,000. The Buyers to provide a banker's guarantee that the monthly instalments shall be paid.

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1963  
(Contd.)

CL.3: The monthly payments to be made as above stated shall be made to Khalid Abdul Latif Al Hamad either in Aden or elsewhere if he so desires subject to Exchange Control permission being obtainable and receipts given to the Buyers or to the Bank in the event of payment being made by the Bank under the Banker's guarantee shall fully discharge the Buyers or the Bank as the case may be from liability to the Sellers for the sum paid. 10

CL.4: As soon as this agreement is signed the Sellers shall cease to exercise their rights as directors of or shareholders in Aden Bottling Company Limited.

CL.5: The Seller will forthwith sign forms of transfer of their shares and deliver up existing share certificates to Aden Bottling Co. Ltd. The Persons to be named in the forms of transfer to be signed by the Sellers shall be such person whom the Buyers choose to nominate as transferees. 20

CL.6: In consideration of this agreement the sellers release Aden Bottling Company Limited from all claims of whatsoever nature they may have or have had against Aden Bottling Co. Ltd., or its Directors or shareholders.

8. The said writing Ex. A hereto was prepared for and on behalf of the Defendants by their Advocates and approved for and on behalf of the Plaintiffs by their Advocates at Aden. 30

9. The Defendant's Advocate sent on 8th August 1963 to Plaintiffs Advocate at Aden the writing Ex. A hereto in three sets for obtaining signatures of the Plaintiffs thereon.

10. On the 13th August, 1962 the Defendant addressed a letter to Advocate of the Plaintiff at Aden asking him to hand over to one Hassanali documents relevant to the purchase of the Plaintiffs shares in the said the Aden Bottling Co. Ltd., and stated that the said Wadia would personally take the same to Kuwait for the signatures of the Plaintiffs. The Plaintiffs 40



Advocate gave him one set of the writing Ex.A hereto and one set for Transfer forms to him.

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1963  
(Contd.)

10 11. The said Mr. Wadia Hassanale met the Plaintiff No. 1 at Cairo (Egypt) and asked him to sign the set of Ex.A and Transfer Forms which he brought from Aden and return the same to him, when the Plaintiff No.1 stated that he had confirmed the writing Ex.A hereto and that he had to take the same to Kuwait where he would sign the same for himself and for and on behalf of the brothers and send the same to his Advocate at Aden. The said Mr. Wadia Hassanali for the reasons best known to him insisted that the Plaintiff No. 1 should return the documents to him duly signed and he refused to deliver the documents to the Plaintiff No. 1.

20 12. The Plaintiff No. 1 then told the said Mr. Wadia Hassonali that he had already got from his advocate at Aden the other two sets of the writing Ex.A hereto duly stamped and signed by the Defendants and also Transfer 20 Forms and that he would sign at Kuwait the documents for himself and for and on behalf of his brothers and then he would return the same to his Advocate at Aden and the said Mr. Wadia raised no objection to this and told Plaintiff No. 1 to do as he would like.

30 13. After the Plaintiff No. 1 went to Kuwait in or about the last week of September, 1962 the said writing Ex.A hereto and the transfer forms were signed by the Plaintiff on or about 2nd October, 1962 and sent to Aden and the Defendants were duly informed of the same at Aden through their representative Mr. Basalch and called upon to make arrangements for payment of the first instalment of £28,000 as agreed to. In fact by their Advocate's letter dated 31.12.62 Plaintiff again reminded the defendants that the said documents were ready for delivery to them against payment at London of a sum of £st.28,000 being the first instalment mentioned in the said writing dated 8th August, 1962. By their Advocate's reply dated 9th January 1963 the Defendants stated that in view of the fact that the documents were sent to the Plaintiffs' advocate on the 8th August, 1962 and there had been a delay of nearly five months the

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Court of Aden

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1963  
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Defendants took the view that this delay in completing the transaction entitled them to regard it as having repudiated by the Plaintiffs. The said letter was duly replied by the Plaintiff's advocates on the 19th March 1963 and the Defendants by their letter dated 26th March, 1963 stated that on 5th November, 1962 they had written to the Plaintiffs informing them that they were no longer prepared to buy the shares of the Plaintiffs and reiterated that the defendants considered themselves discharged from the agreement in view of the plaintiffs failing to complete their part of the contract within a reasonable time. The letter of the 5th November 1962 referred to in the Defendant's Advocate's letter dated 26th March 1963 was addressed by the Aden Bottling Co.Ltd. and not by the defendants, in which it was stated that they were no longer interested in purchasing the shares of the Plaintiffs and offered their shares to the Plaintiffs for sale. Hereto annexed copies of correspondence mentioned herein including the said letter of the 5th November, 1962 addressed by the Aden Bottling Co. Ltd., and collectively marked Ex.B.

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14. The Plaintiffs say that there is a binding and concluded agreement on the part of the defendants to purchase the shares held by the plaintiffs in the said the Aden Bottling Co.Ltd., on the terms and conditions mentioned in the writing dated 8th August, 1962. The Plaintiffs say that the time was never of the essence of the Agreement nor did the defendants ever make it so and they are not entitled to complain about the alleged delay on the part of the Plaintiffs in signing the said writing or performing their part of the said Agreement recorded therein. In fact in the circumstances mentioned hereinabove the writing Ex. A hereto was duly signed by the Plaintiffs on 2nd October, 1962 together with the share Transfer Forms and it was only on signing of the said writing and the Transfer Forms that the obligation of the Defendants to pay the first instalment ar The Defendants having failed to pay the said instalment or any part of the purchase price, although repeatedly called upon to do so and having repudiated the said agreement the

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Court of Aden

            
No. 1

            
Plaint

23rd November  
1963  
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10 Defendants committed breach of contract and have failed to perform their obligations under the said agreement recorded in the writing Ex.A hereto. The Plaintiff's say that they were all along and still are ready and willing to carry out their part of the agreement but the Defendants have falsely contended that they were discharged from the said agreement and have falsely alleged that the plaintiffs had delayed in performing their obligations thereunder. The Plaintiffs say that the shares of the said The Aden Bottling Co. Ltd., being shares of a Private Limited Company are not readily saleable nor are they quoted in market and in fact it was in view of the settlement of disputes and differences between the plaintiffs and the defendants and their directors (who are also the Directors of the said The Aden Bottling Co.Ltd.) that the said agreement was recorded in the writing dated 8th

20 August, 1962 was arrived at. The Plaintiffs say that damages would not afford adequate relief to the plaintiffs. The plaintiffs further say that they will suffer considerable loss if specific performance is not granted and in any case the plaintiffs add that they have done substantial acts under the said agreement and in particular have ceased to exercise their rights as Director of and as shareholders in the said The Aden Bottling Co.Ltd., and have released the said The

30 Aden Bottling Co.Ltd., from all claims of the plaintiffs against them or their directors or shareholders. The plaintiffs submit that there exists no standard for ascertaining the actual damage caused by the non-performance of the acts agreed to be done by the defendants under the said agreement recorded in the writing Ex.A. hereto. In the circumstances aforesaid the plaintiffs submit that the Defendants should be ordered and decreed to specifically perform their

40 part of the said agreement recorded in the writing Ex.A. hereto and to pay to the Plaintiffs the said price of £stg.40,000, against delivery of the Share-Scripts and Transfer Forms.

15. The Plaintiffs further say that the defendants have by their declarations, acts and/or omissions intentionally caused and permitted the plaintiffs to believe that the said agreement recorded in the writing Ex.A hereto was duly concluded and that they would be ready to perform

In the Supreme  
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1963  
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their obligations on the plaintiffs signing the said writing Ex.A hereto and the relevant Transfer Forms. In fact the defendants were informed through their one of the director Mr.Constantine (Dino) by Mr. Basaleh the representative of the Plaintiffs in Aden in orabout October, 1962 that the Plaintiffs had duly signed the said writing Ex,A hereto and the Transfer Forms and that the Defendants should arrange for payment in London of the first instalment of £stg.28,000 as agreed. Thereafter the Defendants did nothing further in the matter nor did they contend until January, 1963 that there was delay on the part of the Plaintiffs. The Plaintiffs say that they have acted upon the declarations act and/or omissions of the Defendants to their prejudice and the defendants are estopped from denying their liability to perform their part of the said agreement and to make payment of the amounts mentioned in the said agreement recorded in writing Ex.A hereto. In the circumstances the plaintiffs are in any event entitled to claim specific performance of the said agreement as prayed for herein. 10 20

16. Without prejudice to the foregoing submissions and contentions and in the event of this Honourable Court for any reasons refusing to grant to the Plaintiffs the relief of specific performance, the Plaintiffs say that the Defendants have committed breach of their obligations under the said agreement recorded in the writing Ex.A hereto and the Plaintiffs are entitled to claim compensation in lieu of specific performance in respect of the said breach. The Plaintiffs assess the damages at E. A. Shs. 550,000, being the differences between the original price of the share when purchased and the sale price as agreed by the defendants in the agreement recorded in the writing Ex. A hereto. 30 40

17. The said agreement for sale of the Plaintiffs' shares in the said The Aden Bottling Co. Ltd., was entered into Aden and was signed by the Defendants in Aden and the Plaintiffs signed the said agreement and Transfer Forms at Kuwait. The Aden Bottling

Co.Ltd., whose shares were agreed to be purchased by the Defendants have then and now been registered at Aden. A material part of the cause of action has arisen in Aden and this Honourable Court has jurisdiction to entertain and this suit.

In the Supreme  
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No. 1  
Plaint

23rd November  
1963  
(Contd.)

18. The Plaintiffs have valued the reliefs claimed in the suit for the purpose of Court fees and jurisdiction £stg.40,000 equivalent to East African Shillings 800,000.

10 19. The Plaintiffs will also rely on the documents a list of which is hereto annexed.

The Plaintiffs, therefore, pray,

- (a) That the defendants be ordered and decreed to specifically perform the said agreement recorded in writing Ex.A hereto and in particular to forthwith pay to the plaintiffs the instalments already accrued due and to pay the balance as mentioned in the writing Ex.A hereto
- 20 (b) that for the purposes aforesaid, the Defendants be ordered and decreed to do and perform all such acts and deeds and to execute all such documents or papers as may be necessary and essential for the complete performance of their obligations under the said agreement recorded in the writing Ex.A hereto.
- 30 (c) that IN THE ALTERNATIVE to prayers (a) and (b) above, the Defendants be ordered and decreed to pay to the plaintiffs the sum of E.A.Shs.550,000, or such other sum as this Hon'ble Court may award as compensation in lieu of specific performance:
- (d) that costs and incidental charges of the suit;
- (e) for such other relief and further relief as the nature and circumstances of the case may require.

(A. BHATT)

40 Advocate for Plaintiffs

In the Supreme  
Court of Aden

No. 1

Plaint

23rd November  
1963

(Contd.)

- i. e. Khalebd Abdul Latif Al Hamad  
Plaintiff No. 1
- i. e. Ahmed Abdul Latif Al Hamad  
Plaintiff No. 2
- i. e. Yousuf Abdul Latif Al Hamad  
Plaintiff No. 3
- i. e. Ali Abdul Latif Al Hamad  
Plaintiff No. 4
- i. e. Abdulla Abdul Latif Al Hamad  
Plaintiff No. 5

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We, the Plaintiffs, above named, do hereby declare that what is stated in the paras 1 to 19 is correct from our own knowledge and informations received which we verily believe to be true. Verified At Kuwait on the 3rd day of November, one thousand nine hundred and sixty three.

- 1. i.e. Khalid Abdul Latif Al Hamad
- 2. Ahmed Abdul Latif Al Hamad
- 3. i.e. Yousuf Abdul Latif Al Hamad
- 4. Ali Abdul Latif Al Hamad
- 5. Abdulla Abdul Latif Al Hamad.

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LIST OF DOCUMENTS ANNEXED TO THIS PLAINT

- 1. Agreement dated 8th August, 1962 signed by the parties therein.
- 2. Letter dated 13th August, 1963 from the Defendants to the advocate of the Plaintiffs:
- 3. Letter dated 31st December, 1962 (copy) from the advocate of the Plaintiffs to the Defendants.
- 4. Letter dated 9th January, 1963 from the advocate of the defendants to the advocate of the Plaintiffs.
- 5. Letter dated 19th March 1963 from the advocate of the Plaintiffs to the advocate of the Defendants.
- 6. Letter dated 26th March, 1963 from the advocate of the Defendants to the advocate of the Plaintiffs.
- 7. Five blank forms of Transfer of Shares signed by the Plaintiffs.

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8. Letter from Aden Bottling Co. Ltd., dated 5th November, 1962 to Khalid Abdul Latif Al Hamad & Bros.

In the Supreme Court of Aden

No. 1

Plaint

23rd November 1963

(Contd.)

LIST OF DOCUMENTS ON WHICH PLAINTIFFS WILL RELY

Share Scripts

Correspondence

No. 2

REQUEST FOR FURTHER AND BETTER PARTICULARS

No. 2

Request for Further and Better Particulars.

28th December 1963

10 Ref: A/93 28th December, 1963

A. Bhatt, Esqre.,  
Advocate, Aden.

Dear Sir,

Civil Suit No. 511 of 1963  
Khaled Abdul Latif v/s Athanas

20 We shall object in the Written Statement that portions of the Plaint are unnecessarily garrulous, prolix and embarrassing - and, for future reference, invite your closer attention to Rules of Court Nos. 54 and 60.

Meanwhile, we require you to furnish within 7 days further and better particulars of the Plaint as follows:-

30 1. Under paragraph 6 and paragraph 14 (line 28) of the alleged "disputes and differences, stating precisely each alleged dispute and/or difference, by and between whom and the date when it is alleged to have arised; and identifying any document wherein such particularised dispute or difference is alluded to.

2. Under paragraph 6, of the date, "later on", on which it is alleged Annexure A was signed by the Plaintiffs.

3. Under paragraph 13, of the allegation that

In the Supreme  
Court of Aden

No. 2

Request for  
Further and  
Better Partic-  
ulars.

28th December  
1963

(Contd.)

the Defendant was "duly informed", stating whether it is alleged that the Defendant was informed orally or in writing; if orally, to whom on behalf of the Defendant, where and the date on which it is alleged Basaleh informed the Defendant if in writing, identifying the document or documents.

4. Under Paragraph 13, of the allegation that the Defendant was "called upon to make arrangements for payment", giving the like kind of particulars as are required in item 3 hereof. 10

5. Under paragraph 14 (line 34), of the "considerable loss" which the plaintiffs claim they will suffer, stating each item of alleged anticipated loss and the financial implication, if any.

6. Under Paragraph 13 (lines 35/37), of the alleged "substantial acts" and of the "rights as Directors and as shareholders" allegedly not exercised, stating each of them with particularity as to subject matter, dates and documentation. 20

7. Under paragraph 13 (line 39) of the "claims" from which the Plaintiffs claim to have released The Aden Bottling Co. Ltd. stating such claim with particularity and whether the release (or each release, if more than one) was oral or in writing; if oral, stating by whom and to whom, and where and the date when, such release was given; if in writing, identifying the document or documents". 30

8. Under paragraph 15, of the "declarations, acts and omissions" ALLEGED, stating with reference to each whether the same was oral or in writing; if oral, by whom, to whom, where, and the date when; if in writing, identifying the document or documents.

9. Under paragraph 15 of the allegations that the Plaintiffs "acted" and that they did so "to their prejudice", stating each such act alleged with reference to each or all of the Plaintiffs, as the case may be, and the prejudice alleged to have been sustained by reason of each such act. 40



10. Under paragraph 16, of the "original price" alleged to have been paid, stating the alleged original price and the date or dates when it was paid.

Yours faithfully,  
Signed/-  
HORROCKS, WILLIAMS & BEECHENO.

In the Supreme  
Court of Aden

No. 2

Request for  
Further and  
Better Partic-  
ulars

28th December  
1963

(Contd.)

No. 3  
FURTHER AND BETTER PARTICULARS

No. 3

Further and  
Better  
Particulars

10 Your Ref: A/93 31st December, 1963

Messrs.Horrocks, Williams & Beecheno,  
Advocate,  
Aden.

31st December  
1963

Dear Sirs,

I refer to your letter of 28th December, 1963 delivered to me on the following day. The Plaintiff states the necessary facts and the Rules of the Court were kept in mind while drafting the Plaintiff.

20 Hereinbelow you will find further and better particulars required by you in your letter under reference.

30 1. Item No. 1. the disputes and differences are included in the letter dated 28th December, 1959 by Plaintiff No. 1 to the Chairman of the Aden Bottling Co. Ltd. and also in the Plaintiff's letter dated 10th July 1961 to the Secretary of the said Company, and again the letter dated 4th May 1962 from Mr. G.A.Taraporwalla as the then Advocate for the Plaintiff No. 1 to the Managing Director of the said Company: the disputes and differences arose on account of connivance at and non-compliance of inquiries and informations demanded in those letters as well as orally, by Plaintiff No. 1 and also by Basaleh, the alternate

In the Supreme  
Court of Aden

No. 3

Further and  
Better  
Particulars

31st December  
1963

(Contd.)

Director, notwithstanding repeated reminders by letters dated 15.7.61, 8.1.1962 and 15.5.1962 addressed to the management of the said Company. The above letters are all in possession of the said Company, of which the directors are the directors of the Defendant Company.

2. Item No. 2. The Plaintiffs signed the annexure A on the 2nd October, 1962. This date is mentioned in line 4 of the para 13 of the Plaint.

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Item Nos. 3 & 4: Mr. Basaleh orally informed Mr. Constantine Ch. Athanassacoupolo (Mr. Dino) at the office of the Defendant Company on the 30th October, 1962 and he went also on the 2nd of November, 1962 to inquire of him (Dino) whether first payment was made.

3. Item No. 5. The balance sheets of the past years do not show appreciable profit: No dividend has been declared for some time and Plaintiff cannot sell shares held by them to the public.

20

The financial loss is therefore the difference between the amount paid by the Plaintiff to the Company when the shares were issued to them and the price agreed between them (Plaintiffs) and the Defendant Company.

4. Item No. 6 & Item No. 7: As to your queries under para 14 lines 35/37 and 39 (not under para 13) I refer to you to the annexure A, particularly paras 4 and 6 thereof, which answer your queries.

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5. Item No. 8 & Item No. 9: I refer you to the list of documents filed with the Plaint:

6. Item No. 10: Your clients are in possession of the balance sheets and accounts of the year when the shares were issued by the Aden Bottling Company and wherein is shown the amounts paid by the Defendants for the shares held by them. They will show the dates also.

Yours faithfully,

Sgd/

A. BHATT, Advocate, Aden.

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No. 4  
WRITTEN STATEMENT

In the Supreme  
Court of Aden

No. 4

Written  
Statement

14th January  
1964

IN THE SUPREME COURT ADEN  
CIVIL SUIT NO.511 of 1963

KHALED ABDUL LATIF AL HAMAD & OTHERS Plaintiffs

versus

ATHANAS BROS. (ADEN) LIMITED Defendant

WRITTEN STATEMENT

1. The Defendant admits paragraph 1 of the  
10 Plaintiff and aver that the Plaintiffs carry on, and  
at all material times have carried on, business in  
the like name and style at Aden also.

2. Paragraphs 2, 3 and 4 of the Plaintiff are  
substantially irrelevant. They are admitted, save  
and except as follows:

(a) Paragraph 2, The first Directors of the  
20 Defendants Company included also Nicholas  
Ch. Athanassacepolo, who died in 1947.  
George Ch. Athanassacepoulo died, and by his  
death retired from the board of Directors on  
6th September, 1952 and not in 1954 as  
alleged.

(b) Paragraph 4. C. Ireland tendered his  
resignation by letter dated 26th November,  
1958 and the Transfer of his shares was  
authorised by resolution passed on 13th  
June, 1959.

3. Paragraph 5 of the Plaintiff is admitted, save  
30 and except that the 1st Plaintiff is the regis-  
tered holder of shares Nos. 4381 to 4880.

4. With reference to paragraph 6 of the Plaintiff  
and the Further and Better particulars thereof:

(i) The Defendant admits that it offered  
to purchase the plaintiff's shares and will  
refer to Annexure "A" to the Plaintiff for the  
full and precise terms thereof; but the  
Defendant denies that the said agreement was  
concluded, whether as a result of disputes

In the Supreme  
Court of Aden

—  
No. 4

Written  
Statement  
—

14th January  
1964

(Contd.)

and/or differences as alleged, or at all: the Defendant offered to buy the said shares because it had a prospective buyer for, and was interested to sell, the business of the Aden Bottling Co.Ltd., as a going concern, and not as a result of any dispute or differences.

(ii) Annexure "A" to the Plaint is but a counterpart of an original agreement executed on behalf of the Defendant and submitted to the Plaintiffs for execution but which said original the plaintiffs declined to execute. On the contrary, the 1st plaintiff, for himself and on behalf of his co-Plaintiffs, insisted to the Defendant's agent Wadia Hassanali, at Cairo in August, 1962 that a new agreement be prepared wherein the mode of payment of the price be amended, such that a first instalment of £12,500 only be paid in cash at Aden and that the balance be paid in Aden to the Plaintiffs' agent Basaleh. The Defendant will refer to the 1st Plaintiffs letter dated 31st August, 1962 and to correspondence and cables between it and the said Wadia Hassanali. The Defendant does not admit that Annexure A was signed by the Plaintiffs, or that it was signed when it purports to have been signed, and puts the plaintiffs to strict proof.

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5. Save that Clause 2 of the Agreement refers to "twelve" (and not "twice") monthly instalments, and that Clause 6 thereof refers to claims which the Plaintiffs may have or have "had against Aden Bottling Company Ltd., the Defendant admits that Clause 2, 3 and 4 of the proposed Written Agreement have been accurately copied in paragraph 7 of the plaint.

6. The Defendant admits paragraph 8 of the Plaint save and except that the proposed written agreement was approved by the Plaintiffs' advocate expressly subject to the approval of the plaintiffs; but the plaintiffs did not approve the same and declined to execute the same.

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7. With reference to paragraph 9 and 10 of the

10 Plaintiff, on or about the 13th day of August, 1962 the Defendant, by its then Advocates, submitted to the Plaintiffs Advocates for approval the original of the proposed written agreement, counterparts thereof (including Annexure "A" to the Plaintiff), the originals of seven share transfer forms for shares 4381/4880, 8001/8500, 8501/9000, 9001/9250, 9251/9500, 9501/9750 and 9751/10,000 respectively, and a carbon copy of each of the said transfer forms. The originals of the proposed written agreement and of the said seven transfer forms, after approval as aforesaid by the Plaintiffs' Advocate, were returned by him to the Defendant, at its request, to the intent that the said Wadia Hassonali acting for and on behalf of the defendant should procure the execution of the said original agreement and share transfers by the Plaintiffs. The Defendant will refer to the said transfer Forms, and to p  
20 printed Condition No. 5 on the reverse thereof, for the full and precise terms thereof. Save as aforesaid, the Defendant admits paragraphs 9 and 10 of the Plaintiff.

30 8. Pursuant to arrangements made between the parties, the said Wadia Hassanali, on behalf of the Defendant, proceeded from Aden with the said originals with the purpose of having the same executed in his presence by the 1st Plaintiff, who was at Cairo, and by the remaining Plaintiffs who were at Kuwait.

40 9. The Defendant denies paragraphs 11 and 12 of the Plaintiff. The said Wadia Hassanali, on behalf of the Defendant, invited the 1st Plaintiff, at Cairo, to execute the original agreement and the share transfer form for Shares Nos. 4381/4880; but the 1st Plaintiff declined as aforesaid to do so and the said Wadia Hassanali, pursuant to the Defendant's telegraphed instructions withdrew the Defendant's offer to purchase and returned all of the aforesaid original documents to the Defendant at Aden and refrained from proceeding to Kuwait and tendering the same to the other Plaintiffs for execution by them, there. There was no occasion for the 1st Plaintiff to state, nor did the 1st Plaintiff state, that he had to take, or that he would take, the documents to Kuwait there to sign the same

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Court of Aden

—  
No. 4

Written  
Statement

—  
14th January  
1964

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Court of Aden

No. 4

Written  
Statement

14th January  
1964

(Contd.)

"for himself and for and on behalf of his brothers", as alleged or at all.

10. The Defendant does not admit, and puts each - of the Plaintiff to strict proof of, the averment in paragraph 13 of the Plaint that annexure "A" was and/or that the transfer forms were executed on or about 2nd October, 1962. In any event, the purported signatures on Annexure A are unattested. The Defendant denies the further averments in paragraph 13 and in the Further and Better Particulars thereof that the Plaintiffs' Agent, Basaleh, informed the Defendant that the same had been executed and/or that the said Basaleh called upon the Defendant to make payment, as alleged or at all. If, as alleged in paragraph 11 of the Plaint, the Defendant's agent Wadia Hassonali "refused" to deliver the originals of the documents to the 1st Plaintiff, it was not competent for the Plaintiffs thereafter to purport to execute the counterparts; and the Defendant will contend that the said agreement was never validly executed so as to constitute a valid contract. Moreover, the shares transfer forms purporting to have been executed by the Plaintiffs are patently altered and varied. Furthermore, the share transfer forms so altered and varied do not conform with clause 5 of the proposed written agreement. 10

11. Prior to the receipt of the Plaintiffs' Advocate's letter of 31st December 1962 the Defendant was wholly unaware of the purported execution by the Plaintiffs or any of them of the Annexure A and/or of the aforesaid amended and altered transfer forms or any of them. Meanwhile, by its registered letter to the Plaintiffs of 5th November 1962 (referred to in paragraph 13 of the Plaint) the Defendant intimated that it was no longer willing to purchase the Plaintiff's shares and confirmed an earlier oral intimation to the like effect conveyed to the Plaintiffs through its said agent Wadia Hassonali. 20 30 40

12. Without prejudice to the allegation that the Plaintiffs refused to approve and execute the original of Annexure A, the Defendant will contend that it was an implied term of the

proposed written agreement that the Plaintiffs would accept and execute the same within a reasonable time and:-

In the Supreme  
Court of Aden

                      
No. 4

                      
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14th January  
1964

(Contd.)

(i) That the 1st Plaintiff refused as aforesaid to accept and execute the same;

(ii) that the Defendant's offer to purchase on the terms of Annexure A was withdrawn prior to the purported execution of Annexure A.

10 (iii) that none of the Plaintiffs accepted and executed the same within a reasonable time;

(iv) that, if the Plaintiffs purported to accept and execute the same, they did so only after the Defendant had withdrawn its offer, and intimate its unwillingness, to purchase.

20 The Defendants accordingly deny that the Annexure A constitutes a concluded written agreement and/or that the Plaintiffs have any cause of action upon the basis of their alleged execution of Annexure A, whether for specific performances and/or for damages.

30 13. With further references to paragraph 13 of the Plaint, the Defendant will refer to the correspondence of the parties, including the correspondence there referred to, for the full and precise terms thereof. The Defendant admits that its letter of 5th November 1962 was written upon letter-heading of Aden Bottling Co. Ltd.; but the said letter had reference, and in view of section 54-A of the Indian Companies Act must have been understood by the Plaintiff to refer, only to the retraction of Defendant's willingness to buy and not to any decision of The Aden Bottling Company Limited.

40 14. (i) With reference to paragraph 14 of the Plaint and the Further and Better Particulars thereof, the same is garrulous, prolix and embarrassing;

(ii) The Defendant denies that the Plaintiffs

In the Supreme  
Court of Aden

            
No. 4

Written  
Statement  
          

14th January  
1964

(Contd.)

were ready and willing at all material times to execute the proposed written agreement and/or to perform their obligations thereunder; the shares of The Aden Bottling Co. Ltd., which is a private Company are and at all material times were saleable, subject to the provisions of its Articles of Association, and in particular Article 30, to which the Defendant will refer; but the Plaintiffs are not in any event entitled to a decree for specific performance herein by reason of the provisions of the said Articles; there is no stock Market in Aden and accordingly no shares prices are quoted there; the circumstance that some of the Directors of the Defendant are now Directors of The Aden Bottling Co. Ltd. is irrelevant; the Defendant puts the Plaintiffs to strict proof of the allegations that damages would not afford them relief and that they would suffer any or considerable loss, if specific performance be not granted to them.

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(iii) The Defendant denies that the Plaintiffs have done any acts under the said agreement and/or that they have ceased consequent upon the alleged agreement to exercise their rights, as alleged or at all. On the contrary, the Plaintiffs' said agent Bassleh continued to act, and was treated, as the Alternate Director of the Plaintiffs and, at the end of October 1962 exhibited to the Directors of The Aden Bottling Co. Ltd., a letter in Arabic addressed to him by the 1st Plaintiff, wherein the 1st Plaintiff demanded that the said Basaleh, as such Alternate Director, be shown the Account of The Aden Bottling Co. Ltd. and offered to send the Kuwait Manager of Coca Cola to Aden to check the said accounts. The Plaintiff received correspondence, copies of Minutes, and the Balance Sheet for 1962, even after October, 1962 without demur and, more particularly, without returning the same or otherwise informing the Defendant that, by reason of the alleged execution of Annexure A, they had ceased to have or to claim any interest in The Aden Bottling Co. Ltd.

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Moreover, during November 1962, the said B Basaleh, as such Alternate, performed the duties of his directorship. The Defendant will refer to draft Minutes for a Board Meeting proposed to be held on 29th November, 1962 which said draft was amended at the insistence of the said Basaleh.

In the Supreme  
Court of Aden

Written  
Statement

No. 4

14th January  
1964

(Contd.)

10 (iv) The Defendant denies that the Plaintiff or any of them had any legal claim against the Aden Bottling Company Limited.

(v) Save as aforesaid, the Defendant denies paragraph 14 of the Plaintiff and puts the Plaintiffs to strict proof of all averments not herein expressly admitted.

15. With reference to paragraph 15 of the Plaintiff and to the Further and Better Particulars thereof the Defendant denies that it has caused and/or permitted the Plaintiffs to believe as alleged or at all, and/or that the Plaintiffs have acted as alleged or at all, upon any declaration, act or omission of the Defendant and further denies the alleged or any estoppel as alleged or at all. On the contrary, after insisting to the said Wadia Hassonali at Cairo as aforesaid that the mode of payment of the price be varied, and refusing to approve and execute the original of Annexure A the Plaintiffs were well aware of the withdrawal of the Defendant's offer and yet took no action in the matter prior to their Advocates' letter of 31st December, 1962.

16. The Defendant denies that it was a party to any contract and/or that it is guilty of breach of contract, as alleged or at all, and further denies that the Plaintiffs are entitled to damages, as claimed or at all. In any event, the measure of damages sought to be supplied by the Plaintiffs is untenable in law.

17. Save as aforesaid and save the formal averments as to venue and suit valuation, the Defendant denies each and all of the allegations contained in the Plaintiff and in the Further and Better Particulars thereof as though the same were herein repeated in full and specifically traversed seriatim.

In the Supreme  
Court of Aden

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14th January  
1964

(Contd.)

18. The Defendant will contend that the Plaintiffs' claim herein is false and vexatious to the knowledge of the Plaintiffs and, accordingly, that it should be dismissed with compensatory costs.

19. Mr. Christo G. Athanassacopoulos is the General Manager and Attorney of the Defendant and as such is able to sign and verify this Written Statement.

Defendant's Advocates  
HORROCKS, WILLIAMS &  
BEECHENO  
ADEN, the 14th  
January, 1964

for ATHANAS BROS. (ADEN)  
LTD. Defendant

Christo G. Athanas  
GENERAL MANAGER & ATTORNEY

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VERIFICATION

I, Christo George Athanassacopoulos, General Manager and Attorney of the Defendant Company, hereby verify paragraph 19 of the above Written Statement of my own knowledge and the remaining paragraphs thereupon partly upon my own knowledge and partly upon information which I verify believe to be true. Verified at Aden, this 14th day of January, 1964.

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Documents Filed

Documents relied on

NIL

- Original of proposed  
Agreement and Share  
Certificate

Memorandum of Address

- Correspondence

The Defendant's A  
Address for Service  
is:

- Cables

- Balance Sheets

- Minutes and draft

Minutes

c/o, HORROCKS, WILLIAMS  
& BEECHENO, ADVOCATES,  
CHARTERED BANK BUILDING,  
CRATER, ADEN.

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No. 5  
KHALED ABDUL LATIF AL HAMAD

CIVIL SUIT NO.511 of 1963

KHALED ABDUL LATIF AL HAMAD & others    PLAINTIFFS  
VERSUS  
ATHANAS BROS. (ADEN) LIMITED            DEFENDANTS

Bhatt for Plaintiffs                      21.12.64  
Horrocks for Defendants

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence on  
Commission

No. 5

Khaled Abdul  
Latif Al Hamad

Examination.

21st December  
1964

Khaled Abdul Latif Al Hamad - Sworn

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I am a partner in the firm of Khaled Abdul Latif & Bros. My brothers who are my partners are as mentioned in the Plaint. We hold shares as stated in para 5 of the Plaint in Aden Bottling Company Ltd., I produce the relevant share certificates. (25 certificates put in and marked "A" collectively). I am one of the 1st Directors in the said Company. There were four other 1st directors. Mr. C. Ireland was one of the 1st Directors. During my absence, Mr. Mohamed Basaleh was appointed as my alternate director. I last came to Aden in the year 1961. I asked for inspection of the accounts from the other directors when I came. They told me that the accounts were secret and I could not see them I thereupon told them that I was a director.

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They replied that they were afraid of income tax, and therefore I could not see them. Thereafter, I met two of the Directors in Alexandria. One of them was Dino, the other was his brother called "Andrew". I told them that their Son Mr. George had refused to give me inspection of the accounts. They stated that although we were friends they could not show the accounts because of income tax. They further told me that instead of seeing the accounts, they would buy up my brother's shares. They offered me £60,000 for our shares. I accepted the offer but pointed out to them that certain outstanding accounts between us had to be settled - 1954 and

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1961. That is, subject to the said inspection.

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence on  
Commission

No. 5

Khaled Abdul  
Latif Al Hamad

Examination.

21st December  
1964

(Contd.)

I said I knew that the price of sugar in Aden was Rs. 60. yet, they had recorded it in the books as Rs. 70.

Horrocks objects to the above evidence. Admitted subject to the ruling of the Court.

They stated that they had a surplus of Rs.120,000 from the sugar. They further told me that it was entirely up to me as to whether I accepted their offer of £60,000 or not. I accepted the offer of £60,000. They said that they would get in touch with their uncle Michael in Athens. Mr. Michael is also a director. They subsequently reduced the offer to £50,000. I accepted the reduced offer. They told me that I could proceed to Kuwait but that on their return to Aden they would arrange to prepare the necessary papers and pay out the money to Mr. Basaleh. I waited two or three months but they did not write to me. I left for India and returned to Egypt. In Egypt in the month of August, 1962 one Wadia Hassonali came to me. The said Wadia Hassonali asked me to accept £40,000, instead of the earlier offer of £50,000. I agreed. Thereafter, I instructed Mr. Bhatt in this matter after my return to Kuwait.

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Part heard and adjourned to 22.12.64 at 3.00 p.m.

S. N. IYER

Commissioner

22nd December  
1964

Examination continued:

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Appearance as before.

Before I met Wadia Hassonali in Cairo I had met him in Quwait. In Quwait Wadia told me that he had come there in connection with the transaction of shares. I informed Wadia that I had already mentioned the figure of £50,000, but he said that they were willing to offer only £40,000. I agreed to the £40,000 and Wadia told me that he would act as their surety I then told Wadia that I would write about the matter to our advocate Mr. Bhatt and our Agent Basaleh. £28,000 was to

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be sent to London and the balance of £12,000 in monthly instalments of £1,000 each, and the National & Grindlays Bank would be the surety. I left for Cairo in August 1962 - 18th August, 1962. Basaleh was in Cairo at that time. I met Wadia in Cairo on the 22nd or 23rd August, 1962. Wadia brought with him some papers duly signed by Athanas. I asked him to let me take them with me to Kuwait. So that my brothers could sign them. Also to enquire from Mr. Bhatt regarding any remittance. Basaleh gave me similar papers. I produce them. (Put in and marked. Agreement marked "B") Four transfer forms similar papers from Basaleh. I took the papers which Basaleh gave me to Kuwait. I went to Kuwait on 31st August, 1962. I left for India with the Sheikh the next day, i.e. the 1st September, 1962. The papers were not signed at the time as I left for India immediately. I returned to Kuwait from India on 1st October, 1962. I signed exhibit "B" for myself and as attorney for my brothers on 2nd October, 1962. In respect of Exhibit "C" I and my brothers signed our respective transfer forms. I then forwarded them to Mr. Bhatt through Basaleh. I again left for Egypt on 4.10.62 and was in Egypt till 1st January, 1963. Wadia did not tell me at any time that Athanas had cancelled Exhibit B Agreement.

At this stage correspondence between the parties put in by consent and marked as follows: D1 dated 13.8.62, D2 dated 5.11.62, D3 dated 31.12.62, D4 dated 9.1.63, D5 dated 19.3.63, D6 dated 26.3.63.

I have not received £28,000 or any other sum I am still prepared to abide by Exhibit "B".

Cross-examined by Horrocks:-

My disputes prior to the agreement of sale, pertained to inspection of accounts and vouchers and running of the business. I maintain that the agreement of sale was concluded because of the disputes. I have no knowledge of any correspondence that took place between the respective advocates prior to the agreement of sale. Mr. Basaleh was looking after my affairs in Aden in May 1962. He had informed me that he had

In the Supreme Court of Aden

Plaintiffs' Evidence on Commission

No. 5

Khaled Abdul Latif Al Hamad

Examination (contd.)

22nd December 1964

Cross-examination

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence on  
Commission

No. 5

Khaled Abdul  
Latif Al Hamad

Cross-  
examination  
(Contd.)

22nd December  
1964

instructed Mr. Taraporwalla, Advocate, Basaleh had told me that Mr. Taraporwalla had written notices, on my behalf regarding inspections of accounts, etc. I do not remember if Basaleh informed me whether Taraporwalla had received any reply to his notices. It is a long time ago. Mr. Basaleh did inform me that he had received a reply from Mr. Nunn to the effect stated in the 4th paragraph of letter dated 24th May, 1962. I cannot remember when he informed me. But although they promised, they did not give inspection. If Athanas stated that they had fully recognised me as a director and Mr. Basaleh as alternative director it would be a lie. My suit is on the basis of Exhibit B and not on any other agreement. Exhibit B was the only written agreement ever submitted to me. There were verbal agreements prior to that. Exhibit B purports to pay the £12,000 in instalments of £1,000 per month. I never saw nor was I informed of any agreement purporting to pay £20,000 down and balance in quarterly instalments. I never saw nor was I informed of a yet earlier agreement stipulating payment substantially similar to Exhibit B. I am not mistaken when I said that Athanas were afraid to give inspection because of income Tax. It is not true that I delayed signing the agreement because if I received the money in Aden it would have income tax implications. I believed that Aden Bottling Co., were keeping false accounts. I admit that I was a director. The accounts were not kept by me. I believed that the accounts were falsely maintained with a view to defraud income tax. Even for my own protection I did not report the matter to the police authorities or the income tax authorities. I did not instruct Basaleh to put the matter in writing as we had long standing friendship with Athanas.

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T and my brothers verified the Plaintiff. I do not know of any application for further and better particulars. I informed Basaleh that the books of account were not shown to me, because, as I believed, they were false.

When I met Wadia in Cairo in August 1962 my brother Ali was not there. Basaleh translated the documents. I had no doubt that

Exhibit B was the same as that Wadia had with him. Likewise, I had no doubt that Exhibit C was the same as the Transfer Forms that Wadia had with him. I did not tell Wadia in Cairo that I wanted to consult my Egyptian Lawyer upon these documents. Wadia suggested that I consult some Egyptian Lawyer but I did not wish to do so as there were censorship regulations in Cairo. Wadia did not leave with me the papers which he brought from Aden. I agree that Exhibit B is a carbon copy. I cannot say if Exhibit C are carbon copies or not. Bassaleh translated Exhibit C to me. I notice the erasures and the re-writings on each sheet of Exhibit C. I also notice the printed instructions on the reverse of each sheet of Exhibit C struck out by a line. I do not know when they were struck out. I see clause 5 of the printed instructions on the reverse of Exhibit C. I agree that none of the erasures or alternations in Exhibit C have been initialled. I signed as I was instructed by the lawyer.

Q. What was the lawyer's name?

A. I did not say anything about the lawyer. I cannot explain as to why there are no initials against the erasures and corrections as I was not familiar with the procedure. All the conversation with Wadia was in my house. None of it was at his hotel.

Nothing was said at the interview with Wadia about income tax. Wadia asked me as to where I would like the money paid. I replied that I did not mind. I did not tell Wadia to wait till Basaleh's return to Aden when he would give him my decision. I did not tell Wadia that an entirely new agreement must be prepared in lieu of Exhibit B. I did not tell Wadia that I wished to mention the sum of £12,500 in the proposed new agreement instead of £28,000. I repeat, I had no fear of income tax. I am a straight forward man. Basaleh did not tell me that they had any conversation after Wadia and he returned to Aden. I gave a letter to Wadia through Basaleh. This is a photo copy of it.

(Put in and marked "1".

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence on  
Commission

No. 5

Khaled Abdul  
Latif Al Hamad

Cross-  
examination  
(Contd.)

22nd December  
1964

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence on  
Commission

No. 5

Khaled Abdul  
Latif Al Hamad

Cross-  
examination  
(Contd.)

22nd December  
1964

Translation tendered and provisionally  
accepted subject to check. Marked "1A")

I agree that Exhibit 1 implies that I had  
given instructions to Basaleh which he would  
convey to Wadia.

Witnesses's attention is drawn to the  
passage in Exhibit 1: "Please inform your  
friends that if they have agreed on our  
conditions they should write the papers and hand  
them over to Basaleh".

10

A. There were no other conditions than  
those stated in Exhibit B.

The conditions pertained to the Bank.

The other conditions were with reference to  
the Bank Guarantee. They required 12 papers in  
connection with 12 instalments.

Q. Do you observe the provision in  
Exhibit B, which reads, "the buyers to  
provide a banker's guarantee that the  
monthly instalments shall be paid?"

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A. Yes.

Q. I put it to you that there was no need  
for the buyers to agree that condition or  
write papers in regard to it?

A. I agree the conditions is in Exhibit  
B. But I could not get money on Exhibit B.  
I had to get 12 guarantees from the Bank.

By the words "your friends" I meant Athanas  
Brothers.

The papers that Wadia's friends were to  
write were to be prepared by his friends and  
signed by the Bank, i.e. similar to bill of  
exchange.

30

No bank guarantee was arranged nor was the  
remittance made to London.

I have paragraph 12 of the Plaint read to



me. When I was in Cairo I held a power of Attorney from my brothers. Apart from the fact that the power of attorney was in Kuwait there was nothing to stop me from signing the documents in Cairo for and on behalf of my brothers. It is not true that I had changed my mind about the terms of the transaction. Wadia can be consulted. In Exhibit 1, I have made reference to Athanas Brothers intending to delay matters. In my belief, they have falsified accounts and defrauded income-tax. I wanted to finish this matter quickly. I did not give written intimation that I had executed the documents before the 31st December, 1962, because he (Wadia) was attending to the matter in earnest. The letter of 31st December, 1962 was not an afterthought after receiving the letter of 5th November, 1962 from the Defendants. I still say that I signed Exhibit B and Exhibit C on the 2nd October, 1962. Exhibit "B" and "C" were sent by me to Aden without a covering letter, by registered post, to Basaleh.

Re-examined: When I sent Exhibit "B" and "C" to Aden Basaleh was not in Aden. I received the letter dated 5th November, 1962 (D2) on the 1st January, 1963, when I returned to Kuwait. I received a reply to Exhibit 1 from Wadia. The reply is dated 25th September, 1962. I produce the reply.

30 (Reply put in and marked "E")

S. N. IYER

Commissioner

In the Supreme Court of Aden

Plaintiffs' Evidence on Commission

No. 5

Khaled Abdul Latif Al Hamad

Cross-examination (Contd.)

22nd December 1964

Re-examination

In the Supreme  
Court of Aden

Defendants'  
Evidence on  
Commission

No. 6

Wadia Abdul  
Karim Hasson  
Ali

Examination

24th April 1965

No. 6

WADIA ABDUL KARIM HASSON ALI

Evidence of Mr. Wadia Hasson Ali  
recorded on COMMISSION

On 24.4.1965, at 4.10 p.m., in the  
Chambers of Mr. A. Bhatt.

Mr. A. Bhatt - for Plaintiffs  
Mr. Horrocks - for Defendants

Wadia Abdul Karim Hasson Ali - Sworn:

Both and all parties were and are friendly to me. I assisted in negotiations for sale by Plaintiffs to the Defendant of the Shares in dispute. There were several negotiations. On one of the negotiations, I went to Kuwait and also to Cairo for the second time, and there I met Mr. Khaled the 1st Plaintiff. When I went to Cairo, I carried with me certain documents - that was in August, 1962. 10

The documents I carried to Cairo were prepared by late Mr. Nunn and Mr. Bhatt, (witness shown documents - he states these are the documents). When I arrived in Cairo, Mr. Khaled was not in Cairo, but I met his agent Basaleh; next week (i.e. a week later) Mr. Khaled arrived and I met him, Basaleh and Khaled's Brother Ali were present in Khaled's house. I handed over the documents. 20

Ex. F, F.1, F.2, F.3, F.4 & F.5 & F.6 & F.7 to Mr. Khaled (By consent witness producing).

Mr. Basaleh was translating everything in these documents to Mr. Khaled. I insisted Mr. Khaled to sign the documents, as I wanted them to be returned to Mr. Bhatt. He said he wished to consult his brothers and I told him, as I knew he had a Power of Attorney from his brothers, to enable me (witness) to hand them back to Mr. Bhatt. The documents I carried were not signed by Mr. Khaled and were returned to me immediately. I do not remember if Mr. Khaled 30

said anything about income Tax - it is about three years now. I have given my statement to Mr. Horrocks about a year/half ago - I am sure, Mr. Horrocks was writing it and it was read over to me - it was correct. Witness shown a letter of 27th August, 1962, written by him to Defendant Company. (Mr. Bhatt objects to admissibility of the said letter) - in fact, addressed to St. "Cresto") - admitted, subject to ruling of the Court. EX.G. Cresto is Mr. Christo of Athanas Bros. & Company.

In the Supreme  
Court of Aden

Defendants'  
Evidence on  
Commission

No. 6

Wadia Abdul  
Karim Hasson  
Ali

Examination  
(Contd.)

24th April 1965

10 Q. What did you mean by words "A new agreement have to be done" in your letter.

A. When I showed to Mr. Khaled EX.E. he told me, actual amount paid by him to the Company when it started was £12,500/- and the balance of the agreed price of the shares was £27,500/- making a total of £40,000/-.

20 When I wrote words "A new agreement" in EX.G., it was my own idea. They said this, in the morning of our interview. By they, I mean Mr. Khaled and his agent Basaleh. They then had gone out, and when they returned they said "it is alright, the figures come to the same £40,000/- the agreement i.e. EX. E. is O.K.

30 An Agreement drawn by M/s. Westby Nunn of 18th July, 1962 shown to witness. EX.1. it was a second attempt in settlement. A letter dated 2nd September 1962 addressed to Mr. Cresto of Athanas, written by witness. EXH. (objected by Mr. Bhatt - admitted subject to Court's ruling). The said letter was written from Cairo. Basaleh informed me after Mr. Khaled had left, that documents Ex. F. and F.1, F2, 3, 4, 5, 6 & 7, were not in order. Witness shown photostat of Ex. F.

40 I cannot remember when EX.G. was written, Mr. Khaled was still in Cairo I agree Exs.G.H. & E. are at variance with Ex.E the reason is, what I wrote in EXs. G & H. was Basaleh's idea, and what I wrote in EX.G. was my ideas. Ex.E, was a letter in which I wrote to Mr.Khaled in reply to his letter.

In the Supreme  
Court of Aden

25th April, 1965 at 3 p.m. (Evidence of Mr.  
Wadia Hasson Ali con'td.)

Defendants'  
Evidence on  
Commission

No. 6

Wadia Abdul  
Karim Hasson  
Ali

Examination  
(Contd.)

25th April 1965

I do not have a letter to which EX.E is a reply. EX.E. was written by me from Cairo. I do not remember the date of my return to Aden, after writing EX.E. I went to Cairo on 13th August, 1962. I returned to Aden in about a month more or less. Dino Athanas returned shortly after me. When Dino called me. I reported to him what happened in Cairo with Mr. Khaled. I was a go-between acting for both the parties. I did not report what I wrote in EXs. G & H to Khaled - I did not tell the Defendants of what I wrote in EX.E. Mr.Khaled left Cairo before me - I did not see him off at the Airport. His departure was sudden. I saw Mr. Khaled after the discussions with him. It must have been after 25th September 1962 I returned to Aden. Dino Athanas told me, he is no more interested in buying these shares, because of Yemem Revolution, he further told me that he was prepared to sell his shares if Mr. Khaled wished to buy them, and at the same time, he said "I shall write to him a personal letter offering his shares at £120,000/- (3 Shares). Dino showed me the letter he had written to Mr. Khaled two or three days after I reported to him. I do not remember when Mr. Khaled signed those papers. I did not have communications with Mr. Khaled about Khaled's signing the agreement. I have no knowledge about disputes and difference between the parties. I had no talk with Basaleh after my return to Aden.

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20

30

Cross-  
Examination

XX. Mr.Bhatt. The parties had agreed - to a sale of Shares at £40,000/-. £28,000 down and balance by instalments, before I took EX.F., F.1, 2, 3, 4, 5, 6 & 7 to Cairo. There was Bank Guarantee Agreed on the balance of £12,000 a draft of the said Guarantee was prepared and sent to Mr. Nunn and agreed by Mr. Bhatt. Ali was in Cairo when I went with documents to Cairo. Mr. Khaled said, agreement EX.F & (Series) were O.K. when I showed him documents he said, he would take them to Kuwait and sign them there, I said, he could not take my copy without signing it, Mr.Khaled then said it was alright because Mr.Bhatt had sent another set of agreements EX.F and Series, he said he would send everything to Basaleh to be given to Mr. Bhatt. Exs.G & H were written without

40

Khaled's suggestions - they were my own ideas. Yes, this is the letter (photostat shown to witness).

EX.D.2. A letter dated 5th November, 1962 which DINO showed to me. Mr.Khaled had told me to tell Mr.Bhatt that there must be a proper Guarantee for securing £12,000/- payable in monthly instalments.

S. T. JOSHI  
COURT COMMISSIONER.

10

No. 7  
PROCEEDINGS

IN THE SUPREME COURT, ADEN

Civil Suit No. 511 of 1963

KHALID ABDUL LATFI AL HAMAD & OTHERS PLAINTIFFS  
VERSUS

ATHANAS BROS. (ADEN) LIMITED DEFENDANTS

23.11.63 (1) Plaint presented by Mr. A. Bhatt  
Advocate for the Plaintiff.

20 (2) Summons issued to Defendant for W/S  
for 15. 15.2.63.

15.12.63 Bhatt  
Mehta for Horrocks for Defendant.  
W/S on 12.1.64

12.1.64 Bhatt  
Mehta for Horrocks  
By consent 19/1/64.

19.1.64 Bhatt  
Mehta for Horrocks files W/S.  
Reply on 9/2/64

30

In the Supreme  
Court of Aden

Defendants'  
Evidence on  
Commission

No. 6

Wadia Abdul  
Karim Hasson  
Ali

Cross-  
Examination  
(Contd.)

25th April 1965

No. 7

Proceedings

23rd November  
1963 to  
5th May 1965

In the Supreme  
Court of Aden

No. 7

Proceedings  
(Contd.)

23rd November  
1963 to  
5th May 1965.

- 9.2.64 Bhatt No reply,  
Iyer for Horrocks  
For hearing
- 9.12.64 Application to Examine a Witness on  
Commission in Aden under Rule No.346  
presented by Bhatt. Advocate for  
Plaintiff.
- 15.12.64 Bhatt for Plaintiff  
Horrocks for Defendant.

O R D E R

10

By consent evidence to be taken on  
commission as prayed. Mr. S. N. Iyer to be  
Commissioner, Costs in cause. Commissioner's  
costs to be arranged between Advocates and  
to be settled by Court in Judgment.

W. H. GOUDIE, J.

4.2.65 Mr. Iyer, Commissioner, files his Report  
and notes of evidence.

L. S. SALOLE 4/2/65

- 22.2.65 Bhatt for Plaintiff  
Horrocks for Defendant  
Hearing 18.3.65 L.C.SALOLE 22/3/65
- 13.3.65 Suit taken out as Mr. Justice Blandford  
busy in Criminal Sessions Case 1/65.
- 7.4.65 At request of Blandford J. who is  
proceeding on leave shortly I agree to commence  
the case at 11 am so as to enable Mr. Bhatt to  
give his closing address in another case before  
Blandford J. Estimated time 1 hour.

20

Mr. Bhatt engaged before Blandford J. until  
afternoon. I agree to hear the case starting  
tomorrow and continuing on Saturday.

30

Mr. Bhatt informs me that his client is  
proceeding on Haj to Mecca tomorrow.

Advocates Horrocks and Bhatt present.

Mr. Horrocks informs me that his client has

come from Greece especially for this case.

Advocates informed that I will adjourn the case BY CONSENT, otherwise the case will come on for hearing tomorrow and a formal application will have to be made for adjournment.

In the Supreme  
Court of Aden

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No. 7

Proceedings  
(Contd.)

O R D E R

By consent hearing adjourned to a date to be fixed by the Registrar not before 1st May, 1965 (2 days required).

23rd November  
1963 to  
5th May 1965.

10 Costs of adjournment RESERVED.

W. H. GOUDIE, Judge.

NOTE

I now discover that the principal witness of defendant is golfing acquaintance with whom I play regularly. I mention this to the Advocates and neither wished to object to my hearing the cases. In the circumstances however, I consider it advisable that the case be listed for another Judge so that justice "may be seen to be done".

20 W. H. GOUDIE, Judge.

7.4.65 Listed for Hearing on 5th and 6th May,  
1964, before Light  
A. J. Bhatt and Horrocks notified.

V. D. TRIPATHI

20.4.65 Bhatt for Plaintiff  
Horrocks for Defendant.

By consent: Wadia Hassanali to be examined on commission. Commissioner will be agreed upon by the Advocate for the parties.

30 V. D. TRIPATHI.

In the Supreme  
Court of Aden

No. 8  
MOHD ABDULLA BASALEH

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh  
5th & 6th May  
1965  
Examination

5.5.65 Bhatt  
Horrocks  
(Agreed issues filed).

BHATT: Evidence of Plaintiff has already been taken on commission and evidence of defendant's witness.

MOHD ABDULLA BASALEH d/s

I am the Manager of the Plaintiff firm. I remember that Plaintiff No. 1 came to Aden in June 1961. He is a Director in the Aden Bottling Co. Ltd. 10

Myself and the Plaintiff No. 1 went to the office of the Aden Bottling Co. after 2 days of arrival of Plaintiff No. 1 in Aden. We went there in order to check accounts. We there met Mr. Dino. He is one of the Directors of the Aden Bottling Co. I know him as Dino. His full name is Constantine Christo Athanassacopoulos. The Plaintiff No. 1 asked Mr. Dino to show him the accounts of the company. He did not agree. We then left the office. Then correspondence passed between the parties. 20

All the five plaintiffs hold shares in the Aden Bottling Co.

The Defendant Co. subsequently agreed to buy all the plaintiff's shares for £40,000. £28,000 of the £40,000 was to be paid in London to the 1st Plaintiff's account and £12,000 to be paid by instalments on the guarantee of the National Bank. The instalments were to be £1,000 per month. This agreement was on the 8th August, 1962. I was in Egypt at the time but I received copies with a letter for the 1st Plaintiff. I went to Egypt on the 2nd of July, 1962. 30

I received a copy of the agreement duly signed by the Defendant (Exhibit B) and 5 blank copies of Transfer of Shares forms (C). I also received at the same time a copy of a letter to 40



Plaintiff No. 1 (d). The original of this letter was sent to Plaintiff No. 1.

Along with these documents I received the draft of guarantee of the Bank, (E).

Wadia Hassanali came to Cairo with a similar set of documents. He met myself and the Plaintiff No. 1 in Cairo and he gave the Plaintiff No. 1 the documents he had brought with him.

10 I translated the contents of the agreement (B) to the plaintiff No. 1 from English into Arabic. I explained to the plaintiff No. 1 word by word and he accepted all the conditions mentioned. The agreement, which Wadia Hassanali brought was identical with the copy I had received. Wadia asked Khalid (Plaintiff No. 1) to sign the documents brought by Wadia (EX.E). I also translated the original (Ex.F) to Khaled before he was asked to sign Khalid did not sign the agreement (F). He said "I would like to take 20 the document to show to my brothers". His brothers were in Kuwait. Wadia did not leave with Khalid the documents he brought. Wadia said to Khalid "As long as you have got two copies of the same document sign it and send it to the Advocate in Aden."

30 Khalid left Cairo by the end of August, 1962. To my knowledge he went to Bombay in September, 1962. He went from Egypt to Kuwait and Kuwait to Bombay along with the Sheikh of Kuwait. I returned to Aden on 21st October, 1962. I did not receive any post in Cairo but I did receive post in Aden. I have post box in Aden. Before I left Aden I wrote to the Postmaster at Aden to retain all the mail for myself and Khalid. After 3 or 4 days of arrival in Aden I collected my post and found a letter from Ahmed, the brother of Khalid. I also received a letter addressed to the Advocate Mr. Bhatt through me. I also received 40 from Ahmed the brother of Khalid the copy agreement (B). I noticed that it had been signed by Khalid. I also received from the brother of Khalid all 5 forms (Exhibit C) each one signed.

After seeing the agreement (B) I enquired in Mr. Bhatt's office for Mr. Bhatt and I was informed

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 8

Mohd Abdulla Basaleh

5th & 6th May 1965  
Examination  
(contd.)

In the Supreme  
Court of Aden.

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965  
Examination  
(Contd.)

that Mr. Bhatt was returning about the middle of December, 1962. After 2 or 3 days in the end of October, I went to the Office of Mr. Dino. I saw Mr. Dino personally. I told him that Khaled had completed all the documents. I told him that Khaled had signed the agreement himself and also on behalf of his brothers and each of his brothers had signed the transfer forms. I showed him the draft guarantee of the National Bank.

I requested Mr. Dino to be good enough to arrange for the first payment of £28,000 Sterling to be paid to London according to the agreement. Mr. Dino said "WAIT FOR A FEW DAYS, AND I WILL SEND TELEGRAMS, TO MY BROTHERS" After a few more days I went to Mr. Dino again and he said to me "WAIT. WE SOLD OUR BUILDING NEAR BY OUR FACTORY FOR 25,000 to 30,000 IN ORDER TO SETTLE THE ACCOUNT OF KHALID and his BROTHERS BUT WAIT UNTIL I RECEIVE A REPLY FROM MY BROTHERS I WILL WRITE TO THEM".

10

20

The £28,000 instalment was not paid and he did not sign the Bank guarantee. After a few days I went to Mr. Brown Manager of the National & Grindlays Bank in Crater and I requested him to intervene to make Mr. Dino make the 1st payment.

Correspondence put in by consent (Exh. G.1 to 6).

In the absence of Mr. Bhatt I went to Mr. Nunn lawyer and informed him about letters. I told him I had received letters and documents from Kuwait and that when Mr. Bhatt arrives in Aden he would communicate with him.

30

The shares are not quoted in the market.

Cross-  
examination

XXn.

Q: Did you not see Mr. Dino in the Office of Athanas Bros. and not at the office of Aden Bottling Co -

A: I saw him in both offices. With Khaled we went to both Offices.

Q: Khaled was making a courtesy call on Dino,

40

to pay his respects?

A: He was asking for accounts; it was not that he want merely to pay respects.

Q: Did Mr. Dino leave Aden within a few days after KHALED called upon him?

A: I do not remember.

Q: At the meeting did Mr Dino say that if you would like to see round the factory you could do so because he was leaving for Egypt in a few days?

10 A: I do not remember.

Q: Khalid did not meet Mr. Dino again on that particular visit of Khaled to Aden?

A: I can't recollect.

Q: Is it true, that a few days later after seeing Mr. Dino at Athanas you went to Aden Bottling Company?

A: On the same day, we went to both offices.

Q: Khalid did not see Mr. Dino at the premises of Aden Bottling Co.?

20 A: Yes.

Q: You and Khalid made your demand for seeing accounts to the Manager of the Aden Bottling Company and not to Mr. Dino?

A: First, we did approach the Manager and he said that he was instructed by Mr. Dino and Mr. Dino's brothers not to show us any accounts.

We did see Mr. Dino. We first saw Mr. Dino and then afterwards saw the Manager. And also I had seen the secretary many times.

30 He also said that he would not show any papers because it was in the hands of Mr. Dino and his brothers.

In the Supreme  
Court of Aden.

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

Q: Was Khalid very annoyed about not being shown the accounts?

A: Yes.

Q: He was a Director of the Aden Bottling Co.?

A: Yes.

Q: Were you not Khalid's alternate Director?

A: Yes.

Q: Whilst Khalid was on his visit to Aden and annoyed at Dino not showing accounts, did he write to Dino?

10

A: Yes, he did; to the Advocate.

Q: Did Khaled write to Dino?

A: He was represented by Mr. Bhatt and Mr. Bhatt wrote to Dino. I don't recollect what Khalid wrote personally to Mr. Dino. I don't remember.

I see letter dated 10th July 1961. I am not sure whether it is Khalid's signature or not.

The letter is addressed to Secretary of Aden Bottling Co. Ltd., Aden. I am not aware of the letter. Put in by consent (H).

20

I see the letter dated 15.7.61. I can't say whether it is Khalid's signature or not. It is addressed to the Secretary of the Aden Bottling Co. I am not aware of the letter.

Put in by consent 'I'.

I do not know whether a reply was sent to Khaled in the terms of this copy letter now produced.

Put in by consent H.l.

Q: In the letter 'I' it is said "your letter is silent as to when the Managing Director will return to Aden"?

30

A: This letter was not brought to my notice.

Q: I put it to you that the difference that had subsisted between Khalid and the Company were about the showing of accounts.

A: It is not only the accounts. There was something beside it, which I would like to explain.

Q: You have been speaking about the agreement B and F.

A: Yes.

10 Q: There were earlier negotiations for the sale of the Plaintiff's shares?

A: Yes.

Q: Were there earlier negotiations, conducted through Wadia?

A: Yes.

Q: He describes himself as a close friend of both parties?

A: Yes, he was in the middle.

20 Q: Did he attempt to negotiate an earlier agreement?

A: Yes.

Q: These earlier negotiations were not successful?

A: I can't remember.

Q: Was there any written document in respect of the earlier negotiations?

A: I do not remember.

30 Q: Whilst you were in Cairo with WADIA & KHALED & AHMED at that time, Khalid held a Power of Attorney for all his brothers?

A: I don't remember.

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

Q: You have represented that WADIA was quite content that KHALED should sign the copy of the agreement Exh. B?

A: Yes.

Q: I put it to you that Wadia refused to leave Exh. F, the original, unless KHALED signed it?

A: He did not refuse to sign the original. Wadia said that as long as there were copies, we should sign the copy.

Q: Wadia has already given evidence in this case? 10

A: I was away when he gave evidence.

Q: Wadia has said that he was insisting on the signing of the document.

A: Yes.

Q: Did Wadia insist on Khaled signing the document (f)?

A: I don't remember.

Q: He also says that he knew Khaled has a Power of Attorney to sign on behalf of the brothers. Did he tell KHALED this? 20

A: I do not remember.

Q: You returned to Aden on the 21st October, 1962?

A: About that time.

Q: The share transfer forms you say you noticed they had been signed by KHALID and his brother?

A: Yes.

Q: The first sheet of Exh. C shows that there has been erasures and that the name has been typed in?

Q: I received it as it is now.

Q: The succeeding sheets. Each have erasures. Were they all in the same condition when you 30

received them?

A: Yes.

Q: According to you, the sum of 40,000 is a debt from the Defendant Company to the Plaintiffs?

A: Yes.

Q: You are saying that DINO was putting you off by asking you to wait?

A: Yes.

Q: Did you think fit to cause anyone to write?

10 A: I had shown all the documents to him.

Q: Did you think fit to cause any letter to be written to anyone stating that these documents had been executed?

A: When I saw DINO I showed him all the documents. I was not satisfied with him, so I went to the advocate.

Q: Did you not see fit to instruct any other lawyer to write saying that the documents had been executed?

20 A: No. I had no instructions.

Q: Dino is going to say that neither of the interviews you had with him ever took place?

A: We did have the interviews.

Q: When Mr. Bhatt eventually came from India to Aden you instructed him personally.

A: Yes.

Q: Did you instruct (him) Mr. Bhatt as to the details of the alleged two interviews?

A: Yes.

30 Q: According to you, Mr. Dino was in effect admitting owing the money and was promising to pay after getting in touch with his brothers?

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

A: Yes.

Q: At the 2nd interview, Dino was saying in effect that they had sold the building and had got the money and he was getting in touch with his brothers)

A: Yes.

Dino was admitting liability. I did tell all this to Mr. Bhatt.

Q: Is this the first letter written to the Defendant?

10

A: Yes.

(Put in J)

Q: Did you approve this letter before it was sent?

A: Yes.

Q: Why bother to inform Athenas Bros. that the documents have been signed when, according to you, you had already shown these documents, signed?

A: Mr. Bhatt thought it right that it should be written like that.

20

Q: Why do you not mention in the letter that Mr. Dino had seen these documents?

A: I forgot.

Q: Did you also forget to tell Mr. Bhatt that Mr. Dino on two occasions had promised to pay?

A: I did tell Mr. Bhatt.

Q: When you read EXHT. J and approved it you were aware that Mr. Bhatt had not mentioned that you had seen Mr. Dino on two occasions and Mr. Dino had promised to pay?

30

A: Yes.

Q: Why did you not ask Mr. Bhatt to include that important matter in that letter?



A: I tried to get Mr. Bhatt to put it in the letter but Mr. Bhatt said "I will take legal steps".

Q: It was not mentioned in the letter because (a) the incidents never took place and (b) you never told Mr. Bhatt?

A: I did mention it to Mr. Bhatt but he said "leave it to me".

(Letter dated 9.1.63 put in by consent. (K)

10 I had not actually sent this letter but I was informed by Mr. Bhatt by telephone about it.

Q: Later, did you ask Mr. Bhatt to write to Mr. Nunn about it?

A: Mr. Bhatt received instructions from Khaled.

(Letter dated 19.3.65 put in by consent 'L').

Q: Had you informed Khalid of the two interviews with DINO at which he had promised to pay?

A: Yes.

20 Q: But there is no mention in Ex. L of the alleged promise to pay?

A: The advocate was acting on behalf of Khalid.

Q: You have said that after the interviews with DINO in which he was putting you off, you went to Mr. Brown. Was this before instructing Mr. Bhatt to write the letter of 31.12.62 (J).

A: It was before I instructed Mr. Bhatt.

Q: But then Mr. Brown was not the Manager of the Bank and was not in Aden at that time?

30 A: I did not see the Manager of the National & Grindlays as I have said I was not sure whether his name was Brown or some other person.

Q: Was Mr. Nunn the lawyer, an honourable gentleman?

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 8

Mohd Abdulla Basaleh

5th & 6th May 1965

Cross-examination (Contd.)

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 8  
Mohd Abdulla Basaleh

5th & 6th May 1965  
Cross-examination (Contd.)

A: I do not know.

Q: You told Mr. Nunn that the document had been signed?

A: I showed Mr. Nunn the signed papers.

Q: So Mr. Nunn, before you included Mr. Bhatt knew perfectly well that the agreement had been signed and the blank transfers signed?

A: Yes.

Q: Do you know anything about this letter in reply to Ex. L? (shown to witness).

10

A: I did not see this letter, but I was informed by Mr. Bhatt on telephone that he had received the letter and that he had sent the letter to Kuwait.

Q: Are you sure that you showed Mr. Nunn the signed agreement and signed blank transfer forms?

A: Yes.

I do not know why Mr. Nunn should say that he had never seen the agreement or the forms of transfer.

20

Q: When you say you translated the agreement for benefit of Khalid, you were well aware of the terms of the agreement?

A: Yes; but I am not a legal person.

Q: Before you is Exht. F. Look at Clause 5. (Clause read).

"The persons to be named.....as transferees".

A: Yes.

Q: Will you now look at F.1 the transfer forms. Do you see that the name of the transferee ---

30

A: I have not seen this Form (F.1)

Q: Do you see it now?

A: Yes.

Q: Do you see that the name of the transferee is filled in at the top and the executed portion also?

A: Yes.

Q: And the other F 2, 3, 4 & 5 also?

A: Yes.

Q: You also saw the Exhibit C series. These were the ones which you say were posted to Khaled.

A: I originally received them from Mr. Bhatt.

Q: When you received them from Mr. Bhatt and they were posted to Khaled, the names of the transferees were already typed in?

10 A: Yes.

Q: Since that time, someone has rubbed out of Exht. C series the names of the transferees? That is apparent, is it not?

A: (The witness does not answer the question although repeated but insists on repeating that that is how he later received the documents).

Q: If they have been erased, who has erased them?

A: I don't know.

Q: Look again at Exht. F Clause 4 (Clause 4 read)

20 A: I want someone to translate it in Arabic.

Q: Are you suggesting that you need someone to translate it for you to understand it.

A: Yes.

Q: How is it, then, you were able to translate these documents to Khalid in Cairo?

A: I did it to the best of my knowledge.

Q: You were, in effect, expecting Khaleb to execute the agreement on the basis of your translation to him?

30 A: According to my understanding, I translated it to Khaled.

In the Supreme  
Court of Aden

Plaintiffs'  
Evidence

No. 8

Mohd Abdulla  
Basaleh

5th & 6th May  
1965

Cross-  
examination  
(Contd.)

In the Supreme  
Court of Aden

Plaintiffs'  
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No. 8

Mohd Abdulla  
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Cross-  
examination  
(Contd.)

Q: And you expected him to act on your translations?

A: That was left to him.

Q: Was not Khalid having the assistance of a lawyer in Cairo at this time?

A: I don't know.

(Clause 4 translated to the witness by Court Interpreter into Arabic).

Q: You say this agreement was signed on the 2nd October?

10

A: Yes.

Q: If the agreement was signed on 2nd October, 1962, clause 4 means Khaild & his brothers shall not exercise their rights in the Aden Bottling Co. Is that not correct?

A: After they signed the agreement and received the money. They do not lose their rights until they receive the money.

Q: Clause 4 says nothing about receiving the money.

20

A: It means that they lose the rights when they received the first payment of money.

Q: I suggest that you never entertained that belief?

A: First there was to be a first payment.

Q: In point of fact, would it be true to say that you were fussing, about the exercise of your rights as alternate director until last November 1962.

A: No.

30

Q: Have you received copies of the Balance Sheets?

A: I have personally not received.

Q: Did you in fact ask that a Directors' Meeting be convened in November 1962?

Q: When attending directors' meetings as an alternate director was it the system that draft minutes were prepared beforehand?

A: Not regularly.

Q: Occasionally.

A: No. They were not calling me.

Q: You did attend as an alternate director.

10 A: I was deprived from all the rights.

Q: Have you ever attended a meeting of Directors of the Bottling Co.?

A: May be, but regularly.

Q: On these occasions, when you did attend, was a draft of the minutes prepared before hand by Mr. PRABHU?

A: Earlier, he or someone else.

Q: Mr. PRABHU was the Secretary of the Company.

A: I know nothing about Mr. Prabhu as Secretary.

20 Q: Between 5th November 1962 and 29th November 1962 you asked that a meeting of the Directors be convened?

A: No.

Q: I put it to you that you did ask between these dates and did so because of a communication you received from Khalid.

A: I don't remember unless I see the communication.

30 Q: Round about that time, had you received any letter from Khalid asking you to obtain a resolution authorising you to take an active part in the management of Aden Bottling Co.?

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No. 8

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examination  
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A: I don't remember.

Q: Did Khalid ask you to obtain a resolution that you be invested with full authority to inspect the records and books of the business?

A: No.

Q: (Documents shown to witness)  
This is a draft of a minute of a meeting proposed to be held on 29.11.62.

A: I was not there.  
(Put in provisionally subject to formal proof) 'N'

10

Q: This draft (N) was amended at your request.

A: No.

Q: Do you deny that you had anything whatsoever to do with the directorial side of the business after 2nd October, 1962.

A: I deny it.

Apart from asking for the money I had nothing to do with the Bottling Co. after 2nd October, 1962.

20

Q: So, if Dino says that you had something to do with the draft that would be false?

A: It would not be correct. I am quite sure.

Q: You have told us about disputes about accounts. Was Mr. Taraporwalla lawyer, acting for you at that time?

A: Yes.

Q: Did he receive a letter of Mr. Nunn dated 24th May, 1962?

A: Yes we did.  
(Letter put in by consent exht. '0').

30

Q: Do you remember Mr. Dino writing a letter to Khaled early in November 1962?

A: I recollect receiving a copy of a letter for Khaled & Bros. in 1963.

(Question repeated).

A: I do not remember.

Q: I put it to you that a copy of such a letter was delivered to you (G2)

A: No reply.

(G2 shown to witness). I have not received any copy in 1962 I received a copy for Khalid in 1963.

10 Q: I put it to you that on or about 6th November, 1962 you received your copy of it and signed for it.

(Book shown to witness).

This is not my signature. I deny that it is my signature.

(Book put in provisionally P. Peon Despatch Book).

Q: Can you recognize SALEM in the Arabic?

A: I can't translate it.

Q: You received a copy of Exht. (O) from Mr. Khalid.

20 A: Yes, January, 1963.

Adj. to 6.5.65 at 9.30 a.m.

E. LIGHT/Ag. J.

6. 5.65. Parties as before.

SWORN: Mohamed Abdulla Basaleh XXd (Cont'd).

Q: You saw the letter of 5th November (G2) before it was despatched?

A: I did not see.

30 Q: Mr. Dino composed that letter with your guidance.

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Plaintiffs' Evidence

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Cross-  
examination  
(Contd.)

A: No.

Q: You told us you received documents from Khalid on your return to Aden about 21st October, 1962.

A: About the end of October.

Q: Khaled says he signed them about 2nd October, 1962. How long do letters normally take from Kuwait to Aden.

A: I do not know.

Q: You get a lot of letters from Kuwait Office don't you. 10

A: I do not pay particular attention how long it takes.

Q: Would you agree that it is about 1 week?

A: I don't know.

Q: Are you saying that Khalid did not inform you of the letter of 5th November, (G2) until some times in January, 1963.

A: I received it in January 1963.

Q: Had you not any information from KHALED until January 1963? 20

A: No. Because Khaled was away in India.

Q: Look at Exht. N. Would you please read Item No. 2.

A: I have not seen this letter.

Q: Have you now fully read para. 2.

A: I did not write it.

Q: Have you now read it?

A: Yes.

XXn.Q: Someone is writing about advice received by 30



you from your Principal. In November, 1962, Khaled was your Principal was he not? You were his Manager?

A: Yes.

Q: In Exht. N the Athanas people in November 1962 (were writing?) to effect that you have received advice from your principal.

A: I don't remember receiving any advice.

10 Q: Can you suggest how Athanas came to write this unless you had told them?

A: I can't remember.

Q: In November 1962 you were willing to take an active part in Aden Bottling Co.?

A: No.

Q: Re Clause 5 of agreement (Ex.F). Is it not a fact that, at that time Athanas group were contemplating selling the whole business as a going concern to another party.

A: I don't know.

20 Q: Did Dino not tell you this.

A: No.

Q: By November, 1962, were you interested to acquire this business or share in the Company - you and your associate.

A: Yes.  
I understand the question.

Q: Ct:- (Question repeated).

A: No.

30 Q: You said nothing to Athanas about the execution of this agreement?

A: I showed Exht. B to Mr. Dino and he said after they had settled the building they could pay.

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Cross-  
examination  
(Contd.)

Mr. Horrocks to Court: I now refer to Exht. 1  
so marked in the evidence on Commission of Khaled.

Q: Please read this document dated 31.8.62  
You told us you were present when Wadia  
submitted documents at Cairo.

A: Yes.

Q: Khaled admits writing this letter.

A: Yes.

Q: Khaled writes as follows: "Please inform  
your friends ..... and hand them over to Mr.  
Basaleh". You were in Cairo at that date.

10

A: August. Yes.

Q: Can you tell us what the "conditions" were  
that Khaled was writing about?

A: As regards this letter in front of me, I  
know nothing about it.

I was instructed by Khaled, if and when  
Athanas Bros. agreed to the conditions and paid  
the money to sign letter of guarantee.

Q: "And he will send them to my brothers for  
signatures and to send them back in time". As  
at 31.8.62 what matters had still to be signed  
not only by Athanas but also by Khaled's  
brothers?

20

A: I don't know.

Q: I suggest that, up to the time Khaled had  
left Cairo at the end of August, 1962, the terms  
of the agreement had not been agreed?

A: The terms had been agreed.

Q: In particular, I suggest that Khaled and you  
were insisting that the first cash payment should  
be £12,500 instead of 28,000.

30

A: No. We agreed to £28,000.

Q: The reference in Exht. before you (Q) to the necessity to write papers and sign them was with reference to a freshly drawn agreement giving effect to the terms that the payment should be £12,500.

A: No. (Translation Q1)

Q: You have denied all knowledge about this directors Meeting in November, 1962 and about the draft Minute.

10 A: Yes. I don't know about it.

Q: The defendants are going to give evidence that you produced to them in Arabic letter that you had received from Khaled.

Bhatt: I would object to the translation of the alleged letter. We have had no notice to produce an Arabic letter. No date is shown.

20 Horrocks: I set out the letter as translated and asked for production of the original. The translation will be given in evidence that it is a true translation, presumably I produce the notice (R).

(Therefore, the original is undated).

Q: I rule that notice has been given to produce the original.

Q: Did you receive from Khaled a letter of which this letter is a translation?

A: I don't remember. (put in S (subject to proof)).

Q: Did you produce an Arabic document, to the effect of Exht. S. to Athanas at any time.

30 A: No.

Q: Is this (document produced) a copy of the Memo and Articles of the Company.

A: Yes, I admit this; but I was not allowed to run this business in place of Khaled.

(Put in T).

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Re-examination

Re-EXX:

Q: You have said in XX that there was a dispute between the parties before the agreement.

A: Yes.

Q: How long before.

A: More than 7 years before.

Q: Did you approach anyone regarding the dispute between the parties?

A: Yes. I approached, DHANBOORA & CO. They were Auditors of Aden Bottling Co. I have approached the Advocate Mr. Taraporwalla. Then in 1960 I met Mr. Horrocks himself and he has written for me.

10

Q: The Agreement B signed by Khaled and his brothers was sent to you?

A: Yes.

Q: By whom?

A: By Ahmed Abdul Latif, the brother of Khaled, and there are letters with it.

Horrocks: I would object to this. In the deposition of Khaled he says that he despatched the documents to this witness by registered post without any covering letter.

20

In view of this testimony of Khalid, I am taking by surprise at this stage I would object to their being put in at this late stage - Certainly in re examination. There was opportunity to put these letters in Examination in Chief.

Bhatt: He had mentioned it in Examination in Chief.

30

Court: I rule that the letters sought now to be admitted are inadmissible at this stage.

Q: Did you receive from Khaled a letter addressed to me?

A: Yes.

Horrocks: I submit that it is inadmissible what a person writes to his own advocate.

Bhatt: The purpose of the admission of this letter to show that I received it on 25th December, 1962 and to show what I wrote to Athanas Bros. on 31.12.62.

10 Horrocks: The question of Mr. Bhatt having written does not arise. We do not deny this, nor when he received it.

As regards the contents of the letter, a party cannot adduce evidence against his opponent by writing the facts to his lawyer.

They should come into Court; and Khalid has given evidence. I would object on these grounds.

Court: I rule that the letter sought to be tendered is inadmissible.

Witness (Cont.)

20 RXn: (Cont.)

Bhatt: No other questions. I close my case.

Case for Plaintiff.

No. 9  
CONSTANTINE CHRISTO ATHANAS COPOULO.

SWORN: CONSTANTINE CHRISTO ATHANAS COPOULO:

30 Many people know me as Dino. I am a Director of the Defendant Co. Athanas Bros., Aden Ltd., and at all material times Director of Aden Bottling Co. I am Hon. Greek Counsel General for Aden.

There were no disputes between Athanas Bros. and the 1st Plaintiff prior to the agreement. In regard to the Aden Bottling Co. there was no disputes between Athanas Bros. and any of the

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Re-examination (Contd.)

Defendants' Evidence

No. 9

Constantine Christo Athanas Copoulo

6th May 1965 Examination

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Court of Aden

Defendants'  
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No. 9

Constantine  
Christo Athanas  
Copoulo

6th May 1965  
Examination  
(Contd.)

Plaintiffs. Mr. Basaleh the last witness was the Manager of the Khaled Abdul Latif and Bros. in Aden. In 1959 he was appointed alternate Director of Aden Bottling Co. for Khaled the 1st Plaintiff who was Director. Mr. Basaleh wanted to go to the factory of the Bottling Co. and permission had been granted for him to go. I only received information from his lawyer that he wanted to inspect the books at the factory. I believe the lawyer was Mr. Taraporwalla.

10

Q: Basaleh says that Khaled came to Aden in June 1961 and saw you at your own office of Athanas Bros. and then at the office at Bottling Co.?

A: They only came to see me in the office of Athanas Bros. There was only one interview. It was a courtesy visit in respect of Khaled.

Q: Basaleh says they went there to check accounts and asked to see accounts.

A: No. I only remained in Aden for 5 or 6 days after the visit and then I left Aden for Egypt. At the meeting I did inform them that I was going to Egypt very shortly and told Khaled that I was at his disposal to show him the factory of Aden Bottling Co.

20

Q: I will read you a passage of Khaled's evidence:-

"I asked for inspection of accounts. They told me that the accounts were secret and I could not see".

30

Q: Did you tell him that accounts were secret?

A: No.  
Thereafter he met two directors in Alexandria .....

Q: Do you recall meeting Khaled in Alexandria in 1961?

A: No.

Q: Was there any discussion between you and

Khaled at Alexandria about the Aden Bottling Company?

A: Yes about business in general of Aden Bottling Co.

Q: Did he make any complaint regarding the accounts?

A: He did complain that the Manager of the Aden Bottling Co. Mr. Kapanlanis, had refused to allow him to enter the factory.

10 Mr. Kapanlanis is now in Beirut.

He said that Mr. Kapalannis was not polite and would not allow him to visit the factory.

Q: He goes on to say that you further told him that you would buy up the shares of Khalid and his brothers as an alternative to offering inspection of the accounts?

A: No.

Q: Was there any talk at all at Cairo about your buying shares?

20 A: We had a prospective buyer for the whole business of Aden Bottling Co. and we enquired whether he was willing to sell the shares? He said he would consult his brothers in Kuwait.

Q: Khaled also suggests in his evidence that half the dispute was that you had falsely entered in your books the price of the sugar you had bought.

A: This is not true.

30 Q: As a result of talk of sale of the shares in Cairo was an agreement prepared?

A: Yes.

A: I see the document produced. It is the document dated the 18th July 1962 with a view to our purchasing the shares of Khaled and his brothers.

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Examination  
(Contd.)

(Put in U).

The negotiations in respect of this document fell through, and thereafter Exht. F the agreement was prepared with forms and transfers and WADIA was despatched to Cairo with these documents.

Horrocks: I produce letter dated 27.8.62 written by the defendant's witness WADIA to "CRESTO" meaning the present witness. There was objection to it in the commission evidence. Evidence has been given that WADIA was a go-between and I submit that this is a report of what transpired in Cairo. 10

Bhatt: It was not listed as a document relied upon. The word "correspondence" means correspondence between the parties and not by a third party.

Court: I rule that the document is inadmissible.

Witness (Contd.)

In August 1962 I was in Athens, Greece. I returned to Aden in October 1962. After my return BASALEH came to me towards the end of October 1962 at my Office of Athanas Bros. 20

Q: He says that he saw you personally and told you all the documents have been completed with the agreement and share transfers and also told you that Khaled had signed. He also says that he showed you the draft guarantee.

A: None of this is true.

Q: He says he asked you to pay the £28,000 according to the agreement and you asked him to wait for a few days. 30

A: This is not true.

Q: He says he had a second interview 2 or 3 days later and again you asked him to wait saying that you had sold your building in order to satisfy payment.

A: This is not true. I had never sold any



building at that time.

Basaleh did see me at my office. I informed him that we were not any more interested to buy the shares.

Q: Why were you no longer interested?

10 A: Due to the delay in signing the documents - No, that was not the reason at that time. The reason why, at that time, we were no longer interested in buying the shares because a new agreement was proposed through WADIA and this was quite different from the original one. A revolution had started in Yemen at that time and the party who had previously been interested to buy the Bottling Co. as a going concern had withdrawn his offer.

Q: Have you seen Exht. Q before?

A: Yes.

Q: From whom did you receive it?

20 A: From Wadia and the proposed new agreement is the one indicated in Exht. Q. I wrote a letter to Khaled on 5th November, 1962. That is the Letter (G2)

A copy of the letter was sent to Mr. Basaleh. This letter was written after I saw him at the office at end of October, 1962. This letter G2 was written in consultation with Mr. Prabhu. After it had been prepared and typed, Mr. Basaleh saw the letter.

30 Q: In November 1962 were any arrangements made to have a meeting of Directors of Aden Bottling Co.?

A: Yes. Basaleh asked for a meeting. Documentary preparation was made. Mr. Prabhu, my secretary, prepared a draft of the resolution to be decided at the meeting.

It was customary to make minutes for the meeting.

I see Exht. N. They are the draft minutes I

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have referred to. There is some pencil writing seen at the end. These alterations were made by Mr. Prabhu following the instructions of Mr. Basaleh. I heard him give these instructions.

Re: Item 2 of the Minutes.

Mr. Basaleh said he had received instructions from Khalid by letter. He did not show me the instructions but a letter in Arabic was produced by Mr. Basaleh. Mr. Hasson Mosgi, an Arab Secretary in my office, is a translator so I asked Mr. Basaleh if he might translate the Arabic letter. 10

I later saw the translation.

I see Ex. S. That is the original translation. The date at the top is the date of the translation. I am not sure but I believe that Mr. Prabhu has recorded this date.

Mr. Bhatt wrote a letter of December, 1962 (J) that is the letter. Prior to the receipt of that letter I received no information from any source that the agreement or transfer share forms had been executed. I instructed my lawyer Mr. Westby Nunn to deal with the matter. 20

Cross-  
examination

XXn: Aden Bottling Co. is separate Co. from Athanas Bros. Ltd., Athanas Bros. are not the Managing Agents of Aden Bottling Co.

The Directors of Athanas Bros. are Directors of Aden Bottling Co. Registered Office of Aden Bottling Co. is in Queen Arwa Road but is not the same office of Athanas Bros. The Chairman of the Directors of Aden Bottling Co. is my brother and he is also Chairman of Directors of Athanas Bros. 30

There is a Managing Director of Aden Bottling Co. He is the one who happened to be present in Aden. If there are two directors in Aden at one time only one will be Managing Director. It is the same arrangement with Athanas Bros.

DHANBOORA & Co. were auditors of Aden Bottling Co. and they are also the Auditors of Athanas Bros.

There is special stationery for each Company. Where a letter is written on behalf of Athanas Bros., the proper stationery is used. Also the proper stationery for Aden Bottling Co. Each Company have separate stamps.

Q: When you call a meeting, a notice of meeting is issued?

A: Yes.

Q: And the Agenda is mentioned?

10 A: Yes.

Q: Who maintains the minutes book of Aden Bottling Co.?

A: The Secretary of Aden Bottling Co.

Q: Who is the Secretary of (Aden Bottling Co.) Athanas Bros.?

A: Mr. Prabhu, he is also Secretary of Aden Bottling Co.

Q: Did you pay the Directors of Aden Bottling Co. for attending the meeting?

20 A: No; it is provided, but we don't pay it.

The directors do get salary.

Same also in Athanas Bros.

Khaled the Plaintiff No. 1 was one of the 1st Directors. He was not paid any salary.

Q: Is there any resolution in Aden Bottling Co. to pay salary to Directors?

A: I don't remember.

Q: The business of Aden Bottling Co. is attended by Directors even in the office of Athanas Bros.

30 A: Yes.

We hold general meetings of Aden Bottling Co.

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every year. We do send notices to the Shareholders. I do not recollect whether or not accounts are sent in advance to shareholders before the meeting.

Draft Minutes are prepared before the meeting usually.

I don't recollect whether or not I was in Aden in December 1959.

Q: Did you receive a letter from Khaled on 28th December 1959. (Photostat copy of a letter shown to witness).

10

A: I never received this letter personally but I do recollect receiving information about it from my brothers.

(Put in V).

Q: Mr. Basaleh was asking to perform duties of a director but he was not appointed by Khaled until later on in 1959. After he had been appointed he was pestering, coming to office of Athanas Bros., asking for this and that; and our reply was that he had right to inspect anything he wanted but he wanted this to be passed in a resolution and the reply we gave him was that there was no need for resolution.

20

So far as I recollect there was no dispute of any kind at the time I received information of the letter (V).

Mr Basaleh was appointed directors 21st November 1959. So far as I know there was no resolution to this effect.

30

It would be the duty of my Secretary to report an appointment to Registrar General.

I did receive this (date Ex.H.) I mean my Company Aden Bottling Co. Not myself personally. I was not in Aden at that time.

I agree correspondence would be placed before the Managing Director when he is in Aden and important decisions are taken by the Board of

Directors.

I wrote a letter "G2". It is signed on behalf of Aden Bottling Co. Ltd.

The persons who was interested in buying the Aden Bottling Co. as a working concern was a person from JEDA named KAKY. There is no correspondence on the subject. It was private.

I agree that there is no record in the minutes of the Company about this offer.

10 Q: Athanas Bros. did not write any letter to Khalid in November 1962.

A: No. Except the letter, G2 of Aden Bottling Co.

Q: The agreement F & B - the suit agreement - was signed by Athanas Bros. Limited.

A: Yes.

Q: They were to be the purchasers of the shares.

A: Yes.

20 Q: You had instructed Mr. Nunn that Athanas Bros. have already agreed to purchase the shares at 4,000.

A: Yes.

Q: 28,000/- cash down and 12,000/- by month instalments. I gave instructions to Mr. Nunn to prepare the agreement.

Q: Do you know that Mr. Nunn sent the agreement to me Mr. Bhatt for approval?

I was acting on behalf of Khaled. Did you then know this?

30 A: Yes.

Q: You were informed that I had approved the agreement?

A: Yes. My nephew signed all the documents as

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(Contd.)

Attorney. He had the authority of the Company.

Q: You sent Mr. Wadia to Cairo at the expenses of Athanas Bros. to obtain signatures of Plaintiffs.

A: Yes. I was not in Aden at that time - August, 1962.

I believe Wadia took the agreement and the transfer forms were sent to Cairo a few days later. I see the letter now produced. I was not there when it was written.

10

Put in (W).

I don't know whether 4 transfer forms were sent to Cairo or not. I was not here at that time.

Q: Basaleh informed you by end of October 1962 that the agreement and transfer forms had been signed by the plaintiffs?

A: No. I first saw the draft Bank guarantee for the first time in these proceedings.

I returned to Aden in October 1962. I had access to the papers of Aden Bottling Co. but I did not see the draft Bank Guarantee.

20

We the defendants did instruct National & Grindlays Bank to stand Guarantor. The draft guarantee was sent to Mr. Nunn for approval. I never saw it but I knew about it. I do not know whether or not this draft guarantee was sent with the agreement to Cairo.

When I received letter Ex.J I instructed Mr. Nunn. I gave him also my letter of the November, 1962 (G2).

30

I see Ex. K dated 9th January 1963. My letter of 5th November, 1962 (G2) was in possession of Mr. Nunn when he wrote the letter (K).

Q: On account of the revolution in YEMEN, you repudiated the agreement on the 5th November, 1962 although the agreement had been signed by the Plaintiffs and you knew of it.

A: No. This is not true.

Q: There was no new offer for the Plaintiffs except what had already been agreed to.

A: There was a new proposal.

Rxn:

Re: Exhibit G2. Was there ever any question of Aden Bottling Co. purchasing its own shares?

A: No.

Q: Who is "We" in this letter?

10 A: Athanas. It was put on Aden Bottling Co. Letterhead by oversight.

Adj. to date to be fixed by Registrar.

6.5.65

E. LIGHT

Bhatt  
Horrocks  
Fixed for Monday 10.5.65 at 9.30  
after the Miscellaneous Applications.

V. D. T.

10.5.65 Bhatt  
Horrocks

20

No.10  
KANVILIL RAM NARAYAN PRABHU

Sworn: Kanvilil Ram Narayan Prabhu

I am Secretary for the Defendant Company and at all material times I had been Secretary of Aden Bottling Co.Ltd.

I see Exhibit N. I prepared this document.

30 This purports to be a draft of minutes of meeting (1952) 29.11.62. I prepared the draft under instructions received a day or two before

In the Supreme  
Court of Aden

Defendants'  
Evidence

No. 9

Constantine  
Christo Athanas  
Copoulo

6th May 1965

Cross-  
examination  
(Contd.)

Re-examination

No.10  
Kanvilil Ram  
Narayan Prabhu

10th May.1965  
Examination

In the Supreme  
Court of Aden

Defendants'  
Evidence

No.10

Kanvilil Ram  
Narayan Prabhu

10th May 1965

Examination  
(Contd.)

the 29th November, 1962. I received the instructions by Mr. Basaleh and Mr. Dino in Mr. Dino's office at Athanas Bros.

In accordance with the instructions I prepared the typed portion of Ex.N.

On 29th November 1962 Mr. Dino and Mr. Basaleh attended the meeting. Exht. N bears handwriting in pencil. This is my handwriting. I was present at the meeting. I am Secretary. I was ordered to make these amendments at the meeting by the Directors at the meeting i.e. Mr. Basaleh and Mr. Dino jointly after discussion among themselves and at the suggestion of Mr. Basaleh. The directors saw the amendments that had been made. The resolutions on Exht. N were not passed at the meeting.

10

There was an Arabic document produced at the office of Athanas by Mr. Basaleh to Mr. Dino in my presence. This was earlier than the meeting of the 29th November, 1962. It was sometime about the end of October, 1962.

20

Mr. Dino asked me to call the personnel office of Athanas Bros.

(Hasson Moshjy called into Court). That is he.

The purpose of calling him was to obtain a translation of the Arabic letter. A translation was made.

I see Ex.S. That is the translation of Hasson Moshgi of the Arabic letter. I see "1.11". at the top of the translation in pencil. This is my handwriting. This is the date I got the translation from Mr. Dino. I see Exht. G2. The original letter was prepared by me. It was addressed to the Plaintiffs at Kuwait and copied to Mr. Basaleh.

30

I see Exht. P. This is the despatch book of Athanas Bros. The letter of 5th November, 1962 is shown at the foot of the page. I do not know Mr. Basaleh's having had contact with Aden Bottling Co. after 29.11.62.

40



Copies and Minutes were sent to Kuwait as well as to Mr. Basaleh.

XXn:

I work full time with Athanas Bros. I do not go to Aden Bottling Co. daily. When meetings are held we issue notice. No notice was issued for meeting of 29th November, 1962.

10 Sometimes notice is sent to Mr. Basaleh by despatch and sometimes by post. As Secretary of Aden Bottling Co. I was ordered by Mr. Basaleh and Mr. Dino to prepare the draft minutes for the meeting and therefore no notice was issued since they themselves instructed me.

I do send notices to all directors but on this occasion I did not because the meeting was to be held in 2 days time and there was not the time to give notice to the other Directors.

20 The procedure at meetings always followed by Aden Bottling Co. was for me to prepare draft minutes and then present it at the meetings and if it was approved the Directors present would sign it. All the Directors present would sign.

Q: I put it to you that Mr. Basaleh did not give you instructions to prepare the draft.

A: He did give me instructions with Mr. Dino. Both of them.

Q: No meeting was held on the 29th November, 1962 and Basaleh not present.

30 A: A meeting was held and Mr. Basaleh was present. The resolutions were not passed and the signatures were not made. The draft was not initialled.

Q: The draft is an afterthought.

A: No.

Q: RE: Exht. S- the translation. Do you know anything about the loan?

A: Some loans were taken long time back and

In the Supreme Court of Aden

Defendants Evidence

No.10

Kanvilil Ram Narayan Prabhu

10th May 1965

Examination

(Contd.)

Cross-examination

In the Supreme  
Court of Aden

Defendants'  
Evidence

No.10

Kanvilil Ram  
Narayan Prabhu

10th May 1965

Cross-  
examination

(Contd.)

Re-examination

repaid. There was no loan pending in October, 1962. I have seen the Arabic document. I cannot read Arabic but it looked like a letter. The letter was handed over to the officer to translate. I was not present when he translated it. The Arabic letter was handed over in the directors' office at Athanas. I can't remember the time except that it was morning time.

I received the translation from Mr. Dino for filing. The fact that there is no mention of despatch clerk re the letter Exht. P may be the fault of the despatch clerk.

10

Re-Exn: Re: Exht. T.

Articles 96 and Article 104 apply to the regulation of the meetings.

No.11

Hasson Mosgy

10th May 1965

Examination

No. 11  
HASSON MOSGY

SWORN: HASSON MOSGY:

I am personnel Officer with Athanas Bros. I see Exht. S. I recognize it as my handwriting. I wrote it sometimes in November, 1962. I cannot remember the exact date. Mr. Dino gave me the letter in Arabic and asked me to translate it into English sometime in November 1962. This Exht. S is the translation of that letter when I had made the translation. I gave it to Mr. Dino. It was a correct translation in English of the Arabic letter. I do sometimes translate Arabic into English. There are other translators with Athanas.

20

30

Cross-  
examination

XXn.:

It is not possible to translate Arabic word for word into English. I recollect that there was a date on the Arabic letter but I inadvertently omitted it.

Re-Xn.: No question.

No. 12  
COUNSEL'S ADDRESS FOR THE DEFENDANTS

In the Supreme  
 Court of Aden

Counsel's  
 Address for  
 the Defendants  
 No.12

10th May 1965

Horrocks: It is not disputed that WADIA HASSON ALI proceeded to Cairo. There had been an earlier written agreement which he had endeavoured to negotiate at KUWAIT but these negotiations broke down and a fresh agreement was prepared and with this agreement WADIA proceeded to CAIRO.

10 Some point has been made in cross examination that, apart from Ex.F, there was an oral agreement to sell the shares for 40,000; but what the terms of that oral agreement were is not known with certainty. The arrangement between them was that the deal should be the subject of a written document.

Hence Ex.U the Kuwait document, which was abortive and Ex. F prepared. Exht. F had been signed on behalf of the Defendant Cc. before WADIA left Aden for CAIRO.

20 An essential part of the deal was that the Plaintiffs should execute valid transfers of their shares.

Without doubt the agreement was not signed at CAIRO it is pleaded in written statement that the first plaintiff KHALED refused to sign; but on that part there is no oral evidence of that.

In the examination of KHALED he appeared to have a hazy recollection. I can only say that there is no oral evidence of the rejection of Exh.F.

30 What WADIA says is that 1st Plaintiff KHALED said that the document was OK but that he would have to take it to KUWAIT for signature of his brothers. WADIA protested that 1st Plaintiff had general power of attorney to sign on their behalf and therefore no need to take to KUWAIT.

Exht. B, the counterpart of Exht. F agreement, is signed by all the plaintiffs and it is alleged that it was signed on the 2nd October, 1962.

Meanwhile we have the remarkable letter Exht.Q

In the Supreme Court of Aden

No.12

Counsel's Address for the Defendants

10th May 1965

(Contd.)

from Khaled dated 31st August 1962 - "I am sorry to inform you....." "The necessary things".

Quite clearly, on 31st August, KHALID is writing to WADIA, the go-between, that they have laid down certain conditions still to be complied with.

This is inconsistent with Exht.F. "The conditions are well known.....them".

If he was laying down conditions for payment of the agreed amount, he could not have been referring to the same figures stated in Exht.F.

10

Only after a fresh paper has been prepared would plaintiffs sign the documents.

Although WADIA unable to assist the Court, I rely upon Exht.Q. This is pleaded in para.4(2) of the written statement. I rely upon Exht. Q to show a change in the mode of payment and on the basis of Exht. Q there was a rejection of Exht.F. Once there was a rejection, there must be a fresh offer or confirmation of original offer waiving the rejection. Quite apart from the rejection there is the Contract Ordinance section 3(b). There would be a contract when Defendants' offer accepted, by the Plaintiff. Khalid 1st Plaintiff says Exht. B executed Kuwait 2 October 1962, and posted to Basaleh in Aden.

20

According to Khaled, he sent the documents by registered cover without any covering letter. It was sent to Basaleh. There must be a signifying of assent to the person who makes the offer.

30

Section 3 (b) Contracts Ordinance, Section 5. The communication of proposal and acceptance and revocation of proposals. Merely posting to one's own agent nor a communication.

Section 4: Communication of an acceptance. Receipt of the documents by Basaleh from Khaled did not put the purported acceptance by Khaled out of the power of Khaled because Basaleh was agent of Khalid and not of the Defendants.

40

Section 4. Revocation: Communication of revocation.

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No.12

                      
Counsel's  
Address for  
the Defendants  
                    

10th May 1965

I submit that the letter of 5th November, 1962 (G2) was a revocation by the Defendants. The question is whether there was an acceptance communicated to Dino orally by Basaleh a day or so after 21st October, 1962. If so, the contract was effective and revocation counts for nothing.

(Cont'd)

10 If the Court rejects the evidence of Basaleh and accepts the evidence of the Defendants, the acceptance was communicated for 1st time by Mr. Bhatt's letter Exh. J dated 31st December, 1962. The question would then arise whether the revocation of 5.11.62 had, in terms of section 4, reached the Plaintiffs or their agent Basaleh before 31.12.62. That emphasises the importance of the draft minutes of 29th November, 1962 (N).

20 Item: I submit reference to letter is to letter G2. Exht.N also refers to "advice". I submit the letter of which Exht. S is translation was the advice referred to.

I invite Court to accept evidence of DINO and Prabhu in preference to evidence of BASALEH.

Is it conceivable that BASALEH would be bothering himself about his services as Director, if the shares had been sold? He would certainly have lost interest in the Company. He would only be concerned in getting the price.

Exht.G2.

30 It has been suggested that this was not a communication from Defendant Co., but from Aden Bottling Co. It is nonsense to suggest any arrangement by Aden Bottling Co. to buy its own shares.

Section 24 of the Companies Act, 1913 as amended prohibits this. Furthermore the contents of G2 "We have already conveyed our agreements....."

This ties up with Exht. N draft minutes. I would read the entire letter G2.

I submit G2 was delivered to Basaleh. We

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the Defendants

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(Cont'd)

rely upon despatch book. Basaleh must have received the letter in a day or two.

The Plaintiffs received one copy of original Exht. G2 in KUWAIT in time to instruct BASALEH to participate in the drafting of Exht. N and write the Arabic of which Exht. S in the translation: certainly before Exht. J, the 1st intimation of any acceptance.

A further point with regard to the documents is that of the share transfer forms. On the back there is print regarding erasures. 10

The documents Exht. C transfer forms patently have alterations and erasures and neither have been authenticated.

If such a document were presented, the Directors would be well advised to say "No".

Aden Bottling Co. is not a party defendant in this case. The Plaintiffs claim specific performance but the Aden Bottling Co. is not bound to comply with any such order. Neither the Aden Bottling Co. nor its Directors are bound to obey any order of the Court. 20

Articles 25 to 30 of Ex. T at page 6 and 7 regarding the transferability of shares.

The Directors have an absolute discretion to refuse to register transfers.

There is a clear impediment to the claim of plaintiffs for specific performance.

- I submit:
1. There was a rejection by the Plaintiff: Therefore no contract. 30
  2. If the Court considers differently I submit that the offer was withdrawn by Defendants before it was accepted by the Plaintiffs.
  3. Even if Court finds that there was a duly accepted offer and a

contract, this is not a case for specific performance to be granted because the court could not compel Aden Bottling Co. or the Directors to conform because they are not parties and have a discretion to refuse to register any transfer of shares

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Address for  
the Defendants  
—————

10th May 1965

(Cont'd)

10 If the Court finds that there was a concluded contract, the question of damages arises. My submission is that there is not a shred of evidence of Plaintiffs' loss. For anything we know, the shares may be 10 times more in value than hitherto.

There was an agreement to pay a certain price; but this may, or may not, be the measure of their loss.

To measure damages by the price would in effect be tantamount to specific performance.

20 Submit no proof of loss.

Does Mr. DINO not appear to the Court to be a good witness. Basaleh on the other hand was a poor witness and, on more than one occasion, the Court may think that BASALEH attempted to hedge.

I ask the Court to take into account all the evidence and the documents and to dismiss the claim.

30 Letter of 31st December, 1962 (J) appears to be inconsistent with BASALEH's having informed Mr. Bhatt that BASALEH had disclosed the acceptance to DINO.

The letters of Mr. Nunn are also significant (K) and (M) Mr. Nunn states specifically that Mr. Basaleh did not tell him or his client. Mr. Nunn a very experienced lawyer.

Authorities:

1877 - 78.3AC. ROSSITTER V. MILLER re CHINNOCK V.  
MARCHIONESS ELY P.1137.

Approved in 1963 I WLR PC (Kenya) page 489.

40 BHATT: Adj. to 12.5.65 at 8.30 a.m.

E. LIGHT

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COUNSEL'S ADDRESS FOR THE PLAINTIFFS

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Counsel's  
Address for  
the Plaintiffs

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12.5.65

Parties as before.

Bhatt: The Defendant Co. Athanas Bros. is not a shareholder in the Aden Bottling Co. and is Private Company.

It is admitted that the Directors of the Defendant Co. are also the Directors of Aden Bottling Co. with Plaintiff No.1. Both have registered separate offices and separate businesses.

10

The Plaintiffs hold 1/4th shares in the Aden Bottling Co. 2,500 shares of 250,000/-.

The remaining  $\frac{3}{4}$  of the shares are held by the remaining shareholders.

According to Exht. B disputes and differences between Plaintiff No. 1 and the other directors of Aden Bottling Co. arose regarding inspection of books of the Company and certain enquiries about sales and particulars. According to the Plaint, on account of these, defendants and plaintiffs came to an agreement finally between July and August 1962.

20

Prior to final agreement, two previous agreements one for £60,000 and the other for £50,000 were both rescinded by the defendants.

I rely upon the evidence of plaintiff No. 1 and partly on the evidence of WADIA, the defendants' witness and also Mr. Dino the defendant. The last agreement which is relevant and the subject matter of this suit we concluded between the parties through the intervention of WADIA before the terms were recorded in writing Exht. B and F.

30

It is admitted by Mr. Dino as well as WADIA and their evidence that the Plaintiffs had agreed to sell the shares to defendants for £40,000 to be paid £28,000 on the execution of the writing embodying the terms and the balance of £12,000 by monthly instalments of £1,000 for which



a guarantee would be provided by the Bank. This was agreed between the parties and the parties handed over to their respective lawyers to put the terms in legal form. The agreement was already agreed. It was to be put in writing. There was a concluded contract orally between the parties.

Horrocks: The prayer - the agreement recorded in writing.

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-----  
No.13

Counsel's  
Address for  
the Plaintiffs

12th May 1965

(Cont'd)

10 Bhatt: Para 6 and 7 of plaint support, what I have said. The writing was prepared by defendants' advocate Mr. Nunn and it was sent to plaintiffs' advocate for approval and execution. On the 8th August, 1962 these writings were prepared in sets - original and duplicates and they were signed by the defendants on the 8th August, 1962 and were forwarded to me the plaintiff's advocate by Mr. Nunn for sending them to my clients in Kuwait.

20 On 13th August, 1962 or thereabouts Athanas the Defendants asked me in writing to hand over one set of documents to WADIA who would carry on their behalf to Cairo where Plaintiff No. 1 Khaled was due to arrive.

WADIA took only one set of agreement and it may be noted that the transfer forms were not taken by WADIA with him as is alleged in the written statement and in evidence.

30 Letter of 14th August, 1962 written by Athanas to WADIA (Ex.W). This letter shows that only 4 transfer forms sent by post and there is no reference in the letter that any transfer forms were taken by WADIA with him.

WADIA went to Cairo with the agreements (F) on 22nd or 25th August, 1962. According to the Plaintiffs this agreement was approved by 1st Plaintiff on behalf of himself and his brothers and the statement of 1st plaintiff is supported by the evidence of WADIA who said plaintiff No. 1 said "OK".

40 The point arises why WADIA did not get the signature of KHALED at Cairo. The explanation of Plaintiff no.1 is that he agreed to all the terms

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and would show this document to his brothers (although he had a general power of Attorney for the brothers) and he said he would return the document to me advocate for Plaintiffs in Aden.

XXD by me ... "The parties had agreed....."

There was no rejection as suggested. Ex.B and blank transfer forms were forwarded by me to Cairo to the address of BASALEH but the letter was addressed to KHALED (Ex.D). He was already in possession of the EX.B and blank transfer forms. No rejection of the agreement. 10

The sets which were sent by me were taken, according to KHALED, to KUWAIT. According to him he went to KUWAIT on the 31st August, 1962 and left KUWAIT on the 1.9.62 to go to INDIA with Ameer of Kuwait - the Sheikh or Ruler of Kuwait and he had no time to set the signatures of his brothers and his own signature after consultation. He returned to KUWAIT. on the 1st October, 1962 and signed the Ex.B and transfer forms also and his brothers signed also on the 2nd October, 1962. 20

He leaves again for CAIRO on the 4th October, 1962. According to the evidence of BASALEH these documents were forwarded to Aden to the address of BASALEH along with the share certificates sent by one of the brothers separately.

This was 5th October, 1962. 1st Plaintiff was afraid of the censorship existing in Cairo in those days.

At that time Basaleh was in Cairo. This was at the time that the documents were despatched to Aden. 30

According to Basaleh he returned to Aden about 20th or 22nd October 1962. He also said that when he left Aden for Cairo he gave instructions to the Post Office to retain any mail until his return. When he returned he collected his mail and found the letter addressed by KHALID to Mr. Bhatt and a letter from Khaled's brother addressed to BASALEH and the agreement (B) and share documents. 40

Basaleh testified that he enquired about Mr.

Bhatt's whereabouts and was told that Mr. Bhatt would be returning to Aden the middle of December, 1962. He says that he had been instructed by KHALID not to approach any other lawyer. He therefore thought it advisable to approach defendants. He says he saw DINO and told him that the documents had been signed, and he asked about the payment, that Dino told him to wait. Basaleh sees Dino again a couple of days later and enquires about payment and he was told that certain properties had been sold and payment would be made later.

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Address for  
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The question comes how far this statement of BASALEH has affected the Defendants. I submit that the letter of 5th November 1962 (EX.G2). This letter is worth nothing (sic). This letter is on Aden Bettling Co. notepaper and signed by Aden Bettling Co.

The Plaintiffs were justified in ignoring this letter. They were entitled to ignore it. No reference to Athanas Bros. but to Aden Bettling Co.

I submit that this letter does not clearly give any indication that the agreement was repudiated or offer withdrawn. Letter Exhibit G

According to Dino he had sent this letter to his Advocate Nunn. If that is true, it is not specifically mentioned. 3 para refers to Aden Bettling Co. Not Athanas.

This letter indicates that the letter G2 was intended to refer to Aden Bettling Co. and not the defendants. I wrote on the 19.3.63 G.5.

This letter supports the statement made by Mr. Basaleh.

My learned friend submits BASALEH's evidence should not be accepted because he did not reply Yes or No to some questions. Your Lordship has got experience of peculiarities of Arabs in not answering questions directly but this does not mean that they are not telling the truth.

I submit his evidence should be weighted on the light of experience of the Court.

The question is whether the agreement (F) or (B) was repudiated by the Defendants or offer withdrawn by defendants after having known from Basaleh that

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(Cont'd)

the agreement had been signed.

Dino says that he repudiated because prospective buyer did not come forward to buy. It was not a condition precedent that this agreement was subject to an offer of prospective buyer.

Furthermore he says that there was a revolution in Yemen.

It has been proved that there was oral agreement before written agreement and we submit therefore that the subsequent repudiation was a breach of contract on his part. 10

The contract had already been agreed orally with all its terms so that there was no question of a withdrawal of any offer. It was breach of contract.

The defendants have made efforts to produce two documents, i.e. the translation of so-called Arabic letters (S?) and a draft Minutes (N).

I submit that a translation submitted without any date being shown and no signature cannot be given any weight whatsoever. This translation is alleged to have been translated by MOSHGY. But a translator would never forget to put down the date and place. I submit that to accept such translation would not be justified. 20

MOSGI says sometime in November he translated whereas the draft Minutes does not bear any date when they were drafted. Mr. Prabahu the drafter has not produced the draft in his own handwriting what the instructions were that were given. BASALEH in his evidence says that he was not present at any alleged meeting or gave instructions as embodied in the alleged draft minutes. 30

It is strange thing that draft minutes should be made before any meeting held and before resolutions made and passed. PRABHU says that notices of meetings were usually sent but that in the instant case no notice was sent. They were not the only two directors. There were 5 directors and to convene a Meeting all the directors should be informed. This was not done. 40

I submit that these draft minutes were made by instructions of DINO but not by instructions of BASALEH.

I submit that N (the draft Minute) should not be given any weight for reason that BASALEH was not present, and no notices given. It was draft.

Basaleh was not present. By preparing such drafts the other party should not be penalised. It was submitted by Dino that Khaled came to Aden in June or July, 1961, and his presence in Aden cancels the appointment of BASALEH.

Exht. T alternate Director Articles 75.

Section 86b of the Companies Act.

The minutes should therefore be ignored.

Regarding the transfer forms. The names could be filled in after. The letter of 14th August, 1962 (W) only refer to 4 transfer forms.

Basaleh says he never saw these transfer forms F1 to 7. Only transfer forms were sent. The forms C were sent by me along with Exht. B.

HALSBURYS LAWS. Vo. 36 3rd Edition Page 272 to 276.

In the present case it is a private Ltd. Co. The shares cannot be sold in the open market, and a specific performance is usually allowed.

It is further laid down in commentaries on Indian Specific Relief Act by GAUR page 154.

The Buyers themselves are the Co. Athanas Bros. Ltd. Athanas Bros. have refused the right to transfer to whom they like. The transfer forms F1 to F7 give a clear indication that most of the transferees were directors of Aden Bottling Co.

It is admitted in the written statement that the Directors of Athanas were the directors of Aden Bottling Co.

Para 2 of the Plaint admitted in para 2 of the W/S.

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If Athanas had not revoked the site agreement, the Company would have accepted it.

I submit that we are entitled to Specific Performances.

Damages would not be adequate relief.

Para. 14 of the Plaint.

The purchase price. The shares at the time of allotment was at the rate of 100/- per share. Par value 250,000/- equal to £12,500.

The Defendants purchased in all (intend?) at £40,000. 10

It is natural that the purchaser, having come to know certain circumstances, should decide to repudiate, but it was not natural for the plaintiffs to repudiate an agreement decidedly for their benefit.

I submit that the cause of the defendants' failure was the revolution in YEMEN and the withdrawal of offer by prospective purchaser.

Basaleh's evidence shows that the Defendants never repudiated before contract made. 20

According to Khalid Khalid was away from KUWAIT up to January 1963. He left Kuwait 1st September, 1962 and absent until 1st September 1962. He came to know about G2 in January, 1963, on his return to KUWAIT.

It is said that a copy was sent to BASALEH by ATHANAS. Basaleh denies receiving a copy from Aden Bottling Co. or from Athanas. He denies his initials in the despatch book (P). Defendants have not proved who served the notice by despatch (P). No person has been brought. 30

I submit that this book does not deserve any importance.

To sum up I submit that there was an agreement approved by both parties and it was made into writing and signed on 2nd October 1962 and BASALEH informed

defendants by end of October, 1962.

Any subsequent repudiation is a breach of contract by the defendants. There was already a concluded oral contract between the parties as evidenced by Dino and Wadia and Basaleh so that the alleged revocation is a clear breach of contract.

10 I submit that I am entitled to specific performance, but in case Court did not grant specific performance, we say that we are entitled to difference between the sale price and the purchase price.

HORROCKS: It is not open to the plaintiffs to rely upon the prior oral agreement. In every case of a written contract there is some oral agreement. My learned friend is bound by the pleadings para 14 of page 7 of the Plaintiff.

"In fact in the circumstances mentioned herein-above ..... arose".

20 Again para 16 of the plaintiff on page 9.  
"Without prejudice ..... Exht. A hereto ....."

In the evidence of Khalid in XX "My suit is on the basis of Exht. B and not on any other agreement."

Page of the notes of evidence.

As regards whether or not there was a rejection of the offer my learned friends overlooks his own witness' letter Ex.Q of 31.8.62.

Khaled X about this.

30 This letter was Exht. 1 in the commission on page 3 of the evidence of Khaled.

"I agree that Exht. 1 implies ....." "

Also refer to para 11 of the Plaintiff "when the plaintiff No. 1 stated that he had confirmed ..... for himself and on behalf of himself and for his brothers."

There was no need to take documents to KUWAIT.

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No.13

Counsel's  
Address for  
the Plaintiffs

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(Cont'd)

I submit that it was not a question of his not having enough time but as showing that the terms were not agreed, as indicated by Exht. Q.

My learned friend refer to G2 withdrawing the offer to sell. If the offer was validly withdrawn, it matters not what the offers were. G6 letter of Mr. Nunn puts the matter in perspective.

Exht.S is criticised but even though it had no date its contents tie up with the Minutes N and with Exht. G2 letter.

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With regard to damages, it is a disappointment to many that the price they pay has no resemblance to the price on sale. The Co. was incorporated in January 1954 so what was paid on allotment cannot possibly be the value of the shares now. The burden is quite clearly on the plaintiffs to prove it and there's not a shred of evidence as to the value of the shares today. They may be utterly worthless. If there was an offer by the Defendants to sell their share, was it an oral contract or subject to written agreement?

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Assuming that it was executed as alleged on the 2nd October was the execution indicated to DINO and to NUNN. If there was, there was a completed contract.

If the court rejects the evidence of BASALEH the question is whether the Defendants effectively withdrew their offer. If so it was by G2.

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I submit that it reached KHALID.

It is mentioned in Exht. N.

We know nothing about the agreement having been completed until Mr. Bhatt's letter of 31st December, 1962. But in the meantime the offer has been withdrawn by defendants.

Letter G2.

Judgment reserved to date to be given on Notice.

E.LIGHT  
AG. JUDGE

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JUDGMENT

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IN THE SUPREME COURT OF ADEN

Civil Suit No. 511 of 1963

KHALED ABDUL LATIF AL HAMAD AND OTHERS PLAINTIFFS

VERSUS

ATHANAS BROS. (ADEN) LIMITED

DEFENDANTS

9.6.55 Mody for Bhatt  
Horrocks.

10

JUDGMENT

The Plaintiffs seek an Order for specific performance of an agreement alleged to have been contracted between the Plaintiffs and the defendant company for the purchase by the defendant of all the shares of the Plaintiffs in the Aden Bottling Co.Ltd. at a total price of £ Stg.40,000 or in the alternative a decree against the defendant for payment of EAS 550,000, or such other sum as may be awarded as compensation in lieu of specific performance.

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The Plaintiffs are brothers and carry on business in partnership inter alia in the firm named KHALED ABDUL LATIF AL HAMAD AND BROS. at Kuwait as general merchants and Commission Agents and Importers and Exporters.

The Defendant is a Private Limited Company incorporated and registered at Aden under the Indian Companies Act, as amended in 1936 as applicable in Aden, carrying on business inter alia as general merchants and Commission Agents, Exporters and Importers.

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The First Directors of the Defendant Company being (a) Mr. George Ch. Athanassa Copoulo (b) Mr. Andrew Ch. Athanassa Copoulo and (d) Mr. Michael Ch. Athanassa Copoulo of whom Mr. George Ch. Athanassa Copoulo retired from the Company and ceased to be Director and shareholder thereof since 1954.

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On or about the 20th January, 1954 the Aden Bottling Co. Ltd., was registered as a Private Limited Company under the Indian Companies Acts, 1936, as applicable in Aden for the objects, inter alia, to manufacture, buy, sell, distribute, bottle and otherwise deal in essences, mineral and aerated waters, beverages and other liquid of every description in the Colony (now State) of Aden and elsewhere.

The Plaintiff No. 1 was one of the First Directors of the said Aden Bottling Co.Ltd., other First Directors being the said Michael Ch. Athanassa Copoulo, Andrew Ch. Athanassa Coupoulo and Constantine Ch. Athanassa Copoulo who are also the Directors of the Defendant Company.

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At all material times to the suit each of the Plaintiffs in their individual capacity held and still holds 500 ordinary shares of EAS100/- each in the said Aden Bottling Co.Ltd. as follows:

KHALED ABDUL LATIF AL HAMAD, the Plaintiff  
No. 1 Shares Nos. 4381 to 4880  
AHMED ABDUL LATIF AL HAMAD, Plaintiff No.2  
Shares Nos. 8001 to 8500  
YOUSUF ABDUL LATIF AL HAMAD, Plaintiff No.3  
Shares Nos. 8501 to 9000  
Ali Abdul Latif, Plaintiff No. 4  
Shares Nos. 9001 to 9500, and  
ABDULLA ABDUL LATIF AL HAMAD, Plaintiff No.5  
Shares Nos. 9501 to 10,000.

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It is alleged by the plaintiffs that as a result of disputes and differences which arose between the defendants and their Directors (who are the only Directors over and above the Plaintiffs in the said Aden Bottling Co.Ltd.) on the one hand and the plaintiffs on the other, an agreement was arrived at between the Plaintiffs and the Defendants whereby the Plaintiffs as sellers agreed to sell to the Defendants all their said shares in the said Aden Bottling Co.Ltd., and the Defendants agreed to purchase from the Plaintiffs the said shares at a total price of £ Stg. 40,000 on the terms and conditions mentioned in writing dated 8th August 1962 and alleged to have been signed by the Defendants on the said date and later on signed by the Plaintiffs.

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Clause 2, 3, 4, 5 and 6 of the said agreement provide as follows:

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10 "2. The Buyers agree to pay for the said shares a sum of £40,000 in the following manner namely on the signing of this agreement and of the forms of shares transfers £28,000 (Twenty eight thousand pounds) to be paid into the account of Khaled Abdul Latif Al Hamad at the Midland Bank, London. Thereafter by twelve monthly instalments of £1000 (One thousand pounds) the first such instalments to be paid one month after the payment of the £28,000. The buyers to provide a banker's guarantee that the monthly instalments shall be paid.

20 3. The monthly payments to be made as above stated shall be made to Khalid Abdul Latif Al Hamad either in Aden or elsewhere if he so desires subject to Exchange Control permission being obtainable and receipts given to the buyers or to the Bank in the event of payment being made by the Bank under the Banker's guarantee shall fully discharge the buyers or the Bank as the case may be from liability to the sellers from the sum paid.

4. As soon as this agreement is signed the sellers shall cease to exercise their rights as directors of or shareholders in Aden Bottling Company Limited.

30 5. The sellers will forthwith sign forms of transfer of their shares and deliver up existing share certificate to Aden Bottling Co. Ltd. The persons to be named in the forms of transfer to be signed by the sellers shall be such persons whom the buyers choose to nominate as transferees.

6. In consideration of this agreement the sellers release Aden Bottling Company Limited from all claims of whatsoever nature they may have or have against Aden Bottling Co.Ltd. or its Directors or shareholders".

40 It is alleged that the Defendants' Advocate, on the 8th August 1963, sent to the Plaintiffs' Advocate at Aden the prepared written agreement in three sets for obtaining the signature of the plaintiffs, and that on the 13th August 1962 the

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Defendants addressed a letter to the plaintiffs' advocate at Aden asking him to hand over to one Wadia Hassonali documents relevant to the purchase of the plaintiffs' shares in the Aden Bottling Co.Ltd. and stated that the said Wadia would personally take the same to Kuwait for the signature of the plaintiffs.

The Plaintiffs' advocate gave him one set of the form of agreement and one set of Transfer forms. It is further alleged that Wadia met the plaintiff No. 1 at Cairo, Egypt and asked him to sign the form of agreement and the transfer forms which he had brought from Aden and returned them to him, whereupon the plaintiff No. 1 stated that he had confirmed the form of agreement and that he had to take it to Kuwait where he would sign the same for himself and for and on behalf of his brothers and send the same to his advocate at Aden. It is alleged that the said Wadia, for reasons best known to himself insisted on the plaintiff No. 1 returning the documents to him duly signed and he refused to deliver the documents to the plaintiff No. 1.

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It is further alleged that the Plaintiff No. 1 then told the said Wadia that he had already got from his advocate at Aden the other two sets of the form of agreement duly stamped and signed by the Defendants and also transfer forms and that he would sign at Kuwait the documents for himself and for and on behalf of his brothers and then he would return the same to his Advocate at Aden and the said Wadia raised no objection to this.

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It is further alleged that after the plaintiff No. 1 went to Kuwait in or about the last week of September 1962 the said form of agreement and the transfer forms were signed by the plaintiff on or about the 2nd October, 1962 and sent to Aden and the defendants were duly informed of the same at Aden through their representative Ba Saleh and called upon to make arrangements for payment of the first instalment of £28,000 as agreed to. By their Advocate's letter dated 31.12.62 the plaintiffs again reminded the defendants that the said documents were ready for delivery to them against payment at London of a sum of £ Stg. 28,000, being the first instalment mentioned in the

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agreement . By their advocates' letter dated 9th January 1963 the defendants stated that in view of the fact that the documents were sent to the Plaintiffs' advocate on the 8th August 1962 and there had been a delay of nearly five months the defendants took the view that this delay in completing the transaction entitled them to regard it as a repudiation by the Plaintiffs. The said letter was duly replied to by the plaintiffs' advocate on the 19th March 1963 and the defendants by their letter of the 26th March 1963 stated that on the 5th November 1962 they had written to the plaintiffs informing them that they were no longer prepared to buy the shares of the plaintiffs and reiterated that the defendants considered themselves discharged from the agreement in view of the plaintiffs failure to complete their part of the contract within a reasonable time. It is further alleged by the plaintiffs that the letter of the 5th November 1962 referred to in the defendants advocate's letter of the 26th March 1963 was addressed by the Aden Bottling Co., Ltd., and not by the defendants in which it was stated that they were no longer interested in purchasing the shares of the plaintiffs and offered their shares to the plaintiffs for sale.

The plaintiffs say that there is a binding and concluded agreement on the part of the defendants to purchase the shares held by the plaintiffs in the said Aden Bottling Co.Ltd. on the terms and conditions mentioned in the said agreement of the 8th August 1962 and that time was never of the essence of the agreement nor did the defendants ever make it so and that they are therefore not entitled to complain about the alleged delay on the part of the plaintiffs in signing or performing their part of the agreement but that the agreement and transfer forms were duly signed by the plaintiffs on the 2nd October 1962, and that it was upon the signing of the agreement and transfer forms that the obligation of the defendants to pay the first instalment arose. The plaintiffs say that they were all along and still are ready and willing to perform their part of the said agreement but that the Defendants have falsely contended that they were discharged from the agreement and falsely alleged that the plaintiffs had delayed in performing their obligations under

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the agreement.

The Plaintiffs contend that the shares of the said Aden Bottling Co.Ltd. being shares of a Private Limited Company are not readily saleable nor are they quoted in the market and that in fact it was in view of the settlement of disputes and differences between the plaintiffs and the defendants and their directors (who are also the directors of the said Aden Bottling Co.Ltd.) that the said agreement of the 8th August, 1962 was made, and that damages would not therefore afford adequate relief to the plaintiffs. The Plaintiffs further say that they will suffer considerable loss if specific performance is not granted and that they have done substantial acts under the said agreement and in particular have ceased to exercise their rights as Directors of and shareholders in the said Aden Bottling Co.Ltd. and have released the said Aden Bottling Co.Ltd. from all claims of the Plaintiffs against them or their directors or shareholders. The plaintiffs submit that there exists no standard for ascertaining the actual damage caused by the alleged non-performance of the acts agreed by the defendants under the said agreement. The plaintiffs further say that the defendants by their declarations, acts and/or omissions have intentionally caused and permitted the plaintiffs to believe that the sale agreement was duly concluded and that they would be ready to perform their obligations on the plaintiffs signing the said agreement and the relevant transfer forms, and that in fact the defendants were informed through one of their own directors, Constantine Christo Athanassa Copoulo, otherwise known as Dino, by Ba Saleh the representative of the Plaintiffs in Aden in or about October 1962 that the plaintiffs had duly signed the said agreement and the transfer forms and that the defendants should arrange for payment in London of the 1st instalment of £ Stg.28,000 as agreed. The Plaintiffs say that thereafter the defendants did nothing further in the matter nor did they contend until January, 1963 that there was delay on the part of the plaintiffs. The plaintiffs therefore say that they have acted upon the declarations, acts and/or omissions of the defendants to their prejudice and that the defendants are estopped from

denying their liability to perform their part of the said agreement and to make payment of the amounts mentioned in the said agreement. The plaintiffs contend that in the circumstances the defendants shall be ordered and decreed to specifically perform their part of the said agreement and to pay to the plaintiffs the said price of £ Stg. 40,000 against delivery of the share scripts and transfer forms.

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10           It is submitted that if this Court for any reason refuses to grant to the plaintiffs the relief of specific performance the plaintiffs are entitled to compensation for the defendants breach of contract which damages the plaintiffs assess at EAS 550,000, being the difference between the original price of the share when purchased and the sale price as agreed by the Defendants in the said agreement.

20           The Defendant admits that it offered to purchase the plaintiffs' shares in accordance with the form of agreement but denies that the said agreement was concluded, whether as a result of disputes and/or differences as alleged or at all. The Defendant says that it offered to buy the said shares because it had a prospective buyer for and was interested to sell, the business of The Aden Bottling Co.Ltd. as a going concern and not as a result of any dispute or differences. The Defendant further says

30           that the form of agreement hitherto referred to by the plaintiffs (Exht.B) is but a counterpart of an original agreement (Exht.F) executed on behalf of the defendant and submitted to the plaintiffs for execution but which said original agreement the plaintiffs declined to execute, but that the 1st plaintiff, for himself and on behalf of his co-plaintiffs insisted to the defendant's agent

40           WADIA, at Cairo in August 1962 that a new agreement be prepared wherein the mode of payment of the price be amended so that a first instalment of £12,500 only be paid in cash at Aden and that the balance be paid in Aden to the plaintiffs' agent Ba Saleh.

The Defendant alleges that on or about 13th August 1962, the Defendant by its then advocates, submitted to the plaintiffs' advocate for approval the original of the proposed written agreement

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(Exht.F) counterparts thereof (including Exht.B) the originals of seven share transfer forms and a carbon copy of each of the said transfer forms. The originals of the proposed written agreement and of the said seven transfer forms, after approval by the plaintiffs advocate expressly subject to the approval of the plaintiffs, were returned by the plaintiffs' advocates to the defendant at its request, to the intent that WADIA acting for and on behalf of the defendant, should procure the execution of the said original (Ex.F) and share transfer by the plaintiffs.

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Pursuant to arrangements between the parties Wadia, on behalf of the defendant, proceeded from Aden with the said originals with the purpose of having the same executed in his presence by the 1st plaintiff, who was in Cairo, and by the remaining plaintiffs, who were at Kuwait. At Cairo, Wadia, on behalf of the Defendants, invited the 1st Plaintiff to execute the original agreement (Exht.F) and the share transfer forms but the 1st Plaintiff declined as aforesaid and Wadia pursuant to the defendant's telegraphed instructions withdrew the defendants' offer to purchase and returned all the aforesaid original documents to the defendant at Aden and refrained from proceeding to Kuwait and tendering the same to the other plaintiffs for execution by them there.

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It is submitted that there was no occasion for the 1st Plaintiff to state, nor did the 1st Plaintiff state, that he had to take, or that he would take, the document to Kuwait there to sign the same "for himself and for and on behalf of his brothers" as alleged or at all.

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The Defendant does not admit that the form of agreement (B) or transfer forms were executed on or about the 2nd October, 1962 and that in any event the purported signatures on the agreement (B) are unattested. The Defendant further denies that the plaintiffs' agent, Ba Saleh, informed the Defendant that the same had been executed and/or that the said Ba Saleh called upon the defendant to make payment. It is submitted that if, as alleged by the plaintiffs, Wadia refused to deliver the originals of the documents to the 1st Plaintiff,

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it was not competent for the plaintiffs thereafter to purport to execute the counterpart and it is further contended that the said agreement was never validly executed so as to constitute a valid contract. It is contended, moreover that the share transfer forms purported to have been executed by the Plaintiffs are patently altered and varied and that being so altered and varied they do not conform with clause 5 of the proposed written agreement.

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It is further alleged by the defendant that prior to the receipt of the plaintiffs' advocate's letter of the 31st December 1962 the Defendant was wholly unaware of the purported execution by the plaintiffs or any of them of the agreement form (Exht.B) and/or of the aforesaid amended and altered transfer forms or any of them.

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Meanwhile, by its registered letter to the plaintiffs of the 5th November, 1962 the Defendant intimated that it was no longer willing to purchase the plaintiffs' shares, and confirmed an earlier oral intimation to the like effect conveyed to the plaintiffs through its agent Wadia.

It is contended by the Defendant:-

(i) that the 1st plaintiff refused to approve and execute the original form of agreement (F)

(ii) that the Defendant's offer to purchase on the terms of the copy agreement (Ex.B) was withdrawn prior to the purported execution of this agreement (Ex.B).

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(iii) that none of the plaintiffs accepted and executed the same within a reasonable time.

(iv) that, if the plaintiffs purported to accept and execute the same, they did so only after the Defendant had withdrawn its offer, and intimated its unwillingness, to purchase.

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The Defendant admits that its letter of the 5th November 1962 was written upon letter heading of Aden Bottling Co.Ltd. but it is contended that the said letter had reference, and, in view of

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section 54A of the Indian Companies Act, must have been understood by the plaintiffs to refer only to the retraction of the defendant's willingness to buy and not to any decision of the Aden Bottling Company Limited.

The Defendant further denies that the plaintiffs were ready and willing at all material times to execute the proposed written agreement and/or to perform their obligation thereunder and submits that the shares of the Aden Bottling Co. Ltd. which is a private Company, are and at all material times were saleable, subject to the provisions of its articles of Association, and in particular Article 30, and that by reason of the provision of the said Articles the Plaintiffs are not, in any event entitled to a decree for specific performance. There is no stock market in Aden and accordingly no share prices are quoted there.

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The Defendant denies that the plaintiffs have done any acts under the said agreement and/or that they have ceased, consequent upon the alleged agreement, to exercise their rights. On the contrary, it is alleged that the plaintiffs' agent Ba Saleh, continued to act and was treated as the Alternate Director of the Plaintiffs and, at the end of October 1962 exhibited to the Directors of the Aden Bottling Co.Ltd., a letter in Arabic addressed to him by the 1st Plaintiff, wherein the 1st Plaintiff demanded that the said Ba Saleh as such Alternate Director, be shown the accounts of the Aden Bottling Co.Ltd., and offered to send the Kuwait Manager of Coca-Cola to Aden to check the said accounts.

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It is further alleged that the Plaintiff received correspondence, copies of Minutes, and the Balance Sheet for 1962 even after October 1962, without demur and, more particularly, without returning the same or otherwise informing the Defendant that, by reason of the alleged execution of the agreement (Ex.B) they had ceased to have or to claim any interest in the Aden Bottling Co.Ltd.

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It is alleged moreover that during November 1962 the said Ba Saleh as such Alternate Director, performed the duties of his directorship, and in

this respect is alleged that the draft minute for a Board Meeting proposed to be held on the 29th November 1962 were amended at the insistence of Ba Saleh.

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10 It is denied that by any conduct on the part of the defendant the plaintiffs have acted to their detriment. On the contrary it is alleged that after their insisting to Wadia at Cairo that the mode of payment of the price be varied and refusing to approve and execute the original form of agreement (Ex.F) the plaintiffs were well aware of the withdrawal of the Defendant's offer and yet took no action in the matter prior to their advocate's letter of the 31st December 1962.

The agreed issues are as follows:

20 1. Did the Plaintiffs reject the defendant's offer contained in the writing of the 8th August 1962 to purchase the Plaintiffs' shares in the Aden Bottling Co.Ltd.? If so, was it legally competent for the plaintiffs thereafter to accept the said offer?

2. Do the Plaintiffs prove that there was valid and completed acceptance by them of the said offer? If not do the plaintiffs prove a concluded contract independent of the said writing?

3. Was the said offer effectively revoked by the Defendant before any valid and completed acceptance thereof?

30 4. Did the Defendant, by declaration, act and/or omission, intentionally cause or permit the plaintiffs to believe that a contract had been concluded in terms of the said writing of the 8th August 1962 and that it would perform its obligations thereunder upon the plaintiffs executing the said writing? If so, is the Defendant estopped from denying its liability to perform the said obligations?

40 5. Do the Plaintiffs prove that the Defendant was in breach of contract to purchase their said shares in terms of the said writing??

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6. Are the Plaintiffs entitled to specific performance as claimed?

7. Are the plaintiffs entitled to any, and what damages?

Mr. Bhatt submits that the defendant's contractual obligations were not dependent upon the signing of the written agreement but arose as a result of a prior oral agreement which was already binding upon the parties i.e. the agreement was not "subject to formal contract" or the drafting and signing of a written agreement by the parties but was complete and binding in itself and the written form of agreement was merely the reduction of the terms of the agreement to writing. Mr. Horrocks on the other hand submitted that this was a departure from the pleadings and I agree with this submission. 10

Para. 14 of the plaint indicates, I think, quite clearly that the plaintiffs are relying upon the written agreement for it is there stated:- 20

"In fact in the circumstances mentioned herein above the writing Ex. 'A' (B) hereto was duly signed by the Plaintiffs on 2nd October 1962 together with the share transfer forms and it was only on signing of the said writing and the Transfer Forms that the obligation of the Defendants to pay the first instalment arose".

There is also para. 16 of the plaint where it is stated ".....the plaintiffs say that the defendants have committed a breach of their obligations under the said agreement recorded in the writing Ex.A(B) hereto.....". 30

In his evidence taken on commission the 1st Plaintiff in cross-examination says:-

"my suit is on the basis of Ex.B and not on any other agreement."

It is not disputed that when Wadia presented to the 1st Plaintiff in Cairo in August 1962 the original agreement (Ex.F) already signed by defendant for signature by the Plaintiffs, the 1st plaintiff 40

10 did not sign it, saying that he wished to consult his brothers, the remaining plaintiffs in Kuwait. It is clear that the 1st plaintiff requested Wadia to allow him to take the agreement (F) to Kuwait and that Wadia refused. There is no direct evidence that the 1st plaintiff refused to sign the agreement (F); indeed Wadia himself says that the 1st plaintiff voiced his approval of the terms. It is also undisputed that the 1st plaintiff was in possession of the counterpart (B) and counterpart blank transfer forms for signature by the plaintiffs.

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20 The 1st plaintiff had a general power of attorney for his brothers the remaining plaintiffs, so why was it essential for him to consult his brothers before signing the agreement? It must be remembered however that, as Mr. Horrocks has stressed, the agreement between the parties was subject to a written contract being prepared and signed and in my opinion therefore, the conduct of the 1st plaintiff is not unreasonable. It is argued that in the light of Ex. Q there was an intention by the 1st Plaintiff when he declined to sign the agreement (F) to reject the defendant's offer. Ex. Q is a letter dated 31st August 1962 (after the incident at Cairo and before the signing by the plaintiffs of the counterpart agreement (B) and transfer forms on the 2nd October 1962) addressed by the 1st Plaintiff at Kuwait to Wadia and reads as follows:

40 "I am sorry to inform you that I had intended to leave to India with His Highness the Prince. Sheikh Mohamed Ba Saleh will leave to Aden at the end of the 9th month and he has all the power to represent us, no need to refer to us or to Kuwait. I have already informed Mr. Ba Saleh with all we need. Please inform your friends that if they have agreed upon our conditions they should write the necessary papers and hand them over to Mr. Ba Saleh and he will send them to my brothers for signature and send them back in time. The conditions are well known to you, they should pay the agreed amount in cash, after we receive payment, we will hand over the papers to them. No reference should be made to us, we have delegated powers to Mr. Ba Saleh that if he

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sees any delay he should take an immediate steps, because your friends intends the delay and waste of time.

Sg. Khlaed A. Latif."

With respect to Mr. Horrocks I am unable to construe this letter or the earlier conduct of the 1st Plaintiff at Cairo as signifying that the Plaintiffs proposed conditions differ out from those embodied in the agreement (F) or the counterpart (V) and I am satisfied that there was no rejection of the defendant's offer but that there was a valid acceptance. I might also add that the plea of unreasonable delay by the plaintiffs in signing the agreement cannot be sustained for time was not the essence of the contract. It might be convenient at this stage to refer to section 5 (2) of the Contract Ordinance Cap.30 which reads as follows:

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"(2) the communication of an acceptance is complete when it has been brought to the knowledge of the proposer, or, as against the proposer, when it has been put in a course of transmission to him the use of which was in the reasonable contemplation of the parties in all the circumstances of the case, and which puts such a communication out of the power of the acceptor."

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The letter of the 5th November 1962 (Ex.G2) addressed by Dino to the plaintiffs at Kuwait reads as follows:

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"Dear Sirs,

As has already been conveyed through our mutual friend, Mr. Wadia Hassanali, we are not any longer interested in purchasing your shares and we hope Mr. Wadia has reported this matter to you. We are however prepared to offer you our shares for £120,000....."

I find that about the 24th or 25th October 1962 Ba Saleh received by registered post in Aden from the plaintiffs the signed agreement (B) and signed transfer forms (C). Be Saleh says he enquired for Mr. Bhatt the advocate of the plaintiffs and

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ascertained that he was out of Aden so he went to the office of Dino about the end of October 1962 and informed Dino that the plaintiffs had completed all documents and he requested Dino to be good enough to arrange for the first payment of £28,000 sterling to be paid to London in accordance with the agreement whereupon Dino replied - "WAIT FOR A FEW DAYS AND I WILL SEND TELEGRAMS TO MY BROTHERS". After a few days Ba Saleh again saw Dino, who said: "WAIT. WE SOLD OUR BUILDING HEARBY OUR FACTORY 25000 to 30000 IN ORDER TO SETTLE THE ACCOUNT OF KHALID AND HIS BROTHERS BUT WAIT UNTIL I RECEIVE REPLY FROM MY BROTHERS. I WILL WRITE TO THEM."

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Ba Saleh says that since the £28,000 instalment was not paid and Dino had not signed the Bank Guarantee he was later obliged to see Mr. Brown, Manager of the National & Grindlays Bank to request him to intervene to induce Dino to make the 1st payment. I am satisfied that Ba Saleh's reference to Brown, who was not Manager at the time, was a genuine mistake.

Mr. Horrocks invites me to reject the testimony of Ba Saleh. He submits that the first communication to the defendant of acceptance was the letter of Mr. Bhatt dated 31.12.62 (Ex.J) but that in the meantime the letter (Ex.G2) from Dino to the Plaintiffs at Kuwait has revoked the proposal.

Section 6 of the Ordinance reads as follows:

"6(1) A proposal may be revoked at any time before the communication of the acceptance is complete as against the proposer, but not afterwards."

Undoubtedly the signed documents, i.e. communication of acceptance sent by the plaintiffs by registered post to Ba Saleh was not such as put the communication out of the power of the acceptor for it was made to Ba Saleh, agent of the Plaintiffs.

The question is whether Ba Saleh did inform Dino of the acceptance. I have carefully considered the testimony of Ba Saleh against the background of the remaining evidence, including

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Exhts. J, K, L and M and other exhts. and I prefer his evidence to that of Dino and I am satisfied that he did so inform Dino and that the plaintiffs' acceptance of the offer was in fact communicated to the Defendant before the attempted revocation (G2) by the Defendant.

I am also satisfied that although there is no mention in Mr. Bhatt's letter of the 31.12.62 (Ex.J) of Ba Saleh's interviews with Dino and of Dino's promises to pay, Ba Saleh did inform Mr. Bhatt of these incidents. I accept the testimony of Ba Saleh that although he did so inform Mr. Bhatt, Mr. Bhatt chose to draft the letter in that form (Ex.J). The same applies to the letter Ex.L. I also accept the evidence of Ba Saleh in spite of Exht. K and M.

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I also believe Ba Saleh when he says that he had nothing to do with the directorial side of the business of the Aden Bottling Co. after the 2nd October 1962 and more particularly that the letter Ex.G2 was not drafted with his guidance nor did he receive a copy of it and that he did not direct the purported amendment to the document (Ex.N) purporting to be the draft minutes of a proposed meeting of the 29th November 1962 nor did he ask for the meeting to be held nor did he attend this meeting nor receive any advice from the 1st Plaintiff or anyone as suggested in para. 2 of Ex. N and he had no knowledge of a letter in Arabic of which Ex. S purports to be a translation.

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Furthermore I consider that a document (S) purporting to be a translation of an original but which is neither dated nor signed is of little or no cogency as against the sworn evidence of Ba Saleh.

As regards the draft minutes (Ex.N) no date is shown as to when they were drafted and the original draft is not produced. The odd system of drafting minutes of a meeting before any meeting is held and before any resolutions are passed has been explained but Prabhu the Secretary of the Defendant Company and of Aden Bottling Co.Ltd., had to admit that notices of meetings were usually sent but that in the instant case no notices were sent. The draft purports to show the attendance of two Directors only but there are 5 Directors

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not two and notices were not sent. In my opinion as opposed to the testimony of Ba Saleh these alleged draft minutes merit no more cogency than the alleged translations (S). I do not believe, the evidence of Prabhu the Secretary of the Defendant Company, that he prepared the draft minutes on instructions of both Dino and Ba Saleh and that Ba Saleh attended the Meeting. Reviewing the evidence as a whole, I consider it much more probable that Prabhu prepared the minutes solely on the instructions of Dino. Similarly I reject testimony of Prabhu that Ba Saleh produced in the Office of Dino a letter in Arabic of which Ex.S purports to be a copy.

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9th June 1965

(Contd.)

As regards the attempt by Dino to withdraw the offer (Ex.G2) he admits that one of the reasons for his change of mind was that a revolution had broken out in the Yemen. This was undoubtedly a very strong and not unnatural reason for the Defendant seeking to withdraw the offer to purchase the Plaintiffs' shares and to make a counter offer to sell the Defendant's shares to the Plaintiffs even though the contract had already been completed. On the other hand it seems most unlikely that the plaintiffs would not take advantage of an offer decidedly for their benefit or that they would, by any act or omission, repudiate the offer. I might add, as regards the letter Ex.G2, that I consider that the fact that it is upon a letter heading of the Aden Bottling Co. does not prove that it is a decision of the Aden Bottling Co. and not of the Defendant. I have said that I am satisfied that Ba Saleh had no knowledge of this letter (G2). I should add that he denies his initials in the Despatch Book (Ex.P) and the Defendant has not proved who served the notice by despatch. As regards the share transfer forms (Ex.C) I do not consider that the condition of these forms invalidates the contract.

To sum up I find -

1. That the plaintiffs did not reject the defendant's offer contained in the written agreement of the 8th August 1962;

2. That the plaintiffs have proved that there was a valid and completed acceptance by

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(Contd.)

them of the said offer;

3. That the said offer was not revoked by the Defendant before a valid and completed acceptance.

4. That the Defendant did cause and permit the plaintiffs to believe that a contract had been concluded in the terms of the agreement and that the Defendant would perform its obligations thereunder and the Defendant is estopped from denying liability under the contract. 10

5. That the Plaintiffs have proved that the Defendant was and is in breach of contract for purchase of the shares in the terms of the said agreement.

The Plaintiffs seek an order for specific performance of the contract.

Mr. Horrocks submits that there is a clear impediment to an order for Specific Performance being given because the Aden Bottling Co. Ltd. is not a party to the suit and neither the Aden Bottling Co. nor its Directors are bound to obey such an order. The Articles 25 to 30 of the Company do not indicate that the Directors have an absolute discretion to refuse to register transfers. 20

Mr. Horrocks further submits that the plaintiffs are not entitled to any damages because there is no evidence of the plaintiffs' loss and no measure of damages exists in such a case as the present one since there is no market in Aden for the shares. Mr. Bhatt on the other hand, submits that the Plaintiffs are entitled to Specific Performance and that failing this measure of damage should be the difference between the original price of the shares and the sale price as contracted. 30

The Aden Specific Relief Ordinance (Cap.140) is based upon the Indian Specific Relief Act of 1877. Pollock and Mulla (Eighth Edition) on the latter states at page 764. - 40

"A contract to sell Government stock or any

stock for which there is a regular market, is not a proper subject for specific performance, for the same reason that a contract to sell and deliver ordinary marketable goods, is not. But this does not apply to the transfer of shares in companies for which there is not a notorious market (Duncoft v. Albrecht (1841) 12 Sirm 46)"

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9th June 1965

(Contd.)

10 The case of DUNCOFT v. ALBRECHT is not available to me, but if the Court must be cautious before accepting the note of the learned authors of Pollock & Mulla there is precisely the same principle stated in 36 Halsbury (3rd Edition) at page 272 quoting DUNCOFT v. ALBRECHT:-

20 "The court as a rule refuses specific performance of a sale of Government stock. On the other hand, the court enforces a contract for the sale or purchase of shares in a company, unless there is a free market in its shares, in which case the vendor or purchaser may easily make a substituted contract and be compensated for the difference in price, if any, by means of damages."

At page 276 under the heading "Contracts relating to Shares", it is stated:

30 "In general and apart from the exigencies of The Stock Exchange, when judgment is given in a sellers action for specific performance of a contract of this nature, it is directed that the plaintiff and all proper parties must execute a proper deed of transfer and that the defendant must concur in the steps necessary for registration....."

40 I have been unable to obtain any of the authorities quoted in the footnote and I appreciate that general principals never decided concrete cases but in this particular case, and with respect of Mr. Horrocks, I fail to see how an Order of this Court for Specific Performance of a contract for the purchase of shares in a private Company is arbitrary or "ultra vires" when there is no market for the shares and when the contracting parties, the Directors of the Company, hold between them all the shares in the Company and the Defendant shareholders have contracted to purchase all the

In the Supreme  
Court of Aden

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9th June 1965

(Contd.)

shares of the Plaintiffs.

It is ordered and decreed that the Defendants do specifically perform their part of the contract and that they forthwith pay to the Plaintiffs the instalments already accrued due and that they pay the balance in accordance with the terms of the contract.

It is further ordered that the parties execute a proper deed of transfer and that the Defendants take all steps necessary for registration.

10

Costs to the Plaintiffs.

E. LIGHT/ACTING JUDGE.

Horrocks I ask for stay of execution for 21 days to communicate with Dino who is out of Aden.

Mody I consider 10 days stay would be sufficient. Communication can always be done by cable.

Court Stay of execution for 10 days.

20

E. Light

Acting Judge.

No. 15  
DECREE

In the Supreme  
Court of Aden

IN THE SUPREME COURT OF THE STATE OF ADEN  
Civil Suit No. 511 of 1963

No.15

Decree

9th June 1965

KHALID ABDUL LATIF AL HAMAD )  
AHMED ABDUL LATIF AL HAMAD )  
ALI ABDUL LATIF AL HAMAD )  
ABDULLA ABDUL LATIF AL HAMAD )

PLAINTIFFS

VERSUS

10 ATHANAS BROS.(ADEN) LIMITED DEFENDANTS

D E C R E E

This suit coming for hearing on the 9th day of June, 1965, before me Enoch Light, Ag.Judge of the Supreme Court of Aden, in presence of Mr.A.Bhatt, Advocate for Plaintiff and Messrs.Horrocks, Williams & Beecheno, Advocates for the Defendants.

IT IS HEREBY ORDERED AND DECLARED:

20 (a) That, the Defendants do specifically perform their part of Contract and that they forthwith pay to the Plaintiff Sterling £40,000/- already accrued due and they do pay the balance in accordance with terms of Contract.

(b) That, Defendants do execute a proper Deed of Transfer and Defendants take all steps necessary for registration thereof.

(c) That, Defendants do pay to Plaintiffs SA£731.700 fils as shown in the Schedule hereto being costs of this suit.

30 GIVEN under my and the Seal of the Court this 9th day of June, 1965.

Sgd. E. LIGHT  
AG. JUDGE OF SUPREME COURT  
STATE OF ADEN

SCHEDULE

Plaint: Shs. 10,194.00  
Application Shs. 5.00  
Advocates' Fees Shs. 4,435.00  
Shs. 14,634.00  
SA£.731.700 Fils.

In the Supreme  
Court of Aden

No.16  
Notice of  
Appeal  
16th June 1965

No. 16  
NOTICE OF APPEAL

IN THE SUPREME COURT, ADEN  
Civil Suit No.511 of 1963.

KHALED ABDUL LATIF AL HAMAD & Others      PLAINTIFFS  
VERSUS  
ATHANAS BROS. (ADEN) LIMITED                      DEFENDANT

NOTICE OF APPEAL

TAKE NOTICE that the Defendant above named, being dissatisfied with the decision of the Honourable Mr. Justice Light given herein at Aden on the 9th day of June 1965, intends to appeal to the Court of Appeal for Eastern Africa against the whole of the said decision. 10

Aden.                                      HORROCKS, WILLIAMS, & BEECHENO  
THE 16th day of JUNE, 1965      ADVOCATES FOR THE APPELLANT

TO: THE Registrar of the Supreme Court, Aden.  
: S. T. Joshi, Esqre., Advocate, Aden. (holding for A.Bhatt, Esqre., Advocate for the Plaintiffs/Respondents, retired) 20

MEMORANDUM OF ADDRESS

The Address for service of the Appellants is:  
C/o HORROCKS, WILLIAMS & BEECHENO,  
Advocates, Chartered Bank Building,  
Crater, Aden.

NOTE: A respondent served with this notice is required within fourteen days after such service to file in these proceedings and serve on the appellant a notice of his address for service for the purposes of the intended appeal, and within a further fourteen days to serve a copy thereof on every other respondent named in this notice who has filed notice of an address for service. In the event of non-compliance, the appellant may proceed ex parte. 30

V. D. TRIPATHI  
REGISTRAR

NO.17  
GROUND OF APPEAL

In the Court of  
Appeal for  
Eastern Africa

IN THE COURT OF APPEAL FOR EASTERN AFRICA  
Civil Appeal No. of 1963

No.17

Grounds of  
Appeal

ATHANAS BROS. (ADEN) LIMITED

APPELLANT

VERSUS

29th September  
1965

KHALID ABDUL LATIF AL HAMAD & OTHERS

RESPONDENTS

(An Appeal from the Judgment and decree  
of the Supreme Court, Aden (The Hon'ble  
Enoch Light Acting Judge) dated the 9th  
day of June, 1965)

10

Between

Khalid Abdul Latif Al Hamad & others

Plaintiffs

versus

Athanas Bros. (Aden) Limited

Defendants.

MEMORANDUM OF APPEAL

ATHANAS (BROS.) ADEN LIMITED, the Appellant  
above named, appeals to the Court of Appeal for  
Eastern Africa against the whole of the decision  
above mentioned on the following grounds, namely:

20

GROUND OF APPEAL

1. The Plaintiff's only remedy, if any, was  
in damages; but there was no evidence on  
record as to the quantum of damages, or as to  
the remedy by way of damages being inadequate;  
and the lower Court should have refused to  
decree specific performance.

2. The lower Court erred in law in construing  
Exhibit Q letter dated 31st August, 1962, and  
should have held that, in terms of the said  
letter, the 1st Plaintiff was stipulating for  
provisions different from and inconsistent  
with those contained in Exhibit B and,  
accordingly, that the Plaintiffs had rejected

30

In the Court  
of Appeal for  
Eastern Africa

No.17

Grounds of  
Appeal

29th September  
1965

(Contd.)

the Defendant's offer and/or were not ready and willing to accept the same.

3. The lower Court wrongly rejected, as being inadmissible in evidence, Commission Exhibit G letter dated the 27th August, 1962 and Commission Exhibit H, letter dated the 2nd September, 1962.

4. The lower Court should have held, having regard to the express terms of Exhibit B, that a delay of several months was unreasonable and contrary to the said terms.

10

5. The lower Court erred in accepting the evidence of the witness Basaleh that he communicated to Defendant's witness "Dino" the alleged execution by the Plaintiffs of Exhibit B and Exhibit Share Transfer Forms (Exhibit C). The said finding ignores the numerous flaws in his evidence revealed by cross-examination; it ignores the preponderance of oral testimony conflicting with the evidence of that witness; and is against the probabilities of the case, having regard to the documentary evidence.

20

(6) Having regard to the exhibit correspondence, the finding that Basaleh informed the Plaintiffs' Advocate of the alleged (but denied) interviews with Dino and of the latter's alleged (but denied) promises to pay is against the weight of evidence and manifestly contrary to the probabilities.

30

(7) The lower Court erred, in the absence of evidence that the Defendant's offer was "decidedly for their (the Plaintiffs') benefit", in holding it to be unlikely that the Plaintiffs "would now take advantage of an offer decidedly for their benefit or that they would by any act or omission, repudiate the offer".



10 (8) The lower Court erred in holding that the want of execution and the state and condition of the share Transfer Forms (Exhibit C) did not invalidate the agreement or otherwise disentitle the Plaintiff to the relief claimed; and should have held that for want of signature and attestation, for want of proper verification of signatures in the vernacular, and for want of authentication or erasures in the Share Transfer Forms (Exhibit C), the Plaintiffs had not complied with the terms of Exhibit B. On the contrary, the Order of the lower Court that the parties execute a "proper" deed of transfer necessarily implies that the Plaintiffs had not already executed any such transfer.

20 (9) The lower Court erred in holding that there was a valid and completed acceptance by the Plaintiffs and should have held that the Defendant's offer to purchase was revoked before any purported communication of acceptance.

(10) The finding of estoppel is wrong in law and insupportable having regard to the evidence.

30 (11) The findings with reference to the Directors' Meeting of 29th November, 1962, to the draft Minute Exhibit N, and to the translation Exhibit S, are unaccompanied by any, or any sufficient, appreciation and assessment of the relevant evidence and no reason is advanced for preferring the evidence of Basaleh to the evidence to the contrary.

40 (12) The Judgment is substantially not in compliance with the mandatory provisions of Rule 220 of the Rules of Court, requiring that a Judgment shall contain the reasons for the court decision.

In the Court  
of Appeal for  
Eastern Africa

—  
No.17

Grounds of  
Appeal

—  
29th September  
1965

(Contd.)

In the Court  
of Appeal for  
Eastern Africa

No. 17

Grounds of  
Appeal

29th September  
1965

(Contd.)

(13) The Decree is not in accordance with  
the Judgment.

WHEREFORE the Appellant  
prays that the Judgment and Decree  
appealed from may be set aside and  
that the Respondents be ordered to  
pay the costs of the suit of this  
appeal.

Sd/. G. Horrocks

ADVOCATE FOR THE APPELLANT

10

Dated, at Aden,

The 29th day of September, 1965.

To The Honourable Judge of  
The Court of Appeal for Eastern Africa.

And

To H. M. Handa, Esqr.,  
Advocate,  
Crater,  
Aden.

The Address for service of the Appellant is:-

20

C/o, Horrocks, Williams & Beecheno,  
Advocate,  
Chartered Bank Building,  
Crater,  
Aden.

FILED the 30th day of September, 1965, at Aden.

Sd/. V. D. Tripathi

Ag. Registrar.

THE COURT OF APPEAL  
FOR EASTERN AFRICA.

30

No.18

Notes of Newbold Ag. P.

IN THE COURT OF APPEAL FOR EASTERN AFRICA  
AT NAIROBI

(Coram: Newbold, Ag. P., Duffus and Spry, JJ.A.)

CIVIL APPEAL NO. 52 OF 1965

B E T W E E N

ATHANAS BROS. (ADEN) LTD. APPELLANT

- and -

10

KHALED ABDUL LATIF AL HAMAD  
AND OTHERS RESPONDENTS

(Appeal from a judgment and  
decree of the Supreme Court  
of Aden (Light, Ag.J.) dated  
9th June, 1965

in

Civil Suit No.511 of 1963)

NOTES OF THE HON. MR. JUSTICE  
NEWBOLD AG.P.

IN THE COURT  
OF APPEAL FOR  
EASTERN  
AFRICA

No.18

Notes of  
Newbold Ag.P.  
24th  
January 1966

24.1.66

20

B.O' Donovan, Q.C. & G. Horrocks for Appellant  
J.M. Nazareth, Q.C. & A.K. Bhatt & M. H.  
Mansoor for Respondents.

O'Donovan Judge came to wrong conclusion on  
facts - findings of fact at variance with  
documents.

p.176 - agreement Ex. B.

Names of transferees typed in transfer forms  
which sent with documents.

IN THE COURT  
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Notes of  
Newbold Ag.P.  
24th January  
1966

(Cont'd.)

Certain copies sent to Kuwait as also  
counterpart of lease.

Pl had power of attorney.

p.193 - Ex.D. 20.8.62 - Letter to P.1 from  
Bhatt.

p.178 - Ex. G1 13.8.62 - Letter from Def. to  
Bhatt.

Shortly afterwards Wadia saw Pl in Cairo but  
did not obtain signature to agreement or share  
transfers. 10

Submit clear that terms not accepted in Cairo.  
Wadia brought back original and handed them to  
Defendants.

p.181 - Ex. Q1 - Letter from Pl to Wadia  
This envisaged further agreement - letter  
written after original offered to P.1.

Only explanation of Q1 is that terms of B not  
agreed to - new contract.

Judge rejected two letters as not attached to  
Defence as required by Rules of Court. 20

p.180 & 167 - Ex. G & H.  
Submit if admissible consistent with? Q.

p.192 - Ex. S (ss P. 95 Ex. R - letter to  
produce). Supposed to come from P.1 -  
translation made 1.11.62.

p.184 Ex. G(2) - 5.11.62 from Aden Co. to P  
notice on behalf of Def.

p.187 - Ex. G(3) - 31.12.62 - from Bhatt to Def.

p.188 - Ex. G(4) - 9.1.63 - from D advocate to  
Bhatt. 30

p.189 - Ex. G(5) - 19.3.63 - no delay.

p.190 - Ex. G(6) - 26.3.63 - letter from advocates  
? ? ? agreement signed

Ex. P - book - letter of 26.3.63 signed for by Basaleh on 6.11.63.

No letter to Nunn saying that signed agreement shown to him by Basaleh.

P's case is that at end of Oct. Basaleh received documents duly executed together with signed transfer forms but there was no covering letter and that few days before 1st Nov. told this to Athanas Bros. and showed them documents and did so to Nunn and that Basaleh left them.

10

But transfer forms different from what we sent - shares split up differently - not property executed - erasures rendering them suspect.

Ex. C - p. 139 - their form.  
Ex. F - p. 150 - our form.

Ex. C. - erasures - no signature to transfer.

To this day no share transfer executed - this a condition precedent to right to payment - no right to institute suit.

20 Plaint read.

No question of jurisdiction arised.

Nazareth: That is so.

O'Donovan No plea that letter of 5th November delayed.

Defence read.

To Court (P) Wadia Hassonali was Defendant's agent.

p.11 & 13 - request for and particulars.

Adj. to 2.15.

(Sgd) C. D. NEWBOLD  
AG.P.

20 On resumption - Bench & Bar as before.

IN THE COURT  
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Notes of  
Newbold Ag.P.  
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(Cont'd.)

O'Donovan and  
Nazareth:

p. 23 - evidence of Khaled.

- Submit 1) No rational explanation of Ex. Q.
- 2) No evidence to show receipt of registered cover of documents.
- 3) Cannot say that brothers in Kuwait did not receive notice of revocation.

p.30 - evidence of Wadia

Submit not a witness of truth even though called by defence - Ex. Q shown where truth lies.

Agreed that Ex. E at p. ,1. should be F  
and E at p. should be E1.

10

- p.36 - evidence of Basaleh.
- p.57 - evidence of Constantino (Dino)
- p.67 - evidence of Prabhue.
- p.70 - evidence of Hasson
- p.85 - judgment.

Adj. to 9.30 a.m. on 25/1/66

(Sgd) C. D. NEWBOLD  
AG.P.

20

25th January  
1966.

O'Donovan:

25.1.66 Bench and Bar as before.  
9.30 a.m.

Judgment - p. 85  
Decree - p. 105

Heavy burden on A to disturb finding of primary fact. But submit on any dispassionate review of evidence and documents it is impossible to believe Ps and witnesses. Judge given no reasons - decision not applicable on basis that Basaleh an impressive witness - in any event dispassionate view cannot support that view.

30

Judge in effect finds that a number of documents fabricated and advocate guilty of misconduct.

Judge for example found that Bassaleh exhibited documents to Dino and Nunn - but no question put on this and no evidence of Basaleh led in chief to this effect - only on re-examination. When Nunn wrote? letters he not contradicted.

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p.181- Ex. Q - in construction this Court in as good a position as Judge.

Notes of  
Newbold Ag.P.  
25th January  
1966.

10 Submit it clearly at least requires D's to submit further documents if they agree to conditions - no explanation of what they are.

(Cont'd)

Reference to payment requires costs of all before a delivery while B envisaged part in instalment and delivery before total payment.

If Q, requires further conditions it is a counter offer and refusal of offer and this disposes of case.

Letters G & H - p.118 & 167

Rejected as not referred to in Written Statement - p.

20 Aden Rules of Court - R. 83 - this appears in part under heading "plaint" and deals with the plaintiff - so does 84 & 86.

Rule 87 - proviso - not clear.

Rules 105 (under heading                   ) requires attachment of document but nothing similar to R. 87.

30 Submit in state of rules objection not well founded and exclusion on that ground a matter of law. But in any event a discretion in Court to be exercised judicially. No response here and referred to in commission proceedings.

Submit common ground that Wadia a go between and this channel of communication to set out reactions to offer and in a limited sense agent for Pl. Also principle transactions in which W. concurred/concerned a matter of direct

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Newbold Ag.P.  
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(Cont'd.)

important and part of res gestae and this  
admissible.

Statement of witness at the time - tend to  
corroborate his evidence to that effect.

Cap. 58, sec. 163 - evidence to corroborate.

Submit unreasonable delay in communicating  
acceptance - the verbal acceptance by Bassaleh  
at the end of Oct. if this is true.

Submit delay equivalent of revocation as  
unreasonable - offer of sale of shares must be 10  
subject to implied term of acceptance within  
reasonable time. B shows anyway? In that  
transfer forms to be signed and in that Wadia  
sent to Cairo.

Cap. 30, Sec. 7(b).

Ex. F. must be read together with accompanying  
transfer forms and constitute one proposal - it  
contains manner of disposal of shares. This not  
complied with by C. as in any event shares not  
split up as required. 20

Submit exhibition of these transfer forms to  
Dino not an acceptance and it shows that P not  
ready to carry out terms. What they have done  
does not entitle them to order that purchase  
price be paid.

If Bassaleh the crucial acceptance why was it  
not referred to in correspondence.

Submit Ex. S. consistent with Ex. N. submit  
these documents cannot be lightly dismissed.

Submit Basaleh's denial of receipt of letter of 30  
revocation not reliable. It is not disputed  
that it written and received as referred to in  
plaint with no reference to delay in receipt.  
Letter addressed to partnership - matter as  
their knowledge as to whether other P's saw it.



As regards specific performance.  
Submit matter governed by Cap. 140, sec.11 Ss (2)  
of importance.

Submit a presumption under Ss (2) that specific  
performance not to be decreed in this case  
unless P. proves to contrary.

Submit that shares fully paid up and this no  
obstacle of liability to call.

10 As private company a limited number of shares  
available but not that there were no purchasers.

Only evidence at p. , 1. - shares not quoted.

Thus only reason for specific performance in  
effect that it is shown in private Co. and  
thus I submit does not dispose of burden of  
proof under Sec. 11 (2).

Foundation for At. 30 not laid as no reference  
to attempts to find purchaser and refusal to  
register by Directors.

20 Judge decided grant of specific performance on  
passage from MULLA and reference to all? cases  
he did not examine. His duty to construe Aden Ord.  
Submit Mulla's passage not supported by cases.

MULLA (8th Ed) 764 - authority quoted is U.K.  
case of Duncuft v. Albrecht 59 E. R. 1104.

Mulla deals with Indian Act which is not  
exactly same to Aden-illustrations.  
Different consideration in sellers and buyers  
action.

30 Duncuft's case 59 E. R. 1104, 1107 - here  
position is availability of purchasers not of  
shares.

Chinoy's Case 77 1A 76, 90.

36 HALS 272, para 371, open to criticism in  
not distinguishing between buyers and sellers  
action.

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Eastern  
Africa

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(Cont'd.)

Submit authorities cited do not support position that vendor on same footing as purchaser.

Jackson v. Cocker 49 E. R. 260 - sellers action but court held no contract.

Cheele v. Kenward, 44 E. R. 1179 - sellers action and specific performance granted and liability for call which an impediment to purchasers.

If a Pl. wishes specific performance he must show such circumstances that pecuniary relief not adequate. 10

As regards damages P proved nothing of value of shares - only entitled to nominal damages.

If Pl. not willing to perform - i.e. share transfers - then left to damages.

Schwabacher's Case 98 L.T. 120, 129 - reasonable time - time essence of the contract.

Nazareth:

Grounds - was S. P. proper remedy.

Submit clear case for order for S.P. If not ordered P's remained with shares - disputes - way out was sale. 20

Court to  
Nazareth

As O'Donovan conceded that on facts of this case an order for specific performance was within the power of the Court in spite of the Co. being a private company, we consider that if there was a contract in existence then the proper remedy was an order for specific performance as ordered by Judge. We do not wish to hear you on this point of appeal.

Nazareth:

Ex. Q - ground 2 of Memorandum of Appeal. 30  
p.181 - Ex. Q. of 31.8.62 - replied to by letter of 25.9.62  
p. - Ex. E.  
Ex. E1 clearly in reply to Q - agreement to be signed - reference to bank guarantee for £12,000.

Ex. G. & H. inadmissible but if looked at inconsistent with a new agreement.

p. , l. - explanation of Khaled that no new conditions. Evidence as whole shows he assented to contract in Ex. B.

Agreement signed by Pl - but transfer forms signed by brothers.

Wadia their witness and agent but his evidence attacked.

Agreed issues treated document as offer and do not depart from this.

- 10 Khalid left Cairo for Kuwait and then on 1.9.62 went to India. Returned to Kuwait on 1 Oct. 1962 - then signed documents on 2 Oct. Leaves for Cairo on 4 Oct. Return to Kuwait on 1 Jan. 63 and finds letter 5 Nov. awaiting him.

Wadia went to Cairo on 13 Aug. 62 and returned to Aden after a month - after 25 Sep.

Basaleh left Aden for Cairo beginning of Aug. and returned 21 Oct. Met Dino and told him of signing about 30 Oct. and 2nd Nov.

- 20 Bhatt left Sep. 62 for India and returned 15 Dec. 1962

In these circumstances known to Def. no danger - of non signature.

p. , l. Wadia refuted what happened in Cairo.

Submit no delay in circumstances which would be construed as non-acceptance.

Question of fact whether offer revoked - delay cannot be construed to that effect.

- 30 Letter of Nunn - Ex. K. - on basis of contract repudiated - not on basis of non-acceptance of offer.

p. , l. - basis of agreement from Dino.

p. , l. - it was not delay that affected Dino.

Ex. G2 - dated 5 November 1962 but no proof of when posted. Copy sent to Basaleh - no-one

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called to prove date of delivery.  
p. , 1. - put in as Ex. P. but cannot be  
evidence of delivery to Basaleh.  
p. , 1. - Ex. P. put in provisionally.

No evidence that brother got letter Ex. G.2 or  
when.

Ground 3.

Adj. to 2.15.  
(Sgd.) C. D. NEWBOLD.

2.15. p.m. Bench and Bar as before.

Nazareth: Ground 3 - admissibility of Ex.G & H. 10

Submit clearly inadmissible for defence. Wadia  
Defendant's agent - no question of letters being  
put in to contradict him. Letters put in as  
truth of statements in letters.

Judah v. Isolyne 1945 A.I.R. (P.C.) 174 (c) 175.  
Letter not evidence of truth of statements.

Cap. 58, Sec. 163 - Evidence Act 157.  
Indian section Wider.

Submit statement in Ex. M as to Nunn not  
seeing documents is not admissible. 20

Ground 4 - delay not unreasonable.

Submit offer in document accepted in Cairo.

Submit contract on which we sue was concluded  
on or before 8th August, alternatively at  
Cairo on acceptance; alternatively on 2nd  
October on signature. Para 6 states contract  
concluded on or before 8th August, 1962.

Now submit that contract concluded by  
acceptance in signing? on 2nd October and  
conveyed to Defs by Basaleh. 30

Submit having regard to movements of parties -  
also Wadia.

Submit disadvantages of delay in accepting the

contract falls on P's.

Letter G4 of 9.1.63 relates to repudiation by delay. Case now put on non-acceptance.

Ground 9 - was offer rejected before accepted.

Revocation of offer on 5 Nov - Ex. G.

At this time Dino gets Ex. S translated - not put to Khaled in his evidence.

Letter of Horrocks of 16/4/65 - evidence of Khalid in December 1964.

10 Letter numbered in Defence para 14 (iii).

Submit Ex. S. if written was written long before when there were disputes as to accounts - it had nothing to do with the history at this period.

p. ,1. - Translator says he inadvertently omitted date. Why should Baseleh hand over letter at this time.

Value of minutes nil - Baseleh does not sign though usually all directors sign. p. ,1.

20 Submit after Dino learnt from Basaleh that agreement signed then he tried to get out of his agreement.

Submit no justification for rejecting findings a Judge.

Ground 8 - transfer forms.

This part of process of carrying out contract - of no importance if properly executed. Defendant's entitled to have proper transfer forms completed.

Ex. C1 - C5 on different forms from F1-7.

30 Mystery in relation to F forms.  
p. 179 - Ex. W four forms sent 14.8.62.

Erasures not relevant.

Submit no question of forms being a condition precedent.

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If mistakes made in carrying out this not relevant to whether contract entered into - it merely shows that contract may not have been fully performed.

At law a cause of action must be complete - but in equity this not so.

Khatijabai v. Zenab 1960 E.A. 7,8D

Order should state that against delivery of proper transfer forms they pay £28,000 and then give a bank guarantee for £1,000 a month. Court may order Pl. to execute good transfers. 10

Ground 5 - Submit no reason to reject express finding of Judge who saw Basaleh - nothing in documentary evidence to cause Court to reject.

Ground 6 - Submit this unjustified.

Ground 7 - Not argued by O'Donovan.

Ground 8 & 9 - Dealt with.

Ground 10 - Not argued in effect.

Ground 11 - Submit Judge's finding amply supported. 20

Ground 12 - This manifestly incorrect - and not argued.

Ground 13 - There is something in this.

Bhatt &  
Horrocks:

Practice was that clerk submitted drafts to Judge who approved it and then faired it. When signed it - to advocates. No application made in this case for review of decree.

Nazareth:

Ask that appeal be dismissed with costs and make small modifications to decree to give proper effect to judgment. 30

O'Donovan:

How can co-existence of E1 and Q be explained. E1 inconsistent with Q.

Submit explanation is that Mohamed found lying to persuade Khalid to accept contract in form shown to him notwithstanding or because of Q. Q. clearly contemplates execution of further documents by Defendants, and then to be sent to Basaleh and then signed. This offer rejected. 40

How do you explain letter of 5 November and 9 January G4- p.188 1962 G2 p. 184.

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O'Donovan: Bad drafting by laymen but in any event cannot govern meaning of Q. What did Q mean where it was written. G4 does refer to Q. As regards rejection it is unfortunate that no reference but

As regards evidence that documents shown to Dino is it not extraordinary that Dino and Nunn did not react immediately to the incorrect transfer forms.

10

As regards G2 - this addressed to firm not to individual. See p.184, l. - question accepts receipt.

Plaint Para 13 - accepts receipt - no suggestion that not a genuine letter generally stated.

Pl says he returned on 1st January and this delay - but what about other partners in business. Matter within their knowledge as to when they saw it. Submit on balance of probabilities as to burden of proof, better known to other plaintiffs.

20

If Judge upset on acceptance of Basaleh at end of October then the revocation of offer received by P's before letter of 31.12.62.

Nazarath & O'Donovan As for certificate for 2 Counsel.

C. A. V.

(Sgd) C. D. NEWBOLD.

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JUDGMENT

IN THE COURT OF APPEAL FOR EASTERN AFRICA AT  
NAIROBI.

(Coram: Newbold, Ag. P., Duffus and Spry, JJ.A.)

CIVIL APPEAL NO. 52 of 1965

B E T W E E N

ATHANAS BROS. (ADEN) LTD.

APPELLANT

-- and --

KHALED ABDUL LATIF AL HAMAD AND OTHERS

RESPONDENTS

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(Appeal from a judgment and decree of the  
Supreme Court of Aden 'Light, Ag.J.' dated  
9th June, '65)

in

Civil Suit No. 511 of 1963

JUDGMENT OF NEWBOLD, AG.P.

This is an appeal from a decision of the  
Supreme Court of Aden ordering specific  
performance of a contract for the sale of shares  
which the court held had been entered into  
between the Plaintiffs as seller and the  
Defendant Company as buyers. From this decision  
the Defendant Company appealed.

20

The relevant facts may be briefly stated as  
follows. The five Plaintiffs were brothers and  
were partners in a firm carrying on business in  
Kuwait. Each of them owned a certain number of  
shares in the Aden Bottling Company Limited,  
(hereinafter referred to as "the Bottling  
Company") which was a private Company. The first  
Plaintiff (hereinafter referred to as "Khaled")

30



was a director of the Bottling Company and he had, at least for the purposes of the matters relevant to this appeal, a power of Attorney to act for his brothers. Mr. Basaleh (hereinafter referred to as "Basaleh") had been appointed as Khaled's alternate director of the Bottling Company and generally as his agent in Aden. The Directors of the Defendant Company were related and all transactions relevant to this appeal were carried out on behalf of the Defendant Company by Mr. Constantine Christo Athanassa Copulo (hereinafter referred to as "Dino"). Some or all of the Directors and shareholders of the Defendant company were also shareholders and directors of the Bottling Company.

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Although this fact is in dispute, it seems fairly clear that relations between Khaled and the other directors of the Bottling Company were not harmonious. At any rate discussions took place with regard to the sale of the shares owned by the Plaintiffs to the Defendant Company and on the 8th August, 1962, there was sent by Mr. Nunn, the Advocate for the Defendant Company, to Mr. Bhatt, the Advocate for the Plaintiffs, the original and counterpart, together with a copy, of a proposed contract between the parties for the sale of the Plaintiffs' shares to the Defendant Company duly signed by the Defendant Company. Accompanying these documents were share transfer forms filled in so as to provide, in accordance with the terms of the contract, for the transfer of the plaintiffs' shares to nominees of the Defendant Company. Broadly, the terms of this proposed contract were that the Plaintiffs were to sell the shares for £40,000 of which £28,000 be paid on the signing of the contract into the account of Khaled in a London Bank and the remainder of £12,000 was to be paid by twelve monthly instalments of £1,000 each with the Defendant Company providing a bankers guarantee for the payment of the monthly instalments. The proposed contract also provided that on signature the plaintiff should sign the forms of transfers and deliver up their existing share certificates. At the request of the Defendant

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Company Mr. Bhatt, about the middle of August, 1962, handed over the original of these documents to Mr. Wadia Hassanali (hereinafter referred to as "Wadia") so that he could take them to Cairo for signature by Khaled who was then in Cairo. Wadia went to Cairo shortly thereafter taking the documents and he there had discussions with both Khaled and Basaleh. Precisely what happened at those discussions is in dispute, but Khaled did not sign the original documents which Wadia had brought and returned them to the defendant Company unsigned. Prior to the discussions in Cairo Khaled had received from Mr. Bhatt the counterpart original and copy of the proposed contract together with copies of the transfer forms. In his evidence Khaled said he asked Wadia to let him take the original to Kuwait so that it might be signed by his brothers and that when Wadia refused to allow this he took the counterpart and copies to Kuwait. Khaled returned to Kuwait and almost immediately thereafter set out for India. He returned from India on the 1st October, 1962, and, according to his evidence, signed the counterpart for himself and his brothers on the 2nd October, and sent it together with the copies of the share transfer forms signed by his brothers and himself, to Basaleh in Aden. Basaleh stated that he received these documents and that towards the end of October he showed them both Dino and to Mr. Nunn and asked for the payment of £28,000 to be made and that Dino said he would do so in a few days. It is in dispute that Basaleh showed these documents to either Dino or Mr. Nunn at that time. According to Dino a letter was written dated the 5th November, from the Defendant Company to the Plaintiffs withdrawing the offer to purchase the shares and a copy of this letter was sent to Basaleh the following day. Basaleh denies receiving this copy and Khaled admits receiving it but only when he returned on the 1st January 1963, to Kuwait from further trips abroad. On the 31st December, 1962 Mr. Bhatt wrote stating that the Plaintiffs had returned to him the documents and transfer forms duly signed and that these were ready for delivery to the

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Defendant Company against payment of the sum of £28,000. On the 9th January, 1963, Mr. Nunn wrote in reply stating that owing to the delay in completing the transaction the Defendant Company regarded it as repudiated by the Plaintiffs. Thereafter further letters between the Advocates followed and this suit was brought.

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10 Of the six witnesses who gave evidence, two were relatively unimportant. The evidence of the remaining four, that is Khaled, Wadia, Basaleh and Dino was all of the greatest importance but unfortunately the evidence of Khaled and Wadia was taken on commission with the result that the trial judge did not have the advantage of seeing and hearing them. Of the two witnesses he did see and hear he preferred the evidence of Basaleh to that of Dino. The judge was satisfied that the offer contained in the written documents presented to Khaled for signature in  
20 Cairo was accepted as he stated in relation to what happened at Cairo: "I am satisfied that there was no rejection of the Defendant's offer but that there was a valid acceptance." It would seem that the judge did not consider that the acceptance was communicated to the Defendant Company through its agent, Wadia, at that time, as the judge later considered the question of communication of the acceptance and in relation to whether Basaleh informed Dino of the  
30 acceptance, the judge stated: "I am satisfied that he did so inform Dino and that the Plaintiffs' acceptance of the offer was in fact communicated to the Defendant before the attempted revocation by the Defendant". While it is not clear precisely what the judge found looking at the matter as a whole I consider that in his judgment he came to the conclusion that the offer of the Defendant Company to purchase the shares made to Khaled in Cairo at the end  
40 of August, 1962, was accepted by the Plaintiff at the end of October, 1962, by Basaleh communicating to Dino the fact that the contract had been signed by Khaled and the transfer documents by all the Plaintiffs. It was on this basis that the pleadings appear to be framed and that Mr. Nazareth, on behalf of the Plaintiffs,

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presented his case in support of the judgment of the trial judge. Having found a completed contract, the trial judge then considered whether, on the facts of this case, specific performance of the contract should be ordered or whether the plaintiffs could be adequately recompensed by means of damages. The trial judge came to the conclusion that the remedy to which the plaintiffs were entitled was that of specific performance of the contract and accordingly he made an order therefor. 10

From this judgment the defendant company appealed. The two main issues argued on the appeal were, first, that there was never a concluded contract between the parties as either (a) the offer was rejected by Khaled in Cairo and thus was no longer subsisting, or (b) the offer was revoked by the defendant company by its letter of the 5th November, before its acceptance by the plaintiffs had been communicated to the defendant company or (c) the offer of the defendant company had been revoked because it had not been accepted within a reasonable time; and, secondly that if there was a concluded contract between the parties then the remedy to which the plaintiff were entitled was one of damages and not specific performance of the contract. Apart from these two major issues there were other minor issues, of which I need only refer to two. The first was that the judge was wrong in rejecting as inadmissible two letters, dated the 27th August, 1962 and 2nd September, 1962, written by Wadia to Dino from Cairo in relation to the discussion he was having or had had with Khaled on the proposal. The second was that as the transfer forms were obviously improperly executed and, indeed, did not purport to transfer the shares in the manner required by the defendant company's offer or, at the least, a non-performance by the plaintiff of a condition precedent to the right to bring suit. 30 40

It will, I think, be convenient if I deal with the second main issue and these two minor issues before I consider the first main issue.

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10 On the question whether specific performance was the proper remedy, if in fact there was a contract which had been broken, Mr. O'Donovan, who appeared for the defendant company, conceded that it lay within the power of the Court in the circumstances of this case to make an order for specific performance. He made this concession because, in spite of the fact that the Bottling Company was a private company with restrictions on the transfer of its shares as the persons to whom the shares would be transferred if an order for specific performance were made were the directors of the Bottling Company, or the relatives of those directors, and were people who already owned shares in the company, then it did not appear to him that the directors could reasonably have refused an application for such transfer. I appreciate the reason for this concession and I consider that he had little

20 alternative but to make the concession. That being so, the fact that disputes had arisen between the owners of the shares of the Bottling Company and the fact that there must have been a limited market for those shares provided, in my view, ample justification for the trial judge in his discretion making the order for specific performance. I can see no basic reason to distinguish, as Mr. O'Donovan urged should be the position, between a buyer's action and a seller's

30 action. Each case must depend on its own facts and on the facts of this case I consider that nothing in section 11(2) of the Specific Relief Ordinance precluded the trial judge from making the order he did. At the hearing we did not call upon Mr. Nazareth to reply to Mr. O'Donovan's submissions on this issue and the reasons why I, for my part, joined with my brethren in not calling on Mr. Nazareth were those I have stated above.

40 The first subsidiary issue related to the admissibility of the two letters from Wadia. The judge appears to have ruled them inadmissible because they were not listed in the defence, as required by rule 105/(2) of the Rules of Court. It was Mr. O'Donovan's contention that rule 105(2) contains no sanction comparable with that contained in rule 87. Whether or not that was

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so, Mr. O'Donovan submitted, if I understood him correctly, that failure to list a document does not make it inadmissible, as there is a discretion in the Court, even under rule 87, to admit such a document. With this submission, I would agree.

Mr. Nazareth argued that the letters were in any event inadmissible as being irrelevant, and he relied on Judah v. Isolyne Bose, A.I.R. (32) 1945 P.C. 174 in support of this argument. 10  
It would seem, however, that the letters were admissible by virtue of section 33 of the Evidence Ordinance and that Judah's case (supra) has no application, since it was an Indian case and the Indian Evidence Act contains no provision comparable with section 33. However, Mr. O'Donovan did not press this point and as it was not fully argued and it is not essential for the determination of this appeal, it is unnecessary to express any conclusion on it. On the second 20  
subsidiary issue, it is quite clear that the proper execution of these forms was one of the matters which had to be performed under the contract and that the non-performance did not in any way whatsoever determine the question whether the proposal had been accepted.

Turning now to the first main issue, the matters in issue are almost entirely matters of fact. It is well established that an appellate court should not interfere with the findings of a trial judge on matters of primary facts unless it is quite satisfied that the advantage enjoyed by the trial judge of having seen and heard witnesses is not sufficient to explain or justify the conclusion to which he came. On the other hand it is equally well established, first, that an appellate court is in as good a position as the trial judge to evaluate evidence other than oral evidence or evidence which does not depend on the credibility or reliability of a witness 30  
and, secondly, that an appellate court should not shrink from doing so. Mr. O'Donovan has urged that Khaled rejected the offer at Cairo by not accepting the proposal of the defendant 40

company and putting forward counter-proposals. The trial judge had found that there was no rejection but an acceptance of the offer, though, as I have said he does not appear to have found that the acceptance was communicated to Wadia. This finding of the judge must have been based primarily upon consideration of the evidence of Khaled and Wadia, of a letter of 31st August, 1962, written by Khaled to Wadia, and of Wadia's reply of 25th September, 1962. As the evidence of these two witnesses were taken on commission it is clear that this court is in as good a position as the trial judge to evaluate all this evidence. An examination of this evidence leads me to place little reliance on any account given by Wadia of what transpired at Cairo, not because he is a witness of untruth but because I have the firm impression that he would avoid saying to or about either party what would be displeasing to that party. I consider that there are certain undisputed facts which lead irresistibly to the conclusion that Khaled did not accept the offer at Cairo but in fact made a counter offer. They are, first that Wadia brought back the originals unsigned, secondly that nothing further was done by either side for at least two months, that is till the end of October when the signed document are supposed to have been shown by Basaleh to Dino; and thirdly, the terms of Khaled's letter of 31st August. Looking at this letter as a whole, I cannot read it as doing anything other than making it clear to Wadia that counter-proposals had been made. Where documents are translated, too much reliance should not be placed upon individual sentences or upon the subtleties of particular phrases, and I consider that a translated document is not satisfactory basis for inferences. I approach, therefore, the construction of this letter with caution, especially having regard to the reply. Nevertheless I cannot but regard this letter written by Khaled at the end of the discussions in Cairo as completely inconsistent with an acceptance by him of the proposals, whether only with counter-proposals; and the return of the documents unsigned together with the delays before any further action took

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place are equally consistent with such a position being the position, there was no longer subsisting after the Cairo meeting an offer which could later be accepted. There are two documents which at first blush appear to be inconsistent with such a position. The first is the letter of the 5th November, 1962, which has been referred to in the submissions of Counsel as a withdrawal of the offer, a withdrawal which would be unnecessary if the offer had been rejected. Even if the offer had been rejected at Cairo, the parties were still interested in a possible sale of the shares by the plaintiffs to the defendant company and, indeed, Khaled had made counter-proposals. Looking at this letter as a whole I am satisfied that it was not written as a withdrawal of a subsisting offer but as an intimation that the defendant company was no longer interested in buying the shares of the plaintiffs though it was interested in selling its own shares. The second is the letter of 9th January, 1963, in which Mr. Nunn, in reply to the letter of 31st December, 1962, from Mr. Bhatt stating that the contract and the transfer forms had been signed, referred to the defendant company's offer as repudiated by delay, a position inconsistent with rejection of the offer at Cairo or, indeed, withdrawal of the offer before the communication of acceptance. I find it difficult to give a rational explanation of this letter and I do not find Mr. O'Donovan's explanation, which was that the letter was badly drafted, as very convincing. I accept that this letter is not consistent with what I believe to be the true position. If, however, I assume that the offer at Cairo was not rejected but was accepted there are, in my opinion, so many facts inconsistent with such an assumption that I am forced to reject it. In the result, in spite of the inconsistency created by this letter, I have come firmly to the conclusion that the offer was rejected at Cairo and that the trial judge erred in not dismissing the suit.

In view of this it is unnecessary to



consider whether the offer, if subsisting, had been withdrawn prior to acceptance or had been revoked by delay. On the latter point I should, however, remark that an offer to purchase shares for a considerable sum of money would normally be an offer which, if not taken up within a short time, would lapse, that is it would be revoked within the meaning of section 7 of the Contract Ordinance. Apart from the subject matter of the offer, there is both internal and external evidence which tends to show that a delay of at least two months in accepting the offer was an unreasonable delay, but I need not pursue this matter further.

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For these reasons I consider that the appeal should be allowed, that the judgment and decree of the Supreme Court should be set aside and that there be substituted therefore a judgment and decree dismissing the suit with costs. I would allow the Appellant the costs of the appeal with a certificate for two counsels. As the other members of the Court agree, it is so ordered.

Dated at Nairobi this 24th day of February, 1966.

C. D. NEWBOLD

.....  
AG. PRESIDENT

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IN THE COURT OF APPEAL FOR EASTERN AFRICA  
AT NAIROBI.

(Coram: Newbold. Ag.P., Duffus and Spry, JJ.A.)

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1966

CIVIL APPEAL NO. 52 of 1965

B E T W E E N

ATHANAS BROS. (ADEN) LTD.

APPELLANT

- and -

KHALED ABDUL LATIF AL HAMAD AND  
OTHERS

RESPONDENTS

(Cont'd.)

(Appeal from judgment and decree  
of the Supreme Court of Aden  
(Light, AG.J.) dated 9th June,  
1965)

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in

Civil Suit No.511 of 1963

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JUDGMENT OF DUFFUS, J. A.

I agree,

Dated at Nairobi this 24th day of February, 1966.

W.A.H. DUFFUS

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.....

JUSTICE OF APPEAL

IN THE COURT OF APPEAL FOR EASTERN AFRICA AT  
NAIROBI

(Coram: Newbold. A.P., Duffus and Spry, JJ.A.)

CIVIL APPEAL NO. 52 of 1965

B E T W E E N

ATHANAS BROS. (ADEN) LTD.

APPELLANT

- and -

KHALED ABDUL LATIF AND OTHERS

RESPONDENTS

In the Court  
of Appeal for  
Eastern  
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(Appeal from a judgment and  
decree of the Supreme Court of  
Aden (Light, Ag.J.) dated 9th  
June, 1965

in

Civil Suit No. 511 of 1963)

—————  
JUDGMENT OF SPRY, J.A.

I also agree,

Dated at Nairobi this 24th day of February, 1966

J. F. SPRY

.....

JUSTICE OF APPEAL

20

In the Court  
of Appeal for  
Eastern  
Africa.

I certify that this is a  
true copy of the original

.....

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DEPUTY REGISTRAR.

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NO. 20

ORDER

IN THE COURT OF APPEAL FOR EASTERN AFRICA AT  
NAIROBI

CIVIL APPEAL NO. 52 of 1965

B E T W E E N

10

ATHANAS BROS. (ADEN) LIMITED

APPELLANT

- and -

1. KHALED ABDUL LATIF AL HAMAD

2. AHMED ABDUL LATIF AL HAMAD

3. YOUSUF ABDUL LATIF AL HAMAD

4. ALI ABDUL LATIF AL HAMAD

5. ABDULLA ABDUL LATIF AL HAMAD

RESPONDENTS

(Appeal from a Judgment and Decree  
of the Supreme Court, Aden (the  
Honourable Enoch Light, Acting  
Judge) dated the 9th of June, 1965 in  
Civil Case No. 511 of 1963)

20

BETWEEN

1. KHALED ABDUL LATIF AL HAMAD

2. AHMED ABDUL LATIF AL HAMAD

3. YOUSUF ABDUL LATIF AL HAMAD

4. ALI ABDUL LATIF AL HAMAD

5. ABDULLA ABDUL LATIF AL HAMAD

PLAINTIFFS

- and -

ATHANAS BROS. (ADEN) LIMITED

DEFENDANT

In the Court  
of Appeal for  
Eastern  
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No.20  
Order

24th February  
1966

In Court this 24th day of February, 1966

Before the Honourable the Acting  
President Mr. Justice Newbold, the  
Honourable Mr. Justice Duffus, a  
Justice of Appeal and the Honourable  
Mr. Justice Spry, a Justice of Appeal.

(Cont'd.)

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O R D E R

THIS APPEAL coming on for hearing on the  
24th and 25th days of January, 1966 AND UPON  
HEARING B. O'DONOVAN Esq., of Her Majesty's  
Counsel and Horrocks Esq., of Counsel for the  
Appellant and J. M. Nazareth Esq., of Her  
Majesty's Counsel and A.K. Bhatt Esq., and M. H.  
Mansoor Esq., both of Counsel for the  
Respondents IT WAS ORDERED that the appeal do  
stand for judgment and upon the same coming for  
judgment this day IT IS ORDERED that this appeal  
be and is hereby allowed with costs with a  
certificate for two Counsels and that the  
Judgment and Decree of the Supreme Court be and  
is hereby set aside and that there be and is  
hereby substituted therefor a Judgment and Decree  
dismissing the suit with costs.

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GIVEN under my hand and the Seal of the Court  
at Nairobi this 24th day of February, 1966.

30

(Sgd) L.C. SALOLE  
Dy. Registrar

COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

ISSUED this 16th day of April 1966.

In the Court  
of Appeal for  
Eastern  
Africa.

No.21  
Order granting  
final leave to  
Appeal to  
Privy Council  
3rd September  
1966

NO. 21  
Order granting Final leave to  
Appeal to Privy Council  
ORDER GRANTING FINAL LEAVE TO APPEAL TO HER  
MAJESTY-IN-COUNCIL.

IN THE COURT OF APPEAL FOR EASTERN AFRICA  
CIVIL APPLICATION NO. 4 OF 1966

(In the matter of an Intended Appeal to the Privy  
Council)

B E T W E E N

10

1. Khaled Abdul Latif Al Hamad,
2. Ahmed Abdul Latif Al Hamad,
3. Yousuf Abdul Latif Al Hamad,
4. Ali Abdul Latif Al Hamad, and
5. Abdulla Abdul Latif Al Hamad

Applicants

- and -

ATHANAS BROS. (ADEN) LIMITED

Respondents

(Intended Appeal from the final Judgment of the  
Court of Appeal for Eastern Africa Sessions  
holden at Nairobi dated 24th day of February,  
1966, in Civil Appeal No. 52 of 1965 and the  
Formal Orders thereon of the same)

20

B E T W E E N

ATHANAS BROS. (ADEN) LIMITED

Appellants

- and -

1. KHALED ABDUL LATIF AL HAMAD,
2. AHMED ABDUL LATIF AL HAMAD,
3. YOUSUF ABDUL LATIF AL HAMAD,
4. ALI ABDUL LATIF AL HAMAD,
5. ABDULLA ABDUL LATIF AL HAMAD

Respondents

30

O R D E R

UPON MOTION made unto this Court by Mr. M.H.  
Mansoor, Advocate for the APPLICANTS for FINAL  
LEAVE to APPEAL to HER MAJESTY-IN-COUNCIL AND  
UPON READING the AFFIDAVIT of Mr. M.H.Mansoor  
sworn on the 25th day of August, 1966 AND UPON  
HEARING Mr. M.H.Mansoor, Advocate for the  
APPLICANTS and Mr. R.H.Mehta Advocate, holding  
for Messrs. Horrocks, Williams & Beecheno,  
Advocates for the RESPONDENTS, THIS COURT DO TH  
HEREBY give leave to the APPLICANTS to appeal to  
HER MAJESTY-IN-COUNCIL against the JUDGMENT and  
ORDER dated 24th day of February, 1966, in Civil  
Appeal No.52 of 1965.

40

GIVEN under my hand and Seal of the Court at Aden  
this 3rd day of September, 1966.

E.G.BLANDFORD, AG.CHIEF JUSTICE,  
SUPREME COURT, ADEN, AS JUDGE OF THE COURT  
OF APPEAL FOR EASTERN AFRICA.

"C"

Share transfer form signed  
Khalid Abdul Latif Al Hamad

Exhibits

"C"

Share transfer  
form signed  
Khalid Abdul  
Latif Al  
Hamad

(Manuscript portions underlined in red:  
erasures indicated by a dotted red line)

EXHIBIT "C"

Commission Exhibit "C"

Company      The

TRANSFER OF 500 SHARES

10 Full name and      I/we, Khalid Abdul Latif Al Hamad  
Address of the      of  
Seller

(Amount in Words) in consideration of the sum  
of Rupees

Full name and      Paid to me/us by .....

Address of the      of      hereinafter  
Purchaser      called the transferee(s) do hereby  
transfer to the said transferee(s)

20 Number of Shares      the \_\_\_\_\_ Ordinary/Preference  
(in words)      Share(s) numbered

Distinctive      (inclusive) standing in my/our  
Nos.      name(s) in the Books of the

30 to hold unto the said transferee(s),  
his/ner/their executors,  
administrators and assigns subject  
to the several conditions and  
regulations on which I/we hold  
the same at the time of the  
execution hereof, and I/we the  
transferee(s) subject to the same  
conditions.

(Date in Words) As Witness our hands the  
day of      One thousand nine  
hundred and

Exhibits

"C"  
Share trans-  
fer form  
signed  
Khalid Abdul  
Latif Al  
Hamad  
(Contd.)

Witness TRANSFEROR'S SIGNATURE  
SIGNATURE  
ADDRESS

TRANSFeree'S SIGNATURE  
Witness  
SIGNATURE OCCUPATION  
ADDRESS FULL ADDRESS

Received transfer fee Rs.

on 19 . Folio Company  
Specimen of Purchaser's signature 10

Entered in Register of Transfers No.

Approved

on Director

(On reverse)

I N S T R U C T I O N S

1. In case of delivery of shares and stock together with the transfer forms (signed by the transferor) in respect thereof the brokers shall be responsible for a period of 15 days from the date of delivery for the regularity and genuineness of the said shares, stock and transfer forms. After expiry of 15 days the liability of the brokers shall cease. 20
2. Before delivering a transfer deed signatures of both the transferor and the transferee must be attested and the witnesses must state their full address. 30
3. The form must be carefully and legibly filled in and the name of the Company inserted in the space provided at the head of the Deed.



Exhibits

"C"

Share trans-  
fer form  
signed  
Khalid Abdul  
Latif Al  
Hamad  
(Contd.)

4. Names of the parties in the body of the transfer must be in full stating whether Mr. Miss or Mrs.

5. No erasure is allowed. Any corrections or alterations must be initialled by both the transferor and the transferee.

6. All signatures in Persian, Urdu, Arabic and Gujrati and thumb impressions, marks etc. must be verified by a Magistrate.

10 Balance certificate required for \_\_\_\_\_ shares  
not required.

Seller's signature KHALED ABDUL LATIF  
AL HAMAD

(in Arabic)

or

Broker's signature \_\_\_\_\_

Power of Attorney  
Death Certificate No. \_\_\_\_\_

Dated

20 Registered with the Company.

Broker

Exhibits

"C"

Share trans-  
fer form  
signed  
Abdulla Abdul  
Latif Al Hamad

"C"

Share Transfer Form signed by  
Abdulla Abdul Latif Al Hamad

(Manuscript portions underlined in red:  
Erasures indicated by a dotted red line.)

EXHIBIT "C"  
Commission Exhibit "C"

Company	The	
Full name and address of the Purchaser	I/we, <u>ABDULLA ABDUL LATIF ALHAMAD</u>	10
(Amount in words)	of	
	in consideration of the sum of Rupees	
Full name and Address of the Purchaser	Paid to me/us by .....	
Number of Shares (In words)	of hereinafter called the transferee(s) do hereby transfer to the said transferee(s) the _____ Ordinary/Preference Share(s) numbered	20
Distinctive Nos.	(inclusive) standing in my/our name(s) in the Books of the	
	to hold unto the said transferee(s), his/her/their executors, administrators and assigns subject to the several conditions and regulations on which I/we hold the same at the time of the execution hereof, and I/we the transferee(s) do hereby agree to accept and take the said share(s) subject to the same conditions.	30
(Date in words)	As witness our hands the day of _____ One thousand nine hundred and	

Witness

SIGNATURE

ADDRESS

TRANSFEROR'S  
SIGNATURE

TRANSFeree'S  
SIGNATURE

Exhibits

"C"

Share transfer  
form signed  
Abdulla Abdul  
Latif Al Hamad  
(Contd.)

Witness

SIGNATURE

ADDRESS

OCCUPATION

FULL ADDRESS

Received Transfer fee Rs.

10 on 19 Folio Company

Specimen of Purchaser's  
signature

Entered in Register of Transfer No.

Approved

Directors

On

Reverse as on previous Share transfer form  
except for signature, as follows:

Seller's signature: ABDULLA AEDUL LATIF AL HAMAD

20

(In Arabic)

or

Broker's signature

Exhibits

"C"

Share transfer form signed Ahmed Abdul Latif Al Hamad

"C"

Share transfer form signed Ahmed Abdul Latif Al Hamad

(Manuscript portions underlined in red: erasures indicated by a dotted red line.)

EXHIBIT "C"

Commission Exhibit "C"

Company THE

TRANSFER OF 500 SHARES

Full name and address of the Seller I/We, AHMED ABDUL LATIF AL HAMAD 10  
.....  
of

(Amount in words) in consideration of the sum of Rupees

Full name and address of the purchaser Paid to me/us by.....  
of hereinafter  
called the transferee(s) do hereby transfer to the said transferee(s) the \_\_\_\_\_  
Ordinary/Preference Share(s) numbered 20

Distinctive Nos. (Inclusive) standing in my/our name(s), in the Books of the  
  
to hold unto the said transferee(s), his/her/their executors, administrators and assigns subject to the several conditions and regulations on which I/We hold the same at the time of the execution hereof, and I/We the transferee(s) do hereby agree to accept and take the said share(s) subject to the same conditions. 30

Date in Words As witness our hands the day of One thousand nine hundred and

Witness	TRANSFEROR'S SIGNATURE	<u>Exhibits</u> "C" Share trans- fer form signed Ahmed Abdul Latif Al Hamad (Contd.)
SIGNATURE		
ADDRESS	TRANSFeree'S SIGNATURE	
Witness		
SIGNATURE	OCCUPATION	
ADDRESS	FULL ADDRESS	

10 Received transfer fee Rs.  
on                    19                    Folio                    Company

Entered in Register of Transfers No.

Specimen of Purchaser's signature

Approved

Director

Reverse as on previous Share Transfer Forms  
except for signature, as follows

Seller's Signature AHMED ABDUL LATIF AL HAMAD

(In Arabic)

20

or

Broker's Signature

Exhibits

"C"  
Share transfer form signed Ali Abdul Latif Al Hamad

"C"  
Share transfer form signed  
Ali Abdul Latif Al Hamad

(Manuscript portions underlined in red:  
erasures indicated by a dotted red line)

EXHIBIT "C"

Commission Exhibit "C"

Company	The	
Full name and address of the Purchaser of	<u>ALI ABDUL LATIF AL HAMAD</u>	10
Amount in Words	in consideration of the sum of Rupees	
Full name and address of the Purchaser	Paid to me/us by _____	
Number of Shares (In Words)	of _____ hereinafter called the transferee(s) do hereby transfer to the said transferee(s) the <u>_____ Ordinary/Preference Share(s) numbered _____</u>	20
	(inclusive) standing in my/our name(s) in the Books of the _____	
	to hold unto the said transferee(s), his/her/their executors, administrators and assigns subject to the several conditions and regulations on which I/We hold the same at the time of the execution hereof, and I/we the transferee(s) do hereby agree to accept and take the said share(s) subject to the same conditions.	30
(Date in words)	As witness our hands the day of _____ One thousand nine hundred and _____	

Witness	TRANSFEROR'S SIGNATURE	<u>Exhibits</u> "C" Share transfer form signed Ali Abdul Latif Al Hamad (Contd.)
SIGNATURE		
ADDRESS	TRANSFeree'S SIGNATURE	

Witness	
SIGNATURE	OCCUPATION
ADDRESS	FULL ADDRESS

Received Transfer fee Rs.

10 on 19 Folio  
Company

Specimen of Purchaser's signature

Entered in Register of Transfer No.

Approved

Director

On

---

Reverse as on previous Share transfer forms except for signature, as follows:

20 Seller's signature: ALI ABDUL LATIF  
AL HAMAD  
(In Arabic)

or

Broker's Signature

Exhibits

"C"  
Share transfer form signed Yousef Abdul Latif Al Hamad

"C"

Share transfer form signed Yousef Abdul Latif Al Hamad

(Manuscript portions underlined in red: erasures indicated by a dotted red line).

EXHIBIT "C"

Commission Exhibit "C"

Company	The	
Full name and address of the Purchaser	I/We, <u>YUSEF ABDUL LATIF AL HAMAD</u>	10
	of	
Amount in words	In consideration of the sum of Rupees	
Full name and address of the Purchaser	Paid to me/us by _____	
Number of Shares (in words)	of _____ hereinafter called the transferee(s) do hereby transfer to the said transferee(s) the _____ Ordinary/Preference 20 Share(s) numbered	
Distinctive Nos.	(inclusive) standing in my/our name(s) in the Books of the	
	to hold unto the said transferee(s), his/her/their executors, administrators and assigns subject to the several conditions and regulations on which I/We the transferee(s) do hereby agree to accept and take the said share(s) subject to the same conditions	30
(date in words)	As witness our hands the _____ day of _____ One thousand nine hundred and	



Witness	TRANSFEROR'S SIGNATURE	<u>Exhibits</u> "C" Share transfer form signed Yousef Abdul Latif Al Hamad (Contd.)
SIGNATURE		
ADDRESS	TRANSFeree'S SIGNATURE	

WITNESS		
SIGNATURE	OCCUPATION	
ADDRESS	FULL ADDRESS	

Received Transfer fee Rs.	Folio
10 on 19 .	Company
	Specimen of Purchaser's Signature

Entered in Register of Transfer No.

Approved

Director

On

Reverse as on previous Share Transfer Forms  
except for signature, as follows:

20 Seller's signature: YUSEF ABDUL LATIF AL HAMAD

(In Arabic)

or

BROKER'S SIGNATURE

Exhibits

"F.1"

Share transfer  
Khalid  
Abdul Latif Al  
Hamed to  
Michael  
Athanassa-  
copoulo -  
1940

"F.1"

Share transfer, Khalid Abdul Latif Al Hamed  
to Michael Athanassacopoulo - 1940

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER OF 500 SHARES

Full name and address of the Seller I/We KHALID ABDUL LATIF AL HAMED of ADEN

Amount in Words In consideration of the sum of EAS. ONE HUNDRED AND SIXTY-THOUSAND

10

Full name and address of the Purchaser Paid to me/us by MR. Michael Athanassacopoulo

No. of Shares in Words Distinctive Nos. Company. of Aden hereinafter called the transferee(s) do hereby transfer to the said transferee(s) the Five hundred Ordinary Shares numbered 4381 to 4880 (inclusive) standing in my name(s) in the Books of the Aden Bottling Company Limited to hold unto the said transferee(s) his executors, administrators and assigns subject to the several conditions and regulations on which I hold the same at the time of the execution hereof,

Date in Words As witness our hands the day of One thousand nine hundred and forty

30

Witness Signature Address Transferor's Signature KHALID ABDUL LATIF AL HAMED

Witness Signature Address Transferee's Signature MICHAEL ATHANASSACOPOULO Occupation: Company Director Full Address: Esplanade Road, Aden

Exhibits

Received transfer fees Rs.

"F.1"

on \_\_\_\_\_ 19 . Folio

Share transfer  
Khalid  
Abdul Latif  
Al Hamed to  
Michael  
Athanassa-  
copoulo -  
1940

Company

Specimen of Purchaser's  
signature

(Contd.)

Entered in Register of Transfer No.

Approved

Director

On

\_\_\_\_\_

10

(On Reverse)

I N S T R U C T I O N S

1. In case of delivery of shares and stock together with the transfer forms (signed by the transferor) in respect thereof the brokers shall be responsible for a period of 15 days from the date of delivery for the regularity and genuineness of the said shares, stock and transfer forms. After expiry of 15 days the liability of the brokers shall cease.
2. Before delivering a transfer deed signatures of both the transferor and the transferee must be attested and witnesses must state their full address.
3. The form must be carefully and legibly filled in and the name of the Company inserted in the space provided at the head of the Deed.
4. Names of the parties in the body of the transfer must be in full stating whether Mr. Mrs. or Miss.
5. No erasure is allowed. Any corrections or alterations must be initialled by both the transferor and the transferee.

20

30

Exhibits

"F.1"

Share  
transfer  
Khalid  
Abdul Latif  
Al Hamed to  
Michael  
Athanassa-  
copoulo -  
1940  
(Contd.)

6. All signatures in Multani, Persian & Urdu  
and thumb impressions, marks etc. must be  
verified by a J.P. or a Magistrate.

Balance certificate      required for shares  
not required

Seller's Signature

or

Broker's signature

Power of Attorney      No.      10  
Death Certificate

Dated

Registered with the Company

Broker

Exhibits

"F.2"

Share Transfer, Yousef Abdul Latif Al Hamed to Constantine Athanassacopoulo

"F.2"

Share Transfer Yousef Abdul Latif Al Hamed to Constantine Athanassacopoulo - 1940

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER OF 500 SHARES

Full name and address of the Seller I/WE YOUSEF ABDUL LATIF AL HAMED of Aden

10 Amount in Words in consideration of the sum of E.A.Sh. One hundred and sixty thousand

Full name and address of the Purchaser paid to me/ by Mr. Constantine Athanassacopoulo

20 No. of Shares (in words) of Aden hereinafter called the transferee(s) do hereby transfer to the said transferee(s) the Five hundred Ordinary Shares numbered 8501 to 9000 (inclusive)

30 (Distinctive Nos.) standing in my name(s) in the Books of the Aden Bottling Company Limited to hold unto the said transferee(s) his executors, administrators and assigns subject to the several conditions and regulations on which I hold the same at the time of the execution hereof, and I the transferee(s) do hereby agree to accept and take the said share(s) subject to the same conditions.

Date in words As witness our hands the day of One thousand nine hundred and forty

Witness Signature TRANSFEROR'S SIGNATURE YOUSEF ABDULATIF AL HAMED

40 Witness Signature Address TRANSFEREE'S SIGNATURE CONSTANTINE ATHANASSACOPOULO Occupation: Company Director Full Address: Esplanade Road, Aden

Exhibits

"F.2"

Share  
Transfer  
Yousef  
Abdul Latif  
Al Hamed  
to Constantine  
Athanassa-  
copoulo -  
1940  
(Contd.)

Received transfer fee Rs.

on 19 . Folio Company

Specimen of Purchaser's  
Signature

Entered in Register of Transfers No.

Approved

Director

---

Reverse side as on Exhibit "F.1"

"F.3"  
Share transfer, Ahmed Abdul Latif Al  
Hamed, to Andrew Athanassacopoulo

Exhibits

"F.3"  
Share  
transfer  
Ahmed Abdul  
Latif Al  
Hamed to  
Andrew  
Athanassa-  
copoulo -  
1940

COMMISSION EXHIBIT F3

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER OF 500 SHARES

Full name and I/We, AHMED ABDUL LATIF AL HAMED  
Address of  
the Seller of Aden

10 Amount in words in consideration of the sum of  
E.A.Sh. ONE HUNDRED AND SIXTY-  
THOUSAND

Full name and Paid to me by Mr. Andrews  
Address of Athanassacopoulo of Aden  
the hereinafter called the  
Purchaser transferee(s) do hereby transfer  
to the said transferee(s) the  
Distinctive Five hundred Ordinary Share(s)  
Nos. numbered 8001 to 8500 (inclusive)  
Company standing in my name(s) in the  
Books of the Aden Bottling  
Company Limited to hold unto the  
said transferee(s) his executors,  
administrators and assigns subject  
to the several conditions and  
regulations on which I hold the  
same at the time of the execution  
hereof, and I the transferee(s)  
do hereby agree to accept and  
30 take the said share(s) subject to  
the same conditions.

Date in words As witness our hands the  
day of One thousand nine  
hundred and forty

Witness Transferor's Signature  
Signature AHMED ABDUL LATIF AL HAMED  
Address Transferee's signature

Witness ANDREW ATHANASSACOPOULO  
Signature Occupation: Company Director

40 Address Full Address: Esplanade Road,  
Aden

Exhibits

"F.3"  
Share  
transfer  
Ahmed Abdul  
Latif Al  
Hamed to  
Andrew  
Athanassa-  
copoulo -  
1940  
(Contd.)

Received transfer fee Rs.

On                                      19   . Folio                      Company

Specimen of Purchaser's Signature

Entered in Register of Transfers No.

Approved

Director

---

Reverse side as on Exhibit "F.1"



"F.4"

Share transfer Ali Abdul Latif Al Hamed  
to Mrs. G. Helen Athanassacopoulo

Exhibits

"F.4"

Share  
Transfer  
Ali Abdul Latif  
Al Hamed to  
Mrs. G. Helen  
Athanassa-  
copoulo -  
1940

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER OF 250 SHARES

Full name and I/We ALI ABDUL LATIF AL HAMED  
address of the  
Seller of Aden

10 Amount in words in consideration of the sum  
of E.A.Sh. EIGHTY THOUSAND  
ONLY

Full name and address of  
the Purchaser paid to me by Mrs. Helen G.  
Athanassacopoulo of Aden  
hereinafter called the  
transferee do hereby transfer  
to the said transferee the  
Two hundred and fifty Ordinary  
No. of Shares Shares numbered 9001 to 9250

20 Distinctive Nos. Company (inclusive) standing in my name in  
the books of the Aden Bottling  
Company Limited to hold unto the  
said transferee her executors,  
administrators and assigns subject  
to the several conditions and  
regulations on which I hold the  
same at the time of the execution  
hereof, and I the transferee do  
hereby agree to accept and take  
the said shares subject to the  
same conditions.

30 Date in words As witness our hands the  
day of One thousand  
nine hundred and forty

Witness Transferor's Signature  
Signature ALI ABDUL LATIF AL HAMED  
Address Transferee's Signature  
Witness HELEN G. ATHANASSACOPOULO  
Signature Occupation: Housewife  
Address

Exhibits

"F.4"  
Share  
Transfer  
Ali  
Abdul Latif  
Al Hamed  
to Mrs. G.  
Helen  
Athanassa-  
copoulo -  
1940  
(Contd.)

Received transfer fee Rs.      Folio  
on                              19 .      Company

Specimen of Purchaser's Signature

Entered in Register of Transfer No.

Approved

Director

---

Reverse side as on Exhibit "F.1"

"F.5"

Share transfer Ali Abdul Latif Al Hamed  
to Christo G. Athanassacopoulo

Exhibits

"F.5"

Share  
transfer  
Ali  
Abdul Latif  
Al Hamed  
to Christo  
G. Athanassa-  
copoulo -  
1940

Company THE ADEN BOTTLING COMPANY LIMITED

Full name I, ALI ABDUL LATIF AL HAMED  
and address of the Seller of Aden

10 Amount in words in consideration of the sum of  
E.A. Sh. EIGHTY THOUSAND

Full name Paid to me by Mr. Christo G.  
and Athanassacopoulo of Aden  
Address of hereinafter called the transferee(s)  
the do hereby transfer to the said  
Purchaser transferee the Two hundred and  
fifty Ordinary shares numbered 9251  
No. of to 9500 (inclusive) standing in  
shares my name in the Books of the Aden  
Bottling Company Limited to hold

20 Distinctive No. Company unto the said transferee, his  
executors, administrators and  
assigns subject to the several  
conditions and regulations on  
which I hold the same at the time of  
the execution hereof, and I the  
transferee do hereby agree to accept  
and take the said shares subject to  
the same conditions.

30 Date in words In witness our hands the  
day of One thousand nine  
hundred and forty

Witness	Transferor's Signature
Signature	ALI ABDUL LATIF AL HAMED
Address	Transferee's Signature
Witness	CHRISTO G. ATHANASSACOPOULO
Signature	Occupation: Company Executive
Address	Full Address: Esplanade Road, Aden

Exhibits

"F.5"  
Share  
transfer  
Ali  
Abdul Latif  
Al Hamed  
to Christo  
G.  
Athanassa-  
copoulo -  
1940  
(Contd.)

Received transfer fee Rs. Folio  
on 19 . Company  
Specimen of Purchaser's Signature  
Entered in Register of Transfers Nos.  
Approved

Director

---

Reverse side as on Exhibit "F.1."

"F.6"

Share Transfer, Abdullah Abdul Latif Al Hamed to Mrs. Elizabeth Athanassacopoulo

Exhibits

"F.6"

Share transfer Abdullah Abdul Latif Al Hamed to Mrs. Elizabeth Athanassacopoulo - 1940

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER of 250 SHARES

Full name and Address of the Seller I, ABDULLAH ABDUL LATIF AL HAMED of Aden

10 Amount in Words in consideration of the sum of E.A.Sh. EIGHTY THOUSAND ONLY

20 Full name and Address of the Purchaser Distinctive Nos. Company Paid to me by Mrs. Elizabeth Athanassacopoulo of Aden hereinafter called the transferee the Two hundred and Fifty Ordinary Shares numbered 9501 to 9750 (inclusive) standing in my name in the books of The Aden Bottling Company Limited to hold unto the said transferee her executors, administrators and assigns subject to the several conditions and regulations which I hold the same at the time of the execution hereof, and I the transferee do hereby agree to accept and take the said shares subject to the same conditions.

30 Date in Words AS WITNESS our hands the day of One thousand nine hundred and forty

Witness

Signature

Address

Witness

Signature

Address

Transferor's Signature

ABDULLAH ABDUL LATIF AL HAMED

Transferee's Signature

ELIZABETH ATHANASSACOPOULO

40

Occupation: Housewife  
Full address: Esplanade Road, Aden.

Exhibits

"F.6"	Received transfer fee Rs.	Folio
Share	On	19 . Company
transfer		
Abdullah		
Abdul Latif	Specimen of Purchaser's Signature	
Al Hamed to		
Mrs.		
Elizabeth		
Athanassa-	Entered in Register of Transfers No.	
copoulo -		
1940		
(Contd.)	Approved	

Director

---

Reverse side as on Exhibit "F.1."

"F.7"

Exhibits

Share Transfer Abdullah Abdul Latif Al Hamed  
to Christo N. Athanassacopoulo

"F.7"  
Share  
transfer  
Abdullah  
Abdul Latif  
Al Hamed to  
Christo N.  
Athanassa-  
copoulo -  
1940

Company THE ADEN BOTTLING COMPANY LIMITED

TRANSFER OF 250 SHARES

Full name and address of the Sellers. ABDULLAH ABDUL LATIF AL HAMED of Aden

10 Amount in words. in consideration of the sum of E.A.Sh. EIGHTY THOUSAND

Full name and Address of the Purchaser

Paid to me by Mr. Christo N. Athanassacopoulo of Aden hereinafter called the transferee do hereby transfer to the said transferee(s) the Two hundred and fifty Ordinary Shares numbered 9751 to 10000 (inclusive) standing in my name in the Books of the Aden Bottling Company Limited to hold unto the said transferees, his executors, administrators and assigns subject to the several conditions and regulations on which I hold the same at the time of the execution hereof, and I the transferee do hereby agree to accept and take the said share subject to the same conditions.

20 Number of Shares. Company

30

Date in words. AS WITNESS our hands the day of One thousand nine hundred and forty

Witness Signature Address

Transferor's Signature  
ABDULLAH ABDUL LATIF AL HAMED

Witness Signature

Transferee's Signature  
CHRISTO N.ATHANASSACOPOULO

40 Address

Occupation: Business

Full Address:  
Esplanade Road,  
Crater, Aden.

Exhibits

"F.7"  
Share  
transfer  
Abdullah  
Abdul Latif  
Al Hamed to  
Christo N.  
Athanassa-  
copoulo -  
1940  
(Contd.)

Received transfer fee Rs.      Folio  
on                              19      .      Company

Specimen of Purchaser's Signature

Entered in Register of Transfers No.

Approved.

Director.

---

Reverse side as on Exhibit "F.1"



"y"

Letter, Khalid Abdul Latif Al Hamed to  
The Chairman, Aden Bottling Co. Ltd.

Kuwait, 28th December, 1959

To: The Chairman  
The Aden Bottling Company Limited,  
Crater, Aden,

Dear Sir,

10 As you are aware, the above Company has  
been functioning since January, 1954 with my-  
self as one of the Directors and 25% of the  
shares therein are held by me and my brothers.

I have tried again and again to get a fair  
view of the state of the Company and its dealings  
and finances but I have not been successful. I  
am not consulted nor advised about any important  
matters and various contracts and engagements of  
the Company with others.

20 As I am away from Aden, I have appointed  
Mohamed Abdulla Ba Saleh as an Alternate  
Director with all rights and powers of a Director  
of the Company under its Articles of Association.  
He has been at pains to ascertain the correct  
position of the Company, its finances, its working  
and its various contracts, Assets and liabilities.  
He has asked for inspection of books of Accounts  
and all vouchers of expenses and income and of  
sales and purchases of goods and of its other  
30 property, but in spite of his personal visits to  
the Company and talks with the other Directors,  
he has been shut out and deliberately denied any  
information. This is most unfortunate situation  
which I cannot tolerate as I cannot understand  
the reasons of such attitude towards me and Mr.  
Ba Saleh.

40 It seems that the Company believes that  
it has a monopoly of the information which it  
avoids passing to me or to any Alternate  
Director. Your action in depriving me and Mr.  
Ba Saleh of rights and authority under the  
Articles of Association is high handed, illegal

Exhibits

"y"

Letter,  
Khalid  
Latif Al  
Hamed to  
The Chair-  
man Aden  
Bottling  
Co. Ltd.  
28th December  
1959

Exhibits

"v"  
 Letter,  
 Khalid  
 Latif Al  
 Hamed to  
 The Chairman  
 Aden Bottling  
 Co. Ltd.  
 28th December  
 1959  
 (Contd.)

and wrongful and against the constitution of the Company.

I would invite your attention to Articles 74, 75 and 112 of the Articles of Association which specify the rights of the Director.

I am not informed of the dealings and accounts you have kept with various banks in the name of the Company and of any loan transaction involving mortgage of the Company's property as security. I understand that though a very large amount goes towards salaries and expenses, the return per share is ridiculous. This all shows a very unsatisfactory state of affairs, and I ask that I and my Alternative Director be always consulted in all matters affecting the Company. 10

I would therefore ask you to submit all relevant vouchers, books, documents for inspection of Mr. Ba Saleh and give him a true and correct picture of the affairs and business of the Company and also supply him such other and further information he may require about the Company's affairs. 20

I may say that your refusal in complying, will leave me no alternative than to put up my and my brothers' shares for public sale through advertisements in Aden Newspapers and everywhere else.

It will be realised that I have been brought to this decision, however disconcerting, through the Company's persisting denials and refusals to pass all required informations and books to my Alternate Director as indicated above and the scant courtesy shown to his legitimate requests in the discharge of his duties. 30

I may add that further to the above, I shall take such other steps as I may be advised in the protection and preservation of my interest in the matter, though I do hope that a conciliatory attitude on your part will make any such move avoidable in the larger interest of the Company. 40

Yours faithfully,  
 KHALID ABDUL LATIF AL HAMED

"H"  
Letter, Khaled Abdul Latif Al Hamed to  
The Secretary, Aden Bottling Co. Ltd.

Exhibits

"H"  
Letter,  
Khaled Abdul  
Latif Al  
Hamed to  
The Secretary,  
Aden Bottling  
Co. Ltd.  
10th July  
1961

ADEN

10th July, 1961

FROM: Mr. Khaled Abdul Latif Al Hamed,  
Crater, Aden.

TO: The Secretary, Aden Bottling Co. Ltd.,  
Aden.

10 Dear Sir,

As you are aware I am one of the Directors of the Company and by virtue of the powers and authority granted to the Directors in the articles of Association of the Company, I have a right and privilege to have complete inspection and investigation of the internal management and arrangement of the business and books, vouchers, files and correspondence from and to the Company.

20 I was rather surprised and felt myself humiliated to have been denied such rights and privileges and the non-co-operative and negative attitudes assumed by the management when I visited the factory and denied informations which I sought for. I was also denied when I visited the office to have access to the books of accounts, vouchers, correspondence and other relevant papers including minute book of the Company.

30 I once more hereby require you and through you to the other Directors and manager of the Company to allow my nominee or accountant to have access, and inspection of the following documents of the Company.

- (1) Account Books.
- (2) Voucher files including invoices.
- (3) Correspondence firm and to the Company.
- (4) Stock Book.
- (5) Purchase Book.

Exhibits

"H"  
Letter,  
Khaled Abdul  
Latif Al  
Hamed to  
The Secretary  
Aden Bottling  
Co. Ltd.  
10th July  
1961  
(Contd.)

- (6) Sale Book.
- (7) Minute Book.
- (8) Register of Shareholders.
- (9) Register of Directors, Manager and Secretary.
- (10) And all other relevant documents concerning the management of the Company.

If my above request is not granted within three days from the receipt of this letter I will have to instruct my Lawyer to take whatever steps he thinks lawful to assert my rights as to the access and inspection of the internal affairs of the Company and also for searching out informations as to the management thereof and all other matters connected with the Company.

10

I hope you or other directors will not compel me to take drastic measures in the matters aforesaid.

Yours faithfully,

20

(Signed) KHALED ABDUL LATIF AL HAMED

"H(1)"  
Letter Secretary Aden Bottling Co.  
Ltd. to Khaled Abdul Latif Al Hamed

---

15th July, 1961

Mr. Khaled Abdul Latif Al Hamed,  
Aden

Dear Sir,

10 With reference to your letter dated  
10th July, 1961 and your visit to our Office  
on the 12th instant, we wish to inform you  
that we have now received telegram from the  
Directors in Alexandria which states:

REPLY HALED INSPECT BOOKS UPON  
ARRIVAL MANAGER DIRECTOR

Yours faithfully,

for THE ADEN BOTTLING CO. LIMITED

Signed/ ???

Secretary

Exhibits

"H(1)"  
Letter,  
Secretary  
Aden Bottling  
Co. Ltd.  
to Khaled  
Abdul Latif  
Al Hamed  
15th July  
1961

Exhibits

"I(1)"  
Letter,  
Khaled Abdul  
Latif Al  
Hamed to  
The Secretary  
Aden Bottling  
Co. Ltd.  
15th July  
1961

"I(1)"  
Letter, Khaled Abdul Latif Al Hamed to  
The Secretary, Aden Bottling Co. Ltd.

ADEN

15th July, 1961

From: Khaled Abdul Latif Al Hamed,  
Crater, Aden.

To: The Secretary, The Aden Bottling Co. Ltd.,  
Aden.

Dear Sir,

10

I refer you to your letter of 15th July 1961,  
purporting to be the acknowledgment of my letter  
dated 10th July, 1961.

Your letter is silent as to when the  
Managing Director will return to Aden. The  
documents which I have demanded for inspection  
must be in the Office of the Company and I am  
quite sure that he has not taken any of them  
away with him.

There must be somebody in charge of the  
Company's affairs, acting on behalf of the  
Managing Director. The business of the Company  
is running daily.

20

Your reply is evasive and appears to  
escape or delay the matters.

I regret I cannot allow such attitude to  
be continued and I once more draw your attention  
that if I am or my nominee is not allowed the  
inspections and particulars of the documents  
mentioned in my letter of 10th July 1961 within  
three days from the receipt of this letter, then  
I will have reluctantly to instruct my lawyer to  
do the needful in the matter to protect my right  
and interest.

30

Yours faithfully,

(Sgd.) ???

KHALED ABDUL LATIF AL HAMED

"0"

Letter, Westby Nunn & Kazi to G.A.  
Taraporwalla

---

Commission Exhibit 2

May 24th 1962

G.A.Taraporwalla, Esq.,  
Advocate,  
CRATER.

Dear Sir,

10 Your two letters dated 4th and 15th May  
addressed to the Managing Director of The  
Aden Bottling Co. Ltd. written on behalf of  
your clients Khalid Abdul Latif Al Hamid and  
Bros. have been handed to me with instructions  
to reply.

20 I think in the first place I must remind  
you that The Aden Bottling Co.Ltd. is a registered  
limited liability company. It is not a partner-  
ship and the rights of the members of the Company  
are governed partly by the Companies Act of 1913  
and partly by the Company's Memorandum and  
Articles.

30 If I understand my instructions correctly  
your clients Khalid Abdul Latif & Bros.  
presumably a partnership, are shareholders, but  
they are not directors. I understand that one  
member of the firm namely Khalid Abdul Latif  
is a director and I understand also that with  
the consent of the other directors Mr. Ba Saleh  
has been appointed a substitute director  
during the absence of Khalid Abdul Latif.

This being so Mr. Ba Saleh has every  
right to inspect the Company's books of accounts  
and I find from the correspondence that this  
right has never been denied him. In any case I am  
instructed to repeat that Mr. Ba Saleh, but no  
other person, is welcome to inspect the books of  
account. As a director he has this right.

40 Turning now to the point numbered 2 in  
your letter of the 4th May, there seems to be a

Exhibits

"0"  
Letter,  
Westby Nunn  
& Kazi to  
G.A.  
Taraporwalla  
24th May  
1962

Exhibits

"O"

Letter,  
Westby Nunn  
& Kazi to  
G.A.  
Taraporwalla  
24th May  
1962  
(Contd.)

failure to appreciate the law.

The shareholders of a company are not entitled to take part in the management of the company's business.

The active day to day management is in the hands of the managing Director under the instructions of the board of directors.

Neither Mr. Khalid Abdul Latif nor Mr. Ba Saleh is the Managing Director and neither is entitled to interfere directly with the business management. 10

Either Mr. Khalid Abdul Latif or Mr. Ba Saleh as a director is entitled to attend directors' meetings and express his opinions at such meetings, but it is the decision of the majority present at such meetings which prevails and neither gentleman has any right to insist, as you seem to think, that resolutions shall be passed against the wish of the other directors.

As I have said before Mr. Khalid Abdul Latif or Mr. Ba Saleh is entitled to examine the books, but neither is entitled to frequent the business premises and interfere with the management unless he is given authority to do this by a resolution passed at a meeting of directors. 20

This brings me to paragraph number 4 in your letter dated 15th May in which you make certain new demands. Shareholders as such have no right to the information you demand. Either Mr. Khalid Abdul Latif or Mr. Ba Saleh has the right to extract this information from the books, but that is all. 30

My clients say, however, that without prejudice they are prepared to supply the information required subject to conditions. The first condition is that Mr. Ba Saleh shall cease pestering them for the information. What is asked for is information which will have to be extracted from the books and this will take time. The information will be supplied in the Company's own 40



time. The second condition is that this compliance with your demand shall not create a precedent and the Company may at some future date refuse to comply with further demands if they think fit.

10 Turning now to point 3 in your letter of the 4th May. If your clients wish to sell their shares they should carry out the procedure which is clearly defined at great length in Clauses 25 to 27 of the Company's Memorandum and Articles.

I understand that my clients are prepared to buy your clients shares though perhaps not at his price.

Yours faithfully,

Sgd: WESTBY NUNN & KAZI

ADVOCATE, ADEN.

c.c. Mr. C. Athanas.

Exhibits

"O"

Letter,  
Westby Nunn  
& Kazi to  
G.A.  
Taraporwalla  
24th May  
1962  
(Contd.)

Exhibit

"U"

Agreement  
Athanas Bros.  
(Aden) Ltd. and  
Khalid  
Abdul Latif  
Al Hamed and  
Others  
18th July  
1962

"U"

Agreement, Athanas Bros. (Aden) Ltd.  
and Khalid Abdul Latif Al Hamed and  
Others

Commission Exhibit I

AN AGREEMENT made between Athanas Bros. (Aden) Limited (hereinafter called 'the Buyers') and (1) Khalid Abdul Latif Al Hamed (2) Ahmed Abdul Latif Al Hamed (3) Yousef Abdul Latif Al Hamed (4) Ali Abdul Latif Al Hamed and (5) Abdullah Abdul Latif Al Hamed (hereinafter referred to jointly as 'the Sellers')

10

1. The Sellers agree to sell to the buyers the shares in The Aden Bottling Company in their names, namely:-

- |                                  |                           |    |
|----------------------------------|---------------------------|----|
| 1. Khalid Abdul Latif Al Hamed   | Shares Nos. 4381 to 4880  |    |
| 2. Ahmed Abdul Latif Al Hamed    | Shares Nos. 8001 to 8500  |    |
| 3. Yousef Abdul Latif Al Hamed   | Shares Nos. 8501 to 9000  |    |
| 4. Ali Abdul Latif Al Hamed      | Shares Nos. 9001 to 9500  | 20 |
| 5. Abdullah Abdul Latif Al Hamed | Shares Nos. 9501 to 10000 |    |

2. The Buyers agree to pay for the said shares a sum of £40,000 in the following manner, namely:

On the signing of this Agreement	£20,000.	
3 months after the date on which this Agreement is signed	£ 5,000	
6 months after the date on which this Agreement is signed	£ 5,000	30
9 months after the date on which this Agreement is signed	£ 5,000	
12 months after the date on which this Agreement is signed	£ 5,000	

3. The payments to be made as above stated shall be made to Khalid Abdul Latif Al Hamed either in Aden or elsewhere if he so desires and receipts given by him to the Buyers shall fully discharge

the Buyers from liability to the Sellers for the sums paid.

4. As soon as this Agreement is signed the Sellers shall cease to exercise their rights as directors of or shareholders in Aden Bottling Company Ltd.

5. The Sellers will when called on to do so by the Buyers sign forms of transfer of their shares and deliver up existing share certificates to Aden Bottling Company Limited. The persons to be named in the Forms of Transfer to be signed by the Sellers shall be such person whom the Buyers choose to nominate as transferees.

6. In consideration of this Agreement the Sellers release, Aden Bottling Company Limited from all claims of whatsoever nature they may have or have had against the Aden Bottling Company Limited or its directors or shareholders.

DATED this 18th day of July, 1962.

EAS: (1/50) Aden Stamp  
Affixed

Signed:  
for ATHANAS BROS. (ADEN) LTD.

Sgd: WADI A. K. HASSONALI

WITNESS TO SIGNATURE:

1. KHALID ABDUL LATIF AL HAMED
2. AHMED ABDUL LATIF AL HAMED
3. YOUSEF ABDUL LATIF AL HAMED
4. ALI ABDUL LATIF AL HAMED
5. ABDULLAH ABDUL LATIF AL HAMED

Witness to signatures:

This Instrument was prepared by:  
WESTBY NUNN & KAZI, ADVOCATES, ADEN.

Exhibits

"U"

Agreement  
Athanas Bros.  
(Aden) Ltd.  
and Khalid  
Abdul Latif  
Al Hamed and  
Others  
18th July  
1962  
(Contd.)

Exhibits  
 "B"  
 Agreement,  
 Athanas Bros.  
 (Aden) Ltd.  
 and Khalid  
 Abdul Latif Al  
 Hamad and  
 Others  
 8th August  
 1962

"B"  
 Agreement, Athanas Bros. (Aden)  
 Ltd. and Khalid Abdul Latif Al Hamad  
 and Others

Commission Exhibit "B"

AN AGREEMENT made between Athanas Bros. (Aden) Limited (hereinafter called "the Buyers") and (1) Khalid Abdul Latif Al Hamad (2) Ahmed Abdul Latif Al Hamad (3) Yousef Abdul Latif Al Hamad (4) Ali Abdul Latif Al Hamad and (5) Abdullah Abdul Latif Al Hamad 10 (hereinafter referred to jointly as "the Sellers")

1. The Sellers agree to sell to the Buyers the shares in the Aden Bottling Co. Ltd. which are registered in the books of the company in their names, namely:-

1. Khalid Abdul Latif Al Hamad	Shares Nos. 4381 to 4880	
2. Ahmed Abdul Latif Al Hamad	Shares Nos. 8001 to 8500	
3. Yousef Abdul Latif Al Hamad	Shares Nos. 8501 to 9000	20
4. Ali Abdul Latif Al Hamad	Shares Nos. 9001 to 9500	
5. Abdullah Abdul Latif Al Hamad	Shares Nos. 9501 to 10000	

2. The Buyers agree to pay for the said shares a sum of £40,000 in the following manner, namely:

On the signing of this Agreement and of the forms of share transfer £28,000, (Twenty eight thousand pounds) to be paid into the account of Khalid Abdul Latif Al Hamad at The Midland Bank, London. Thereafter by twelve monthly instalments of £1,000 (One thousand pounds) the first such instalment to be paid one month after the payment of the £28,000. 30

The Buyers to provide a Banker's guarantee that the monthly instalments shall be paid.

3. The monthly payments to be made as above stated shall be made to Khalid Abdul Latif Al Hamad either in Aden or elsewhere if he so desires subject to Exchange

Exhibits

"B"

Agreement,  
Athanas Bros.  
(Aden) Ltd.  
and Khalid  
Abdul Latif Al  
Hamad and  
others  
8th August  
1962

(Contd.)

Control permission being obtainable and receipts given to the Buyers or to the Bank or to the Bank in the event of payment being made by the Bank under the Bank's guarantee shall fully discharge the Buyers or the Bank as the case may be from liability to the Sellers for the sum paid.

10 4. As soon as this Agreement is signed the Seller shall cease to exercise their rights as directors of or shareholders in Aden Bottling Co. Ltd.

5. The Sellers will forthwith sign forms of transfer of their shares and deliver up existing share certificates to Aden Bottling Co. Ltd. The person to be named in the forms of transfer to be signed by the Sellers shall be such person whom the Buyers choose to nominate as Transferees.

20 6. In consideration of this Agreement the Sellers release Aden Bottling Co. Ltd. from all claims of whatsoever nature they may have or have had against Aden Bottling Co. Ltd. or its directors or shareholders.

DATED this 8th day of August, 1962.

AFFIXED E.A.S. 1.50 (ADEN STAMP)

Signed: for ATHANAS BROS. (ADEN) LIMITED

- 2.10.1962 1. Signed: KHALID ABDUL LATIF AL HAMAD
- 2.10.1962 2. Signed: AHMED ABDUL LATIF AL HAMAD
- 2.10.1962 3. Signed: YOUSEF ABDUL LATIF AL HAMAD
- 30 2.10.1962 4. Signed: ALI ABDUL LATIF AL HAMAD
- 2.10.1962 5. Signed: ABDULLAH ABDUL LATIF AL HAMAD

This Instrument was prepared by:

Westby Nunn and Kazi, Advocates,  
Crater, Aden.

for WESTBY NUNN AND KAZI

Approved by me.

A. BHATT

Exhibits

"G(1)"

Letter,  
Athanas Bros.  
to A. Bhatt  
13th August  
1962

"G(1)"

Letter, Athanas Bros. to A. Bhatt

---

Commission Exhibit D(1)

Aden 13th August, 1962

Mr. A. Bhatt,  
Barrister-at-Law,  
Aden.

Dear Sir,

Kindly hand over to Mr. Wadia Hassanali  
the documents relevant to our purchase of Mr.  
Khaled Abdul Latif & Bros. share in the Aden  
Bottling Company. These are the documents  
that were sent to you by our Advocates Messrs.  
Nunn & Kazi. Mr. W. Hassanali will personally  
take these documents to Kuwait for signature by  
Mr. Khaled Abdul Latif and his brothers.

10

Thank you,

Yours faithfully,

ATHANAS BROS.

179.

"W"

Letter, Athanas Bros. (Aden) Ltd.  
to Wadia Hassanali

---

Exhibits

"W"

Letter,  
Athanas Bros.  
(Aden) Ltd.  
to Wadia  
Hassanali  
14th August  
1962

CGA/V.

14th August, 1962

Mr. Wadia Hassanali,  
Care: Nitocrisse Hotel,  
23rd July Street,  
Al Taleb Building,  
CAIRO.

10 Dear Wadia,

Herewith I enclose four share Transfer Forms, each for 250 Shares of the four Shareholders. Duplicate copies of these share transfer Forms are forwarded to your address, in Kuwait together with copy of this letter, as desired.

Trust your mission will be completely successful and I look forward to news from you.

20

Yours sincerely,

Sgd: ATHANAS BROS. (ADEN) LTD.

ADEN.

Exhibits

"G"

(Commission  
Exhibit)  
Letter,  
Wadi  
to Cresto  
27th August  
1962

"G" (Commission Exhibit)  
Letter, Wadi to Cresto

---

Dear Cresto,

27. 8. 62

Have spent ten days in Cairo with Khaled and his Advocate trying to come to understanding at the end they have decided that a new agreement have to be done and only show the first payment made by Khaled in Aden £12,500 and balance £27,500 to be paid in Aden to the man which I give all signed document. I went 10 to uncle Michael and he gave a lot of thank and your father watch and of all the family gold. I have lot of trouble in Cairo. I have spent lot of money. Thank God I have this Aden boy how he now everybody after I left Cairo than another thing happened in London Air Port I do not know how I try to save them again air India Man he helped me after giving lot of (Bakses) (Hak A Slet). I have left the set in the question in box sealed when I will return take 20 them back Stealyo stamps are with me in Cairo I shall bring with this a good lesson for me Cresto.

Yours WADI



"Q.1"  
Letter, Khaled A. Latif to Wadi  
Abdul Karim Hassanali

---

Commission Exhibit 1A

Cairo

31st August, 1962.

Exhibits  
"Q.1"  
Letter,  
Khaled A.  
Latif to  
Wadi Abdul  
Karim  
Hassanali  
31st August  
1962

Mr. Wadi Abdul Karim Hassanali,

Dear Son,

10 I am sorry to inform you that I had  
intended to leave to India with His Highness  
the Prince. Sheikh Mohd. Ba Saleh will  
leave to Aden at the end of the Ninth month,  
and he has all the Power to represent us, no  
need to refer to us or to Kuwait. I have  
already informed Mr. Ba Saleh with all we need.  
Please inform your friends that if they have  
agreed upon our conditions, they should write  
the papers and hand them over to Ba Saleh and  
20 he will send them to my brothers for signature  
and to send them back in time. The conditions  
are well known to you, they should pay the  
agreed amount in Cash, after we receive pay-  
ment, we will hand over the papers to them.  
No reference should be made to us, we have  
delegated powers to Mr. Ba Saleh that if he  
sees any delay, he should take an immediate  
steps, because your friends intends the delay  
and waste of time.

Sgd. KHALED A. LATIF

Exhibits  
"H"  
(Commission  
Exhibit)  
Letter,  
Wadia  
Hassonali  
to Cresto  
2nd September  
1962

"H"  
(Commission Exhibit)  
Letter, Wadia Hassonali to Cresto

---

Cairo,  
2.9.62.

Dear Cresto,

I hope you got my cable and letter which  
send with Sultan of Lahej Khaled left to Bombay  
with the Sheikh now we will have a new agreement  
and it will be for the first amount paid in Aden 10  
£12,500 and the rest to paid in cash in Aden  
after all the paper are in order I cannot say  
any more I have good my valuable part in Sane  
to the Custom in Cairo I got lot of trouble  
this the first and last people will think I  
am a smglo that a all for you regard to  
Stilyo.

Yours

WADIA HASSONALI.

"E(1)"  
Letter, Wadi Hasonali to Khalid  
Abdul Latif Al Hamad

---

Wadi Hassanali  
Crater, Aden.

Cairo 25th September, 1962.

TO Kuwait.

Exhibits  
"E(1)"  
Letter,  
Wadi  
Hasonali  
to Khalid  
Abdul Latif  
Al Hamad  
25th  
September  
1962

10 Dear uncle Khalid Abdul Latif Al Hamad.  
God save you. After Salams I hope that you  
are in a good health. We received your  
letter dated 31st August, 1962 through brother  
Mohamed Basaleh in Cairo. We hope you will  
meet your brothers soon after your return to  
Kuwait. And we request to send to brother  
Mohamed Basaleh or to advocate Bhatt the  
agreement together with transfer shares forms  
after signing them on behalf of yourself and  
on behalf of your brothers, and I shall ask  
20 Athanas to get ready the papers and also bank  
guarantee for 12000 twelve thousand pounds  
as demanded by you. Family and mother are  
well. Please give my salams to mother of  
Abdul Latif thousand salams.

Your son,

WADI HASONALI

Exhibits

"G(2)"

Letter,  
Aden Bottling  
Co. Ltd. to  
Khaled Abdul  
Latif  
Alhamad &  
Bros.  
5th November  
1962

"G.(2)"

Letter, Aden Bottling Co. Ltd. to  
Khaled Abdul Latif Alhamad & Bros.

Commission Exhibit D(2)

Our ref: CA/V  
Your ref:

5th November 1962

Messrs. Khaled Abdul Latif Alhamad & Bros.  
KUWAIT.

Dear Sirs,

As has already been conveyed through our mutual friend Mr. Wadia Hassanali, we are not any longer interested in purchasing your shares and we hope Mr. Wadia has reported this matter to you. We are however prepared to offer you our shares for £120,000.--. If you are not interested in the purchase, we shall upon hearing from you and in consultation with Mr. Basaleh try and find a buyer for the whole lot of shares (ours and yours inclusive). We are endeavouring our best to sell the whole lot of shares at best obtainable price.

10

20

However in this connection Mr. Basaleh called on us recently to convey the contents of your letter to him.

During the frank conversation, we have conveyed to him our persistent view that it is our keen desire to continue in the same friendly atmosphere as has always existed between us and any hasty move to publicise any temporary differences or resorting to court action for settlement of our undefined dispute will have adverse effects and consequences.

30

We have already conveyed our agreement to the inspection of the books, files and all other records by Mr. Basaleh. We have also offered Mr. Basaleh to take an active part in the running of the business whereby our joint efforts to improve the operation of our industry could be channalised for our mutual

benefit. We have full hopes of success of gradual recuperation of the decline sustained in recent years due to unhealthy competition and frequent labour troubles, which latter have now been mutually settled.

10 Please give your careful attention to the points above and advise us of your decision. We repeat that we are eager to remain friends as long as our two houses exist.

Yours faithfully,

(Signed)

THE ADAN BOTTLING COMPANY  
LIMITED

Queen Arwa Road, Crater,  
Aden.

c.c. To Mr. Ba Saleh,  
Aden.

Exhibits

"G.(2)"

Letter,  
Aden  
Bottling Co.  
Ltd. to  
Khalid Abdul  
Latif Alhamad  
& Bros.  
5th November  
1962

(Contd.)

Exhibits  
 "N"  
 Minutes of  
 Meeting of  
 Directors of  
 Aden  
 Bottling Co.  
 Ltd.  
 29th  
 November  
 1962

"N"  
 Minutes of Meeting of Directors of Aden  
 Bottling Co. Ltd.

---

THE ADEN BOTTLING COMPANY LIMITED

MINUTES of the meeting of the Board of Directors  
 held on 29th November, 1962 at 10 a.m.

Present: Mr. Constantine Athanas.

Mr. Mohamed Basaleh (representing  
 Mr. Khaled Abdul Latif)

Proceedings:

10

1. The Minutes of the previous meeting were read and confirmed.
2. Mr. Mohamed Ba Saleh who had orally asked for the meeting to be held stated that as per advice received by him from his principal he was prepared to take active part in the management of the Company's business as has been agreed to by the Managing Director in his letter dated 5th November 1962 and this was to be included in the minutes in the form of a resolution. He also stated that another resolution authorising him to undertake inspection of the books and records of the Company has also to be passed. This was agreed to.

20

Proposed by Mr. Mohamed Ba Saleh and seconded by Mr. Constantine Athanas it was resolved:

"that the Alternate Director Mr. Mohamed Ba Saleh is hereby authorised to take active part in the management of the Company's business.

30

It was further resolved:

"That Mr. Mohamed Ba Saleh is hereby vested with full authority to undertake inspection of the books and records of the Company's business in accordance with the provisions of the Company's Articles of Association as also to take active part in the management of business of the Company.

40

187.

"G.(3)"  
Letter, A. Bhatt to Athanas Bros.  
(Aden) Ltd.

Commission Exhibit D(3)

31st December 1962.

Exhibits  
"G.(3)"  
Letter,  
A.Bhatt to  
Athanas Bros.  
(Aden) Ltd.  
31st December  
1962

Messrs. Athanas Bros. (Aden) Ltd.  
Crater,  
Aden.

Dear Sirs,

10 I refer you to my letter No.400/8/62 of  
13th August 1962 and since then my client  
have returned to me the Original Agreement  
and Transfer Forms of shares held by them  
duly signed by all the partners of Messrs.  
Khalid Abdul Latif & Bros. and the documents  
are ready for delivery to you against payment  
at London a sum of £stg. 28000 (Pounds  
Sterling twenty eight thousand) as being the  
20 first instalment mentioned in the Agreement  
dated 8th August 1962 signed by you and by all  
the partners of the said firm of Khalid Abdul  
Latif & Bros.

You will please let me know whether the  
amount has been paid and if so when the same  
was paid at London. In case the amount is  
still not paid, will you be good enough to  
inform me as to when, you will arrange such  
payment at London.

Yours faithfully,

30 (A. BHATT)

Copy to Messrs. Westby Nunn & Kazi,  
Advocates,  
Crater,  
Aden.

Exhibits  
"G(4)"  
Letter,  
Westby  
Nunn & Kazi  
& Luqman to  
A. Bhatt  
9th January  
1963

"G(4)"  
Letter, Westby Nunn & Kazi & Luqman  
to A. Bhatt

---

Commission Exhibit D(4)

January 9th, 1963.

A. Bhatt, Esq.,  
Advocate,  
Crater.

Dear Sir,

Athanas Bros. and Khalid Abdul Latif  
and Bros.

10

We are instructed to reply to your letter dated 31st December.

In view of the fact that the documents were sent to you for signature on the 8th August and there has been a delay of nearly five months, our clients take the view that this delay in completing the transaction entitles them to regard it as having been repudiated by your clients.

20

We understand that The Aden Bottling Company Limited have written to the alternative director appointed by Mr. Khalid Abdul Latif and perhaps you should get in touch with him and consider the terms of their letter.

Yours faithfully,

WESTBY NUNN & KAZI & LUQMAN

EWN/KAB

c.c. Athanas Bros.



"G(5)"

Letter, A. Bhatt to Westby, Nunn, Kazi  
& Luqman

---

171/3/63

19th March, 1963

Exhibits

"G(5)"

Letter,  
A. Bhatt to  
Westby Nunn,  
Kazi &  
Luqman  
19th March  
1963

Messrs. Westby Nunn, Kazi & Luqman,  
Advocates,  
Crater,  
Aden.

10 Dear Sirs,

ATHANAS BROS. and KHALID ABDUL  
LATIF & BROS.

20 I refer you to your letter of January,  
8, 1963 and I am now instructed to inform  
you that there was no delay on the part of  
my clients. My clients long before informed  
your clients for their having signed the  
agreement which was sent to them for their  
signature and which was already signed by  
your clients.

So far as the delay is on the part of your  
clients, who have to act upon the agreement by  
making payments as agreed therein.

My instructions are now to take actions  
against your clients in the matter unless the  
payment is commenced as agreed in the  
Agreement within one week from the date of the  
receipt of this letter.

30 It is hoped your clients will not compel  
my clients to take legal steps by not complying  
with the terms of the agreement.

Yours faithfully,

A. BHATT

Exhibits  
"G(6)"  
Letter,  
E. Westby  
Nunn to A.  
Bhatt  
26th March  
1963

"G(6)"  
Letter, E. Westby Nunn to A. Bhatt

---

Commission Exhibit D(6)

March 26th, 1963.

A. Bhatt, Esq.,  
Advocate,  
Crater,  
Aden.

Dear Sir,

Athanas Bros. and Khalid Abdul Latif & Bros. 10

I reply to your letter dated 19th March.

On the 8th August I sent you for signature a revised Agreement and forms of transfer.

On the 5th November, since the agreement and transfer forms had not been returned, our clients wrote to Khaled Abdul. Latif Al Hamed and Bros. telling them that they were no longer prepared to buy their shares.

Nothing more occurred until they received your letter dated 31st December. 20

To this day neither I nor my clients have set eyes on the agreement or the forms of transfer.

In the circumstances I have again to inform you that because your clients failed to complete their side of the contract within a reasonable time, my client consider themselves discharged.

Yours faithfully,

Signed:

E. WESTBY NUNN  
WESTBY NUNN, KAZI & LUQMAN, 30  
ADVOCATES,  
ADEN.

c.c. Athanas Bros.

"R"

Letter, Horrocks, Williams & Beecheno to  
A. Bhatt

---

6th April, 1965

Reference: A/93

A. Bhatt, Esq.,  
Advocate,  
Aden.

Dear Sir,

10 URGENT: Civil Suit No.511 of 1963  
Khaled Abdul Latif v. Athanas Bros.  
(Aden) Ltd.

---

20 Further to our conversation, the  
following is a translation of an Arabic  
letter addressed by the 1st Plaintiff to  
Mr. Ba Saleh and produced to our client on  
or about 1st November, 1962, on which date our  
clients prepared the translation from the  
original Arabic. Kindly produce the original  
Arabic document in Court at the hearing:

"Dear Mr. Ba Saleh,

30 I hope, you have reached Aden safely.  
We have received your good news regarding  
the loans of Athanas, and nothing is hidden  
of their tricks for all these years, which  
cannot be tolerated, and they are gaining  
a lot of profit, and we are waiting for  
their unfulfilled promises, on receipt of  
this letter we request you to take the  
necessary steps, either to show you all the  
accounts as we have asked before, if not,  
we request to announce in the local papers  
about the sale of our share from the  
Company and to instruct a lawyer to file  
a suit and to ask for the accountants of  
the past years. We are ready to send you the  
Manager of the Coca Cola from Kuwait, to  
check with them the accounts.

40 Awaiting your early reply, as soon as  
possible."

Yours faithfully,  
HORROCKS, WILLIAMS & BEECHENO  
Sgd.

Exhibits

"R"

Letter,  
Horrocks,  
Williams &  
Beecheno  
to A. Bhatt  
6th April  
1965

Exhibits

"S"

Letter to  
Mr. Ba  
Saleh  
(undated)

"S"

Letter to Mr. Ba Saleh (undated)

---

Dear Mr. Ba Saleh,

I hope, you have reached Aden safely. We have received your good news regarding the loans of Athanas, and nothing is hidden of their tricks for all these years, which cannot be tolerated, and they are gaining a lot of profit, and we are waiting for their unfulfilled promises, on receipt of this letter we request you to take the necessary steps, either to show you all the accounts as we have asked before, if not, we request to announce in the local papers about the sale of our share from the Company and to instruct a lawyer to file a suit and to ask for the accounts of the past years. We are ready to send you the Manager of the Coca Cola from Kuwait, to check with them the accounts.

10

Awaiting your early reply, as soon as possible.

"D"

Letter, A. Bhatt to Khalid Abdul Latif  
Al Hamed

Exhibits

"D"

Letter,  
A. Bhatt to  
Khalid Abdul  
Latif Al  
Hamed  
20th August  
1966

Private & Confidential

No. 412/8/62

Aden  
20th August 1966

Haj Khalid Abdul Latif Al Hamed,  
CAIRO

Attention of Mr. Basaleh

10 Dear Sir,

re: Matter between you and Aden  
Bottling Co. Ltd.

20 Messrs. Aden Bottling Co. Ltd. did not  
reply to my various letters written to them  
in connection with the appointment of  
Alternative Directors by Athanas Bros.:  
their appointment, was not according to the  
Law and they were afraid of the Court  
litigation as whatever resolutions they have  
passed were all illegal and the Bank from whom  
they took the loans would have compelled the  
Company to repay as the alternative Directors  
appointed by the First Directors were not legally  
appointed: I had prepared, the suit and was about  
to file the case in the Court. But Mr. Wadi  
Hassonali approached me and informed me that you  
and your brothers agreed to sell all of your  
shares in the Company, and that I should approve  
of the agreement so far legal side was concerned,  
30 when submitted to me by the Advocates of the  
other side.

40 I had several conferences with the  
advocates (M/s. Westby Nunn & Kazi) of  
Messrs. Athanas Bros. (Aden) Ltd. and of the  
Aden Bottling Co. and finally the terms of  
the agreement prepared by the advocates of the  
opposite side were scrutinized by me and  
approved by me to the effect that you are well  
protected thereby in regard to payment of the  
balance sum of £12000/- by instalments,  
provided they pay you cash £28000 in London  
as agreed.

Exhibits

"D"  
Letter,  
A. Bhatt  
to Khalid  
Abdul Latif  
Al Hamed  
20th August  
1966  
(Contd.)

I understood from Mr. Wadi Hassonali that he was asked by M/s. Athanas Bros. (Aden) Ltd. to go to Cairo or Kuwait and to see you personally and get your signatures on the Agreement and on the Transfer of shares:

Mr. Wadi has taken with him original agreement, copies of which I am sending herewith: The Agreement is quite in order.

I also enclose a draft of letter of Guarantee from the National & Grindlays Bank Ltd. Aden. It is also in order. 10

I advise you and your brothers to sign the original and copies of the Agreement and also the Transfer Forms of Shares and send the same.

I will not deliver the original agreement to Athanas Bros. (Aden) Ltd. unless I receive your letter or telegram to the effect that you have been paid £28000/- in London.

I will in the mean while get letter of Guarantee, as per draft enclosed signed by the Bank, undertaking to pay monthly instalments of £1000 per month in case Athanas Bros. (Aden) Ltd. fail to pay. 20

I hope you and Mr. Basaleh are in good health and with Sallams to you both I remain.

Yours sincerely,

A. BHATT

ADVOCATE, ADEN.

"E"  
Draft enclosed with Exhibit "D"

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Exhibits

"E"  
Draft  
enclosed  
with  
Exhibit "D"

Khalid Abdul Latif Al Hamed.

Dear Sir,

10 We are advised by Athanas Brothers  
(Aden) Limited that in terms of the attached  
agreement they have undertaken to pay you  
twelve monthly instalments of £1,000 (One  
thousand pounds sterling) the first instalment  
to be paid one month after they have effected  
an initial payment of £28,000.

We hereby guarantee payment in Aden of  
the above instalments which will fall due to  
you by Athanas Bros. (Aden) Ltd. and we under-  
take to effect payment of any instalment  
which may become overdue within three days  
from the receipt of your claim for the  
instalment thereby owing to you.

Dated this                      day of                      19     .

20

Yours faithfully,  
for NATIONAL & GRINDLAYS BANK LTD.

Manager

Approved by me

A. Bhatt

Exhibits

"T"  
 Extract  
 from  
 Memorandum  
 and Articles  
 of Association  
 of Aden  
 Bottling  
 Co. Ltd.

"T"

Extract from Memorandum and Articles  
 of Association of Aden Bottling Co. Ltd.

TRANSFER OF SHARESShares to be transferable

25. Subject to the restrictions of these Articles, shares shall be transferable but every transfer must be in writing in the usual common form or in such other form as the Directors shall from time to time approve, and must be left in the office, accompanied by the certificate of the shares to be transferred and such other evidence (if any) as the Directors may require to prove the title of the intending transferor. In the case of any application for the transfer of shares not fully paid up the provisions of section 34 of the Act shall be observed. 10

Persons under disability

26. No share shall in any circumstances be transferred to infant, bankrupt or person of unsound mind.

27. No share shall be transferred except in accordance with the following provisions: 20

(1) Except where a transfer is proposed to be made pursuant to sub-clause (6) of this Article, a person proposing to transfer any share (hereinafter called 'the proposing transferor') shall give a notice in writing (hereinafter called a 'transfer notice') to the Company that he desires to transfer the same. Such notice shall specify the price he fixes for such share, and shall constitute the Company his agent for the sale of the share to any member of the Company or to any person selected by the Directors as one whom it is desirable in the interests of the Company to admit to membership who is willing to purchase the share hereinafter called the "purchasing member") at the price so fixed. A Transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. A transfer notice shall not be revocable except with the sanction of the Directors. 30 40



Exhibits

"r"

Extract from  
Memorandum  
and Articles  
of Association  
of Aden  
Bottling  
Co. Ltd.  
(Contd.)

- 10 (2) If the Company shall, within the period of twenty eight days, or, if the share comprised in a transfer notice stands in the name of a deceased member of the Company, within the period of three calendar months, after being served with a transfer notice, find a purchasing member for any share comprised therein and shall give notice thereof to the proposing transferor, he shall be bound upon payment of the price so fixed in accordance with sub-clause (1) hereof to transfer the share to the purchasing member.
- 20 (3) If in any case the proposing transferor, after having become bound as aforesaid makes default in transferring any shares the Directors may authorise some person to execute a transfer of the shares to the purchasing member and may receive the purchasing money and shall thereupon cause the name of the purchasing member to be entered in the register as the holder of the shares and shall hold the purchase money in trust for the proposing transferor.
- 30 The receipt of the Company for the purchase money shall be a good discharge to the purchasing member, and after his name has been, entered in the register in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person.
- 40 (4) If the Company shall not within the space of twenty eight days or three calendar months, as the case may be) after being served with a transfer notice, find a purchasing member for all or any of the shares comprised therein and given notice in manner aforesaid, as if through no default of the proposing transferor the purchase of a share in respect of which such notice as is mentioned in sub-clause (2) hereof shall have been given shall not be completed within twenty one days of the service of such notice, the proposing transferor shall at any time

Exhibits

W.P.

Extract from  
Memorandum  
and Articles  
of Association  
of Aden  
Bottling Co.  
Ltd.

(Contd.)

within three months afterward be at liberty subject to the provisions of sub-clause (1) and (2) of Article 30, to sell and transfer the shares comprised in the transfer notice or such of them as shall not have been sold to a purchasing member to any person, but so that the price paid shall not be less than the price fixed by the proposing transferor, in the transfer notice. Before passing any transfer under this sub-clause the Directors may require transferor and transferee respectively to make a statutory declaration that the consideration mentioned in the transfer is the true consideration paid by the transferee for the transfer of the share and is not subject to any deduction of rebate. When the proposing transferor cannot find a purchaser at the price so fixed he may give a fresh transfer notice under sub-clause (1) hereof.

- (5) The Company in General Meeting may make and from time to time vary rules as to the mode in which any shares specified in any transfer notice shall be offered to the members and as to their rights in regard to the purchase thereof, and in particular may give any member or class of member a preferential right to purchase the same. Until otherwise determined, any shares comprised in a transfer notice shall, unless the Directors think fit to offer them to any person selected as aforesaid, be first offered by the Company to the Directors in the same proportion as the shares held by each such Director bears to the total shares held by all the Directors, and if all or any of the shares offered to a Director shall not be taken by that Director such shares shall be offered to the other Directors in proportion to their share-holdings and so on until no Director is willing to take any further share, and if any such shares shall not be taken by a Director then such a share shall be offered to the other members in such order as shall be determined by lot. And in each case then person to whom one offer is made (whether a Director or not) shall have

the option of buying at the price fixed in the transfer notice.

Exhibits  
"T"

Extract from  
Memorandum  
and Articles  
of Association  
of Aden  
Bottling Co.  
Ltd.  
(Contd.)

10 (6) Subject to the provisions of sub-clause (2) of Article 30, any share may be transferred by a member to any child or other lineal decendant, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member may be transferred by his executors or administrators to any child or other lineal decendant, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, widow or widower of such deceased member, being a ceslui que trust or specific legatee thereof, and shares standing in the name of the trustees of the Will of any deceased member may upon any change of trustees be transferred to the new trustees of such will.

20 28. The Instrument of transfer of a share shall be executed by both the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

30 29. The Company shall provide a book to be called the "Register of Transfers" which shall be kept by the Secretary under the control of the Directors, and in which shall be entered the particulars of every transfer of transmission of every share.

40 30. (1) The Directors may, in their discretion, and without assigning any reason, refuse to register a transfer of any share to any person whom it shall in their opinion be undesirable in the interests of the Company to admit to membership, but (subject to the provisions of Article 6) such right of refusal shall not be exercisable in the case of any transfer made pursuant to sub-clause (6) of Article 27.

(2) The Director may refuse to register any transfer for the purpose of ensuring that the number of members does not exceed the limit prescribed by Article 6, or any transfer of

Exhibits

"T"

Extract from  
Memorandum  
and Articles  
of  
Association  
of Aden  
Bottling  
Co. Ltd.  
(Contd.)

shares on which the Company has a lien.

(3) If the Directors refuse to register a transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the Company, send to the transferee notice of the refusal, as required by section 34 of the Act.

75. Subject to the provisions of section 86B of the Act, any Director may by notice in writing communicated to the Secretary of the Company, appoint any person, whether a member of the Company or not to act as alternate Director in his place, and on such appointment being made the alternate Director shall, in the absence of the Director appointing him, be entitled to attend and vote at meetings of the Directors and shall have and exercise and discharge all the powers, rights, duties and authorities of the Director he represents. Any appointment of an alternate Director may be revoked in writing by notice communicated to the Secretary of the Company and, in the event of revocation of an appointment or of the vacation of the office by such alternate Director under the provisions of the said section, or in the event of the Director making any such appointment ceasing to be a Director the person appointed by him shall thereupon cease to act as an alternate Director. Every alternate Director shall be an officer of the Company and alone responsible to the Company for his own acts. The remuneration of any such alternate Director shall consist of such portion of the remuneration payable to the Director who appointed him as shall be agreed between such Director and his appointee.

10

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30

104. A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened, held and constituted.

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ON APPEAL FROM  
THE COURT OF APPEAL FOR EASTERN AFRICA

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B E T W E E N:

1. KHALED ABDUL LATIF AL HAMAD
  2. AHMED ABDUL LATIF AL HAMAD
  3. YOUSUF ABDUL LATIF AL HAMAD
  4. ALI ABDUL LATIF AL HAMAD
  5. ABDULLA ABDUL LATIF AL HAMAD
- (Plaintiffs) Appellants

- and -

<sup>1</sup>  
ATHENAS BROS. (ADEN) LIMITED  
(Defendants) Respondents

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R E C O R D   O F   P R O C E E D I N G S

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T. L. WILSON & CO.,  
6, Westminster Palace Gardens,  
Artillery Row,  
London, S.W.1

Solicitors for the Appellants.

GORDON, DADDS & CO.,  
80, Brook Street,  
London,  
W.1

Solicitors for the Respondents.