

29/82

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE GAMBIA COURT OF APPEAL

BETWEEN:

BRITISH PETROLEUM LIMITED

Appellants
(Plaintiffs)

- and -

EMILE ABOURITZ

Respondent
(Defendant)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & Co.
61 Catherine Place,
Westminster, SW1E 6HB

CHARLES RUSSELL & Co.
Hale Court,
Lincoln's Inn,
London, WC2A

Solicitors for the Appellants

Solicitor for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE GAMBIA COURT OF APPEAL

B E T W E E N

BRITISH PETROLEUM LIMITED

Appellants
(Plaintiffs)

- and -

EMILE ABOURITZ

Respondent

RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE GAMBIA COURT OF APPEAL

B E T W E E N :

BRITISH PETROLEUM LIMITED Appellants
(Plaintiffs)

- and -

EMILE ABOURITZ Respondent
(Defendant)

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

SOCIETE DES PETROLES B.P.
D'AFRIQUE OCCIDENTALE
BRITISH PETROLEUM LIMITED

PLAINTIFFS

20

AND

EMILE ABOURITZ

DEFENDANT

TO: EMILE ABOURITZ
OF: BARRA VILLAGE, NORTH BANK DIVISION,
THE GAMBIA

In the
Supreme Court

No.1
Writ of
Summons
Suit No.
1975-A-6

24th January
1975

30

YOU ARE HEREBY COMMANDED in the name of
the Republic of the Gambia to attend this
Court at Banjul on Monday the 3rd day of
February 1975 at 9 o'clock in the forenoon to
answer a suit by SOCIETE DES PETROLES BP
D'AFRIQUE OCCIDENTALE and BRITISH PETROLEUM
LTD against you:

In the
Supreme Court

No.1
Writ of
Summons
Suit No.
1975-A-6

24th January
1975

(continued)

The Plaintiff's claim is for D21,029
being the balance of price of petrol products
sold and delivered to the defendant.

ISSUED AT BANJUL, this 24th day of
January, 1975.

(Sgd) Phillip Bridges
CHIEF JUSTICE.

TAKE NOTICE: 1. That if you fail to attend
at the hearing of the suit or at any contin-
uation or adjournment thereof the Court may 10
allow the plaintiff to proceed to judgment
and execution.

2. If you have a counter-claim or set-off
against the plaintiff you must lodge with
the Registrar FOUR CLEAR DAYS before the
return day a notice in original with as many
copies thereof as there are plaintiffs
containing your name and address and a
concise statement of the grounds of such 20
counterclaim or set-off and pay such court
and service fees as may be payable in
respect thereof.

CERTIFICATE OF SERVICE BY BAILIFF

UPON the day of 1975, this
summons was served by me on
the Defendant, This I did by serving a copy
of the above summons and the particulars of
claim on the defendant personally at

BAILIFF OR OFFICER OF
THE COURT. 30

No. 2

In the
Supreme Court

STATEMENT OF CLAIM

No.2
Statement
of Claim
Suit No.
1975-A-6
(undated)

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.1975-A-6

BETWEEN:

SOCIETE DES PETROLES B.P.
D'AFRIQUE OCCIDENTALE
BRITISH PETROLEUM LIMITED Plaintiff

AND

10 EMILE ABOURITZ Defendant

STATEMENT OF CLAIM

1. That the plaintiffs and the defendant are businessmen dealing in petroleum products the former operating in the whole of the Gambia and the latter at Barra Village, North Bank Division, aforesaid.

20 2. That the plaintiffs supplied the defendant with petrol and other petroleum products at his station at Barra Village, North Bank Division, aforesaid.

3. That the defendant paid the price of the said products supplied and delivered to him by the plaintiffs except the sum of 21,029 Dalasis which the defendant refuses and is refusing to pay despite repeated demand.

4. That the plaintiffs claim D21,029 from the defendant and costs.

30 Alhaji A.M.Drameh
8, MacCarthy Square,
Banjul, The Gambia,
Solicitor for the Plaintiff

1. Master & Registrar of the Supreme Court
2. Mr. A.S.B.Saho, 32 Loman St., Banjul, The Gambia
3. Alhaji A.M.Drameh, Solicitor for the Plaintiffs.

In the
Supreme Court

No. 3
Writ of
Summons
Suit No.
1975-A-10

24th January
1975

No. 3

WRIT OF SUMMONS

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO.1975-A-10

BETWEEN:

SOCIETE DES PETROLES BP
D'AFRIQUE OCCIDENTALE
BRITISH PETROLEUM LIMITED

PLAINTIFFS

AND

10

EMILE ABOURITZ

DEFENDANT

TO: EMILE ABOURITZ
OF: BARRA VILLAGE, NORTH BANK DIVISION,
THE GAMBIA

YOU ARE HEREBY COMMANDED in the name of the
Republic of the Gambia to attend this Court
at Banjul on Monday the 3rd day of February
1975 at 9 o'clock in the forenoon to answer
a suit by SOCIETE DES PETROLES BP D'AFRIQUE
OCCIDENTALE and BRITISH PETROLEUM LTD. Against 20
you

The Plaintiffs claim possession of the
Defendant's Petrol Station situate at
Barra Village North Bank Division The
Gambia he having breached the Free
Management Reseller Contract executed
by the parties hereto.

Value of Station D25,000.00

ISSUED AT BANJUL, this 24th day of January
1975.

(Sgd) Phillip Bridges
CHIEF JUSTICE

30

TAKE NOTICE: 1. That if you fail to attend
at the hearing of the suit or at any continua-
tion or adjournment thereof the Court may
allow the plaintiff to proceed to judgment
and execution.

2. If you have a counter-claim or set-off
against the plaintiff you must lodge with
the Registrar FOUR CLEAR DAYS before the

return day a notice in original with as many copies thereof as there are plaintiffs containing your name and address and a concise statement of the grounds of such counterclaim or set-off and pay such court and service fees as may be payable in respect thereof.

In the
Supreme Court

No.3
Writ of
Summons
Suit No.
1975-A-10

24th January
1975

(continued)

CERTIFICATE OF SERVICE BY BAILIFF

10 UPON the day of 1975, this
summons was served by me on
the Defendant. This I did by serving a copy
of the above summons and the particulars of
claim on the defendant personally at

BAILIFF OR OFFICER OF THE
COURT.

No. 4

STATEMENT OF CLAIM

No.4
Statement
of Claim
Suit No.
1975-A-10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO.1975-A-10

22nd January
1975

20 BETWEEN:

SOCIETE DES PETROLES BP
D'AFRIQUE OCCIDENTALE
BRITISH PETROLEUM LIMITED

PLAINTIFFS

AND

EMILE ABOURITZ DEFENDANT

STATEMENT OF CLAIM

- 30
1. The Plaintiffs are distributors of Petroleum Products in the Gambia and the Defendant is a businessman, in Barra Village, North Bank Division.
 2. The Plaintiffs and the Defendant entered into a Free Management Reseller Contract one of the clauses of which has been breached in that the Defendant negligently

In the C
Supreme Court

No.4
Statement
of Claim
Suit No.
1975-A-10
22nd January
1975
(continued)

caused the said petrol station to be closed for the sale of all petroleum products for more than 2 months without just cause, the Plaintiffs to be "dissatisfied in the manner in which the station is being operated".

3. The Defendant owes the Plaintiffs the sum of D21,029 being the balance of price of Petrol Products sold and delivered to him at this station which products have been sold to the Public but the proceeds of which have not reached the Plaintiffs hence this debt. 10
4. That the said station has been closed by the Defendant because he can procure no further supplies from the Plaintiffs nor can he from elsewhere.
5. The Plaintiffs claim possession of the said station and costs and further relief or reliefs the Court may order. 20

DATED AT BANJUL, this 22nd day of January, 1975.

(Sgd) Alhaji A.M.Drameh
8 MacCarthy Square,
Banjul, The Gambia,
SOLICITORS FOR THE PLAINTIFFS

The Master & Registrar,
Supreme Court.

Mr. Emile Abouritz,
Barra Village,
North Bank Division. 30

Alhaji A.M.Drameh,
8 MacCarthy Square,
Banjul, The Gambia,
Solicitor for the Plaintiffs.

No. 5

In the
Supreme Court

NOTICE OF MOTION

No.5
Notice of
Motion
Suit No.
1975-A-6 and
A-10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-10
1975-A-6

21st February
1975

BETWEEN:

EMILE ABOURITZ APPLICANT/
DEFENDANT

AND

10

SOCIETES DES PETROLES
B.P. D'AFRIQUE RESPONDENTS/
BRITISH PETROLEUM PLAINTIFFS
LIMITED

NOTICE OF MOTION

S.5 ARBITRATION ACT, CAP.5 VOL.1

LAWS OF THE GAMBIA

20

TAKE NOTICE that this Court will be moved on Monday the 3rd day of March, 1975, at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by PAP CHEYASSIN OUSMAN SECKA, Counsel for the above-named Applicant/Defendant on the hearing of an application on the part of the above-named Applicant/Defendant, EMILE ABOURITZ, that this Honourable Court may be pleased to make the following orders :-

30

- (a) staying the above proceedings unless the Plaintiff/Respondents can give sufficient reason why the matters therein should not be submitted to Arbitration;
- (b) that the costs of and occasioned by this application be costs in the event and to be taxed;
- (c) any other relief that the Court may deem just and expedient.

DATED AT BANJUL, this 21st day of February, 1975.

40

(Sgd) Pap Cheyassin O.Secka
Boye Sajo's Chambers,
19 Buckle Street,
Banjul, The Gambia
SOLICITOR FOR THE APPLICANT/DEFENDANT

In the
Supreme Court

No.5
Notice of
Motion
Suit No.
1975-A-6 and
A-10

21st February
1975

(continued)

1. The Master & Registrar,
Supreme Court,
Banjul, The Gambia.
2. Alhaji A.M.Drammehm
8, MacCarthy Square,
Banjul, The Gambia.
Solicitor for the Plaintiff/Respondents.
3. Mr. A.S.B.Saho and
Mr. Pap Cheyassin O. Secka,
19, Buckle Street,
Banjul, The Gambia.

10

No.6
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

22nd February
1975

No. 6

AFFIDAVIT OF PAP CHEYASSIN
OUSMAN SECKA

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-10
1975-A-6

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

20

AND

SOCIETE DES PETROLES
BP D'AFRIQUE
BRITISH PETROLEUM
LIMITED

RESPONDENTS/
PLAINTIFFS

A F F I D A V I T

I, PAP CHEYASSIN OUSMAN SECKA, Solicitor of
the Supreme Court, Gambian, 19 Buckle Street,
Banjul, make oath and say as follows :

1. That I am a Solicitor for the Applicant/
Defendant. 30
2. That Mr. A.S.B.Saho is senior Counsel for
the Applicant/Defendant.
3. That on the 22nd January, 1975, Writs
of Summons Suit Nos. 1975-A-10, 1975-A-6

were filed by the Plaintiff/
Respondents in this Court claiming:-

In the
Supreme Court

No.6
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

22nd February
1975

(continued)

10

"Possession of the Defendant's
Petrol Station situate at Barra
Village North Bank Division, The
Gambia he having breached the Free
Management Reseller Contract
executed by the parties hereto.
Value of Station D25,000.00",
as per suit No.1975-A-10.

"D21,029 being the balance of
price of petrol products sold and
delivered to the defendant",
as per Suit No.1975-A-6

20

4. That the Applicant/Defendant entered
appearance to the above suits on the
3rd day of February, 1975 but the
said Applicant/Defendant has neither
delivered any pleadings nor taken any
other steps in the proceedings hereto.

30

5. That, by an Indenture delivered to the
parties on the 25th day of March, 1974
and for which said Indenture Stamp
Duty was paid on the 10th day of April,
1974, the Defendant/Applicant demised
his leasehold property (at Barra
Village, North Bank Division of The
Gambia) dated 23rd February, 1965 and
Registration No. D1, 1L 19 and
Registered in the Registry of Deeds,
Banjul, on the 30th day of August, 1966,
to the Plaintiff/Respondents for a term
of 15 years.

6. That, clause 5 of the said Indenture
stipulates that :-

40

"All disputes or differences which
may arise between the Lessor and
the Lessees touching the provisions
hereof or the rights or liabilities
of either party hereunder shall be
referred to arbitration by a single
arbitrator under the provisions of
the Arbitration Act or any statutory
re-enactment or modification thereof
for the time being in force".

7. That the Plaintiffs/Respondents have no
sufficient reason for not referring the
matters contained in these suits in
accordance with clause 5 aforesaid.

In the
Supreme Court

No.6
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

22nd February
1975

(continued)

8. That, the Applicant/Defendant was, at the time the proceedings were commenced, and still remains ready and willing to do all things necessary and proper conduct of the arbitration.
9. That the Applicant/Defendant has so communicated his readiness and willingness aforementioned in the last preceding paragraph to the Plaintiff/Respondents.
10. That I make these statements to the best of my information, knowledge and belief. 10

(Sgd) Pap Cheyasin O. Secka
D E P O N E N T

SWORN AT BANJUL, this
22 day of February, 1975

BEFORE ME

(Sgd) J.O. Agege
COMMISSIONER FOR OATHS

No.7
Affidavit of
Alhaji A.M.
Drameh
Suit Nos.
1975-A-6 and
A-10
3rd March 1975

No. 7

20

AFFIDAVIT OF ALHAJI A.M.
DRAMEH

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-6

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

SOCIETIES DES PETROLES
B.P. D'AFRIQUE BRITISH
PETROLEUM LIMITED

RESPONDENTS/
PLAINTIFFS

30

AFFIDAVIT IN REPLY

1. That I admit paragraphs 1 - 6 of the Applicant/Defendant's affidavit sworn on the 22nd February 1975.
2. That the Respondents/Plaintiffs base

their claim on the Free Management Reseller Contract referred to in the writ and in paragraph 3 of the Applicant/Defendant's affidavit.

In the
Supreme Court

No.7
Affidavit of
Alhaji A.M.
Drameh
Suit Nos.
1975-A-6 and
A-10

3rd March 1975

(continued)

- 10 3. That the contract in question has no clause Requiring the parties thereto to go to arbitration as stated in paragraph 6 of the Applicant/Defendant's affidavit.
- 10 4. That instead of an arbitration Clause the said contract says as follows :

"This agreement shall be read and construed in all respects in accordance with the laws applicable in the Gambia".

- 20 5. That the indenture referred to in the Applicant/Defendant's affidavit relates to a dispute between the Lessor and the Lessees regarding the land and the Free Management Reseller Contract relates to matters between the parties herein as employers and employee of the Respondents/Plaintiffs. The Applicant/Defendant is both a lessor (according to the lessee) and the Applicant/Defendant an employee (according to the Free Management Reseller Contract). The Applicant/Defendant can be removed from the station in accordance with the F.R.C. while he remains the Lessor and the Respondents/Plaintiffs remain Lessees.
- 30 6. That the Respondents/Plaintiffs had possession of the land after the execution of the sub-lease.
7. That the Respondents/Plaintiffs deny paragraphs 7 to 10.

(Sgd) Alhaji A.M.Drameh
DEPONENT

40 SWORN AT BANJUL, this
3rd day of March, 1975

BEFORE ME

(Sgd) J. Omo Agege
A COMMISSIONERS FOR OATHS

In the
Supreme Court

No. 8

PROCEEDINGS

No. 8
Proceedings
Suit Nos.
1975-A-6 and
A-10

3rd February
1975

Monday, 3rd February, 1975
Before: J. Omo Agege, Master.

Mr. A.S.B.Saho, Secka with him for applicant.
A.M. Drammeh for respondents.

Affidavit in reply filed this morning by
A.M.Drammeh. Served on parties in Court.

Adjourned to 11th March 1975.

(Sgd) J.Omo Agege
3.3.75

10

11th March
1975

A.S.B. Saho, Secka with him for applicant.
A.M.Drammeh for respondents.

Secka produces a document - Free Management
Reseller Contract executed by the parties
hereto. Says that the copy he is producing
has no date on it. Tenders it as an
Exhibit. Says that the original is not
with the applicant; copy which he is
producing is a photostat copy supplied to
the applicant by respondent.

20

A.M.Drammeh objects to the production of
the copy. Says that original is with the
applicant.

Court: Guided by the statement of the law at
page 686, Article 1712 of Phipson -
Evidence, Tenth Edition, I will admit the
photostat copy of the document as the
proceedings are interlocutory. Document is
admitted and marked as Exhibit 1.

30

Tenders Lease of Plot of Land situate
at Barra, North Bank Division made between
Emile Abouritz, the applicant and the
respondents. Marked as Exhibit 2.

Secka further continues. Refers to
Arbitration Act, Cap.5, Vol.1 of the Laws.
Refers to "submission" as defined under
Section "2".

Refers to Clause 5 of Exhibit 2. Also
Clause 3 of Exhibit 2. Says that the contract
referred to is Exhibit 1. Court has first

40

to decide whether there is a nexus between the two contracts.

In the
Supreme Court

Refers to Russel on Arbitration, 18th Edition, pages 37 - 38. Also Halsbury 3rd Edition, Vol.2, page 3, paragraph 3. Also Russel, page 66. Submits that Exhibit 2 varies the terms of Exhibit 1. Again on the effect of Arbitration Clause, page 56. The point is also dealt with in Halsbury's Supra, page 10, paragraph 22.

No.8
Proceedings
Suit Nos.
1975-A-6 and
A-10

11th March
1975

(continued)

10

Submits that there is a valid agreement concerning the dispute in question; that applicant is a party to the agreement; that he has taken no steps in the proceedings; that he is ready and willing to arbitrate. There is no reason to refuse a stay.

Refers to affidavit filed by applicant, paragraph 8.

A.M.Drammeh replies :-

20

Submits that the question is whether the lease and the Management Contract are together or distinct. Submits that the lease relates to the land alone and the Management Contract relates to the running of the Station. In the one case, applicant is a lessor, in the other he is a servant.

Refers to paragraph 3 of Exhibit 2.

Again to Clause 3 (12) of Exhibit 1.

30

"	"	"	3	(12)	"	"
"	"	"	3	(15)	"	"
"	"	"	3	(19)	"	"
"	"	"	3	(21)	"	"
"	"	"	3	(26)	"	"
"	"	"	6			
"	"	"	7			
"	"	"	8			
"	"	"	11			
"	"	"	12			

Submits that there is no arbitration clause in the contract - Exhibit 1. (Mr.Secka states that he concedes the point).

40

Says that arbitration clause being invoked is under the Lease i.e. Clause 5. Submits that the claim can only be invoked if there is a dispute touching the land already leased to the respondent. The position of the applicant in regard to the two suits - that of a servant to his master as both suits are governed by the Free Management Agreement. Submits that

In the
Supreme Court

No.8
Proceedings
Suit Nos.
1975-A-6 and
A-10

11th March
1975

(continued)

there is no dispute as to the land. Submits that the arbitration clause is inapplicable to the claims before the Court. Refers Court also to his affidavit in reply

Mr. Secka in reply. Refers also to Russel on Arbitration, page 68. Says that respondent has to show cause why the proceedings are not to be stayed. Submits that affidavit by respondent is defective in that it does not comply with Order VIII, rule 28(b) of Schedule 1.

10

A.M.Drammeh submits that the rules allow that a defective affidavit may be admitted (rule 22).

Adjourned sine die.

(Sgd) J. Omo Agege

11.3.75.

No.9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975

No. 9

RULING

Friday 9th May, 1975
Before: J. Omo Agege, Master.

20

A.S.B.Saho, Secka with him for applicant.
A.M. Drammeh for respondent.

R U L I N G

This is a motion by Emile Abouritz, a businessman of Barra in the North Bank Division of the Gambia, for a stay of proceedings in some two actions brought against him by Societe Des Petroles B.P. D'Afrique Occidentale B.P.Ltd., who are distributors of petroleum products in the Gambia.

30

In Suit No. 1975-A-6 the company claims "the sum of D21,029 being the balance of price of petrol products sold and delivered to the defendant"; and in Suit No. 1975-A-10 the company claims "possession of the Defendant's petrol station situate at Barra Village North Bank Division, the Gambia, he having breached the Free Management Reseller Contract executed by the parties hereto, value of station D25,000.00".

40

The motion is being brought under Section 5 of the Arbitration Act Cap.5 Vol.1 of the Laws of The Gambia 1966. In his affidavit Counsel for applicant, P.C.O. Secka deposed, inter alia, thus :-

In the
Supreme Court

No.9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975

(continued)

10

"4. That the applicant/defendant entered appearance to the above Suits on the 3rd day of February, 1975 but the said applicant/defendant has neither delivered any pleadings nor taken any other steps in the proceedings hereto.

20

5. That, by an Indenture delivered to the parties on the 25th day of March, 1974 and for which said Indenture stamp duty was paid the 10th day of April, 1974, the Defendant/Applicant demised his leasehold property (at Barra Village, North Bank Division of the Gambia) dated 23rd February, 1965 and Registration No. D1 1L 19 and Registered in the Registry of Deeds, Banjul on the 30th day of August, 1966, to the Plaintiff/Respondents for a term of 15 years.

30

6. That, clause 5 of the said Indenture stipulates that :-

"All disputes or differences which may arise between the Lessor and the Lessees touching the provisions here of or the rights or liabilities of either party hereunder shall be referred to arbitration by a single arbitrator under the provisions of the Arbitration Act or any statutory re-enactment or modification thereof for the time being in force.

40

7. That the Plaintiffs/Respondents have no sufficient reason for not referring the matters contained in those suits in accordance with clause 5 aforesaid".

At the hearing of this motion I received in evidence the said Indenture which was marked as Exhibit 2.

50

In his affidavit in reply, Counsel for the respondents, Alhaji A.M.Drameh, deposed that "Respondents/Plaintiffs base this claim on the Free Management Reseller Contract referred to in the writ and in paragraph 3 of

In the
Supreme Court

No.9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975
(continued)

the Applicant/Defendant's affidavit". I wish to point here that Counsel did not say which of the claims he was referring to. However, Counsel deposed further :-

"5. That the Indenture referred to in the Applicant/Defendant's affidavit relates to a dispute between the lessor and the lessee regarding the land and the Free Management Reseller Contract relates to matters between the parties herein as employers and employee of the Respondents/Plaintiffs. The Applicant/Defendant is both a lessor (according to the lease) and Applicant/Defendant an employee (according to the Free Management Reseller Contract). The Applicant/Defendant can be removed from the station in accordance with the F.R.C. while he remains the lessor and the Respondents/Plaintiffs remain lessees".

10
20

Again at the hearing of the motion, I received in evidence a photostat copy of the Free Management Reseller Contract which was marked as Exhibit 1.

I record that it is common ground that after applicant had entered appearance in both suits he did not deliver any pleadings nor had he taken any steps in the proceedings; that he has also shown that when the proceedings were commenced he was and still remains ready and willing to do all things necessary and proper to go to arbitration.

30

Why then should the parties not go to arbitration?

It was contended on behalf of the applicant that there is a nexus between the two contracts i.e. the lease, Exhibit 2 and the Free Reseller Management Contract, Exhibit 1. That the lease varied the terms of the F.M.R.C. and that all disputes or differences between the parties touching both contracts fall within the scope of the arbitration clause. This is not so, argued Counsel for the respondents. He contended that the contracts are distinct: that the lease relates to the land whilst the Free Management Contract relates to the running of the station; that in the one case applicant is a lessor and in the other he is a servant.

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50

That there is no dispute as to the land and that the arbitration clause is inapplicable to the claims before the Court.

In the
Supreme Court

No.9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975
(continued)

10

Counsel on both sides agree that there is no arbitration clause in the Free Management Reseller Contract, Exhibit 1. As I see it, for the arbitration clause in Exhibit 2 to apply it has to be shown that the claims in the two suits before the court relate to matters of the category of the nature and scope stipulated for in the said clause.

20

Suit No.1975-A-6 is a claim for D21,029 being balance of price of petrol products sold and delivered. Neither in the writ nor in the statement of claim is any reference made to any other contract between the parties referable to either Exhibits 1 or 2. But Counsel for respondents clearly stated in argument that this claim also arose from Exhibit 1 (F.M.R.C.).

Suit No. 1975-A-10 is for possession of Petrol Station. The defendant having breached the Free Management Reseller Contract "..... This suit clearly arose from Exhibit 1."

30

It has been shown, therefore, that both suits arose from Exhibit 1. But as already stated, Exhibit 1 has no arbitration clause. The question therefore is: does Exhibit 2 incorporate Exhibit 1 to the extent that the arbitration clause in the former covers matters arising from the latter?

Clause 3 of Exhibit 2 reads thus :-

40

"The Lessor herein has agreed with the Lessees that in consideration of the demised herein contained the lessees will pay to the Lessor a rental of D600 per year during all the time Mr. Emile Abouritz (the lessor) will operate the service station under the terms of a free management contract with B.P. or D1800 per year in case B.P. do not renew the yearly free management contract or otherwise shall be exercisable by the lessees without reference or consultation with Mr. Emile Abouritz (the lessor). The said rental of D600 or D1800 per annum as the case may be is payable two yearly in advance and the first of such payment shall be made on the execution of this document."

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In the
Supreme Court

No.9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975

(continued)

It would be seen that the parties contemplated two possible but alternative situations and upon which the rent reserved under the lease was to depend :-

- (i) A free management contract between the parties under which Mr. Emile Abouritz will operate the service station; the rent reserved for the lease to be D600 per annum;
- (ii) Service station to be operated by someone other than Mr. Emile Abouritz; the rent reserved for the lease to be D1800 per annum. 10

The position as could be inferred from the affidavits on both sides is that the first alternative was adopted and that Emile Abouritz, the lessor, was to operate the service station under the terms of a free management contract. This other contract bears on the lease to the extent that its existence determined the rent payable under the lease. Save and except this point of tenuity the provisions of the free management contract have nothing whatsoever to do with the lease. Any dispute as to the rent payable under the lease would necessarily entail an enquiry into the existence of any free management contract entered into by the parties, but any other dispute other than the rent has to be decided under the covenants within the lease. I hold that Exhibit 2, the lease, does not incorporate Exhibit 1, the free management contract, to the extent that the arbitration clause in the former covers matters arising from the latter. I state further that "the nexus between both contracts falls far short of the term incorporation". The meeting point as already stated is that a clause in the one (not arbitration clause) falls to be decided on the face of the existence of the other. 20 30 40

I wish in conclusion to record that in coming to this decision I have adverted to, and have been guarded by the nationale in the cases of Piercy v Young 1880 14 Ch.200 and Beatie v E. & F. Beatie Ltd. 1938 Ch.708; MISR (Mig) Ltd. v. Oyedebe 2 1966 ALR (Commercial) 157, as also the law as expounded in Halsbury's Laws of England, Vol.2, para.3 and in Russel on Arbitration, 17th Edition pages 43 - 50. 50

In result the application before the

court is dismissed but there shall be no order as to costs.

(Sgd) J. Omo Agege
M A S T E R

In the
Supreme Court

No. 9
Ruling
Suit Nos.
1975-A-6 and
A-10

9th May 1975
(continued)

No. 10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-6 &
1975-A-10

No. 10
Proceedings
Suit Nos.
1975-A-6 and
A-10

3rd February
1975

BETWEEN:

10

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LTD.

RESPONDENTS/
PLAINTIFFS

Monday, 3rd February, 1975
Before: J.O. Agege, Master (In Chambers)

A.M.Drammeh for plaintiffs
A.S.B.Saho for defendant.

20

Order for pleadings - Statement of Claim
already filed to be
deemed to have been
filed by order.

Statement of Defence in
21 days.

Mention - 24th February,
1975.

(Sgd) J.O. Agege,
3.2.75

Monday. 24th February, 1975
Before: J.O.Agege, Master (In Chambers)

24th February
1975

In the
Supreme Court

No.10
Proceedings
Suit Nos.
1975-A-6 and
A-10

24th February
1975

(continued)

A.M.Drammeh for plaintiff.
A.S.B.Saho, Secka with him for defendant.

Application for a stay of proceedings
before the Court.

Adjourned to 3rd March, 1975.

3rd March 1975

Monday, 3rd March, 1975.
Before: J. Omo Agege, Master (In Chambers)

2nd June 1975

Monday, 2nd June, 1975
Before: J. Omo Agege, Master

A.M.Drammeh for plaintiff
A.S.B.Saho (Secka with him) for defendants. 10

Drammeh seeks leave to file amended statement
of claim. He has in fact filed it.

Order: The amended Statement of Claim
already filed to be deemed to have
been filed with leave.

A.M.Drammeh applies to amend the Amended
Statement of Claim by inserting in paragraph
5 sub-paragraph 3 the following :-

"Loss of profit/use until judgment at
D28676.20 per year". 20

Mr. Secka has no objection.

Order: The Amended Statement of Claim is
amended accordingly.

(Sgd) J.O.Agege

Mr.Secka asks for time to apply for further
and better particulars.

Adjourned to 9th June, 1975

(Sgd) J.O.Agege

2.6.75

30

9th June 1975

Monday, 9th June, 1975
Before: J.Omo Agege, Master

A.M.Drameh for plaintiff
P.C.Secka for defendant.

In the
Supreme Court

By consent - adjourned to 16th June,
1975.

(Sgd) J.O.Agege
9.6.75

No.10
Proceedings
Suit Nos.
1975-A-6 and
A-10
9th June 1975
(continued)

Monday, 16th June, 1975
Before: J. Omo Agege, Master

16th June 1975

10 A.M.Drameh for plaintiff
P.C.O.Secka for defendant.

Mr. Secka's application for further
and better particulars filed.

Order: Mr. Drammeh to file further and
better particulars in seven days.

Mention - 23rd June, 1975

(Sgd) J.O.Agege

Monday, 23rd June, 1975
Before: J.O.Agege, Master

23rd June 1975

20 A.M.Drammeh for plaintiff
P.C.O. Secka for defendant - absent.

Statement of Defence to be filed in
fourteen days.

Mention - 7th July, 1975.

(Sgd) J.O.Agege
23rd June, 1975

In the
Supreme Court

No. 11

NOTICE OF MOTION

No.11
Notice of
Motion
Suit Nos.
1975-A-6 and
A-10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6 and
1975-A-10

11th March 1976

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LTD.

RESPONDENTS/ 10
PLAINTIFFS

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Wednesday the 7th day of April, 1976 at 9.30 o'clock in the forenoon, or so soon thereafter as Counsel can be heard by PAP CHEYASSIN OUSMAN SECKA, Counsel for the above-named Applicant, on hearing of an application on the part of the Applicant that :-

20

(a) Farid Abouritz of Barra, North Bank Division, The Gambia, be added as a 2nd Defendant and Counter-Claimant in the above consolidated suits on the grounds that he is equally beneficially liable in the subject matters of the said suits;

(b) that the Court makes an Order permitting the said Farid Abouritz to conduct the said suits on behalf of and for the benefit of both 1st and 2nd Defendants.

30

DATED AT BANJUL, this 11th day of March, 1976.

(Sgd) Pap Cheyassin O. Secka,
Boye Sajo's Chambers,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPLICANT/
DEFENDANT. 40

- | | | |
|----|--|---|
| 1. | The Master & Registrar,
The Supreme Court,
Banjul, The Gambia. | In the
<u>Supreme Court</u> |
| 2. | Alhaji A.M. Drammeh,
8, McCarthy Square,
Banjul, The Gambia.
Solicitor for the Respondent. | No.11
Notice of
Motion
Suit Nos.
1975-A-6 and
A-10 |
| 3. | Pap Cheyassin O. Secka,
19, Buckle Street,
Banjul, The Gambia.
Solicitor for the Applicant. | 11th March
1976
(continued) |

10

No. 12

AFFIDAVIT OF PAP CHEYASSIN
OUSMAN SECKA

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-6 &
1975-A-10

No.12
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

7th April
1975

BETWEEN:

20

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LTD.

RESPONDENTS/
PLAINTIFFS

A F F I D A V I T

I, PAP CHEYASSIN OUSMAN SECKA, Barrister-
At-Law and Solicitor of the Supreme Court of
Boye Sajo's Chambers, 19, Buckle Street,
Banjul, make oath and say as follows :-

30

1. That I am the Solicitor for the above-named Applicant.
2. That I was instructed by the Applicant in my chambers when I became involved in the case in January, 1975, that all his business transactions are conducted by Mr. Farid Abouritz.

In the
Supreme Court

No.12
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

7th April 1975
(continued)

3. That the Applicant also instructed me that the said Farid Abouritz is his brother and that they operate a joint account and a joint business.
4. That the Applicant confirmed this to me by showing me the Invoices from the Respondents, most of which were signed by the said Farid Abouritz.
5. That, as Counsel, I have rarely discussed the case with the Applicant as I have already dealt with the Applicant through Mr. Farid Abouritz. 10
6. That even the Respondents will not deny that they had always dealt with the Applicant through Mr. Farid Abouritz.
7. That I verily believe that Mr. Farid Abouritz is a person likely to be affected by any decision granted by this Court in this case.
8. That I make these statements to the best of my information, knowledge and belief. 20

(Sgd) Pap Chesasin O.Secka,
D E P O N E N T.

SWORN AT BANJUL, this
7th day of April, 1976

BEFORE ME
(Sgd) R.R.G.Joiner
A COMMISSIONER FOR OATHS.

No.13
Amended
Statement of
Claim
Suit No.
1975-A-10
24th May 1975

No. 13

30

AMENDED STATEMENT OF
CLAIM

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

SOCIETE DES PETROLES B.P.
D'AFRIQUE OCCIDENTALE
BRITISH PETROLEUM LIMITED

PLAINTIFFS

AND
EMILE ABOURITZ DEFENDANT

In the
Supreme Court

No.13
Amended
Statement of
Claim
Suit No.
1975-A-10
24th May 1975
(continued)

AMENDED STATEMENT OF CLAIM

1. The Plaintiffs are distributors of Petroleum Products in The Gambia and the Defendant is a businessman, in Barra Village, North Bank Division.
- 10 2. The Plaintiffs and the Defendant entered into a Free Management Reseller Contract one of the clauses of which has been breached in that the Defendant negligently caused the said petrol station to be closed for the sale of all petroleum products for more than 2 months without just cause, the Plaintiffs being "dissatisfied in the manner in which the station is being operated".
- 20 3. The Defendant owes the Plaintiffs the sum of D21,029 being the balance of price of Petrol Products sold and delivered to him at this station which products have been sold to the public but the proceeds of which have not reached the Plaintiffs hence this debt.
4. That the said station has been closed by the Defendants because he can procure no further supplies from the Plaintiffs nor can he from elsewhere.
5. The Plaintiffs claim :
- 30 (1) possession of the said station and
- (2) D2,500.00 damages and costs and further relief or reliefs the court may order.

Dated at Banjul this 24th day of May, 1975.

(Sgd) Alhaji A.M.Drameh
8, MacCarthy Square,
Banjul, The Gambia.
SOLICITOR FOR THE PLAINTIFFS.

40 The Master & Registrar,
Mr. Emile Abouritz,
Barra Village, N.B.D.

Alhaji A.M.Drameh,
8, MacCarthy Square,
Banjul, The Gambia
SOLICITOR FOR THE PLAINTIFFS

In the
Supreme Court

No.14
Request for
Further and
Better
Particulars
Suit No.
1975-A-10

13th June
1975

No. 14

REQUEST FOR FURTHER AND
BETTER PARTICULARS

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

BRITISH PETROLEUM LIMITED PLAINTIFFS

AND

EMILE ABOURITZ DEFENDANT

REQUEST FOR FURTHER AND
BETTER PARTICULARS

10

In paragraph 2 of Statement of Claim

1. "For 2 months" - what months in which years?
2. Which of the said Clauses was the Defendant in breach of?
3. When was the contract entered into?

In paragraph 3 of Statement of Claim

1. What period was covered by the debt?
2. Over what periods were the petroleum products sold and delivered to the Defendant at his station? 20

In paragraph 5 of Statement of Claim

1. Is the Station a leasehold or a freehold premises?
2. If leasehold, who is the lessee?

DATED AT BANJUL, this 13th day of June, 1975.

(Sgd) Pap Cheyasin O.Secka,
Boye Sajo's Chambers,
19, Buckle Street,
BANJUL, THE GAMBIA.

30

SOLICITOR FOR THE DEFENDANT.

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

No. 15

FURTHER AND BETTER
PARTICULARS

In the
Supreme Court

No.15
Further and
Better
Particulars
Suit No.
1975-A-6
13th June
1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

10

EMILE ABOURITZ

DEFENDANT

FURTHER & BETTER PARTICULARS

On the indorsement of the Writ of Summons :-

1. When and/or over what period were the Petroleum products sold and delivered to the Defendant?

Paragraph 2 of Statement of Claim

1. When and/or over what period was the petrol and other petroleum products at the Defendant's station supplied?

20

Paragraph 3 of Statement of Claim

1. Statement of Account for period 1st January, 1970 to 31st December, 1974 or for the whole period when the said petrol and other petroleum products were said to be supplied?

DATED AT BANJUL, this 13th day of June, 1975

PAP CHEYASSIN O. SECKA,
BOYE SAJO'S CHAMBERS,
19, BUCKLE STREET,
BANJUL, THE GAMBIA

30

SOLICITOR FOR THE DEFENDANT.

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

In the
Supreme Court

No.16
Reply to Request
for Further and
Better
Particulars
Suit No.
1975-A-6
20th June 1975

No. 16

REPLY TO REQUEST FOR
FURTHER AND BETTER
PARTICULARS

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

10

EMILE ABOURITZ

DEFENDANT

REPLY TO REQUEST FOR FURTHER
AND BETTER PARTICULARS

The attached Statement of Account will
furnish all the further and better particu-
lars requested.

DATED AT BANJUL, this 20th day of June, 1975.

Alhaji A.M.Drameh
8, MacCarthy Square,
Banjul, The Gambia

20

SOLICITOR FOR THE PLAINTIFFS

1. Master & Registrar
2. Mr. P.O.Secka
3. Alhaji A.M.Drameh

MR EMILE ABOURITZ IN ACCOUNT WITH BP.BANJUL,
THE GAMBIA

No.16
 Reply to Request for Further and Better
 Particulars Suit No.1975-A-6
 20th June 1975

	Client's Order No.	BP Order No.	Carrier	Product	Invoice No.	A M O U N T		SUB-TOTAL		R E M A R K S	
						D	b	D	b		
26. 8.74	-	268034	GA9219+	Gas Oil*	301991	61	20				
31. 8.74	30	268052	"	Petrol	302003	3,078	00			Cheque No.1576797 for D6,311.40 returned to us for lack of sufficient funds in the BICI.	
5. 9.74	-	268073	"	Gas Oil*	302014	61	20				
9. 9.74	31	268087	"	Petrol	302024	<u>3,111</u>	00	6,311	10		
13. 9.74	-	268103	"	Gas Oil*	302036	61	20			+ This vehicle belongs to Mr. Abouritz	
23. 9.74	32	268155	"	Petrol	302064	<u>3,111</u>	00	3,172	20		
11.10.74	-	268237	"	Gas Oil*	302195	61	20				
16.10.74	34	268250	"	Petrol	302205	3,078	00				
16.10.74	-	268259	"	Gas Oil*	302213	61	20	3,200	40	All other items were supplied to Mr. Abouritz for sale at his station in Barra.	
11.11.74	36	268358	-	Lub.Oils	302301	2,011	20				
11.11.74	-	268369	GA9219+	Gas Oil	302350	61	20				
13.11.74	35	268376	"	Petrol	302353	3,111	00				
18.11.74	-	268403	"	"	302364	3,078	00	8,261	40		
6.12.74	-	268584	"	Gas Oil*	302537	61	20				
19.11.74	-	268423	"	" *	302555	61	20				
13.12.74	-	268683	"	" *	302648	<u>61</u>	<u>20</u>	183	60		
								<u>D21,129</u>	<u>00</u>		

for SOCIETE DES PETROLES BP D'AFRIQUE OCCIDENTALE,
 MANAGER

In the
Supreme Court

No. 17

FURTHER AND BETTER
PARTICULARS

No.17
Further and
Better
Particulars

Suit No.
1975-A-10

23rd June 1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

BRITISH PETROLEUM LIMITED PLAINTIFFS

AND

EMILE ABOURITZ DEFENDANT

FURTHER AND BETTER PARTICULARS

10

In paragraph 3 of Statement of Claim

1. You have already been supplied with a detailed statement covering this matter - since the filing of your request for further and better particulars.
2. As above.

In paragraph 5 of Statement of Claim

1. Leasehold
2. The defendant

DATED AT BANJUL, this 23rd day of June, 1975 20

Alhaji A.M.Drameh
8, MacCarthy Square,
Banjul, The Gambia.

SOLICITORS FOR THE PLAINTIFFS

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

No. 18

NOTICE OF MOTION

In the
Supreme Court

No.18
Notice of
Motion
Suit No.
1975-A-6

1st July 1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LIMITED

RESPONDENT/
PLAINTIFF

10

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Monday the 7th day of July, 1975, at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by PAP CHEYASSIN OUSMAN SECKA, Counsel for the Applicant/Defendant, that this Honourable Court may be pleased to make an order varying its order dated the 23rd June, 1975, to wit that the Statement of Defence be filed within 14 days from that day.

20

DATED AT BANJUL, this 1st day of July, 1975

PAP CHEYASSIN O. SECKA,
BOYE SAJO'S CHAMBERS,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPLICANT/
DEFENDANT

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

30

In the
Supreme Court

No.19
Notice of
Motion
Suit No.
1975-A-10

1st July 1975

No. 19

NOTICE OF MOTION

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

EMILE ABOUTRIZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LIMITED

RESPONDENT/
PLAINTIFF

10

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Monday the 7th day of July, 1975 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by PAP CHEYASIN OUSMAN SECKA, Counsel for the Applicant/Defendant that this Honourable Court may be pleased to make an order varying its order dated the 23rd June, 1975, to wit; that the Statement of Defence be filed within 14 days from that day.

20

DATED AT BANJUL, this 1st day of July, 1975

(Sgd) Pap Cheyasin O. Secka,
Boye Sajo's Chambers,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPLICANT/
DEFENDANT

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

30

No. 20

AFFIDAVIT OF PAP CHEYASSIN
OUSMAN SECKA

In the
Supreme Court

No.20
Affidavit of
Pap Cheyassin
Ousman Secka
Suit No.
1975-A-10
1st July 1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

EMILE ABOUTIZ APPLICANT/
DEFENDANT

AND

10 BRITISH PETROLEUM RESPONDENT/
 LIMITED PLAINTIFF

A F F I D A V I T

I, PAP CHEYASSIN OUSMAN SECKA, Barrister-
At-Law and Solicitor of the Supreme Court,
Gambian Nationality make oath and say as
follows :-

1. That I am the Solicitor for the above-named Applicant.
- 20 2. That on the 16th day of June, 1975, I filed an application for further and better particulars prior to the delivery of defence.
3. That I was served with what purported to be the Respondent's reply to my request.
4. That on the 23rd day of June, 1975, this Honourable Court made an order for the filing of defence within 14 days.
- 30 5. That the reply so filed by the Respondent does not sufficiently meet the Applicant's request.
6. That I make these statements to the best of my information, knowledge and belief.

(Sgd) Pap Cheyassin O. Secka
D E P O N E N T

SWORN AT BANJUL, this
1st day of July, 1975

In the
Supreme Court

No.20
Affidavit of
Pap Cheyassin
Ousman Secka
Suit No.
1975-A-10
1st July 1975
(continued)

BEFORE ME,

(Sgd) J. Omo Agege

A COMMISSIONER FOR OATHS.

No.21
Affidavit of
Pap Cheyassin
Ousman Secka
Suit No.
1975-A-6
1st July 1975

No. 21

AFFIDAVIT OF PAP CHEYASSIN
OUSMAN SECKA

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT 10

AND

BRITISH PETROLEUM
LIMITED

RESPONDENT/
PLAINTIFF

A F F I D A V I T

I, PAP CHEYASSIN OUSMAN SECKA, Barrister-
At-Law and Solicitor of the Supreme Court,
Gambian Nationality make oath and say as
follows :-

1. That I am the Solicitor for the above- 20
named Applicant.
2. That on the 16th day of June, 1975,
I filed an application for further
and better particulars.
3. That on or about the 21st June, 1975,
I received what purported to be the
Respondent's reply to my request for
further and better particulars.

4. That, on the 23rd June, 1975, this Honourable Court ordered the applicant to file a statement of defence within 14 days.
5. That the reply so filed by the Respondent does not sufficiently and adequately meet the Applicant's request.
- 10 6. That I make these statements to the best of my information, knowledge and belief.

In the
Supreme Court
No.21
Affidavit of
Pap Cheyassin
Ousman Secka
Suit No.
1975-A-6
1st July 1975
(continued)

Pap Cheyassin O. Secka
D E P O N E N T

SWORN AT BANJUL, this
1st day of July, 1975

BEFORE ME

A COMMISSIONER FOR OATHS.

No. 22
PROCEEDINGS

No.22
Proceedings
7st July
1975

20 IN THE SUPREME COURT OF THE GAMBIA
CIVIL SUIT NOS. 1975-A-6 &
1975-A-10

BETWEEN:

EMILE ABOURITZ APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM RESPONDENTS/
LIMITED PLAINTIFFS

In the
Supreme Court

No. 22
Proceedings

7th July 1975

Monday, 7th July, 1975
Before: J.O.Agege, Master

A.M.Drammeh for Plaintiff
P.C.O. Secka for Defendant.

Application to vary order for
pleadings - Relies on the affidavit
filed.

Drammeh replies -

- (1) Application does not give sufficient evidence to justify consideration of the case. 10
- (2) Says that the period asked for is shown in the accounts 20/8/74 - 13/12/74
- (3) Also for query 2, the same period.
- (4) Paragraph 3 of the request has also been answered.

Mr. Secka state's that as long as the period concerned is now given as 26/8/74-13/12/74 he is satisfied. 20

Order: My order for s/d is varied to the extent that the defence should be filed in 7 days from today. Mention 14/7/75.

(Sgd) J.O.Agege

14th July 1975

Monday, 14th July, 1975
Before: J.O.Agege, Registrar.

Parties as before.

Reply to c/c in 2 days.

Hearing to be in vacation.

(Sgd) J.O.Agege 30

6th November
1975

Thursday, 6th Nov. 1975
Before: J.O.Agege, Master

10th November
1975

Monday, 10th Nov. 1975
Before: J.Omo Agege, Master

9th January
1976

9th January 1976
Consolidated with 1975-A-10 between the same parties.

(Sgd) Phillip Bridges

No. 23

FURTHER AND BETTER
PARTICULARS

In the
Supreme Court

No.23
Further and
Better
Particulars

Suit No.
1975-A-10

10th July 1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

10

EMILE ABOURITZ

DEFENDANT

FURTHER AND BETTER PARTICULARS

In paragraph 2 of Statement of Claim

1. The 2 months preceding the date of filing the writ.
2. Clause 6 (Page 10) (b) and (c).
Clause 3(1) - operations Page 3
Clause 3(3) Page 3
Clause 3(19) Page 7
Clause 3(24) Page 9
Clause 3 (2) Page 3
3. The Defendant has the original contract and in fact produced a photostat copy to support his application for arbitration proceedings instead of these proceedings and the said copy is still in court awaiting to be collected by the defendant.

20

In paragraph 3 of Statement of Claim

1. 26/8/74 - 13/12/74 Statement of account covering the said period has already been filed and delivered to defendants solicitors. Also see the other Suit between the same parties - Suit No. 1975-A-6.

30

In paragraph 5 of Statement of Claim

1. The Station is on a sublease granted to the Plaintiffs by the Defendant.
2. The Defendant is the sublessor.

Dated at Banjul this 10th day of July 1975.

In the
Supreme Court

No.23

Further and
Better
Particulars
Suit No.
1975-A-10

10th July 1975
(continued)

(Sgd) Alhaji A.M.Drameh
8 MacCarthy Square
Banjul, The Gambia.

SOLICITOR FOR THE PLAINTIFFS.

1. The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.
2. P.O.Secka
3. Alhaji A.M.Drameh

No.24

Defence and
Counter-Claim
Suit No.
1975-A-6

12th July 1975

No. 24

DEFENCE AND COUNTER-CLAIM

10

IN THE SUPREME COURT OF THE GAMBIA
CIVIL SUIT NO. 1975-A-6

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

EMILE ABOURITZ

DEFENDANT

D E F E N C E

1. The Defendant admits paragraph 1 of
the Statement of Claim. 20
2. The Defendant does not admit paragraph
2.
3. The Defendant denies paragraph 3 of
the Statement of Claim.
4. Save as hereinbefore specifically
admitted, the Defendant denies each and
every allegation in the Statement of Claim
as if the same were set out separately and
traversed seriatim. 30

C O U N T E R - C L A I M

1. The Defendant repeats paragraphs 1-4

of the Statement of Defence herein.

In the
Supreme Court

2. Since January 1970, the Defendant had an agreement with the Plaintiffs whereby the Plaintiffs would, inter alia, supply petrol and other petroleum products to the Defendant and the Defendant paid against a customer/client Account between the parties established at the International Bank for Commerce and Industry, Banjul.

No.24
Defence and
Counter-
Claim
Suit No.
1975-A-10
12th July
1975

10 3. By an Indenture delivered to the parties on the 25th day of March, 1974, the Defendant sub-demised his leasehold at Barra Village, North Bank Division of The Gambia dated 23rd February, 1965, and Registration Number DI. 1L 19, for a term of 15 years.

(continued)

20 4. It was a term of the said Indenture that the Plaintiffs will pay to the Defendant a rental of D600.00 per during the time the Defendant operated the service station (held under the said Lease) under the terms of a free management contract or D1800.00 per year in case the Plaintiffs didn't renew the yearly management contract.

30 5. That the said lease and free management contract subsisted from year to year, wherein the Plaintiffs supplied the Defendant with petrol and other petroleum products and the Defendant made regular payments in the said account with the Plaintiffs at the International Bank for Commerce and Industry.

6. That the said supplies were effected by the Plaintiffs' agents delivering it to the Defendant against an Invoice which the Defendant signs to signify receipt.

7. The Plaintiffs never supplied the Defendant with a Statement of Account; but the Defendant, for fear of losing the business to this unequal partner (the Plaintiffs), kept up this regular payments in the account aforesaid.

40 8. That the Defendant made a total payment of D108,854.83 to the Plaintiffs for the final year of the said agreement, that is, January 1974 to December 1974, against the Plaintiffs' supply of D17,929.00.

9. The said station has been closed since November 1974 because the Defendant couldn't procure no further supplies from the Plaintiffs nor could the Defendant get supplies elsewhere.

In the
Supreme Court

No24
Defence and
Counter-Claim
Suit No.
1975-A-10
12th July 1975
(continued)

10. By a Hire/Purchase Agreement between the parties, the Defendant hired his petrol tanker GA.9219 to the Plaintiffs for the transportation of the Plaintiffs products.

11. It was a term of the agreement that the Plaintiffs pay for each delivery made by the Defendant's tanker by depositing the sum due to the Defendant's account at the International Bank for Commerce and Industry.

12. The Plaintiffs used the said tanker but failed to make the payments aforesaid. 10

13. By reason of paragraph 12, the Plaintiffs owe the Defendant D3,600.00.

14. Despite repeated demands, the Plaintiffs still refuse to pay.

15. By reason of the matters aforesaid, the Defendant counter claims damages for :-

- (a) a breach of contract;
- (b) D90,925.83 being money paid and received by the Plaintiffs from the Defendant for the supply of petrol and petroleum products, which said petrol and petroleum products the Plaintiffs didn't supply; 20
- (c) D3,600.00 being money the Plaintiffs owed the Defendant for the hire of the Defendant's tanker GA.9219.
- (d) Interest;
- (e) Any other relief the Court may deem just; 30
- (f) Costs.

DATED AT BANJUL, this 12th day of July, 1975.

(PAP-CHEYASSIN O. SECKA, ESQ.)
BOYE SAJO'S CHAMBERS,
19, BUCKLE STREET
BANJUL, THE GAMBIA

SOLICITOR FOR THE DEFENDANT

No. 25

In the
Supreme Court

DEFENCE AND COUNTER-
CLAIM

No.25
Defence and
Counter-Claim
Suit No.
1975-A-10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-10

14th July
1975

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

10

EMILE ABOURITZ

DEFENDANT

DEFENCE & COUNTER-CLAIM

1. Paragraph 1 of the Statement of Claim is admitted.

20

2. In respect of paragraph 2 of the Statement of Claim save that the Defendant admits a free management contract was entered into between the parties, the Defendant does not admit either that the agreement was entered into 2 months preceding the date of filing the writ or that he was in breach of any of the terms of the contract.

3. The Defendant denies paragraph 3 and states that it is irrelevant to the suit.

4. The Defendant admits paragraph 4 of the Statement of Claim and will contend that it was the act or omission of the Plaintiffs which made it impossible for him to operate the station under the time of the free management contract aforesaid.

30

5. The Defendant will contend that the Plaintiff's claim does not disclose any course of action and should be struck out.

6. Save as hereinbefore specifically admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same were set out separately and traversed seriatim.

COUNTER-CLAIM

1. The Defendant repeats paragraph 1 - 6 of the Statement of Defence herein.

In the
Supreme Court

No.25
Defence and
Counter-Claim
Suit No.
1975-A-10

14th July
1975

(continued)

2. It was a term of the free management contract that the Plaintiffs were to supply the Defendant with petrol or other petroleum products.
3. As stated in paragraph 4 of the Plaintiff's Amended Statement of Claim, the Defendant ceased the station only because he couldn't get supplies either from the Plaintiffs or from any where else.
4. The Plaintiff by wrongfully refusing to supply the Defendant, frustrated the further operation of the Agreement.
5. By reason of the matters aforesaid, the Defendant Counter-claims :-
 - (a) for a declaration that the free management contract is inoperative and that the Defendant is discharged from further liability under it
 - (b) general damages for breach of contract
 - (c) costs.

10

20

DATED AT BANJUL, this 14th day of July, 1975.

(Sgd) Pap Cheyasin O.Secka
Boye Sajo's Chambers,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE DEFENDANT

No. 26

DEFENCE TO COUNTER-CLAIM

In the
Supreme Court

No.26
Defence to
Counter-Claim
Suit No.
1975-A-6

16th July
1975

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6

BETWEEN:

BRITISH PETROLEUM
LIMITED

PLAINTIFFS

AND

EMILE ABOURITZ

DEFENDANT

10

DEFENCE TO COUNTER-CLAIM

1. The Plaintiffs deny paragraph 2 of the defendant's counter-claim.
2. The plaintiffs admit paragraphs 3 and 4 of the defendant's counter-claim.
3. The plaintiffs prices are ex-depot sale, i.e. not including any Transport element. The defendant had almost always collected his supplies with his own vehicles GAS.5998 and 9219.

20

There is no Hire Purchase agreement between the parties as alleged. The plaintiffs stood as guarantors for the defendant in connection with the purchase of GA.9219 at the B.I.C.I. The balance of the price of the vehicle still remains unpaid to the B.I.C.I. and that the Bank has now written to the plaintiffs as guarantor requesting immediate payment which the plaintiffs will be forced to do in a day or two.

30

The plaintiffs deny owing the defendant D3,600, D90,925.83, D3,600 or any sum at all.

Save or herein before specifically admitted, the plaintiffs deny each and every allegation in the counter-claim as if the same were set out separately and traversed seriatim.

AND the plaintiffs claim that the defendant's

In the
Supreme Court

No.26
Defence to
Counter-Claim
Suit No.
1975-A-6
16th July 1975
(continued)

counter-claim be dismissed with
costs.

DATED AT BANJUL this 16th day of July,
1975.

ALHAJI A.M. DRAMEH
8, MacCarthy Square,
Banjul, The Gambia.

SOLICITOR FOR THE PLAINTIFFS.

No.27
Chamber
Summons
Suit Nos.
1975-A-6 and
A-10
5th August
1975

No. 27
CHAMBER SUMMONS

10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NOS. 1975-A-6 and
1975-A-10

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LTD.

RESPONDENTS/
PLAINTIFFS

LET ALL PARTIES concerned attend the
Judge in Chambers on the
day of , 1975, at o'clock
in the hearing of an application by PAP
CHEYASSIN OUSMAN SECKA, Counsel for the
above-named Applicant/Defendant, that
this Honourable Court may be pleased to
make an order permitting the above suits
to be heard during this vocation on the
grounds that there is urgent need for the
trial or hearing of the said suits.

20

30

DATED AT BANJUL, this 5th day of
August, 1975.

(Sgd) J.Omo Agege
MASTER & REGISTRAR

1. The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.
2. The Respondent/Plaintiffs,
Thro. Their Solicitor,
Alhaji A.M.Drammeh,
8, MacCarthy Square,
Banjul, The Gambia.

In the
Supreme Court
No.27
Chamber
Summons
Suit Nos.
1975-A-6 and
A-10
5th August
1975
(continued)

No. 28

10

AFFIDAVIT OF PAP
CHEYASSIN OUSMAN SECKA

No.28
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10
August 1975

IN THE SUPREME COURT OF THE GAMBIA
CIVIL SUIT NOS. 1975-A-6
1975-A-10

BETWEEN:

EMILE ABOURITZ APPLICANT/
DEFENDANT

AND

20

BRITISH PETROLEUM RESPONDENTS/
LTD. PLAINTIFFS

A F F I D A V I T

I, PAP CHEYASSIN OUSMAN SECKA, Barrister-
At-Law and Solicitor of the Supreme Court of
Gambian Nationality make oath and say as
follows :-

30

1. That I am the Solicitor for the above-
named Applicant/Defendant.
2. That the above suits involve a Petrol
Station at Barra which, because of the
conclusiveness of the relations between
the parties to the suit, is not being
used.
3. That any further delay will put the

In the
Supreme Court

No.28
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

August 1975
(continued)

Applicant/Defendant in sense
hardship.

4. That I make these statements to the
best of my information, knowledge and
belief.

(Sgd) Pap Cheyassin O.Secka
D E P O N E N T

SWORN AT BANJUL, this
day of August
1975

10

BEFORE ME,

A COMMISSIONER FOR OATHS.

No.29
Proceedings
7th July 1975

No. 29
PROCEEDINGS

Monday, 7th July, 1975
Before: J. Omo Agege, Master
A.M.Drammeh for plaintiff
P.C.O.Secka for defendant.

Adjourned to 14th July, 1975

(Sgd) J.O.Agege
7.7.75

20

14th July 1975

Monday, 14th July, 1975
Before: J.Omo Agege, Registrar
Parties as before.
Reply to statement of claim in two days.
Hearing in vacation.

(Sgd) J.Omo Agege

6th November 1975

Thursday, 6th November 1975
Before: J.Omo Agege, Master
Monday 10th November 1975
Before: J.Omo Agege Master

30

Drammeh for plaintiff - absent
Secka for defendant.

In the
Supreme Court

Case ripe for hearing.

No.29
Proceedings

Adjourned to 2nd December 1975 Court 2.

6th November
1975

(continued)

Tuesday the 2nd day of December 1975
Before His Lordship the Hon. Mr. Justice A.
Nithianandan, J.

2nd December
1975

Friday 9th January 1976
Before the Hon. Sir Phillip Bridges, C.J.

9th January
1976

10 A.M. Drammeh for plaintiff
P.C.O. Secka with A.S.B. Saho

Applies to consolidate with 1975-A-6
Mr. Secka has no objection.

Order for consolidation as prayed.

(Sgd) Phillip Bridges.

No. 30

EVIDENCE OF MOMODOU BABUCAR
N'JIE

No.30
Plaintiff's
Evidence

20 Momodou Babucar N'Jie SOK (E) 74 Gloucester
Street, Banjul. Member of Parliament
(nominated). Manager for The Gambia of the
Plaintiffs. BP and S.P. BP D'Afrique
Occidentale. We are claiming D21,029.00
in respect of petroleum products supplied
to defendant which are not paid for.

No.30
Momodou
Babucar N'Jie
Examination
9th January
1976

30 This is a photocopy of a statement of
account for period 26th August 1974 - 13th
December 1974 - Exhibit A.

This is a summary of deliveries not paid
for - Exhibit B.

A signed by Mr. Jallow, Administrative
Assistant.

B signed by myself.

Document sought to be put in -
Secka objects - falls outside the period
August - December 1974 mentioned in answer
to F and BP.

Drammeh - I withdraw the document.

In the
Supreme Court
Plaintiff's
Evidence

No.30
Momodou
Babucar N'Jie
Examination
9th January
1976
(continued)

This is the copy of sublease between
Abouritz and BP - Exhibit C and his
agreement with the Company - Exhibit D.

Court: I shall require undertaking that
stamp duty has been paid in respect
of both documents.

GA 9219 is petrol road tanker owned by
Abouritz. Bought with a loan from Bank of
Commerce and Industry (BICI) guaranteed
by BP. He paid partly BP had to honour
its guarantee to the tune of D1,678.64. 10
This is the correspondence (E1 - 6).
These are Delivery orders, Invoices, monthly
clients advice - returned cheque notice
(F1 -

Adjourned to 12th January 1976.

(Sgd) Phillip Bridges

13th January
1976

Tuesday, 13th January, 1976
Before the Hon. Sir Phillip Bridges, C.J.

Reminded of oath.

20

GA9219 - there was no hire purchase agree-
ment but there was an hirer purchase agree-
ment in respect of an earlier tanker.
This is a list of journeys of tanker.
GA 9219 on our behalf - Exhibit G.
D1661.00 was due Mr. Abourisk but according
to the demand from BICI we had to pay them
D1678.64. We had guaranteed him. Never
was an agreement signed agreeing that BP
should pay BICI. Loan was to be repaid by
Abourisk. He submitted bills for hire of
his transport and he paid by cheque. He
owes us 17.64 on this transaction after
we'd paid BICI we were paying bills. This
is list of total receipts of E.A.Abouritz
in 1974 - it is signed by me. Exhibit H.
We supplied him with monthly statements.
Defendant was always in arrears. This is
a carbon copy of a notice to quit served
on the Defendant - Exhibit J. 30
40

Station was closed because we would
not supply him because he was our debtor.
Not in accordance with contract for him to
be a debtor. He was an employee in the
form of a dealer. We paid him an agreed
discount. 10b/gallon on motor spirits;
12b/gallon on kerosene; 7b/gallon on
gasoil. He had a Free Management Reseller
Contract. It is still subsisting. BP
built the station and put in the equipment. 50
We are claiming possession, loss of use

In the
Supreme Court

Plaintiff's
Evidence

No. 30
Momodou
Babucar N'Jie
Cross-
examination
14th January
1976

(continued)

Re-
examination

As before.

Reminded of oath.

Accounts were closed at the end of each month. He never paid regularly. We've dealt with him since late 1969. Until 1974. He'd received notice of all relevant accounts. We had no running account. We've paid the rent. He asked for a statement of account only when we called him to court.

10

Re-examination: Bills sent at end of month; invoices raised on the delivery orders. Abourisk sent bills in respect of transport. Jallow Gassama was Abouritz' driver at time of delivery.

Ruling of the Master of 9th May, 1975 - Misc. Civil Cause 2/75 to be put on file.

(Sgd) Phillip Bridges.

Adjourned to 21st January, 1976

20

(Sgd) Phillip Bridges.

No. 31
Proceedings
21st January
1976

No. 31
PROCEEDINGS

Wednesday, 21st January 1976
Before the Hon. Sir Phillip Bridges, C.J.
Same representation.

Mr. Drammeh wishes to call the Commissioner of Stamp Duties and Registrar General on formal matters, otherwise his case is complete.

30

Court: We will not enter upon the defence and counterclaim, reserving to Mr. Drammeh the right to call the Commissioner of Stamp Duties and Registrar General at a later stage. These witnesses are searching their records for the documents and information sought. Commissioner of Stamp Duties has got the stamp duty register but not reference to the Free Management Reseller Contract.

40

(Sgd) Phillip Bridges.

No. 32

EVIDENCE OF EBRIMA
SINYAN

In the
Supreme Court
Plaintiff's
Evidence

No.32
Ebrima Sinyan
Examination
21st January
1976

Ebrima Sinyan SOK (E) 5 Sam Jack Terrace.
Civil Servant. Accountant General's
Department - Stamp Duties Section. I produce
stamp duties register. On 10th April 1974
there is an entry Tenancy Agreement Abourisk
to BP 23rd March 1974 stamped D6.00

10

Cross-examination: A tenancy agreement was
submitted for stamping.

Cross-
examination

No. 33

EVIDENCE OF REBECCA
GABISI

No.33
Rebecca
Gabisi
Examination

Rebecca Gabisi Sworn on Bible (E) Serrekunda.
Civil Servant. Assistant Registrar General.
This is the Index Register of Provincial
Leases. This is original lease of land at
Barra and this is the copy of sublease 25th
March 1974 - Exhibit LL (numbered after
close of case).

20

We received it for registration on 10th
April 1974. Registration fee was paid on
same day.

E. Abourisk and BP executed the lease. E.
Abourisk's signature was witnessed by Farid
Abourisk. The documents are still with us
because Mr. Farid Abourisk has not come to
attest E. Abourisk's signature. Thus the
Registration is not complete. BP's witness -
I cannot identify the signature.

30

Adjourned to permit registration to be
completed.

To 17th February 1976

In the
Supreme Court

No. 34
Proceedings

10th March 1976

No. 34

PROCEEDINGS

Wednesday, 10th March, 1976
Before the Hon. Sir Phillip Bridges, C.J.
As before.

Application by Mr. Secka to join Farid
Abourisk as codefendant.
Drammeh objects. Emile is the defendant
and properly so.

Court: This must be the subject of a formal application supported by affidavit. to join Farid as codefendant. 10

(Sgd) Phillip Bridges

Plaintiff's case is not yet closed.

Mr. Drammeh seeks to put in an agreement between the parties.

Mr. Secka objects - it is outside the pleadings and no issue joined on it.

Drammeh: Defendant should go on asking for further and better particulars until he is satisfied. 20

Court: the document may be put by calling a witness who may properly do so - Mr. Drammeh has not, as I have already noted, closed his case.

(Sgd) Phillip Bridges

Plaintiff's
Evidence

No. 35
Mohamed Bashir
Omar Jallow

Examination
10th March 1976

No. 35

EVIDENCE OF MOHAMED BASHIR
OMAR JALLOW

Mohamed Bashir Omar Jallow Sworn on Koran (E) 19 New Primet Street. Assistant in BP's office. I produce this document. 30

Mr. Secka objects - Document not executed - presence of document.

Court: The document may go in

(Sgd) Phillip Bridges

Agreement between Emile Abourisk and BP
21st April 1969. Kept in office of local
manager. Exhibit M - a copy of this was
sent to BP.

Cross-examination - None

Close of plaintiff's case

Adjourned to 7th April, 1976

(Sgd) Phillip Bridges

In the
Supreme Court

Plaintiff's
Evidence

No. 35
Mohamed Bashir
Omar Jallow

Examination
10th March
1976

(continued)

No. 36

PROCEEDINGS

1 No. 36

Proceedings

7th April 1976

10

Wednesday 7th April, 1976
Before the Hon. Sir Phillip Bridges, C.J.

As before.

Motion to join Farid Abourisk
Affidavit read.

Drammeh opposes application. Lessee is Emile-
we are not interested in Farid.

Ruling:

20 I will grant this application but with
misgivings. Mr. Farid Abourisk has been
sitting in court throughout the trial to date
and the defendant Mr. Emile Abourisk has not
been present at all. It seems to me to savour
of a lack of candour to the court. I will
not fail to note that, when Mr. Farid Abourisk
gives evidence, he has been present throughout.
Let Mr. Farid Abourisk be joined as co-
defendant in both suits.

(Sgd) Phillip Bridges

30

Mr. Secka undertakes to call both defendants
but will begin with Mr. Farid Abourisk.

In the
Supreme Court
Defendant's
Evidence

No. 37

EVIDENCE OF FARID ABOURISK

No.37
Farid Abourisk
Examination
7th April 1976

Farid Abourisk Sworn on Bible (E) but speaks Wollof. I live at Barra Point. Merchant and Filling Station proprietor. I operate my business and that of my brother. I am Texaco selling agent my brother is BP's.

I live at Barra. Lease is in my name. Emile has lease of BP Station. I have lease of Texaco Station. We have separate accounts. I operate the accounts. I did not go to Registrar General's Office on 24th March 1976. 10

This is what I got from the Registrar General. I sent a messenger for it. It is Emile's Lease of his petrol station - Exhibit O.

In 1969 Lawyer Drammeh was between the Madis and ourselves - Madis were BP Agent. We negotiated an agreement. I went to Mr. Drammeh to negotiate. Drammeh prepared the agreement for the Free Management contract. For us to start. I went with Emile and Drammeh to Madi's office. My brother signed. When conditions were read agreement was made for them to start their own buildings. 20

They B.P. started construction early in 1970 - completed in 1970 - early. They supplied petrol and we pay by cheques. BP would demand payment without bills sometimes and we would pay. They never issue receipts to us - we'd prove payment only by cheques. 30

We continued until 1972 when Drammeh prepared an agreement. That is the sublease of March 1973. There were a lot of drafts which I rejected. I signed the third one - I called my brother and he signed it - 1972, 1973, 1974 supply against payment continued. Our tanker brought it - my brother's tanker - BP orders to go and get it from Shell. Other tankers brought it also - Tabbal for example. Sometimes my brother took delivery, sometimes me, or my wife or the pump attendant. 40

From 1970 up to date we have received no statement of account. I was always at Mr. N'Jie's office asking for statements but I only ever got chits. These are they (Exhibit P1 - 7). Letter from Drammeh in by

consent (Q) dated 13th January 1975. I wrote this to Drammeh Exhibit R.

In the
Supreme Court

Defendant's
Evidence

No.37

Farid
Abourisk

Examination
7th April
1976

(continued)

10 November 1974 N'Jie said your brother is owing us so much - I said give us statement of account. Since 1970 you have never given one statement of account. I said let us have accountants look into the matter and in the meantime supply us against cash payments. He did not agree. He said pay D10,000 and the balance we will see about - D21,000 was still to be owed. I get statement of accounts from Texaco for my station. BP said they were going to summons me but they closed the station by giving us no supplies. No notice was ever given. I have no right to sell petroleum products other than BP.

20 GA 9219 tanker registered owner is Emil. BP agent - hired this tanker for the provinces not necessarily to us - BP paid us for hire by cheque.

[By consent two books and tabulations thereof go in as Exhibits S.1, 2 and 3/ Delivery notes and Summary.

30 There is a balance owing on these transactions. This is copy of letter my lawyer wrote to BP Exhibit T. We owe BP nothing. We claim for breach of contract - from day they refused to supply the station. 1 year 4 months without work.

Cross-examination: BP have no books and I have not in respect of the Station - Reads paragraph of agreement on the matter.

Cross-
examination

Adjourned 29th April, 1976

(Sgd) Phillip Bridges

As before.

29th April
1976

Witness reminded of oath - continues.

I kept no books - only have the cheques.

Thursday 29th April 1976

40 Before the Hon. Sir Phillip Bridges, C.J.

The Bank paid all the cheques - afterwards. Looks at Exhibit F. I agree this cheque was not paid but we paid them. We have overpaid them.

In the
Supreme Court

Defendant's
Evidence

No. 37
Farid
Abourisk

Cross-
examination
29th April
1976

(continued)

I never wrote a letter like this - never received the original. Looks at Exhibit B. D6120 - this was paid to BP by cheque -

Mr. Secka admits this was not paid neither was cheque of 30th November 1974 for D6311.407.

This - Exhibit A is not the statement I asked for.

They are owing us - we are not owing them.

We want statements 1970 - 1974.

10

Exhibit Q put to witness -

These are cheques were paid to BP: In as Exhibit U1 - 57

D108,854.83 overpayment is only in 1974.

There is no stock at the store at the moment.

There are bills owing in respect of hire of my transport.

The 90000 odd claim is in the bank statement.

Re-
examination

Re-examination. My lawyer asked for a statement of account when case started. I've never received any statement of account. Thomassi is our accountant.

20

Adjourned to 4th May 1976

(Sgd) Phillip Bridges

No. 38
Emile Abourisk
Examination
4th May 1976

No. 38

EVIDENCE OF EMILE
ABOURISK

Tuesday 4th May, 1976
Before the Hon. Sir Phillip Bridges, C.J.
Representation as before.

30

Emile Abourisk Sworn on Bible (W) Barra Point. Businessman. I have a lease at Barra. I do business with BP - I've done it since 1970. Petrol business from 1970 - 1974. I'd received petrol and pay against an invoice.

Invoice 268034 gas oil. I did not sign this and don't accept it.

Invoice 268073 - I did not sign this.

Invoice 268250 I don't know who "KMJ" is.

I had a running account with BP.

40

I did day to day running but my brother did outside relations. He did the transactions and brought the agreement to me and I signed it. I never discussed business with Mr. N'Jie. All the cheques were signed by me.

My brother is my elder.

Station was subleased to them.

10 We signed a Free management contract. Around November 1974. They stopped the supply of petrol without notice and without cause. I asked for supply and was told I was owing. I asked my brother - Looks at Exhibit V. Total payment for 1974 D108,854.83 D17,929 is what we have received.

I'm claiming D90,925.83 reimbursement also damages for breach of contract.

20 Cross-examination: GA 9219 is owned by my brother. My elder brother gave me the money. He paid half - I paid half. BP gave me my half. He took his from his own money. £1700 is what it cost. Registered in my name. BP guaranteed me to the bank - BICI D3600. I've repaid that. My accountant and brother know about this. Papers are all with Farid.

Looks at K2 - I don't know this - my brother prepared it. (G.U.C. Georgetown Bill No.33).

30 To Court: I can write a bit of English; bit of French, a little Arabic because I've no higher education.

D1678.64 is what was paid to BICI.

GA 9219 was gas oil - not petrol. Jallow Gassama was not the driver. Yaya Bayo was and still is my driver. Driver signs at Shell and brings it to me.

Looks at 26250 - I accept this Farid signed it. I don't know who signed this - 268052 - I signed this - (the carbon).

40 Jallow Gassama is apprentice - the driver's apprentice.

Witness denied knowing Gassama - this last was dragged from him [with reluctance on his part].

Cheque counterfoils with my accountant. I have only the cheques as my accounting system.

I cannot produce my current account statements - my accountant can.

In the
Supreme Court

Defendant's
Evidence

No.38
Emile
Abourisk

Examination
4th May
1976

(continued)

Cross-
examination

In the
Supreme Court

Defendant's
Evidence

No. 38
Emile
Abourisk

Cross-
Examination
4th May 1976

(continued)

I overpaid BP between January -
December 1974. This is my signature -
Exhibit M.

Looks at Exhibit C. I don't know who
witnessed this. This is my signature -
Exhibit D.

Re-
examination

Re-examination: Does not always happens
that I receive and pay. I've never paid
in advance for petrol that did not arrive.

No. 39
Sulayman
Drammeh
Examination
4th May 1976

No. 39

10

EVIDENCE OF SULAYMAN
DRAMMEH

Sulayman Drammeh - Sworn on Koran (E).
29 Lancaster Street. B.I.C.I. Bank
official - Accountant of the Bank. I
produce cheques for period 1971 - 1974.
Emile Abourisk's account.

13 for August	December 1971	V1 - 13
11 for January	December 1972	W1 - 11
16 for January	December 1973	X1 - 16
17 for January	December 1974	Y1 - 17

20

Here is the list of the cheques -
Those for 1970 are not available.

Cross-
examination

Cross-examination: Some cheques here are
not in favour of BP - Kerewan Area Council,
Chanbeh Elhaj, S.Madi Ltd. I don't know
what payments are in respect of.

Re-examination: None

No. 40
Louis Lucien
Thomassi
Examination
4th May 1976

No. 40

30

EVIDENCE OF LOUIS LUCIEN
THOMASSI

Louis Lucien Thomassi Sworn on Bible (E)
72 Leman Street. Accountant. I know
the defendants. I have started on their
accounts but I've only seen their cheques.

No documents from BP. I am qualified -
Diploma in Paris. I was brought to The
Gambia by L.C.A. and was with Howell trade
& Co. chartered accountants of Buckle
Street. On Exhibit A from 26th August 1974
- 13 December 1974 - a debit of D21,129.00.
On Exhibit B from 1st September 1974 - 1st
December 1974 a debit of D21,129.00

In the
Supreme Court
Defendant's
Evidence

No.40
Louis Lucien
Thomassi

Examination
4th May 1976

(continued)

Court: A & B are duplicate documents?

Yes.

I've not seen the delivery notes.

Adjourned to 5th May 1976

Not before 11 a.m.

(Sgd) Phillip Bridges

No. 41

PROCEEDINGS

No.41
Proceedings
5th May 1976

Wednesday 5th May, 1976
Before the Hon. Sir Phillip Bridges, C.J.

This is by consent adjourned to a date to
be fixed by the Registrar.

Defendants' accountants to have access to
the exhibits in presence of an Officer of
the Court.

(Sgd) Phillip Bridges

No. 42

JUDGMENT

No.42
Judgment
26th May 1976

Wednesday 26th May, 1976
Before the Hon. Sir Phillip Bridges, C.J.

Notices have been issued.

Mr.Drammeh is present.

Mr.Secka is not present nor his witness or
defendants.

Mr. Drammeh asks for judgment.

In the
Supreme Court

No.42
Judgment
26th May 1976
(continued)

Judgment

There will be judgment for the plaintiff company in both cases with costs for D21,029.00 and order for possession and in addition the sum of D2500.00 as liquidated damages under the Free Management Reseller Contract.

(Sgd) Phillip Bridges

No.43
Notice of
Motion
Suit Nos.
1975-A-6 and
A-10
27th May 1976

No. 43

NOTICE OF MOTION

10

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1975-A-6
CIVIL SUIT NO. 1975-A-10

BETWEEN:

EMILE ABOURITZ

APPLICANT/
DEFENDANT

AND

BRITISH PETROLEUM
LIMITED
SOCIETE DES PETROLES
B.P. D'AFRIQUE
OCCIDENTALE

RESPONDENTS/
PLAINTIFFS

20

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Wednesday the 9th day of June, 1976 at 9.00 o'clock in the forenoon, or so soon thereafter as counsel can be heard by PAP CHEYASSIN OUSMAN SECKA, counsel for the Applicant/Defendant, Emille Abouritz, for an order that this Honourable Court may be pleased to review its judgment in default in the above suit dated 26th day of May, 1976 on such terms and conditions as the Court may deem fit, on the grounds specified in the affidavit attached hereto.

30

DATED AT BANJUL, this 27th day of May, 1976

In the
Supreme Court

No.44
Affidavit of
Pap Cheyassin
Ousman Secka
Suit Nos.
1975-A-6 and
A-10

28th May 1976

(continued)

3. That, even though my messenger received the notice of hearing on or about the 25th May, 1976, I didn't see it, nor was I aware of the new cause list, issued on the 25th May, 1976.
4. That, for the whole of the 25th May, 1976, I didn't come to the Supreme Court, I had engagements at the Banjul Magistrate's Court and at Brikama.
5. That, on the 26th May, 1976 (up to which time I wasn't aware of the existence of the new cause list) I went to the Banjul Magistrate's Court and then to Kanifing. 10
6. That I finished at Kanifing around 11.00 a.m. and back to the Supreme Court Building around 11.30 a.m. only to learn of the said judgment.
7. That our non attendance was completely inadvertent and was wholly occasioned by the unusual nature of having two cause lists in the same week. 20
8. That issues in these cases are too intricate that justice will be better heard if all the issues were heard.
9. That the applicant has a good defence to the action.
10. That the Plaintiffs/Respondents could be sufficiently and adequately compensated by costs. 30
11. That I make these statements to the best of my information, knowledge and belief.

(Sgd) Pap Cheyassin O.Secka
D E P O N E N T

Sworn at Banjul this
28th day of May, 1976

BEFORE ME

(Sgd) A.A.B.Gaye

A COMMISSIONER FOR OATHS.

40

No. 45
PROCEEDINGS

In the
Supreme Court
No.45
Proceedings
9th June 1976

Wednesday 9th June, 1976
Before the Hon. Sir Phillip Bridges, C.J.

Application to set judgment aside and
restore to list 041.

Mr. Secka appears to move.

Affidavit read.

10 Submits to judgment in default after
evidence heard Cap.103 paragraph 18.

Drammeh: Judgment should stand - everything
was taken into account when it was given.

Costs should be substantial - D1000.00 but
no negligence by practitioner.

Order:

The judgment is set aside and the case
will be relisted and continue. Costs of
26th May and today to plaintiff to be taxed.

(Sgd) Phillip Bridges

20 Adjourned to 29th June, 1976

(Sgd) Phillip Bridges

No. 46

EVIDENCE OF LOUIS LUCIEN
THOMASSI (RECALLED)

Tuesday 29th June, 1976
Before the Hon. Sir Phillip Bridges, C.J.
Representation as before.
Witness (Thomassi) reminded of oath.

Defendant's
Evidence
No.46
Louis Lucien
Thomassi
(Recalled)
Examination
29th June 1976

30 I've scrutinised the exhibit file and
I build up the accounts between these
people from January - December 1974. I
used copy delivery notes. I compared them
with Invoices in Exhibit L.

In the
Supreme Court

Defendant's
Evidence

No.46
Louis Lucien
Thomassi
(Recalled)

Examination
29th June 1976

(continued)

D58,038.45 January 12th to August 6th 1974.
Supported by BP Delivery Notes and Invoices.

26th August - 13th December 1974 (Exhibit A
and B) D21,067.80

Total debit in year January 12th - 13th
December - D79,106.25

Payments made by E.Abourisk to BP

January to December 1974 cheques D107,816.83

Due to Abourisk therefor D28,710.58

1970, 71, 72, 73 no claim from BP - clear 10
account January 1974.

Letter 7th September 1974 BP to Abourisk
(Exhibit

Invoice for 3 Dalasis.

Witness seeks to put the delivery notes -

Mr.Drammeh objects - on the ground that
they do not relate to our claim - the
period and are irrelevant.

Secka: If they are irrelevant so is Exhibit L.

The delivery notes may go in. Exhibit Z. 20

(Sgd) Phillip Bridges

Witness continues.

I find some invoices are not in Exhibit
L. and some repeated in Exhibit A.

301856 - 301852 - 301874 - 301886.

Court: Seems to me they appear twice because
the cheque was RD'd and redebited.

Summary Accounts produced by this witness
are now put in as Exhibit AA.

Cross-
examination

Cross-examination: My accounts were made 30
from papers in the Abourisk's possession.
It is not necessary to keep books you can
produce accounts from records.

My figure is correct - D28710.58 on
Petrol Products
account & D 1462.86

Looks at Exhibit S - page Quasi
government notes are headed "on your behalf".
Private ones not.

I did not prepare the vehicle account I 40
merely copied Abourisk's manuscript. Due
Abourisk D243.00 (Inv.42)

Re-examination: None.

No. 47
ADDRESSES OF COUNSEL

In the
Supreme Court

No.47
Addresses of
Counsel
29th June 1976

Addresses:

Secka:

10 Possession - statement of claim - clause 9
of contract. Force majeure - validity of
sublease - submits null and void - Cap.103
paragraph 18 - permission to sublet. Malang
Kanteh's case - P.C. - consent. Exhibit B -
defective lease paragraph 14 of schedule :-
Re Thomas decd. to the breach of contract -
F and BP clauses b b and c and clause 3.
Accounts - Trading since 1970. No statement
of accounts. Arbitration clause - refusal
of BP to submit to arbitration. NO statement
and therefore cannot sue on an account.

Drammeh:

20 Documents not invalid - recitals - referred to
Exhibit C, Exhibit M N: No arbitration clause -
free management agreement paragraph 3 of
agreement - breach from closure of station.
Accounts - 3(21) - Inspection by BP
D2500.00 liquidated damages.
Accounts - defendants kept no books.
BP supports all claims into books and accounts.
Cash on delivery account but no current account.

Cur ad vult.

(Sgd) Phillip Bridges.

No. 48

JUDGMENT

No.48
Judgment
6th April
1977

30

40

These are two consolidated cases numbered
respectively 1975-A-6 and 1975-A-10. In each
case there are joint plaintiffs namely Societe
des Petroles B.P. D'Afrique Occidentale and
British Petroleum Limited. It has not been
disclosed where these two companies are
incorporated, but apparently not in The Gambia.
I shall refer to them collectively as "B.P."
The defendant in each case is a Mr. Emile
Abouritz, a businessman who runs a Petrol
Station at Barra, a river port on the River
Gambia opposite Banjul and the Northern terminal

In the
Supreme Court

No.48
Judgment

6th April 1977

(continued)

of the Banjul - Barra Ferry.

In the course of the trial Mr. Farid Aboutritz, the brother of the original defendant was joined as co-defendant.

In the first suit (1975-A-6) the plaintiff's claim is "for D21,029 being the balance of price of petrol products sold and delivered to the defendant". This claim was denied and a counterclaim made claiming:

- (a) damages for breach of contract; 10
 - (b) D90,925.83 being money paid and received by the plaintiffs from the defendant in respect of petroleum products paid for but not delivered;
 - (c) D3600.00 owed by the plaintiffs to the defendant for the hire of the defendant's tanker, GA 9219;
 - (d) Interest;
 - (e) other just relief 20
- and (f) costs.

In the second suit the plaintiffs claim possession of the defendants' petrol filling station at Barra following breach by the 1st defendant of a Free Management Reseller contract executed by the original parties to the suit. D2500.00 liquidated damages, other just relief and costs. To this claim the defendant Emile entered a defence and counter-claimed for a declaration that the free management contract is inoperative and that he should be discharged from further liability thereunder and damages for breach of contract and costs. 30

I will refer to the two defendants by their first names; Emile the original defendant is the proprietor of the B.P. filling station at Barra and his brother Farid is the proprietor of the Texaco station next door. Farid in his evidence said "I operate my business and that of my brother" and this I believe to be true - he is the prime mover in the businesses carried on by himself and his brother at Barra. 40

Both Emile and Farid have plots of land on lease from the District Authority, but we are only concerned here with Emile's plot. It is the subject of a leasehold grant by the Lower Niimi District Authority for a

term of twenty one years from 10th October 1964 with an option to renew for a like term. It was executed on 23rd February 1965 and contained a proviso that "this lease shall, if not registered at the Colonial Registry within 60 days of the date hereof, be and become void and of no effect". This proviso is more stringent than the provisions of Section 13(e) of the Lands (Provinces) Act Cap.103 which provides that :

In the
Supreme Court

No.48
Judgment

6th April
1977

(continued)

10

"13. A written agreement creating a tenancy of Provinces Land shall be voidable by either party unless -

(e) it is registered within sixty days of execution in the Registry office"

20

The Lease was in fact delivered for registration on the 30th day of August 1966 - eighteen months after execution. It seems to me and I so hold that this became void and of no effect under its terms sixty days after execution namely on 23rd April, 1965.

In 1973 Emile purported to grant to Societe des Petroles BP d'Afrique Occidentale a fifteen years term by way of sub-demise out of his so called lease of one-third of the land comprised in the lease. I will set out the document in full :

30

" This Indenture is made the day of One thousand nine hundred and seventy three BETWEEN EMILE ABORITZ Businessman of Barra Village Lower Nuimi in the North Bank Division of the Gambia (hereinafter called "the Lessor" which expression shall where the context so admits include his heirs and permitted assigns) of the one part and SOCIETE DES PETROLES BP D'AFRIQUE OCCIDENTALE a Limited Company (hereinafter called "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part.

40

WHEREAS :-

50

1. By an indenture of lease dated the 23rd day of February 1965 numbered DI 1L 19 and registered in the Registry of Deeds Banjul Gambia on the 30th day of August, 1966, made between the Native Authority of the said Lower Nuimi District as Lessors of the one part Emile Abouritz as

In the
Supreme Court

No.48
Judgment

6th April
1977

(continued)

Lessee of the other part (which said Lease is hereinafter called "the Head Lease") all that piece or parcel of land described in the said Head Lease (i.e. containing 1,810 square yards or thereabout situate at Barra) and delineated in RED on the map annexed to the Head Lease was demised unto the said Emile Abouritz for the term of 21 years from the 10th day of October, 1964 subject to the reservation conditions and covenants on the part of the Lessee in the Head Lease therein contained

10

2. The consent of the District Authority for the said Lower Nuimi District to the demise hereinafter affected was obtained on the 6th day of April, 1970 - Letter Reference PA/32/DI/(215) refers.

3. The Lessor herein has agreed with the Lessees that in consideration of the demise herein contained the Lessees will pay to the Lessor a rental of D600 per year during all the time Mr. Emile Abouritz (the Lessor) will operate the service station under the terms of a free management contract with BP or D1,800 per year in case BP do not renew the yearly free management contract or otherwise shall be exercisable by the lessees without reference or consultation with Mr. Emile Abouritz (the Lessor). The said rental of D600 or D1,800 per annum as the case may be is payable two yearly in advance and the first of such payment shall be made on the execution of this document.

20

30

NOW THIS INDENTURE WITNESSETH AS FOLLOWS :-

1. The Lessor hereby demises unto the Lessees ALL THAT piece or parcel of land $\frac{1}{3}$ (one third) of the area of 1810 square yards or thereabout situate in Barra Village in the Lower Nuimi District of the North Bank Division of the Gambia or one third of the area named in the indenture of the 23rd day of February, 1965 as indicated on the plan attached hereto to HOLD the same unto the Lessees for a term of 15 years.

40

It is well agreed between the parties that the rent charged by the Kerewan Area Council for the Head Lease of the land remains the responsibility of the Lessor who will settle the same unfailingly at the due date.

The Lessee shall pay the rates assessed on the Petrol Station and the Lessor shall pay the rates assessed on the part occupied by him.

50

The Lessor shall be permitted to build a dwellinghouse on the part of the demised land on the condition that the back wall separating the service station from the said dwellinghouse shall be seven feet.

In the
Supreme Court

No.48
Judgment

6th April
1977

(continued)

10 All equipment and installations (including tanks and all service station materials, e.g. hoists but buildings are excluded) shall remain the property of the lessees and shall be removable by the lessees at the end of the term stipulated herein.

The lessees hereby covenant with the lessor as follows :-

- (a) To erect upon the premises hereby demised within six months from the date hereof at a total cost of not less than D32,500 (THIRTY TWO THOUSAND FIVE HUNDRED DALASIS) a vehicle service and petrol filling station
- 20 (b) Not to commit any act or omit any duty which would make the lessor liable to the forfeiture of his lease and to indemnify the lessor against all liabilities arising from such commission or omission.
- (c) To insure and keep insured all buildings and installations against fire explosion and public liabilities.
- 30 (d) To pay all rates government taxes to which the land is liable except as indicated above
- (e) At the expiration of the term hereby granted to yield up the said premises and all the buildings with the exception of the pumps and tanks and accessories which remain the lessees property
- 40 (f) During the said term of the lease the lessee will be at liberty to execute modifications and new constructions in the service station without asking for authorisation from the lessor provided the project have been approved by the necessary building authorities.

The Lessor his successors or heirs during the duration of this sublease will not :-

- (a) Permit the erection of any non-aesthetic construction on the other half of the land retained by him.

In the
Supreme Court

No.48
Judgment

6th April
1977

(continued)

(b) Allow any commercial activities presenting any risks or fire or explosion on the said portion of land retained by him.

(c) Permit any other Petroleum Company or any Commercial activity which could be considered as competitive to the business of the lessee.

4. The Lessor hereby covenants with the lessees that the Lessees paying the rates and government taxes and observing the covenants on the lessee's part herein contained shall peaceably hold and enjoy the demised premises during the term hereby created without any interruption from the lessor or any person rightfully claiming under him. 10

This lease shall be deemed to come into operation as from 1st day of April, 1969.

The Laws of The Gambia shall govern this Lease. 20

5. All disputes or differences which may arise between the lessor and the lessees touching the provisions hereof or the operation or construction hereof or the rights or liabilities of either party hereunder shall be referred to arbitration by a single arbitrator under the provisions of the Arbitration Act or any statutory re-enactment or modification thereof for the time being in force. 30

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED In the presence
by the within-named EMILE of F.Abouritz
ABOURITZ

The Common Seal of Societe Des Petroles BP D'Afrique Occidentale was hereunto affixed in the presence of: Societe Des Petroles 40
BP D'Afrique Occidentale
2, Av.Albert Sarraut
BP 59
DAKAR

(Sgd) ? ? ?
PRO DIRECTOR

(Sgd) ? ? ?
SECRETARY

The document put in evidence by the plaintiffs is marked as a copy although the signatures of the parties are to be found upon it and its a top not a carbon copy. It has not been denoted as having been stamped, neither does it bear any stamps on its face. It has not apparently been registered and is therefore voidable by either party under the provisions of Section 13 of Cap 103 set out above. Since it has not been dated and no evidence appears to exist as when it was executed presumably it became voidable sixty days after 31st December 1973.

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(continued)

10 On 21st April 1969 Emile was party to an agreement under seal made between himself and Societe des Petroles des Petroles BP D'Afrique Occidentale as follows:-

20 " An AGREEMENT made the 21st day of April One thousand nine hundred and sixty-nine BETWEEN EMILE ABOURITZ of Barra in the North Bank Division, Gambia Businessman, (hereinafter called the Assignor) of the one part and SOCIETE DES PETROLES BP D'AFRIQUE OCCIDENTALE, 2 Avenue Albert Sarraut BP 59 Dakar, with their representative L. BOLON (hereinafter called the

30 Assignees) of the other part

1. The Assignor will sublease Lease Number DI.1/L.19 situate at Barra in the North Bank Division Gambia less $\frac{1}{3}$ (One third) of the area thereof for a term of Fifteen years with an option to be exercised SIX months before the termination of the first term of FIFTEEN YEARS.

40 2. The purposes of this sub-lease is for the Assignees to erect a petrol service station. The ground rent in respect of the main lease shall be payable by the Assignor.

50 3. The rent payable to the Assignor by the Assignees shall be £120 (One hundred and twenty pounds) per year during all the time Mr. Emile Abouritz will operate the service station under the terms of a free management contract with B.P. £360 in case BP does not renew the yearly Free Management Contract to Emile Abouritz The agreed rent shall be payable TWO years

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1977
(continued)

in advance from the date of the
proposed assignment.

4. The Assignor shall be permitted to
build premises on the part not occupied
by the Assignees for the purpose of
the petrol service station consisting
of a minimum distance of 7 (Seven) feet
from the back wall separating the
service station from the planned building
which is kept for safety reason as per 10
attached plan.

5. The Assignees shall pay the rates
in respect of the part occupied by them
and the Assignor for the part occupied
by him as his private residence.

6. Any equipment and installations
(including underground tanks and all
service station materials e.g. hoist
but excluding buildings shall remain
the property of BP and shall be 20
removable at the end of the term
stipulated in the prepared lease.

This agreement is entered into
subject to the Minister of Local
Government Lands and Mines giving his
approval to the proposed sublease.

IN WITNESS whereof the parties have
hereunto set their respective hands
and seals the day and year first above
written. 30

SIGNED SEALED and DELIVERED
by the within-named EMILE
ABOURITZ in the presence (Sgd) E.A.
of : Abouritz

(Sgd) ? ? ?

11, Russel Street,
Bathurst.

SIGNED SEALED and DELIVERED
by the within-named LOUIS
BOLON District Manager 40
for Gambia and Senegal of
the within named Societe
des Petroles BP D'Afrique (Sgd) L.Bolon
Occidentale in the presence
of

(Sgd) ? ? ?

This document was made subject to the Minister's approval of the sublease - but whether such approval was ever given is not disclosed in evidence. The document was not registered and was not stamped until 2nd March 1976.

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Supreme Court

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1977

(continued)

10 A Free Management Reseller Contract was entered into between BP and Emile - apparently in 1970 since Emile said he had business with BP since that year. A carbon copy of the Agreement was put in evidence (Exhibit D). It is under hand and bears original signatures but was not stamped until 10th March 1976 and it is not dated. Not being concerned with land there was no need for it to be registered. At the risk of being prolix, I will set out the agreement as tendered in evidence:

FREE MANAGEMENT RESELLER CONTRACT

20 AN AGREEMENT made the.....
day of.....19 BETWEEN

The SOCIETE DES PETROLES BP D'AFRIQUE OCCIDENTALE, having its registered office at 2, Avenue Sarraut DAKAR (Senegal) (hereinafter called "BP") and represented by :

- P.R. BLANCHARD,

acting in pursuance of the powers delegated to him by BP

OF THE ONE PART,

30 AND

MR. EMIL ABOURIZK of Barra (hereinafter called "the Dealer") and represented by :

- Himself,

in pursuance of the authority he holds for this purpose

OF THE OTHER PART.

40 WHEREAS BP markets petroleum products and other products in the Gambia through his Agent THE GAMBIA MILLING AND TRADING CO. (hereinafter called G.M.T.) having its Office at Bathurst AND WHEREAS BP is Owners of a Service/ Station situated at BARRA (hereinafter referred to as "the Station"), for the sale to the public of the said petroleum products and other products marked by BP (hereinafter referred to as "the Products").

AND WHEREAS BP has agreed to appoint the Dealer

ruling at the place of delivery on the day of delivery and in such quantities that the Dealer may reasonably require.

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(continued)

10

BP shall not be in breach of this agreement on its part contained if at any time it shall be prevented from or hindered or delayed in fulfilling the orders of the Dealer in whole or in part by reason of any strike, lockout, government restriction or shortage of available supplies or any other cause, event or matter not within the reasonable control of B.P.

CLAUSE 3 - RESPONSIBILITIES OF
THE DEALER

20

3.1 At the commencement of this Agreement the Dealer shall enter upon and commence to operate the Station throughout each day and also at night if BP consider it to be necessary during the continuance of this Agreement.

3.2 Purchase of Products

30

The Dealer shall buy from BP or its appointed agents all the products required for sale at the Station, and not buy from any other person, company or firm whatsoever any petroleum or other products for sale at or supply from the Station, and not advertise, sell or expose for sale at the Station any petroleum or other products marketed by any person, company or firm other than B.P., except with the written permission of B.P. The products supplied to the hereunder shall be sold by him under such brand names and trade marks and under such colours as BP may from time to time prescribe. Nothing in this Agreement shall give the Dealer any proprietary right, title or interest in any brand names, trade marks or colours so prescribed. On the termination of this Agreement the Dealer shall discontinue immediately the use in any manner whatsoever of any brand names, trade marks and colours prescribed by BP.

40

50

3.3. The Dealer shall pay for all the products purchased from B.P.'s Agent (G.M.T.) following the terms of payment agreed between the Dealer and G.M.T.

3.4 Resale Price

The Dealer shall sell the products at the Station only. In no case shall the Dealer exceed the retail sales prices notified to him by BP and he shall display such price lists as BP or the competent authorities shall from time to time require to be displayed.

3.5 Station Operating Costs

The Dealer shall be responsible for the cost of all electricity charges connected with the Station, conservancy charges, supply of water whether by a metered supply or by way of a water rate levied by a competent authority all other existing rates and assessments, the rental of a telephone and all telephone calls. 10

3.6 Permits and Regulations

The Dealer shall procure such Municipal and other permits as may be necessary for the operation of the Station and comply with the provisions of all statutes or other instruments having the force of law and with all regulations rules or instructions lawfully issued or given by any authority in respect of or affecting the Station or the business carried on or the storage or use of explosive or inflammable liquids or other substances therein by the Dealer or in respect of any employees of the Dealer. The Dealer shall indemnify BP against all claims and liabilities arising out of any breach of the provisions of this sub-clause. 20 30

3.7 Petroleum Storage Licenses

The Dealer shall apply for or cause application to be made at all proper times to the Licensing Authority for the time being and use his best endeavours to obtain a grant or renewal of the necessary petroleum storage licence and pay all fees and excise duties payable in respect thereof which said fees and excise shall on demand be refunded by BP to the Dealer on production of the said Licence provided that should this Agreement be terminated during the durrency of a licence the Dealer shall repay and hereby agrees to repay to BP 40

the amount paid to him under this sub-clause which the Dealer hereby authorised BP to deduct from any amount due to him at the termination of this Agreement.

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(continued)

3.8 Care and Maintenance

10 The Dealer shall take all proper care of the station and the Equipment and pay to BP on demand any and all charges made by BP under clause 4.2 of this agreement and use all reasonable care to preserve and maintain the Station in good order and keep it in a neat and tidy condition, all to the satisfaction of BP. The cost of all cleaning and other materials necessary for keeping the Station in good order and in the required neat and tidy condition shall be borne by the Dealer.

20 3.9 Access

30 The Dealer shall permit BP, its servants and agents to have access to the Station and the Equipment at all times for the purposes of inspection, maintenances, repair, removal, painting or the placing of advertisements thereon and for any other purpose which BP considers necessary or desirable for the preservation of its property in the proper development of the Station's potential as a Sales Outlet of B.P.

3.10 Advertising

The Dealer shall permit BP to display and maintain on the Station and the Equipment any advertisements BP may consider desirable and not place any other advertisements thereon without the written consent of BP first had and obtained.

40 3.11 Execution

The Dealer shall protect the Equipment from distress, execution, or seizure or any threat or danger of the same respectively and indemnify BP against all losses, damages and expenses arising therefrom.

3.12 Prohibition of Assignment

The Dealer shall not transfer or part with

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(continued)

possession of the Station or the Equipment or any part thereof nor assign or in any way divest himself of all or any of his rights and obligations under this Agreement nor leave the Station or any part thereof unattended nor enter into any agreement to do any of the foregoing things detailed in this sub-clause without the written consent of BP first had and obtained.

10

3.13 Removal of Equipment

The Dealer shall not remove or permit to be removed the Equipment or any part thereof from the Station without the written consent of BP.

3.14 Claims by third Parties

The Dealer shall indemnify and keep indemnified BP against theft from the Station and all claims, damages, losses and expenses of every kind arising out of or connected with the servicing repair, maintenance and refuelling of motor vehicles and engines and the driving of any motor vehicles by himself, his agents or any member of his staff outside the station.

20

3.15 Staff

The Dealer shall maintain at all times an efficient staff for the proper and efficient operation of the Station. BP shall have the right to draw attention to the inefficiency of any member of the Dealer's staff whereupon the Dealer shall take such steps as BP in its sole discretion considers necessary, such necessary steps being advised by BP to the Dealer in writing.

30

3.16 Unauthorised Use

The Dealer shall not permit any person other than the Dealer and BP (and their servants and agents) and customers, to be or remain upon the Station and in particular, but without derogating from the generality of the foregoing, nor allow any petty traders upon the Station without the written consent of BP first had and obtained.

40

3.17 Nuisance

The Dealer shall not do or suffer anything

to be done upon the Station or any part thereof which in the opinion of BP is or may become a nuisance to BP or to third parties.

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3.18 Training

- 10 (i) The Dealer shall permit BP, its servants and agents to have access to the Station at all reasonable times for the purposes of training and advising all personnel involved in the operation of the Station or in the selling of petroleum and other products therefrom, and shall
- (ii) permit BP, its servants and agents to use the Station for the express purpose of training its staff, servants or agents at any time and for any period

3.19 Stocks

- 20 The Dealer shall maintain always stocks of petroleum products sufficient to supply the requirements of all customers during the normal hours of operation as stipulated in sub-clause 3.1 herein, or such stocks as BP shall in its sole discretion from time to time consider adequate to ensure the proper development of the Station, unless at the time of any request for supplies BP or its agents shall be unable to supply a sufficient quantity of any product. It shall be deemed a breach by non-performance of this Agreement for the purposes of sub-clause 2.2 hereof (but without prejudice to the generality of that sub-clause) if the Dealer shall fail to requisition BP or its agents for a fresh supply within 24 hours of having run out of supplies of any product. It is further agreed that
- 30 BP, its agents and servants shall have the right at all reasonable times to check the stocks maintained by the Dealer provided that such checks take place in the presence of the Dealer or any responsible member of his staff.
- 40

3.20 Sale of Accessories

- 50 The Dealer shall at the request of BP or with the prior consent of BP confirmed by letter, undertake to sell Motor tyres and tubes, batteries or such other articles as BP or the Dealer shall from time to time

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(continued)

consider necessary, all such articles being supplied to the Dealer by a person or firm so authorised by BP, on such terms and conditions as BP may in its sole discretion from time to time determine.

3.21 Accounts

The Dealer shall punctually make true proper and correct entries of all his transactions in the books of Accounts as required by BP which books shall be available at all reasonable times for inspection by BP, its agents and servants and furnish BP with such returns as it shall from time to time require. 10

3.22 Production of Permits and Receipts

The Dealer shall when called upon by BP, produce evidence that he has obtained and paid for the permits referred to in sub-clause 3.6 and that he has paid all the costs and charges referred to in sub-clause 3.5. 20

3.23 Supply to BP's customers

The Dealer shall at the request of BP supply to BP and its customers from his stocks of petroleum products such quantities as shall be specified on BP's approved order form or the customer's local purchase order. The price which the Dealer shall receive from BP for this Service shall be determined by agreement between BP and the Dealer prior to any such supply being made. 30

3.24 B.P's Stocks

If BP so require the Dealer shall stock such quantities of its products as BP may from time to time require the property therein remaining with BP and account for such stocks in a manner to be prescribed by BP. 40

3.25 Insurance

Effect insurance to cover fire explosion and third party risks on the Station and damages caused to the Equipment by third parties on the Station.

3.26 Rentage of the Station

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(continued)

The Dealer will pay a yearly rentage to BP amounting to £120 starting one year after the official opening of the station based on the technical acceptance receipt date of signature.

- 10 3.27 In deviation to the sub-clause 3.26 BP will not apply for payment if the yearly total sales of products reach 40,000IG. If the Dealer do not reach 40,000IG yearly sales he will be bound to pay rentage according to the pro-rata of sales done.

CLAUSE 4 - EQUIPMENT

- 20 4.1 The Equipment listed in the attached Inventory and as added thereto from time to time shall be and shall at all times remain the property of BP unless and until purchased by the Dealer under the terms of any special Agreement entered into between BP and the Dealer.

- 30 4.2 All repairs to and replacements of parts of the Station and the Equipment including, without prejudice to the generality of the foregoing, painting and decorating the Station and the Equipment, shall be carried out by BP as it considers necessary provided that if in any case it appears to BP that any repair or replacement is necessary because of damage or loss caused by or resulting from an act of negligence of the Dealer or his servants, agents, independent contractors or customers, BP shall be entitled to recover the cost of the repair or the replacement, as the case may be, from the Dealer. At the end or sooner termination of this Agreement the Dealer shall yield up to BP possession of all
40 the Equipment, other than the Equipment purchased under the terms of any special Agreement entered into between BP and the Dealer and all other property of BP on the Station.

CLAUSE 5 - LIMITATION OF AGREEMENT

Nothing herein contained shall be deemed to constitute a partnership between the parties hereto or to constitute the Dealer a tenant of BP.

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(continued)

CLAUSE 6 - TERMINATION IN THE EVENT
OF LIQUIDATION OR DEFAULT

Notwithstanding anything to the contrary expressed or implied elsewhere herein BP (without prejudice to any other rights or remedies available to it hereunder) may terminate this Agreement forthwith on giving to the Dealer notice in writing to that effect in the event that :

- (a) the Dealer commits any acts of bankruptcy, compounds with his creditors or allows execution, to be levied upon his property following the judgment of a court of law, or being a Company shall go or threaten to go into liquidation or if a petition for its winding-up be presented to the Court. 10
- (b) there is any breach or non-performance by the Dealer of any of the terms and conditions of this Agreement. 20
- (c) BP is dissatisfied with the manner in which the Station is being operated.

CLAUSE 7 - VACATION ON TERMINATION

At the end or sooner determination of this Agreement the Dealer shall vacate the Station within 48 hours of receipt of notice of termination from BP and yield up to the BP its possession thereof provided that should the Dealer fail to quit and deliver up possession of the Station on expiry of such notice he shall pay to BP the sum of £500 by way of liquidated damages for such failure. 30

CLAUSE 8 - LIMITATION ON ASSIGNMENT

This Agreement shall be binding upon and enure to the benefit of the parties hereto only, to the exclusion of any other person or persons. It shall not be assigned in whole or in part by either party without the previous consent in writing of the other party except that no such consent shall be required in the case of an assignment either in whole or in part by BP to any subsidiary company of it or of the British Petroleum Company Limited. 40

CLAUSE 9 - FORCE MAJEURE

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Supreme Court

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1977

(continued)

10 No failure or omission to carry out or observe any of the stipulations or conditions of the Agreement shall except as herein expressly provided to the contrary give rise to any claim against either party or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of either party.

CLAUSE 10 - NOTICES

Any notice requiring to be served under this Agreement shall be sufficiently served on BP if sent by registered post to its registered office and on the Dealer if delivered personally or sent by registered post to the Station or to his usual or last known address.

CLAUSE 11 - FORBEARANCE

20 No neglect delay or indulgence on the part of BP in enforcing any of the terms or conditions of this Agreement and no forbearance or relaxation or granting of time to the Dealer by BP in any way affect diminish restrict or prejudice the rights and powers of BP under this Agreement or operate as or be deemed to be a waiver of any breach by the Dealer of the terms and conditions of this Agreement.

30 CLAUSE 12 - INTERPRETATION

This Agreement shall be read and construed in all respects in accordance with the laws applicable in The Gambia.

AS WITNESS the hands of the authorised representative of BP and the Dealer the day and year first above written.

40 SIGNED BY Louis Bolon (Sgd) L.Bolon
for and on behalf of the
within-named SOCIETE DES
PETROLES BP D'AFRIQUE
OCCIDENTALE in the
presence of :-

Witness' signature: (Sgd) W.Martin
Name in Block Letters: W. MARTIN
Occupation: Chartered Accountant
Address: 11 Russell Street, Bathurst.

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(continued)

Either A. For persons literate in the English Language

SIGNED by the within-)
named.....) E.Abouritz
.....)
in the presence of:-)

Witness' Signature: W.Martin (Sgd)
Name in Block Letters:
Occupation:
Address:

10

On 25th March 1974 a sub-lease was granted by Emile to BP in exactly the same terms as the abortive document of 1973 to which I have already referred and which has already been set out in this judgment. This fresh document differing from the former only in date, was stamped on 10th April 1974 and submitted for registration on the same day. Under paragraph 10(1) of the Land (Registration of Deeds) Act Cap 101 an instrument required to be registered shall be acknowledged by the Lessor (in the case of a lease or sublease) or proved upon oath by one or more of the subscribing witnesses. In this case the witness was Farid and he has not been to the Registry to prove the execution of the deed by his brother. The registration is therefore, incomplete, and this document not having been registered within the required sixty days is voidable at the instance of either party.

20

30

As will be seen the position between the parties so far as property dealing goes is confused and it seems to me the blame for this confusion must be laid upon the Abouritz brothers, whose attitude throughout the case I regret to say did not appear to me to be motivated by any desire to help the court to arrive at the truth.

Whatever may be the true legal position between Emile and BP as evidenced by the various documents to which I have referred, BP for their part built and equipped a petrol filling station and began to supply petroleum to Emile.

40

The vehicle, or one of those, used to deliver supplies was GA 9219. There is of course confusion about who owns this vehicle. Farid in evidence said "our tanker brought it" (the petrol) - my brother's

50

10 tanker". Emile said "GA 9219 is owned by my elder brother. My elder brother gave me the money. I paid half he paid half - BP gave me half. He took his from his own money. £1700 is what it cost. Registered in my name BP guaranteed me to the International Bank of Commerce and Industry. It would appear that BP guaranteed Emile's account with BICI and in due course had to honour the guarantee to the tune of D1678.64.

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20 The sum of D3600.00 is claimed in respect of BP's hire of their vehicle from Emile but it seems to me that it is a closed transaction and in any event no bill for the vehicle's hire was ever submitted to BP. Credit was given by BP in the sum of D1661.00 in respect of work done by GA 9219 and when the guarantee to the International Bank for Commerce and Industry of D1678.64 was paid D17.64 remained owing by Emile.

The trading arrangements between BP and Emile were not eventually to the satisfaction of BP who in 1975 issued the writs which began these actions.

The claim in 1975-A-6 is for D21,129.00 supported in evidence by delivery notes and invoices as follows :-

30	Invoice No.	301991	amount	61.20
		303003	"	3078.00
		302014	"	61.20
		302024	"	3111.00
		302036	"	61.20
		302064	"	3111.00
		302195	"	61.20
		302205	"	3078.00
		302213	"	61.20
		302301	"	3011.20
40		302350	"	61.20
		302353	"	3111.00
		302364	"	3078.00
		302537	"	61.20
		302555	"	61.20
		302648	"	61.20
				<hr/>
				21129.00
				<hr/>

50 The system of supply and billing was by monthly statements and a running statements of account with balances carried over was not sent to the defendant because that was not the method used in this case. Total payments by Emile

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6th April 1977

(continued)

during the relevant period - 1974 - totalled D107,819,93: I am satisfied that he still owes 21,129.00 as claimed on the writ.

I am also satisfied that the Free Management Reseller Contract has been breached by Emile's failure to pay what he owes to BP and that the D2500.00 liquidated damages are payable to BP.

The claim for possession presents some difficulty. I summarize the position - it seems to me that all of the documents of title are suspect.

10

The District Authority lease out of which the various attempted sub-demises spring is void and of no effect under its own terms for want of registration within the strictly prescribed time limit and as the head lease falls all sub-leases under it must fall.

The sub-demise (Exhibit C) of 1973 was never registered and is voidable. In any event the parties apparently disregarded it because they entered into the sub-demise of 21st April 1969; this in turn was disregarded when the parties entered into yet another sub-demise in terms identical to that of 1973 on 25th March 1974 which has not yet been registered and is therefore voidable - assuming that it had sprung from a lease which itself was not void.

20

30

A further complication is that the District Authority apparently approved the sub-demise by a letter of 6th April 1970 of the void head lease.

The petrol station the building of which was the object of these manoeuvres was in fact built at BP's expense and operated until petrol supplies were withheld by BP and thus it seems to me that BP must be the tenant in equity of the station of the basis of the agreement between the parties evidenced by the legally abortive succession of documents signed by the parties. BP as tenants of Emile on a fifteen year sub-demise are entitled to quiet enjoyment and if they do not want him running their station for them they only have to ask him to go. With some reluctance, I admit, I will make an order for possession but only to the extent that BP may enjoy the benefit of their tenancy from Emile their landlord.

40

50

I now turn to the counter-claim and would here remark that any accurate assessment of the financial situation between Emile and BP from the stand point of Emile is virtually impossible since Emile on his own admission keeps no books. This I might add in spite of a specific requirement that he should keep books in paragraph 3.21 of the Free Management Reseller Contract.

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(continued)

10

The substance of the counterclaim is this - in the year in question 1974 - Emile paid D107,816.83 to BP but only received D79,106.25 worth of petroleum products leaving a balance due to him of D28,710.58. I am unable to relate this sum produced by an accountant, Mr. L.L. Thomasi who looked at the documentation such as it was on behalf of Mr. Abouritz while the trial was proceeding to the sum of D90,925.83 claimed in the counterclaim in Suit No. 1975-A-6.

20

In coming to a decision on the sum of D28,710.58 already mentioned it has been necessary for me to look into all the figures on all the documents in evidence as an accountant might do and I confess that I am no expert with figures.

30

The vital documents it seems to me, are Exhibits A, H, V5 and AA1 - 4. Exhibit A sets out the unpaid invoices on which the claim of BP is based and Exhibit H sets out the position between the parties immediately prior to the period represented in Exhibit A; in fact it will be noticed that the last four invoices on Exhibit H (301991, 302003, 302014 and 302024) totalling D6311.40 appear on Exhibit A as the first four invoices on that document for the reason that the cheque tendered in payment of this sum of D6311.40 was referred to drawer and remains unpaid and is in evidence as Exhibit F. These four invoices appear on Exhibit AA2 put in by Emile, as part of supply duly received as do all the other invoices set out in Exhibit A the basis of the claim.

40

50

The transactions set out in Exhibit H relate to 1974 as do those on Exhibit A and they are transactions which BP regard as closed. Emile says that in that year he was billed for supplies not received but it seems to me that there is no evidence before me that this is so. Certainly a number of the

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(continued)

invoices set out in Exhibit H do not appear in Exhibits AA1 and 2 but Emile paid some twenty cheques in respect of these debits in the course of the year totalling D137,308.63 less cheques returned of D29,488.80 - a net D107,819.83 and it follows it seems to me that the undelivered items must appear on Exhibit A but Emile had already drawn a cheque in respect of the first four items on Exhibit A and the invoices 10 set out in Exhibit A are in evidence as a bundle marked Exhibit F most of which are signed by Jallow Gassame, Emile's driver or Emile himself. I cannot find on the evidence that there has been short delivery or breach of contract by BP and the counter-claims in both actions are dismissed with costs.

There will be judgment for the plaintiff company BP against Emile Abouritz in both actions in the sum of D21,129.00 plus D2500 - in all D23,629.00 with costs. An order is made for possession of the BP Station at Barra and the defendant shall give quiet enjoyment to BP for the residue of the agreed term.

20

Mr. Farid Abouritz is dismissed from the suit with his costs.

6th April, 1977

(Sgd) Phillip Bridges
CHIEF JUSTICE

No. 49

In the Court
of Appeal

NOTICE AND GROUNDS
OF APPEAL

No.49
Notice and
Grounds of
Appeal

IN THE GAMBIA COURT OF APPEAL

12th April
1977

CIVIL APPEAL NO. 3/1977

BETWEEN:

EMILE ABOURITZ APPELLANT

AND

10

BRITISH PETROLEUM
LIMITED RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the decision of the Supreme Court contained in the judgment of the Learned Chief Justice dated the 6th day of April, 1977 doth hereby appeal to the Gambia Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

20

AND the Appellant further states that the name and address of the persons directly affected is that set out in paragraph 5.

2. The whole judgment of the Supreme Court dated 6th day of April, 1977.

3 GROUNDS OF APPEAL

30

- (i) That the learned Chief Justice erred in law when he held that the Respondents are tenants in equity on the basis of "legally abortive succession of documents" signed by the parties.
- (ii) That the learned Chief Justice erred in law when he failed to hold that the Respondents were in breach of several clauses of the "Free Management Reseller Contract".
- (iii) That the learned Chief Justice erred in law when he failed to aver whether the Respondents made a demand for the sum alleged to be owed by the Appellant.

In the Court
of Appeal

No.49
Notice and
Grounds of
Appeal

12th April
1977

(continued)

- (iv) That the learned Chief Justice was wrong when he held that the Appellant still owes D21,129.00 without satisfying himself whether "a running statement of account with balances carried over" existed between the parties.
- (v) That the learned Chief Justice erred in law when he failed to hold that the "Free Management Reseller Contract" was unoperative and void. 10
- (vi) That the learned Chief Justice took into account matters not in evidence when he held that the station was "in fact built at B.P. expense and operated until petrol was withheld by B.P."

4. RELIEF SOUGHT FROM THE GAMBIA
COURT OF APPEAL

To set aside the judgment of the Supreme Court and enter judgment in favour of the Appellant, on his counter-claim, both with costs. 20

PERSONS AFFECTED BY THE APPEAL

BRITISH PETROLEUM LIMITED,
16, Wellington Street,
Banjul, The Gambia.

DATED AT BANJUL, this 12th day of April, 1977.

(Sgd) Pap Cheyasin O.Secka
Boye Sajo's Chambers, 30
60, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPELLANT

No. 50

MOTION TO STAY
EXECUTION

In the Court
of Appeal

No.50
Motion to
Stay Execution

12th April
1977

IN THE GAMBIA COURT OF APPEAL

G.C.A. NO. 3/1977

BETWEEN:

EMILE ABOURITZ APPELLANT/
 APPLICANT

AND

10

BRITISH PETROLEUM
LIMITED RESPONDENTS

MOTION TO STAY EXECUTION OF JUDGMENT

20

TAKE NOTICE that the Court will be moved on the day of 1977 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by PAP CHEYASSIN OUSMAN SECKA, Counsel for the Applicant/Appellant that this Honourable Court may be pleased to make an order staying execution of the judgment in the above suit, dated 6th April, 1977, until the determination of the appeal, on such terms and conditions as this Honourable Court may deem just and expedient.

DATED AT BANJUL this 12th day of April, 1977

(Sgd) Pap Cheyassin O.Secka
of BOYE SAJO'S CHAMBERS,
60, Buckle Street,
Banjul, The Gambia.

30

SOLICITOR FOR THE APPELLANT/
APPLICANT

The Master and Registrar,
The Supreme Court,
Banjul, The Gambia.

In the Court
of Appeal

No. 51

No.51
Affidavit of
Emile Abouritz

AFFIDAVIT OF EMILE
ABOURITZ

12th April
1977

IN THE GAMBIA COURT OF APPEAL

G.C.A. No. 3/1977

BETWEEN:

EMILLE ABOURITZ

APPELLANT/
APPLICANT

AND

BRITISH PETROLEUM
LIMITED

RESPONDENTS

10

A F F I D A V I T

I, EMILLE ABOURITZ of Barra, Lower
Niuni District, North Bank Division, a
Businessman, and of Gambian Nationality,
make oath and say as follows :-

1. That I am the Applicant/Appellant
herein.
2. That on the 6th day of April, 1977,
judgment was given against me in the
above suit by the learned Chief
Justice, in the sum of D23,629.00 and
costs; and the Respondents were also
given possession of the station. 20
3. That I have instructed by Solicitor,
Pap Cheyassin Secka of Counsel to
appeal this judgment and such notice
of appeal has been filed today.
4. That the appeal is bona fide and
involves substantial questions of law. 30
5. That I undertake to maintain the
status quo and to do nothing in
respect of the subject matter of the
suit until the hearing of the appeal
or further order by this court.
6. That I intend to prosecute the said
appeal with diligence.
7. That I make these statements to the
best of my information, knowledge and
belief. 40

(Sgd) E.A.Abouritz
D E P O N E N T

In the Court
of Appeal

SWORN AT BANJUL, this
12th day of April, 1977

BEFORE ME

(Sgd) O.S.Batchilly
COMMISSIONER FOR OATHS

No.51
Affidavit of
Emile
Abouritz

12th April
1977

(continued)

No. 52

JUDGMENT

No.52
Judgment

15th
November 1979

10 IN THE GAMBIA COURT OF APPEAL

Coram: Hon. Mr.Justice S.J.
Forster - Justice of Appeal
Hon. Mr.Justice E.
Livesey Luke - Justice of Appeal
Hon. Mr.Justice P.D.
Anin - Justice of Appeal
Civil Appeal No. 3/77

BETWEEN:

EMILE ABOURITZ APPELLANT

AND

20 BRITISH PETROLEUM
LIMITED RESPONDENTS

P.C.O.Secka for the Appellant
Alhaji A.M.Drameh for the Respondents.

Judgment delivered on the 15th day of
November 1979 Livesey Luke, J.A.

30 By a Lease dated 23rd February, 1965
and expressed to be made between the Lower
Nuimi Native Authority for the Lower Nuimi
District in the Lower River Division of the
Gambia of the one part and Emile Abouritz of
the other part a piece of land situated at
Barra was demised to Emile Abouritz for a
term of twenty one years from the 10th day of
October, 1964 with an option of twenty one years.

In the Court
of Appeal

No.52
Judgment

15th November
1979

(continued)

On 21st April, 1969 Emile Abouritz (hereinafter referred to as the "Appellant") entered into a written Agreement to sub-lease part of the land to Societe Des Petroles B.P. D'Afrique Occidentale (hereinafter referred to as the "Company") for a term of fifteen years for the erection of a petrol service station. This Agreement contemplated that under certain circumstances the appellant would operate the service station when completed under the terms of a "Free Management Contract" with the Company. Sometime in 1973 the appellant and the Company executed a Deed of Lease whereby the same land covered by the Agreement dated 21st April, 1969 was sub-leased to the Company for fifteen years. It was expressly provided that the sub-lease shall be deemed to have come into operation as from 1st April, 1969. The Company covenanted to erect a vehicle service and petrol filling station on the demised land. The sub-lease also contemplated that in certain circumstances the appellant would operate the service station under the terms of a "Free Management Contract" with the Company. According to the evidence the Free Management Reseller Contract between the Company and the appellant was signed sometime in 1969. According to the Free Management Reseller Contract the appellant was appointed Dealer to operate the service station upon the terms and conditions set out in the contract. The Company completed construction of the service station early in 1970, the appellant was put into possession and he started operating the service station. Business dealings between the Company and the appellant appear to have proceeded normally until the latter part of 1974 when a dispute arose regarding the payment for supplies. On 24th January 1975 the Company issued two writs of summons against the appellant numbered Civil Suit No.1975-A-6 and Civil Suit No. 1975-A-10 respectively (hereinafter referred to as the first suit and the second suit respectively). In the first suit the claim was for the sum of D21,029 being the "balance of price of petrol products sold and delivered to the defendant". In the second suit the claim was for "possession of the defendant's petrol station situate at Barra Village North Bank Division The Gambia he having breached the Free Management Reseller Contract executed by the parties hereto".

The Company duly filed statements of

claim in both suits. Only paragraphs 2 and 3 of the Statement of Claim in the first suit are of importance and they are in the following terms :-

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(continued)

"2. That the plaintiffs supplied the defendant with petrol and other petroleum products at his station at Barra Village North Bank Division aforesaid.

10 3. That the defendant paid the price of the products supplied and delivered to him by the plaintiffs except the sum of 21,029 Dalasis which the defendant refused and is refusing to pay despite repeated demand."

20 In answer to request for further and better particulars of that Statement of Claim the Company filed and served a Statement of Account giving particulars of goods supplied between 26th August 1974 and 13th December, 1974. The appellant filed a Defence and Counterclaim dated 12th July, 1975. In his defence the appellant denied the debt. In his counterclaim the appellant claimed inter alia :

- 30 (a) damages for breach of contract;
(b) D90,925.83 being money paid and received by the plaintiff (i.e. Company) from the Defendant (i.e. appellant) for the supply of petrol and petroleum products;
(c) D3,600 being money the plaintiffs owed the defendant for the hire of the defendant's tanker.

In its defence to the counterclaim the Company inter alia denied owing the appellant the sums claimed in the counterclaim.

In the amended Statement of Claim in the second suit the Company averred inter alia :-

40 "2. The Plaintiffs (i.e. the Company) and the Defendant (i.e. the appellant) entered into a Free Management Reseller Contract one of the clauses of which has been breached in that the defendant negligently caused the said petrol station to be closed for the sale of all petroleum products for more than two months without just cause, the plaintiffs being "dissatisfied in the manner in
50 which the station is being operated.".....

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(continued)

4. That the said station has been closed by the Defendant because he can procure no further supplies from the plaintiffs nor can he from elsewhere".

The Appellant filed a Defence and Counterclaim dated 14th July, 1975 to the Statement of Claim just referred to. In his defence, the appellant pleaded inter alia :-

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"2. In respect of paragraph 2 of the Statement of Claim save that the Defendant admits a Free Management Contract was entered into between the parties the Defendant does not admit either that the agreement was entered into two months preceding the date of filing the writ or that he was in breach of any of the terms of the contract.....

20

4. The Defendant admits paragraph 4 of the Statement of Claim and will contend that it was the act or omission of the plaintiffs which made it impossible for him to operate the station under the terms of the Free Management Contract aforesaid".

In his counterclaim the appellant inter alia averred :-

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"2. It was a term of the Free Management Contract that the plaintiffs were to supply the defendant with petrol or other petroleum products.

4. The Plaintiffs by wrongfully refusing to supply the defendant, frustrated the further operation of the Agreement".

The appellant counterclaimed :-

- "(a) for a declaration that the Free Management Contract is inoperative and that the defendant is discharged from further liability under it;
- (b) general damages for breach of contract."

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On the application of Counsel for the Company an order was made on 9th January, 1976 consolidating the two suits. The trial

commenced on that same date before Sir Phillip Bridges, C.J. The learned Chief Justice delivered judgment in favour of the Company on 6th April, 1977 for D21,129 in respect of the first suit and for D2,500 liquidated damages and for possession of the petrol station at Barra in respect of the second suit. It is against that judgment that the appellant has appealed to this Court. Several grounds of appeal were filed on behalf of the appellant and argued by learned counsel on both sides. But the main issues arising in this appeal may be summarized thus :-

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(continued)

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(i) Did the Company prove that the appellant owed the sum of D21,129 or any other sum on the date of the issue of the writ?

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(ii) Did the appellant commit any breach of the terms of the Free Management Reseller Contract entitling the Company to stop supplying the appellant petrol and petroleum products?

(iii) In any event was the Company entitled to stop supplying the appellant petrol and petroleum products?

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(iv) Was the Company entitled to possession of the petrol station at Barra?

(v) Did the Company commit any breach of contract?

(vi) If the appellant was in breach, what damages is the Company entitled to?

(vii) If the Company was in breach, what damages is the appellant entitled to?

40

I propose to deal with these issues seriatim.

With regard to the first issue, it is pertinent to recall that the Company alleged in its statement of claim that the appellant was owing it the sum of D21,029 in respect of petrol and other petroleum products supplied and delivered to the appellant and that in his Defence the appellant denied that allegation. In those circumstances, the burden

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(continued)

was clearly on the company to prove the allegation. How did the Company set about discharging this burden?

At the trial the Company called the Manager of its Gambia branch, Momodou Babucarr N'Jie. He produced a number of documents which were admitted in evidence, including :-

- Exhibit 'A' Statement of Account of the Company's supplies to the appellant for period 26th August 1974 to 13th December 1974. 10
- Exhibit 'B' Summary of deliveries to the appellant not paid for.
- Exhibit 'C' A copy of the sub-lease of the appellant's land at Barra expressed to be made between the appellant of the one part and the Company of the other part 20
- Exhibit 'D' The Free Management Reseller Contract expressed to be made between the Company of the one part and the appellant of the other part
- Exhibit 'F' File containing Delivery Notes, Invoices, Monthly clients advice etc. for period August to December, 1974. 30
- Exhibit 'H' List of total receipts from the appellant in 1974.
- Exhibit 'L' File containing Statements of Account, Invoices, Delivery Notes, Letters etc. for period January to December, 1974.

The witness gave no evidence of the delivery of any of the petrol or other petroleum products during the period covered by the claim or at any other time. And no other witness was called to prove delivery. Admittedly delivery notes in respect of the relevant period were included in Exhibit F and delivery notes in respect of other periods in 1974 were included in Exhibit L. But 40

surely the mere production of a delivery note cannot conceivably be accepted as proof of delivery. In my opinion if the company intended to rely on the delivery notes as proof of delivery of goods specified therein, it should have gone further and led evidence that the delivery notes were signed by the appellant himself or by his servant or agent or that the appellant or his servant or agent otherwise acknowledged the receipt of the goods. No such evidence was led. Indeed at the close of the case for the Company, no evidence had been led to prove the debt claimed. The appellant's case was that he did not owe the Company any money in respect of goods supplied during the relevant period or at any other time. The appellant maintained that on the contrary the Company was owing him as a result of over-payments made by him to the Company. According to the appellant's case, the cause for the over-payments was the persistent failure of the Company to render Statements of Account of the dealings between the appellant and the Company. The appellant called Louis Lucien Thomassi, an accountant who tendered in evidence various documents including Exhibits AA1, AA2, and AA3. Exhibits AA1 and AA2 are statements prepared by the accountant of supplies "duly received" by the appellant from the Company for the periods 12th January to 6th August, 1974 and 26th August to 13th December 1974 respectively giving details of the date of receipt, delivery note number, invoice number and the value of each item. The total value of the receipts on Exhibits AA1 and AA2 is D58,038.45 and D21,067.80 respectively. In my judgment those were clearly admissions by the appellant of deliveries of the items listed in the respective statements (i.e. Exhibits AA1 and AA2). Exhibit AA2 covers the period in respect of which the company has claimed in the first suit. So Exhibit AA2 amounts to an admission by the appellant that during the period covered by the claim the company delivered to him petrol and other petroleum products to the value of D21,067.80. In normal circumstances, on the basis of that admission, the company would be entitled to judgment for the amount admitted i.e. D21,067.80. But the position is not as simple as that. Apart from making admissions of receipt in Exhibits AA1 and AA2, the appellant also, through his accountant, tendered in evidence

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(continued)

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(continued)

Exhibit AA3 listing payments made by the appellant to the Company during the period January to December, 1974 and giving particulars thereof. The total payments listed amount to D107,816.83 - far in excess of the total of the amounts admitted in Exhibits AA1 and AA2. In this connection it is relevant to state that the Company tendered in evidence a statement of total receipts from the appellant in 1974 (i.e. Exhibit H). According to that Statement the total amount admitted to have been received by the Company from 14th January to 31st December 1974 is D107,819.83, an amount far in excess of the total of the amounts admitted by the appellant in Exhibits AA1 and AA2. In my judgment the position even at the close of the defendant's case in the Court below was that notwithstanding admissions made by the appellant the company still failed to prove that the appellant owed it the amount claimed in the first suit or any amount at all. In the circumstances that claim should have been dismissed and the learned Chief Justice erred in giving judgment for the Company on that claim.

I shall now deal with the claim of the appellant for D90,925.83 "being money paid and received by the Plaintiffs from the Defendant for the supply of petrol and petroleum products, which said petrol and petroleum products the Plaintiffs did not supply". According to paragraph 8 of the Counterclaim to the first suit this claim was in respect of the period January 1974 to December 1974 and the allegation in support of that claim was that the appellant made a total payment of D108,854.83 to the Company and the Company supplied products to the total value of D17,929 during that period. The appellant sought to prove this claim by Statements of Accounts prepared by his Accountant of amounts paid to the Company and of goods received by the appellant from the Company during that period. The relevant Statement of Accounts are Exhibits AA1, AA2, AA3 and AA4, the last being a summary of the first three. According to the summary the appellant paid the company a total of D107,816.83 and was supplied products to the total value of D79,106.25 during the period, thereby resulting in an overpayment of D28,710.28 by the appellant to the Company. The question of the total payment made by the appellant to the Company during the period is not in dispute. According to Exhibit H

prepared by the Company, the Company admitted receiving from the appellant payments amounting to D107,819.83 during the period 14th January to 31st December, 1974 and the learned Chief Justice found that the total payments by the appellant during the period amounted to D107,819.93. In my opinion therefore the only question in dispute is whether the Company supplied products to the value of the total payments made. As stated earlier, the Company led no evidence to prove delivery of products during the relevant period. The only evidence that can be relied upon to prove delivery is the admission of the appellant. According to Exhibits AA1, AA2 and AA4 the appellant admitted receiving products to the total value of D79,106.25 during the period. But according to another Statement of Account prepared by the appellant's Accountant and dated 22nd June, 1976, products to the total value of D96,511.25 were listed as having been received by the appellant during the period. For some inexplicable reason that Statement of Account was not tendered in evidence at the trial. It was however tendered in evidence before an Inquiry held by the Master and Registrar pursuant to an order of this Court dated 22nd November, 1978, and was marked "B". In that Statement the Accountant listed several deliveries made to the appellant by the Company during the relevant period, the relevant delivery notes and supporting invoices of which are to be found in Exhibits F and L.

In his argument before this Court Learned Counsel for the appellant relied on that Statement of Account. Indeed learned counsel's argument proceeded on the basis that that Statement of Account was true and correct. The resulting position is that the appellant now admits that he received products to the total value of D96,511.25 during the relevant period. As stated earlier the Company admitted receiving a total of D107,819.83 from the appellant during the relevant period. So unless there is evidence that the Company delivered to the appellant goods to that value, or the Company can justify its failure to deliver goods to that value, then the Company is liable to the appellant for the difference between the amount paid and the value of the goods supplied. Except for the admissions of the appellant made by his Accountant, there is no evidence of any delivery made to the appellant during the relevant period, and the Company has not

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(continued)

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(continued)

led any evidence or sought to justify the failure to make delivery. In my judgment therefore the appellant is entitled to judgment for the difference between D107,819.83 (i.e. the amount admitted received by the Company) and D96,511.25 (i.e. the value of the goods admitted received by the appellant) i.e. D11,308.58.

I shall now proceed to consider the third issue formulated above. 10

In answer to request for further and better particulars of his Statement of Claim in the second suit the Solicitor for the Company delivered and filed Further and Better Particulars dated 10th July, 1975. In paragraph 2 thereof, the following clauses of the Free Management Contract are listed as having been breached by the appellant :-

Clauses 3.1; 3.2; 3.3; 3.19; 3.24 and 6(b) and (c). It will be convenient to set out those clauses. They are in the following terms :- 20

Operations

"3.1 At the commencement of this Agreement the Dealer shall enter upon and commence to operate the Station throughout each day and also at night if B.P. Consider it to be necessary during the continuance of this Agreement.

3.2 Purchase of Products 30

The Dealer shall buy from B.P. or its appointed agents all the products required for sale at the Station, and not buy from any other person, company or firm whatsoever any petroleum or other products for sale at or supply from the Station, and not advertise, sell or expose for sale at the Station any petroleum or other products marketed by any person, company or firm other than B.P., except with the written permission of B.P. The products supplied to the Dealer hereunder shall be sold by him under such brand names and trade marks and under such colours as B.P. may from time to time prescribe. Nothing in this Agreement shall give the Dealer any proprietary right, title or interest in any brand names, trade marks or colours so prescribed. On the 40 50

termination of this Agreement the Dealer shall discontinue immediately the use in any manner whatsoever of any brand names, trade marks and colours prescribed by B.P.

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1979

(continued)

10 3.3. The Dealer shall pay for all the products purchased from B.P.'s Agent (G.M.T.) following the terms of payment agreed between the Dealer and G.M.T.

3.19 Stocks

20 The Dealer shall maintain always stocks of petroleum products sufficient to supply the requirements of all customers during the normal hours of operation as stipulated in sub-clause 3.1 herein, or such stocks as B.P. shall in its sole discretion from time to time consider adequate to ensure the proper development of the Station, unless at the time of any request for supplies B.P. or its agents shall be unable to supply a sufficient quantity of any product. It shall be deemed a breach by non-performance of this Agreement for the purposes of sub-clause 2.2 hereof (but without prejudice to the generality of that sub-clause) if the Dealer shall fail to requisition B.P. or its agents for a fresh supply within twenty four hours of having run out of supplies of any product. It is further agreed that B.P., its agents and servants shall have the right at all reasonable times to check the stocks maintained by the Dealer provided that such checks take place in the presence of the Dealer or any responsible member of his staff.

40 3.24 B.P.'s Stocks

If B.P. so require the Dealer shall stock such quantities of its products as B.P. may from time to time require the property therein remaining with B.P. and account for such stocks in a manner to be prescribed by B.P."

6. Termination in the event of Liquidation or Default

50 Notwithstanding anything to the contrary expressed or implied elsewhere herein

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(continued)

B.P. (without prejudice to any other rights or remedies available to it hereunder) may terminate this Agreement forthwith on giving to the Dealer notice in writing to that effect that

(a).....

(b) There is any breach or non-performance by the Dealer of any of the terms and conditions of this Agreement.

(c) B.P. is dissatisfied with the manner in which the Station is being operated." 10

I also set out two other clauses which I consider to be relevant:

"2.2 Supply of Products

B.P. shall deliver his petroleum products to the Dealer from its depots in BATHURST either in bulk or in drums at the "dealer price" agreed between B.P. or his agents (G.M.T.) and the Dealer and ruling at the place of delivery on the day of delivery and in such quantities that the Dealer may reasonably require. 20

B.P. shall not be in breach of this Agreement on its part contained if at any time it shall be prevented from or hindered or delayed in fulfilling the orders of the Dealer in whole or in part by reason of any strike, lockout, government restriction or shortage of available supplies or any other cause, event or matter not within the reasonable control of B.P. 30

7. Vacation on Termination

At the end or sooner determination of this Agreement the Dealer shall vacate the Station within forty-eight hours of receipt of notice of termination from B.P. and yield up to the B.P. its possession thereof, provided that should the Dealer fail to quit and deliver up possession of the Station on expiry of such notice he shall pay to B.P. the sum of £500 by way of liquidated damages for such failure". 40

It should be noted that in the Agreement the Company is referred to as "B.P." and the

appellant is referred to as the "Dealer" and "G.M.T." means The Gambia Milling and Trading Company, an Agent of B.P.

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(continued)

10 Alhaji Drameh, learned Counsel for the Company argued most strenuously before us that the appellant had committed breach of the Agreement and therefore the Company was entitled not only to terminate supplies but also to terminate the Agreement. He submitted that the appellant had failed to pay for deliveries made and that constituted a breach entitling the Company to terminate supplies. He further submitted that the Station had closed down because of lack of supply and that that closure constituted a breach entitling the Company to terminate the Agreement.

20 Learned Counsel did not seriously contend that the appellant had breached Clauses 3.2 and 3.24. In support of his submissions, he placed great reliance on Clauses 3.3, 3.19 and 6(a) and (b). The question then arises, was there any breach of any or all of these clauses?

30 With regard to Clause 3.3, learned counsel argued that the appellant had failed to pay for products purchased from B.P. and therefore the appellant had committed a breach of this Clause. In the first place, it should be pointed out that that clause provides for payment "following the terms of payment agreed between the Dealer and G.M.T." It is therefore important to know what terms of payment were agreed between the Dealer and G.M.T. No evidence was led at the trial, and there is none before this Court to establish or even indicate what were the terms of payment agreed upon. And in the absence of such evidence, I fail to see how it can be said that the appellant failed to make payment in accordance with the "agreed terms". But even if there was such evidence the Company would, in my opinion, have to establish that on the date of the alleged breach the appellant had committed a default in making payment due. I have already drawn attention to the serious deficiencies in the evidence led by the Company on the issue of deliveries made to the appellant. There is certainly no evidence that on the date of the alleged breach any deliveries had been made. So the question whether the appellant had paid for those deliveries does not arise.

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In the Court
of Appeal

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(continued)

With regard to Clause 3.19, there is no dispute that throughout the period the Station was in operation, the appellant maintained sufficient stocks of petroleum products at the Station within the terms stipulated in that Clause. It is also not disputed that until November, 1974 when the Company stopped supplies to the appellant the appellant always made prompt requisitions for fresh supplies. It is also not disputed that after November, 1974, the appellant made requisitions for fresh supplies but that the Company refused to supply them. I therefore find the submissions of learned counsel based on this Clause lacking in substance. 10

With regard to Clause 6(b) Learned Counsel's submission was that the appellant had committed breaches of the clauses specified in the Further and Better Particulars and therefore the Company was entitled to terminate the Agreement. I have already held that the appellant did not commit any breach of those clauses. The submission therefore fails. 20

With regard to Clause 6(c), learned Counsel's argument proceeded like this: The Company stopped supplying petrol and other petroleum products to the appellant, therefore the appellant ran out of supplies, therefore the appellant had no petrol and other petroleum products to sell at the Station, therefore the appellant had caused the Station to be closed without just cause, therefore the Company was dissatisfied with the manner in which the Station was being operated and therefore the Company was entitled to terminate the Agreement. This argument only has to be stated to expose its patent absurdity. The important question is whether the Company was entitled to stop supplies to the appellant in the first place. It is not in dispute that the Company stopped supplies in November, 1974 during the currency of the Free Management Reseller Contract. In fact the purported termination of the contract by the Company was in January, 1974. Learned Counsel for the Company was unable to refer us to any clause of the contract entitling the Company to stop supplies during the currency of the contract and indeed there is no such clause in the contract. In my judgment the Company was not entitled to stop supplies to the appellant during the 30 40 50

currency of the contract and I hold that it was its act of refusal to make supplies that resulted in the closure of the Station. In my judgment therefore the Company was not entitled to terminate the contract under Clause 6(c) of the Contract.

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1979

(continued)

10 The next question is whether the Company was entitled to possession of the petrol station. According to paragraph 2 of its Amended Statement of Claim in the second suit the Company claimed possession of the Station on the ground that the appellant had committed a breach of "one of the Clauses of the contract" in that the defendant (appellant) negligently caused the said petrol station to be closed for the sale of all petroleum products for more than two months without just cause, 20 the Plaintiffs being "dissatisfied in the manner in which the station is being operated". The notice to quit (Exhibit J) was dated 16th January 1975, and it required the appellant to quit and deliver up to them on the 18th day of January, 1975, the possession of the said petrol station in accordance with your agreement/sub-lease which you have now contravened by leaving the station closed for over one month 30 despite repeated warning". According to the Further and Better Particulars dated 10th July, 1975 the two months during which the appellant was alleged to have closed the station were "the two months preceding the date of the filing of the writ", i.e. 25th November, 1974 to 24th January, 1975, and the clauses alleged to have been breached were Clauses 3.1, 3.2, 3.3, 3.19, 3.24 and 6(b) and (c). I have 40 already held that the closure of the station was caused by the act of the Company in refusing to make supplies and that the appellant did not commit any breach of any of the clauses relied on by the Company.

50 According to Clause 7 of the Contract "at the end or sooner determination of this Agreement the Dealer shall vacate the Station within forty eight hours of receipt of notice of termination from B.P. and yield up to B.P. its possession thereof....." In my opinion that clause should be read with Clauses 1.1 and 1.2 of the contract. They read:

"1.1 This Agreement shall be deemed to have commenced on the.....day of

In the Court
of Appeal

No. 52
Judgment
15th November
1979
(continued)

.....19.... and shall remain
in force for an initial period
of twelve months. Unless not less
than one month's notice is given
by registered letter of an intention
to terminate at the end of the
said initial period is given by
either party to the other, this
Agreement shall continue indefinitely
until terminated by either party
giving to the other not less than
three months' notice by registered
letter. 10

1.2 Clause 1.1 notwithstanding, B.P.
retains the right to terminate the
Agreement by giving one month's
notice by registered letter in the
event of the monthly sales of
products from the Station being less
than 5000IG per month from January
to April or 2500 IG per month from
May to December of automotive fuels". 20

There is no dispute that the initial period
provided for in Clause 1.1 had long expired.
There is also no dispute that neither party
gave the three months' notice provided for
in that clause. And it is not disputed
that neither party gave the month's notice
provided for in Clause 1.2. In my opinion
therefore the contract was still subsisting
for an "indefinite" period on 16th January
1975 when the Company purported to give
notice to quit. The Company purported to
act under Clause 7 in giving forty eight
hours notice to quit. In my opinion it
was not entitled to act under that Clause.
In my opinion the situations contemplated
by that Clause are 30

(i) where the contract is terminated
under Clause 1.1 or 1.2; by one
month's notice during the initial
period, or by three months'
notice after the initial period
or by one month's notice in the
case of low sales and 40

(ii) where the contract is terminated
forthwith under Clause 6(a), (b)
or (c) for example bankruptcy,
breach, or dissatisfaction by
the Company with the manner of
operation of the Station. 50

I would term the former cases as "regular

10 termination" and the latter as "forthwith
termination". In my opinion it is only
where the appellant has done an act or
omission bringing him within the circum-
stances specified in Clause 6(a)(b) or (c)
that the Company is entitled to exercise
its right of "forthwith termination".
Otherwise the Company can only fall on
their right of "regular termination". In
10 either case the Company should give due
notice and it is after the expiration of
such notice that it is entitled to
possession of the Station. It is well
settled that if a contract contains a
provision that one or both of the parties
thereto may determine the contract by
notice, notice must be given in accordance
with the terms of the contract. See
20 William Jacks & Co. vs. Palmers Shipbuilding
& Iron Co. (1928) 68 L.J.K.B. 366. As I
have already indicated, it was not proved
that the appellant committed any act or
omission to bring him within the circum-
stances specified in Clause 6(a) (b) or
(c). In my judgment therefore the Company
was not entitled to exercise the right of
"forthwith termination" against the
appellant. The purported termination was
therefore invalid. In the circumstances
30 the appellant was entitled to continue in
possession of the Station under the terms
of the Contract and the Company was not
entitled to possession thereof. In my
judgment therefore the Learned Chief
Justice erred in granting possession of
the Station to the Company and in awarding
D2500 Liquidated damages against the
appellant for failure to give up possession.

40 The next question I propose to consider
is whether the Company committed any breach
of the Contract. I think that this question
can be disposed of briefly. The breach
alleged by the appellant in his Counterclaim
to the second suit is the refusal of the
Company to supply the appellant with petrol
and other petroleum products. The Company
admitted that it refused to supply the
appellant. Indeed its defence was to the
effect that it was entitled to stop supply.
50 I have already held that the Company was
not entitled to stop supply during the currency
of the Contract. According to the terms of
the contract the appellant was entitled to be
supplied by the Company and the Company was
under an obligation to supply to the
appellant petrol and other petroleum products
"in such quantities that the Dealer may

In the
Court of
Appeal

No.52
Judgment

15th November
1979

(continued)

In the Court
of Appeal

No.52
Judgment
15th November
1979

(continued)

reasonably require", during the currency of the contract. In my opinion therefore the refusal or failure of the Company to supply petrol and other petroleum products to the appellant from November 1974 constituted a breach of contract.

The appellant claimed general damages for breach of contract. There can be no argument that the appellant is entitled to damages for the breach of contract committed by the Company. The only question is as to the quantum of damages that should be awarded for such breach. The remedies of a buyer for non-delivery of goods are provided for in Section 50 of the Sale of Goods Act (Cap.170 of the Laws of the Gambia). The section reads:

"50.(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non delivery;

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver".

Applying sub-section (2) what we have to assess is the estimated loss directly and naturally resulting in the ordinary course of business from the Company's breach of contract. And it must be borne in mind that this was a case of not mere delay in delivery but of no delivery at all. This distinction was emphasized by Lord Dunedin in William Brothers vs Ed. T. Agius Ltd. (1914) A.C. 510 when he said inter alia at page 522:

"The buyer, therefore, got the goods, and the only damage he had suffered was in delay. Now, delay might have

prejudiced him; but the amount of prejudice was no longer a matter of speculation, it had been put to the test by the goods being actually sold; and he was rightly, as I think, only held entitled to recover the difference between the market price at the date of due delivery and price he actually got. But when there is no delivery of the goods the position is quite a different one. The buyer never got them, and he is entitled to be put in the position in which he would have stood if he had got them at the due date".

In the Court
of Appeal

No.52
Judgment

15th November
1979

(continued)

10

20

30

There is no direct evidence of the loss suffered by the appellant as a result of the refusal of the Company to make supplies. But having regard to the discount agreed between the parties to be allowed to the appellant in respect of deliveries, and to the volume of business transacted between the parties during 1974 as evidenced by the Accounts and other documents submitted by both the Company and the appellant and after making deduction for the overheads of the appellant, I assess the average monthly profit derived by the appellant from the operation of the station at D1,500. On this basis I hold that the appellant's loss should be measured at the rate of D1,500 per month.

40

The next question to determine is in respect of what period the appellant should be compensated for his loss of profit? According to the undisputed evidence the Company refused to effect supplies from November, 1974 and the refusal persisted up to the date the Court below ordered the appellant to deliver up possession of the Station to Company i.e. 6th April, 1977. In my opinion the appellant is entitled to be compensated for his loss during the whole of the period supplies were withheld, that is from November 1974 up to the date possession was ordered. I would therefore assess general damages at D1500 per month for 28 months totalling D42,000.

50

The next question I propose to consider is whether having held that the order for possession was erroneous, that order should be set aside and possession restored to the appellant. The appellant has not claimed for possession of the station. What he has claimed is for a declaration that he be discharged from further liability under the Contract.

In the Court
of Appeal

No. 52
Judgment
15th November
1979
(continued)

In my opinion that claim amounts to a
claim for rescission of the Contract.

It is a well-settled rule that where one party to a contract has committed a serious breach by a defective performance or by repudiating his obligations under the contract the innocent party will have the right to rescind the contract; that is to treat himself as discharged from the obligation to tender further performance,¹⁰ and to sue for damages, for any loss he may have suffered as a result of the breach. See Halsbury's Laws 4th Edition Vol.9 paragraph 538. There could be no doubt that the Company committed a serious breach of the contract by wrongful termination of the contract. In my opinion the Company thereby repudiated the contract. In my judgment therefore the appellant is entitled to rescind the contract by treating himself²⁰ as discharged from the further performance of his obligations under the contract and by claiming damages for the loss he has suffered thereby. I would therefore declare that the appellant is no longer bound by the contract.

On the question of damages resulting from the rescission of the contract, I am of the opinion that the proper measure for assessment is the profit that the appellant³⁰ would have made during the period of valid notice had he been given a valid notice of termination. According to Clause 1.1 of the Contract the appellant was entitled to "not less than three months' notice" of termination. I have already held that the other provisions relating to termination do not arise. I would therefore assess damages under this part of the appellant's claim at three months loss of⁴⁰ profit (i.e. D4,500).

I think that for the avoidance of doubt it is necessary to state that the validity of the appellant's lease was never in issue. The uncontested legal position therefore is that the appellant is the lessee of the piece of land at Barra, that the Petrol Filling Station is erected on a portion of that piece of land, that the Company is a tenant of the appellant of⁵⁰ that portion of land under a sub-lease granted by the appellant to the Company and that both parties are entitled to exercise their rights and are liable to perform their obligations under the sub-lease.

Having regard to the foregoing, I would make the following orders :-

In the Court of Appeal

No.52 Judgment

15th November 1979

(continued)

(i) That the appeal be allowed and the judgment and the orders of the Court below except that relating to possession be set aside.

(ii) That the claim of the Company for D21,029 be dismissed.

10 (iii) That the Company pays to the appellant the sum of D11,308.58 being total of monies paid by the appellant to Company for goods not supplied.

(iv) That the Company pays to the appellant the sum of D42,000 by way of general damages for breach of contract by wrongful refusal to make supplies to the appellant.

(v) That the Contract be rescinded.

20 (vi) That the Company pays to the appellant the sum of D4,500 by way of damages for breach of Contract by wrongful termination of the Contract.

(vii) The Company to pay the costs of both suits and the Counterclaims in the Court below and of this appeal and of all proceedings incidental thereto.

(E.Livesey Luke)
.....

30 (Sgd) E.Livesey Luke
JUSTICE OF APPEAL

I agree (Sam J.Forster)
.....

(Sgd) Sam J.Forster
JUSTICE OF APPEAL

I also agree (P.D.Anin)
.....

(Sgd) P.D.Anin
JUSTICE OF APPEAL

In the Court
of Appeal

No. 53

No.53
Certificate
of Order
23rd November
1978

CERTIFICATE OF ORDER

IN THE GAMBIA COURT OF APPEAL

CERTIFICATE OF THE ORDER OF THE COURT

CIVIL APPEAL NO. 3/77

BETWEEN:

EMILE ABOURIZK APPELLANT

AND

BRITISH PETROLEUM
LTD. RESPONDENTS 10

S.J.FORSTER
PRESIDING J.A.

This appeal coming on for hearing on Wednesday the 22nd day of November, 1978, before S.J.Forster presiding Justice of Appeal, E.Livesey Luke, Justice of Appeal and P.D.Anin, Justice of Appeal in the presence of Pap Cheyassin O. Secka with him O.M.E. Sillah for the Appellant and Alhaji A.M.Drammeh for the Respondents. 20

I HEREBY CERTIFY that on the 22nd day of November, 1978, an Order was made as follows :-

" Under Order XXXVII rules 1 - 2 Rules of the Supreme Court Sch.II, it is ordered that the accounts of the various transactions between the parties be enquired into by the Master together with issues raised in the pleadings. 30

It is further Ordered that counsel file detail accounts and all relevant documents within fourteen days and that parties and or their counsel do attend during the Inquiry before the Master, as and when summoned.

The Master to transmit to this court records of the proceedings and his report on the points referred for his investigations within three months of the date hereof. 40

Costs to abide the event."

Given under my hand and Seal of the Court this 23rd day of November, 1978.

REGISTRAR
GAMBIA COURT OF APPEAL

In the Court
of Appeal

No.53
Certificate
of Order

23rd November
1978

(continued)

No. 54

RULING

No.54
Ruling

17th March
1980

IN THE GAMBIA COURT OF APPEAL

G.C.A. No.3/77

BETWEEN:

10

B. P.

APPLICANTS/
PLAINTIFFS

AND

EMILE ABOURIZK

RESPONDENT/
DEFENDANT

Before His Lordship Sir Phillip Bridges, C.J.
Mr.A.M.Drameh for Applicants
Mr.F.E. M'Bai for Respondent

R U L I N G

20

On 15th November 1979 The Gambia Court of Appeal allowed the appeal of the present respondent and in reversing the judgment of the Supreme Court entered judgment for the appellant in the sum in all of D58,108.58 with costs throughout.

The present applicant has signified its intention to appeal to the Judicial Committee of the Privy Council and was put on terms on the 12th December 1979. Final leave will be given presumably, after the expiration of the prescribed period on 12th March 1980.

30

In the meantime, the appellant Company, British Petroleum Ltd. seeks to have the judgment of the Court of Appeal stayed pending the appeal to the Judicial Committee.

In the Court
of Appeal

No.54
Ruling

17th March
1980

(continued)

Considerations affecting the granting of such a stay were considered by me in the case of Shyben A.Madi & Ano. v. C.L. Carayol Civil Appeal No.13/77 and I am now, as then was of the opinion that a stay is in the discretion of the single judge of the Court of Appeal deciding the matter.

In Madi v. Carayol case I set out Section 7 of The Gambia (Appeals to Privy Council) order-in-Council, which form part of the law of The Gambia and will now set in this case :-

10

" 7. Where the judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, provide good and sufficient security, to the satisfaction of the Court, for the due performance of such order as the Judicial Committee shall think fit to make thereon".

20

30

It will be observed that the Court has power to grant a stay of execution "when granting leave to appeal". The time for seeking final leave to appeal has not yet arrived, but in the meantime, the judgment of the Court of Appeal herein is stayed.

(Sgd) Phillip Bridges
CHIEF JUSTICE

17th March, 1980

40

No. 55

ORDER GRANTING FINAL
LEAVE TO APPEAL TO THEIR
LORDSHIPS OF THE JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL

In the Court
of Appeal

No.55
Order
Granting
Final Leave
to Appeal
to their
Lordships of
the Judicial
Committee

17th April
1980

IN THE GAMBIA COURT OF APPEAL

G.C.A. No.3/77

BETWEEN:

10

B. P.

APPLICANTS/
PLAINTIFFS

AND

EMILE ABOURIZK

RESPONDENT/
DEFENDANT

Before His Lordship Sir Phillip Bridges, C.J.
Mr.A.M. Drameh for Applicants
Mr. F.E.M'Bai for Respondent

O R D E R

20

This is an application firstly for
final leave to appeal to the Judicial
Committee of the Privy Council against the
judgment of the Court of Appeal herein and
secondly for a stay of execution of the
judgment of that court.

By an order dated 12th December 1979,
the appellant was put on terms to fulfil
certain obligations in connection with its
intended appeal. These obligations having
been fulfilled, final leave to appeal is
hereby granted.

30

On the question of the stay, I am
satisfied that this is a case in which it
would be proper to grant a stay and the
judgment of the Court of appeal is stayed
accordingly.

(Sgd) Phillip Bridges
CHIEF JUSTICE

17th April, 1980

CERTIFIED TRUE COPY

EXHIBITS "A"
 Account 26th August 1974 to
 13th December 1974

EXHIBIT 'A'

MR. EMILE ABOURIZK IN ACCOUNT WITH B.P. BANJUL, THE GAMBIA

Date	Client's Order No.	BP Order No.	Carrier	Product	Invoice No.	A m o u n t S u b - T o t a l				Remarks	
						D	b	D	b		
26. 8.74	-	268034	GA 9219+	Gas Oil*	301991	61	20			Cheque No.1576797 for D6,311.40 returned to us for lack of sufficient funds in the BICI.	
31. 8.74	30	268052	"	Petrol	302003	3,078	00				
5. 9.74	-	268073	"	Gas Oil*	302014	61	20				
9. 9.74	31	268087	"	Petrol	302024	3,111	00	6,311	40		
13. 9.74	-	268103	"	Gas Oil*	302036	61	20				
23. 9.74	32	268155	"	Petrol	302064	3,111	00	3,172	20	+ This vehicle belongs to Mr. Abourizk	
11.10.74	-	268237	"	Gas Oil*	302195	61	20			These items were supplied for the use of the vehicle GA 9219	
16.10.74	34	268250	"	Petrol	302205	3,078	00				
16.10.74	-	268259	"	Gas Oil*	302213	61	20	3,200	40		
11.11.74	36	268358	-	Lub.Oils	302301	2,011	20				
11.11.74	-	268369	GA 9219+	Gas Oil*	302350	61	20			All other items were supplied to Mr.Abourizk for sale at his station in Barra	
13.11.74	35	268376	"	Petrol	302353	3,111	00				
18.11.74	-	268403	"	"	302364	3,078	00	8,261.	40		
6.12.74	-	268584	"	Gas Oil*	302537	61	20				
19.11.74	-	268423	"	" " *	302555	61	20				
13.12.74	-	268683	"	" " *	302648	61	20	183	60		
GRAND TOTAL =								D21,129	00		for SOCIETE DES PETROLES BP D'AFRIQUE (Sgd) M.B.O.Jallow OCCIDENTALE M A N A G E R

16 Wellington Street,
 P.O.Box 394,
 BANJUL, The Gambia
 19th June, 1975

118.

EXHIBITS

"B"

STATEMENT OF CLAIM
SEPTEMBER TO DECEMBER 1974

EMILE ABOURIZK IN ACCOUNT WITH BP BANJUL
1974

SEPTEMBER 1ST PERIOD UP TO DATE

10	Order No.268034 - Invoice No.301991 -	6120	
	" " 268052 - " " 302003 -	307800	
	" " 268073 - " " 302041 -	6120	Cheque 1576797 returned
	" " 268087 - " " 302024 -	<u>311100</u>	to us for lack of
		631140	funds.

SEPTEMBER 25

Order No.268103 - Invoice No.302036 -	6120
" " 268155 - " " 302064 -	<u>311100</u>
	<u>317220</u>

OCTOBER 25

20	Order No.268259 - Invoice No.302213 -	6120
	" " 268250 - " " 302205 -	307800
	" " 268237 - " " 302185 -	<u>6120</u>
		<u>320040</u>

NOVEMBER 25

Order No.268358 Invoice No.302301 -	<u>2011.20</u>	<u>SUMMARY (A)</u>
" " 268369 " " 302350 -	6120	631140
" " 268376 " " 302353 -	311100	317220
" " 268403 " " 302364 -	<u>307800</u>	320040
	625020	201120
		<u>625020</u> 2094540

DECEMBER 1974

30	Order No.268584 Invoice No.302537 -	6120	<u>SUMMARY (B)</u> 18360
	" " 268423 " " 302553 -	6120	<u>21129.00</u>
	" " 268683 " " 302648 -	<u>6120</u>	
		<u>18360</u>	

GRAND TOTAL = 21129.00

EXHIBITS

"C"

Indenture,
Land at Barra

Undated

EXHIBITS

"C"

INDENTURE, LAND AT BARRA

THIS INDENTURE is made the day of
One thousand nine hundred and seventy three
BETWEEN EMILE ABORITZ Businessman of Barra
Village Lower Nuimi in the North Bank
Division of the Gambia (hereinafter called
"the Lessor" which expression shall where
the context so admits include his heirs and 10
permitted assigns) of the one part and
SOCIETE DES PETROLES BP d'AFRIQUE OCCIDENTALE
a Limited Company (hereinafter called "the
Lessee" which expression shall where the
context so admits include their successors
and permitted assigns) of the other part

WHEREAS :-

1. By an Indenture of lease dated the
23rd day of February 1965 numbered DI.1L.19
and registered in the Registry of Deeds 20
Banjul Gambia on the 30th day of August,
1966, made between the Native Authority for
the said Lower Nuimi District as Lessors of
the one part Emile Aboritz as Lessee of the
other part (which said Lease is hereinafter
called "the Head Lease") all that piece or
parcel of land described in the said Head
Lease (i.e. containing 1,810 square yards or
thereabout situate at Barra) and delineated
in RED on the map annexed to the Head Lease 30
was demised unto the said Emile Aboritz for
the term of 21 years from the 10th day of
October 1964 subject to the reservation
conditions and covenants on the part of the
Lessee in the Head Lease therein contained

2. The consent of the District Authority
for the said Lower Nuimi District to the
demised hereinafter affected was obtained
on the 6th day of April, 1970 - Letter
Reference PA/32/DI/(215) refers. 40

3. The Lessor herein has agreed with the
Lessees that in consideration of the demise
herein contained the Lessees will pay to
the Lessor a rental of D600 per year during
all the time Mr. Emile Aboritz (the Lessor)
will operate the service station under the
terms of a free management contract with BP
or D1,800 per year in case BP do not renew
the yearly free management contract or other-
wise shall be exercisable by the Lessees 50
without reference or consultation with Mr.

Emile Aboritz (the Lessor). The said rental of D600 or D1,800 per annum as the case may be is payable two yearly in advance and the first of such payment shall be made on the execution of this document.

EXHIBITS
"C"
Indenture,
Land at Barra
Undated
(continued)

NOW THIS INDENTURE WITNESSETH AS FOLLOWS :-

10 1. The Lessor hereby demises unto the Lessees ALL THAT piece or parcel of land $\frac{1}{3}$ (one third) of the area of 1810 square yards or thereabout situate in Barra Village in the Lower Nuimi District of the North Bank Division of the Gambia or one third of the area named in the indenture of the 23rd day of February, 1965 as indicated on the plan attached hereto to HOLD the same unto the Lessees for a term of 15 years.

20 It is well agreed between the parties that the rent charged by the Kerewan Area Council for the Head Lease of the land remains the responsibility of the Lessor who will settle the same unfailingly at the due date.

The Lessees shall pay the rates assessed on the Petrol Station and the lessor shall pay the rates assessed on the part occupied by him.

30 The Lessor shall be permitted to build a dwelling house on the part of the demised land on the condition that the back wall separating the service station from the said dwelling house shall be seven feet.

All equipment and installation (including tanks and all service station materials, e.g. hoists but buildings are excluded) shall remain the property of the Lessees and shall be removable by the lessees at the end of the term stipulated herein.

The Lessees hereby covenant with the Lessor as follows :-

- 40 (a) To erect upon the premises hereby demised within six months from the date hereof at a total cost of not less than D32,500 (THIRTY TWO THOUSAND FIVE HUNDRED DALASIS) a vehicle service and petrol filling station.
- (b) Not to commit any act or omit any duty which would make the lessor liable to the forfeiture of his lease and to indemnify the lessor against all liabilities arising from such commission

EXHIBITS

"C"
Indenture,
Land at Barra
Undated
(continued)

or omission.

- (c) To insure and keep insured all buildings and installations against fire explosion and public liabilities.
- (d) To pay all rates government taxes to which the land is liable except as indicated above.
- (e) At the expiration of the term hereby granted to yield up the said premises and all the buildings with the exception of the pumps and tanks and accessories which remain the lessee's property. 10
- (f) During the said term of the lease the lessee will be at liberty to execute modifications and new constructions in the service station without asking for authorisation from the lessor provided the project have been approved by the necessary building authorities.

The Lessor his successors or heirs during the duration of this sublease will not :- 20

- (a) Permit the erection of any non-aesthetic construction on the other half of the land retained by him.
- (b) Allow any commercial activities presenting any risks of fire or explosion on the said portion of land retained by him.
- (c) Permit any other Petroleum Company or any commercial activity which could be considered as competitive to the business of the lessee. 30

4. The Lessor hereby covenants with the Lessees that the Lessees paying the rates and government taxes and observing the covenants on the lessee's part herein contained shall peaceably hold and enjoy the demised premises during the term hereby created without any interruption from the Lessor or any person rightfully claiming under him. 40

This Lease shall be deemed to come into operation as from 1st day of April, 1969.

The Laws of the Gambia shall govern this Lease.

5. All disputes or differences which may arise between the Lessor and the Lessees touching the provisions hereof or the operation

EXHIBITS

"D"
Reseller
Contract
Undated
(continued)

WHEREAS BP markets petroleum products and other products in the Gambia through his Agent The GAMBIA MILLING AND TRADING CO. (hereinafter called G.M.T.) having its Office at BATHURST

AND WHEREAS BP is Owner of a Service/Station situated at BARRA (hereinafter referred to as "the Station"), for the sale to the public of the said petroleum products and other products marketed by BP (hereinafter referred to as "the Products") 10

AND WHEREAS BP has agreed to appoint the Dealer to operate the Station upon the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows :

CLAUSE 1 - DURATION

1.1 This Agreement shall be deemed to have commenced on the..... day of19.....and shall remain in force for an initial period of twelve months. Unless not less than one month's notice is given by registered letter of an intention to terminate at the end of the said initial period is given by either party to the other, this Agreement shall continue indefinitely until terminated by either party giving to the other not less than three months' notice by registered letter. 20

1.2 Clause 1.1 notwithstanding, BP retains the right to terminate the Agreement by giving one month's notice by registered letter in the event of the monthly sales of products from the Station being less than 5000 IG per month from January to April or 2500 IG per month from May to December of automotive fuels. 30

1.3 In deviation from the sub-clause 1.2 (monthly minimum of sales) BP agrees not to apply this sub-clause to the Dealer during the first two years of this contract. 40

CLAUSE 2 - RESPONSIBILITIES OF BP

2.1 Supply of equipment

BP shall at its expense supply and install upon the Station such petrol and petroleum dispensing equipment and

other ancilliary equipment as listed in the attached inventory hereto or from time to time added the said inventory at BP's discretion (hereinafter collectively referred to as "the Equipment")

EXHIBITS
"D"
Reseller
Contract
Undated
(continued)

2.2 Supply of products

10 BP shall deliver his petroleum products to the Dealer from its depots in BATHURST either in bulk or in drums at the "dealer price" agreed between BP or his agent (G.M.T.) and the Dealer and ruling at the place of delivery on the day of delivery and in such quantities that the Dealer may reasonably require.

20 BP shall not in breach of this agreement on its part contained if at any time it shall be prevented from or hindered or delayed in fulfilling the orders of the Dealer in whole or in part by reason of any strike, lockout, government restriction or shortage of available supplies or any other cause, event or matter not within the reasonable control of BP.

CLAUSE 3 - RESPONSIBILITIES OF THE DEALER

3.1 Operations

30 At the commencement of this Agreement the Dealer shall enter upon and commence to operate the Station throughout each day and also at night if BP consider it to be necessary during the continuance of this Agreement.

3.2 Purchase of Products

40 The Dealer shall buy from BP or its appointed agents all the products required for sale at the Station, and not buy from any other person, company or firm whatsoever any petroleum or other products for sale at or supply from the Station, and not advertise, sell or expose for sale at the Station any petroleum or other products marketed by any person, company or firm other than BP, except with the written permission of BP. The products supplied to the Dealer hereunder shall be sold by him under such brand names and trade marks
50 and under such colours as BP may from

EXHIBITS

"D"
Reseller
Contract
Undated
(continued)

time to time prescribe. Nothing in this Agreement shall give the Dealer any proprietary right title or interest in any brand names, trade marks or colours so prescribed. On the termination of this Agreement the Dealer shall discontinue immediately the use in any manner whatsoever of any brand names, trade marks and colours prescribed by BP.

3.3 The Dealer shall pay for all the products purchased from BP's Agent (G.M.T.) following the terms of payment agreed between the Dealer and G.M.T. 10

3.4 Resale Price

The Dealer shall sell the products at the Station only. In no case shall the Dealer exceed the retail sales prices notified to him by BP and he shall display such price lists as BP or the competent authorities shall from time to time require to be displayed. 20

3.5 Station Operating Costs

The Dealer shall be responsible for the cost of all electricity charges connected with the Station conservancy charges, supply of water whether by a metered supply or by way of a water rate levied by a competent authority all other existing rates and assessments, the rental of a telephone and all telephone calls. 30

3.6 Permits and Regulations

The Dealer shall procure such Municipal and other permits as may be necessary for the operation of the Station and comply with the provisions of all statutes or other instruments having the force of law and with all regulations rules or instructions lawfully issued or given by any authority in respect of or affecting the Station or the business carried on or the storage or use of explosive or inflammable liquids or other substances therein by the Dealer or in respect of any employees of the Dealer. The Dealer shall indemnify BP against all claims and liabilities arising out of any breach of the provisions of this sub-clause. 40

3.7 Petroleum Storage Licenses 50

The Dealer shall apply for or cause

EXHIBITS

"D"

Reseller
Contract

Undated

(continued)

application to be made at all proper times to the Licensing Authority for the time being and use his best endeavours to obtain a grant or renewal of the necessary petroleum storage licence and pay all fees and excise duties payable in respect thereof which said fees and excise duties shall on demand be refunded by BP to the Dealer on production of the said Licence provided that should this Agreement be terminated during the currency of a licence the Dealer shall repay and hereby agrees to repay to BP the amount paid to him under this sub-clause which the Dealer hereby authorises BP to deduct from any amount due to him at the termination of this Agreement.

10

3.8 Care and Maintenance

The Dealer shall take all proper care of the station and the Equipment and pay to BP on demand any and all charges made by BP under clause 4.2 of this agreement and use all reasonable care to preserve and maintain the Station in good order and keep it in a neat and tidy condition, all to the satisfaction of BP. The cost of all cleaning and other materials necessary for keeping the Station in good order and in the required neat and tidy condition shall be borne by the Dealer.

20

30

3.9 Access

The Dealer shall permit BP, its servants and agents to have access to the Station and the Equipment at all times for the purposes of inspection, maintenances, repair, removal, painting or the placing of advertisements thereon and for any other purpose which BP considers necessary or desirable for the preservation of its property or the proper development of the Station's potential as a Sales Outlet of BP.

40

3.10 Advertising

The Dealer shall permit BP to display and maintain on the Station and the Equipment any advertisements BP may consider desirable and not place any other advertisements thereon without the written consent of BP first had and obtained.

50

EXHIBITS

"D"
Reseller
Contract
Undated
(continued)

3.11 Execution

The Dealer shall protect the Equipment from distress, execution or seizure or any threat or danger of the same respectively and indemnify BP against all losses, damages and expenses arising therefrom.

3.12 Prohibition of Assignment

The Dealer shall not transfer or part with possession of the Station or the Equipment or any part thereof nor assign or in any way divest himself of all or any of his rights and obligations under this Agreement nor leave the Station or any part thereof unattended nor enter into any agreement to do any of the foregoing things detailed in this sub-clause without the written consent of BP first had and obtained.

10

3.13 Removal of Equipment

The Dealer shall not remove or permit to be removed the Equipment or any part thereof from the Station without the written consent of BP.

20

3.14 Claims by Third Parties

The Dealer shall indemnify and keep indemnified BP against theft from the Station and all claims, damages, losses and expenses of every kind arising out of or connected with the servicing, repair, maintenance and refuelling of motor vehicles and engines and the driving of any motor vehicles by himself, his agents or any member of his staff outside the Station.

30

3.15 Staff

The Dealer shall maintain at all times an efficient staff for the proper and efficient operation of the Station. BP shall have the right to draw attention to the inefficiency of any member of the Dealer's staff whereupon the Dealer shall take such steps as BP in its sole discretion considers necessary, such necessary steps being advised by BP to the Dealer in writing.

40

3.16 Unauthorised Use

The Dealer shall not permit any person

other than the Dealer and BP (and their servants and agents) and customers, to be or remain upon the Station and in particular, but without derogating from the generality of the foregoing, nor allow any petty traders upon the Station without the written consent of BP first had and obtained.

EXHIBITS

"D"
Reseller
Contract
Undated

(continued)

3.17 Nuisance

10 The Dealer shall not do or suffer anything to be done upon the Station or any part thereof which in the opinion of BP is or may become a nuisance to BP or to third parties.

3.18 Training

20 (i) The Dealer shall permit BP, its servants and agents to have access to the Station at all reasonable times for the purposes of training and advising all personnel involved in the operation of the Station or in the selling of petroleum and other products therefrom, and shall

(ii) permit BP, its servants and agents to use the Station for the express purpose of training its staff, servants or agents at any time and for any period.

30 3.19 Stocks

40 The Dealer shall maintain always stocks of petroleum products sufficient to supply the requirements of all customers during the normal hours of operation as stipulated in sub-clause 3.1 herein, or such stocks as BP shall in its sole discretion from time to time consider adequate to ensure the proper development of the Station, unless at the time of any request for supplies BP or its agents shall be unable to supply a sufficient quantity of any product. It shall be deemed a breach by non-performance of this Agreement for the purposes of sub-clause 2.2 hereof (but without prejudice to the generality of that sub-clause) if the Dealer shall fail to requisition BP or its agents for a fresh supply within 24 hours of having run out of supplies of any product. It is further agreed that BP, its agents and servants shall have the right at all

50

EXHIBITS

"D"
Reseller
Contract
Undated
(continued)

reasonable times to check the stocks maintained by the Dealer provided that such checks take place in the presence of the Dealer or any responsible member of his staff.

3.20 Sale of Accessories

The Dealer shall at the request of BP or with the prior consent of BP confirmed by letter, undertake to sell Motor tyres and tubes, batteries or such other articles as BP or the Dealer shall from time to time consider necessary, all such articles being supplied to the Dealer by a person or firm so authorised by BP, on such terms and conditions as BP may in its sole discretion from time to time determine.

10

3.21 Accounts

The Dealer shall punctually make true proper and correct entries of all his transactions in the books of Accounts as required by BP which books shall be available at all reasonable times for inspection by BP, its agents and servants and furnish BP with such returns as it shall from time to time require.

20

3.22 Production of Permits and Receipts

The Dealer shall when called upon by BP, produce evidence that he has obtained and paid for the permits referred to in sub-clause 3.6 and that he has paid all the costs and charges referred to in sub-clause 3.5.

30

3.23 Supply to BP's Customers

The Dealer shall at the request of BP supply to BP and its customers from his stocks of petroleum products such quantities as shall be specified on BP's approved order form or the customer's local purchase order. The price which the Dealer shall receive from BP for this service shall be determined by agreement between BP and the Dealer prior to any such supply being made.

40

3.24 BP's Stocks

If BP so require the Dealer shall stock such quantities of its products as BP

may from time to time require the property therein remaining with BP and account for such stocks in a manner to be prescribed by BP.

EXHIBITS

"D"
Reseller
Contract

Undated

(continued)

3.25 Insurance

Effect insurance to cover fire explosion and third party risks on the Station and damages caused to the Equipment by third parties on the Station.

10 3.26 Rentage of the Station

The Dealer will pay a yearly rentage to BP amounting to £120 starting one year after the official opening of the station based on the technical acceptance receipt date of signature.

20 3.27 In deviation of the sub-clause 3.26 BP will not apply for payment if the yearly total sales of products reach 40,000 IG. If the Dealer do not reach 40,000 IG yearly sales he will be bound to pay rentage according to the pro-rata of sales done.

CLAUSE 4 - EQUIPMENT

30 4.1 The Equipment listed in the attached Inventory and as added thereto from time to time shall be and shall at all times remain the property of BP unless and until purchased by the Dealer under the terms of any special Agreement entered into between BP and the Dealer.

40 4.2 All repairs to and replacements of parts of the Station and the Equipment including, without prejudice to the generality of the foregoing, painting and decorating the Station and the Equipment, shall be carried out by BP as it considers necessary provided that if in any case it appears to BP that any repair or replacement is necessary because of damage or loss caused by or resulting from an act of negligence of the Dealer or his servants, agents independent contractor or customers, BP shall be entitled to recover the cost of the repair or the replacement, as the case may be, from the Dealer.

4.3 At the end or sooner termination of this Agreement the Dealer shall yield up to BP possession of all the Equipment, other than

EXHIBITS

"D"
Reseller
Contract

Undated

(continued)

the Equipment purchased under the terms of any special Agreement entered into between BP and the Dealer and all other property of BP on the Station.

CLAUSE 5 - LIMITATION OF AGREEMENT

Nothing herein contained shall be deemed to constitute a partnership between the parties hereto or to constitute the Dealer a tenant of BP.

CLAUSE 6 - TERMINATION IN THE EVENT OF LIQUIDATION OR DEFAULT 10

Notwithstanding anything to the contrary expressed or implied elsewhere herein BP (without prejudice to any other rights or remedies available to it hereunder) may terminate this Agreement forthwith on giving to the Dealer notice in writing to that effect in the event that :-

- (a) the Dealer commits any act of bankruptcy, compounds with his creditors or allows execution to be levied upon his property following the judgment of a court of law, or being a Company, shall go or threaten to go into liquidation or if a petition for its winding-up be presented to the Court. 20
- (b) there is any breach or non-performance by the Dealer of any of the terms and conditions of this Agreement. 30
- (c) BP is dissatisfied with the manner in which the Station is being operated.

CLAUSE 7 - VACATION ON TERMINATION

At the end or sooner determination of this Agreement the Dealer shall vacate the Station within 48 hours of receipt of notice of termination from BP and yield up to the BP its possession thereof provided that should the Dealer fail to quit and deliver up possession of the Station on expiry of such notice he shall pay to BP the sum of £500 by way of liquidated damages for such failure. 40

CLAUSE 8 - LIMITATION ON ASSIGNMENT

This Agreement shall be binding upon and

enure to the benefit of the parties hereto only, to the exclusion of any other person or persons. It shall not be assigned in whole or in part by either party without the previous consent in writing of the other party except that no such consent shall be required in the case of an assignment either in whole or in part by BP to any subsidiary company of it or of the British Petroleum Company Limited.

EXHIBITS
"D"
Reseller
Contract
Undated
(continued)

CLAUSE 9 - FORCE MAJEURE

No failure or omission to carry out or observe any of the stipulations or conditions of the Agreement shall except as herein expressly provided to the contrary give rise to any claim against either party or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of either party.

CLAUSE 10 - NOTICES

Any notice requiring to be served under this Agreement shall be sufficiently served on BP if sent by registered post to its registered office and on the Dealer if delivered personally or sent by registered post to the Station or to his usual or last known address.

CLAUSE 11 - FORBEARANCE

No neglect delay or indulgence on the part of BP in enforcing any of the terms or conditions of this Agreement and no forbearance or relaxation or granting of time to the Dealer by BP shall in any way affect diminish restrict or prejudice the rights and powers of BP under this Agreement or operate as or be deemed to be a waiver of any breach by the Dealer of the terms and conditions of this Agreement.

CLAUSE 12 - INTERPRETATION

This Agreement shall be read and construed in all respects in accordance with the laws applicable in the Gambia.

AS WITNESS the hands of the authorised representative of BP and the Dealer the day and year first above written.

EXHIBITS

"D"
Reseller
Contract
Undated
(continued)

SIGNED BY LOUIS BOLON }
for and on behalf of the }
within-named SOCIETE DES } (Sgd) L.Bolon
PETROLES BP D'AFRIQUE }
OCCIDENTALE in the }
presence of :- }

Witness' signature: (Sgd) W. Martin
Names in Block Letters: W. MARTIN
Occupation: Chartered Accountant
Address: 11 Russell Street, Bathurst 10

Either A. For persons literate in the English Language

SIGNED by the within - }
named..... } (Sgd) E.Abouritz
..... }
in the presence of :- }

Witness' Signature: W. Martin
Name in Block Letters:
Occupation:
Address: 20

EXHIBITS

"E1"

LETTER, INTERNATIONAL BANK
FOR COMMERCE AND INDUSTRY
TO SOCIETE DES PETROLES B.P.

INTERNATIONAL BANK FOR COMMERCE AND
INDUSTRY BANJUL

10 Post Office Box 211
Cables: GAMBICOMI
Telex: BICI BTH GV 203

7 Cameron Street
BANJUL
GAMBIA, W.A.

EXHIBITS

"E1"

Letter,
International
Bank for
Commerce &
Industry to
Societe des
Petroles
B.P.

1st July
1975

CONFIDENTIAL

Your ref:

Our ref: IAC/AMB

Date: 1st July 1975

The Manager,
Societe des Petroles BP.,
P.O.Box 394,
16 Wellington Street,
BANJUL.

Mr. Emile Abouritz

20 Outstanding Balance of Loan due
25.5.75 D.1,678.64

Dear Sir,

We wrote to you on the 28th May and 13th June, 1975, in connection with our customer, Mr. Emile Abourizk and the loan which you guaranteed, but to date we do not seem to have received any reply at all. We enclose herewith a photocopy of our letter of the 13th June.

30 As our Head Office in Dakar require this Loan Account to be put in order as soon as possible, we should be pleased if you would arrange for the necessary payment to be made without further delay.

We thank you for your early attention to this matter, and remain,

Yours faithfully,

? ? ?

INTERNATIONAL BANK FOR COMMERCE
AND INDUSTRY

EXHIBITS

"E2"

Letter,
International
Bank for
Commerce &
Industry to
Societe des
Petroles B.P.

13th June
1975

EXHIBITS

"E2"

LETTER, INTERNATIONAL BANK
FOR COMMERCE AND INDUSTRY
TO SOCIETE DES PETROLES B.P.

CONFIDENTIAL

IAC/AMB

13th June 1975

The Manager,
Societe des Petroles BP.,
P.O.Box 394,
16 Wellington Street,
BANJUL

10

Dear Sir,

Mr. Emile Abourizk

On the 28th May, 1975, we wrote to you
in connection with our customer, Mr. Emile
Abourizk, informing you that the balance
of the loan you guaranteed was due for
repayment in full on 25th May 1975, and
requesting your settlement.

20

To date we do not seem to have received
your reply.

We attached hereto a copy of our letter
of the 28th May, 1975, for your information,
and would be pleased if you would arrange
for the necessary payment to be effected as
soon as possible.

Yours faithfully,

????

INTERNATIONAL BANK FOR
COMMERCE AND INDUSTRY

30

EXHIBITS

"E3"

LETTER, A.A.M. DRAMEH TO
INTERNATIONAL BANK FOR
COMMERCE AND INDUSTRY

EXHIBITS

"E3"

Letter,
A.A.M.
Drameh to
Internat-
ional Bank
for
Commerce &
Industry
23rd July
1975

10 ALHAJI A.M. DRAMMEH, 8 MacCarthy Square,
LL.B. CERT. I.C.L. Banjul, The Gambia
BARRISTER-AT-LAW,
SOLICITOR OF THE
SUPREME COURT 23rd July, 1975

MY REF: AAMD/IEN

The Manager,
International Bank for Commerce
and Industry,
Cameron Street,
Banjul.

Dear Sir,

20 , Mr. Emile Abourizk
Outstanding Balance of Loan due 25.5.75
D.1,678.64

Both your letters of the 13th June, 1975
and 1st July, 1975 respectively have been
passed to me by my Clients, Societe des Petroles
BP.

I attach hereto :-

- 30 (1) Their Cheque No.1614709 dated the
12/7/75 for D1661.00
and
(2) The Gambian Money Order No.9718 for
D17.64 in final settlement of the
Account.

I shall be glad if you will send me your
receipt for transmission to my Clients.

Yours faithfully,

Alhaji A.M.Drammeh (Sgd)

cc: Societe des Petroles BP
P.O.Box 394,
Banjul.

40 Mr. Pap C.O.Secka,
Solicitor,
Buckle Street,
Banjul.

EXHIBITS

"E4"

Compliments
Slip
International
Bank for
Commerce &
Industry
(Undated)

EXHIBITS

"E4"

COMPLIMENTS SLIP
INTERNATIONAL BANK FOR
COMMERCE AND INDUSTRY

With the compliments of :

INTERNATIONAL BANK FOR COMMERCE AND INDUSTRY
B. I. C. I.

7 CAMERON STREET - BANJUL

ATLANTIC ROAD - BAKAU

10

Affiliated to: Phone: 8145
Banque Nationale de Paris Serrekunda: 2120(CAPE)
Bank of America
Banca d'America d'Italia Cable: Gambicomi
Banque Lambert Telex: BTH - B.I.C.I.
Dredsnr Bank GV - 203

"E5"

Bank Receipt
Slip
20th July
1975

EXHIBITS

"E5"

BANK RECEIPT SLIP

INTERNATIONAL BANK FOR COMMERCE AND INDUSTRY

20

Banjul Branch of
BANQUE INTERNATIONALE POUR LE COMMERCE
ET L'INDUSTRIE DU SENEGAL
SOCIETE ANONYME AU CAPITAL DE 675
MILLIONS

DE FRANE C.F.A.
SIEGE SOCIAL: 2 AVENUE ROUME - DAKAR
(Republique du Senegal)

BANJUL

Date 25/7/75

CASH RECEIPT

RECEIVED FROM
Al. A.M. Drameh
FOR ACCOUNT OF
E.Abourizk
ACCOUNT PT/417

30

The sum of (Seventeen Dalasis - Sixty
four bututs)

AMOUNT: D17 b64

(Sgd) ? ? ?
INTERNATIONAL BANK FOR COMMERCE AND INDUSTRY
(Sgd) ? ? ?

EXHIBITS

"E6"

BANK RECEIPT SLIP

EXHIBITS

"E6"

Bank Receipt
Slip

20th July
1975

INTERNATIONAL BANK FOR COMMERCE AND INDUSTRY

BATHURST BRANCH OF
BANQUE INTERNATIONALE POUR LE COMMERCE
ET L'INDUSTRIE DU SENEGAL

Societe Anonyme au Capital de 625 Millions
de Francs C.F.A.

10 Siege Social: 2 Avenue Roume DAKAR
(Republique du Senegal)

BATHURST

Date 25/7/75

Name of Banks	Amount	Name and Address of Account holder
BICI Chq. 1614 709	1661.00	Emile Abourizk

Value	Account No.
	PT 1417

20

NAME AND SIGNATURE OR
REMITTER
(in case of reunision by
third party)

ADVICE TO THE ACCOUNT HOLDER

TOTAL AMOUNT:
1661.00

30

All cheques must be crossed
before being paid in. The Bank
reserves the right at its
discretion not to pay cheques
drawn against uncleared effects,
and to debit the account with any
uncleared effects previously
credited to the account which
are not eventually paid.

International Bank for Commerce and
Industry

EXHIBITS

"G"

Account
Tanker GA
9219

3rd January
1975 to 24th
March 1975

BP

EXHIBITS

"G"

ACCOUNT, TANKER GA 9129

TRANSPORT - E. ABOURIZK

TANKER GA 9219

B/L	000325	- G.U.C.	G/Town	39	24/2/75	1500	243 - 00	
	000316	- P/Authority - Banjul		40	"	1800	18 - 00	
	000472	- G.U.C.	G/Town	41	24/3/75	1500	243 - 00	
	268804	- "	"	38	3/1/75	1500	208 - 50	10
	000144	- "	"	38	26/1/75	1500	208 - 50	
							<u>921 - 00</u>	
							8 - 50	
							<u>929 - 50</u>	

S U M M A R Y

1974 refer our ref. 3422(25)/74 - 7/1/75	731 - 50
1975 above	929 - 50
	<u>D 1661 - 00</u>

D1661 - 00

20

One thousand Six hundred & Sixty One Dalasis
only.

(Sgd) M.B.N'Jie
MANAGER BP

EXHIBIT "H" - STATEMENT OF ACCOUNTS

EXHIBITS

"H"

Statement of Account
14th January 1974 to
31st December 1974

TOTAL RECEIPTS FROM E.A.ABOURIZK IN 1974

DATE	C202 NO	CHEQUE NO.	AMOUNT	CHEQUE RETURNED	INVOICE NCS.	DATED
14. 1.74	537	156780	9015-60		223671, 223677, 223693, 223705, 223783, 223741	
29. 1.74	557	1576781	808870	R/D	300597, 614 618 650 674	
"	"	1576782	229770		223634, 223664, 300560, 300561	
6. 2.74	C2C2D No.1	1576781		808870	C202D No.001. 6/2/74 6300597 614 618 650	
14. 2.74	578	1576781	8088-70		300597, 614, 618, 650, 674	
25. 2.74	590	1576783	387563		300812, 939 954	
"	"	1576784	972000		000162, 172, 190, 214	
30. 3.74	615	1576785	860070	R/D	000339, 367, 430, 461, 490	
9. 4.74	C202D-42	1576785		860070		
9. 4.74	620	1576785	8600-70		000339, 367, 430, 461, 490	
29. 4.74	637	1576787	1194145		301011, 301038, 301055, 301157, 301171	
31. 5.74	661	1576788	636795		301197, 301223, 301236, 301304, 301347	
29. 6.74	675	1576789	944765		301422, 301447, 301454, 301483	
1. 8.74	696	1576786	109400		000412	
"	"	1576790	1281585		301539, 550, 562, 646, 608, 609, 628, 629, 651, 652, 691	
25. 8.74	710	1576792	944440		301751, 762, 771, 795, 811	
25. 9.74	731	1576793	648800	R/D	301852, 1856, 1874, 1886	
1.10.74	C202D No.004	1576793		6488.00	" " " "	
24.10.74	745	1576794	311100		301852	
31.10.74	760	1576793	6488.00		301852, 1856, 1874, 1886	
9.11.74	762	1576795	238100		300109, 301074	
30.12.74	791	1576796	313020		302140, 302159	
"	801	1576797	631140	R/D	301991, 302003, 302014, 302024	
31.12.74	C202D 05	1576797		631140	" " " "	
			D 137308.63	D29488.80		
		Less	D 29488.80			
			D 107819.83			

• 171

EXHIBITS

"J"
Notice to
Quit
16th January
1975

EXHIBITS

"J"
NOTICE TO QUIT

ALHAJI A.M. DRAMEH,
LL.B. Cert. I.C.L.
Barrister-at-Law
Solicitor of the
Supreme Court

8 MacCarthy Square,
Banjul, The Gambia

16th January, 1975

MY REF: AAMD/AJC

Mr. Emile Abourizk,
Barra Village,
North Bank Division,
The Gambia

10

AS SOLICITOR for BP with whom you entered into a Free Management Reseller Contract/Sublease in connection with the Petrol Station at Barra Village, North Bank Division, The Gambia, I HEREBY GIVE YOU NOTICE to quit and deliver up to them on the 18th day of January, 1975, the possession of the said Petrol Station in accordance with your agreement/Sublease which you have now contravened by leaving the Station closed for over 1 month despite repeated warning.

20

(Sgd) Alhaji A.M.Drameh
8, MacCarthy Square,
Banjul, The Gambia.
SOLICITOR FOR BP.

cc. BP

cc. BP, Dakar.

30

EXHIBITS

"K"

LETTER, PAP C.O.SECKA
TO DODOU N'JIE

1st March, 1975

The Hon. Dodou N'Jie, M.P.
Local Agent for B.P.
Wellington Street,
Banjul, The Gambia.

10 Sir,

Re: GA 9219 on Hire to you from
Emile Abouritz

I am acting on the instruction of Mr.
Emile Abouritz.

Mr. Abouritz informs me that the Hire
Agreement whereby you utilize his vehicle,
GA 9219, for the transportation of your petrol
products, still subsists.

20 I am further instructed that you have
failed to credit the said vehicle for work done
from the 5th day of November, 1974 to the
11th day of January, 1975. From documents in
my client's possession the total amount failed
to be credited is D2,402.50 (Two thousand
four hundred and two dalasis).

It is pertinent to mention that this
sum is more than enough to liquidate the debt
on the said vehicle in favour of the B.I.C.I.

30 I am instructed to kindly request you to
draw a cheque for the above sum in favour of
my client or communicate to him as soon as
possible, of any contrary intentions you may
have.

Most Respectfully,
(Sgd) Pap Cheyassin O. Secka

EXHIBITS

"K"

Letter, Pap
C.O.Secka
to Dodou
N'Jie

1st March
1975

EXHIBITS

"M"

Agreement,
E.Abourizk
and Societe
des Petroles
D'Afrique
Occidentale
21st April
1969

EXHIBITS

"M"

AGREEMENT, E. ABOURIZK
AND SOCIETE DES PETROLES
D'AFRIQUE OCCIDENTALE

AN AGREEMENT made the 21st day of April One thousand nine hundred and sixty-nine BETWEEN EMILE ABOURIZK of Barra in the North Bank Division, Gambia Businessman (hereinafter called the Assignor) of the one part and SOCIETE DES PETROLES BP D'AFRIQUE OCCIDENTALE 2 Avenue Albert Sarraut BP 59 Dakar, with their representative L. BOLON (hereinafter called the Assignees) of the other part

10

1. The Assignor will sublease Lease Number DI.1/L.19 situate at Barra in the North Bank Division Gambia less $\frac{1}{3}$ (One third) of the area thereof for a term of Fifteen years with an option to be exercised SIX months before the termination of the first term of FIFTEEN years.

20

2. The purpose of this sub-lease is for the Assignees to erect a petrol service station. The ground rent in respect of the main lease shall be payable by the Assignor.

3. The rent payable to the Assignor by the Assignees shall be £120 (One hundred and twenty pounds) per year during all the time Mr. Emile Abouritz will operate the service station under the terms of a free management contract with BP. £360 in case BP does not renew the yearly Free Management contract to Emile Abourizk. They agreed rent shall be payable Two years in advance from the date of the proposed assignment.

30

4. The Assignor shall be permitted to build premises on the part not occupied by the Assignees for the purpose of the petrol service station consisting of a minimum distance of 7 (seven) feet from the back wall separating the service station from planned building which is kept for safety reason as per attached plan.

40

5. The Assignees shall pay the rates in respect of the part occupied by them and the Assignor for the part occupied by him as his private residence.

6. Any equipment and installations (including underground tanks and all service station materials e.g. hoist, but excluding buildings

50

shall remain the property of BP and shall be removable at the end of the term stipulated in the prepared lease.

This agreement is entered into subject to the Minister of Local Government Lands and Mines giving his approval to the proposed sublease.

IN WITNESS whereof the parties have hereunto set their respective hands and seals the day and year first above written

EXHIBITS

"M"

Agreement,
E.Abourizk
and Societe
des Petroles
D'Afrique
Occidentale

21st April 1969

(continued)

10

SIGNED SEALED AND DELIVERED
by the within named EMILE
ABOURIZK in the presence
of :-

(Sgd) E.Abouritz

? ? ?

11 Russell Street,
Bathurst.

20

SIGNED SEALED AND DELIVERED
by the within named LOUIS
BOLON District Manager for
Gambia and Senegal of the
within-named Societe des
Petroles BP D'Afrique
Occidentale in the presence
of :-

(Sgd) L.Bolon

? ? ?

EXHIBITS

"N"

Letter,
A.S.B.Saho to
Alhaji A.M.
Drameh

17th January
1975

EXHIBITS

"N"

LETTER, A.S.B. SAHO TO
ALHAJI A.M. DRAMEH

A. S. B. SAHO

BARRISTER-AT-LAW, SOLICITOR & ADVOCATE
OF THE SUPREME COURT

Ref: ASBS/FLJP

Bamba's Chambers,
32 Leman Street,
Bathurst, Gambia

10

Alhaji A.M. Drameh, B.L.
8, MacCarthy Square,
BANJUL.

17th January 1975

Dear Sir,

Your letter, reference AAMD/AJC, dated
16th January, 1975, addressed to my client,
Mr. Emile Abourizk of Barra Village, has
been handed to me to reply to.

My client cannot understand the tenor
of your letter and is perturbed by your
purported notice to quit.

20

I am, therefore, instructed to say that
my client is not prepared to vacate and takes
no notice of your warning.

Your attention is called to the terms
of your client's Agreement of the 1st April,
1969, which inter alia, stipulate references
to arbitration.

I am,
Yours sincerely,

A.S.B. Saho
SOLICITOR FOR EMILE ABOURITZ

30

CC: BP Banjul,
Independence Drive,
BANJUL, THE GAMBIA.

B.P.

Societe Des Petroles,
B.P. D'Afrique Occidentale,
2 Avenue Albert Sarraut,
B.P. 59, Dakar.

EXHIBITS

"O"

LEASE, LAND AT BARRA

Lease Number DI.L/L.19

L E A S E

[PROTECTORATE LANDS ORDINANCE 1945, S.77

EXHIBITS

"O"

Lease, Land
at Barra

23rd February
1965

10

The Lower Nuimi Native Authority for the Lower Nuimi District in the Lower River Division of the Protectorate of the Gambia (hereinafter called the Lessors which expression includes their successors in office) on behalf of the native community of the District aforesaid, and with the approval of the Divisional Commissioner HEREBY LEASES to EMILE ABORITZ of Barra (hereinafter called the Tenant which expression where the context so admits includes his executors administrators and permitted assigns) ALL THAT piece of land containing 1,810 sq.yds acres/square yards/square feet or thereabouts

20

situate at Barra the boundaries of which said piece of land are more particularly delineated on the plan hereon and coloured RED TO BE HELD by the said EMILE ABORITZ as tenant for the term of Twenty-one years commencing on the 10th day of October, 1964 at the year rental of £12 (Twelve Pounds) payable to Kerewan Area Council in advance in the month of January in every year.

30

Excepting and reserving out of this demise all precious metals, coals, seams of coal, mines, minerals, mineral oils, and quarries of stone which now are, or at any time hereafter may be found in, upon or under the said lands with full liberty at all times to the Lessors, their agents or workmen to survey, search, dig for, carry away well or dispose of such metals, coals, seams of coal, minerals, mineral oils and stone and for that purpose to enter upon the said land or any part thereof.

40

THIS LEASE IS SUBJECT ALSO TO THE FOLLOWING CONDITIONS :-

1. The rent shall be subject to re-assessment in the Tenth year of this demise and at the end of every Tenth year thereafter.

2. The Tenant shall not during the said term transfer, assign, mortgage, sublet or allow the use of, with or without payment, the land hereby leased or any part thereof, or otherwise

EXHIBITS

"O"

Lease, Land
at Barra

23rd February
1965

(continued)

by any act or deed procure the said land or any part thereof to be transferred, assigned, mortgaged or sublet without the consent of the Lessors and the approval of the Senior Commissioner first had and obtained.

3. It shall at all times be lawful for the Lessors to resume without compensation any part of the said land which it may be necessary to resume for making roads, canals, bridges, or other works of public utility or convenience. 10

3a. 3a. The tenant shall erect upon the demised premises within.....months from the date hereof a.....fit for immediate occupation.

4. The Tenant shall during the continuance of the said term adequate fence in all stock kept upon the land, and place boundary pillars at each of the corners thereof.

5. The tenant shall use the land for residential and trading purposes and for no other purposes without the previous consent in writing of the Lessors. 20

6. The tenant shall not erect any buildings upon the land hereby leased unless and until the site of such buildings and the plans elevations sections and specifications thereof shall have been approved in writing by the Divisional Commissioner.

7. The tenant shall have the option of extending this lease for a further period of Twenty-one years subject to re-assessment of rental as provided in condition 1. 30

8. Any fixture to, or building erected by the tenant upon the land hereby leased shall be the property of and be removable by the tenant before or within two months after the termination of the tenancy

Provided that :-

(a) the tenant shall not remove any fixtures or building without giving to the Lessors one Month's previous notice in writing of his intention so to do; 40

(b) at any time before the expiration of the notice of removal, the lessors by notice in writing given by them to the tenant, may elect to purchase any building comprised in the notice

of removal, and any building thus elected to be purchased shall be left by the tenant and shall become the property of the lessors who shall pay to the tenant the fair value thereof to an incoming tenant of the land; and any difference as to the value shall be settled by the Divisional Commissioner from whose decision an appeal shall lie to the Governor whose decision shall be final and binding on all parties;

EXHIBITS

"O"
Lease, Land
at Barra

23rd
February
1965

(continued)

10

(c) before such removal the tenant shall pay all rent owing by him, and shall perform or satisfy all his other obligations to the lessors in respect of the land hereby leased;

20

(d) in the course of such removal the tenant shall not do any avoidable damage to any part of the land hereby leased;

(e) immediately after such removal the tenant shall make good all damage occasioned by such removal to any part of the land hereby leased.

30

PROVIDED ALWAYS that the lessors with the approval of the Senior Commissioner may at any time before the expiration of the term of this lease determine this lease upon non-payment by the tenant of rent, rates or other dues lawfully imposed on the land, or upon abandonment or non-use of the land for a period of not less than two years, or upon breach of any covenant or condition herein contained.

40

AND PROVIDED ALWAYS THAT this lease shall, if not registered at the Colonial Registry within sixty days of the date hereof, be and become void and of no effect.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands this 23rd day of February 1965.

Signed by Seyfo Landing Sonko (Sgd) Seyfo
representing the Native Landing Sonko
Authority for the Lower Nuimi (Sgd) Sulayman Sonko
District of the Lower River (Sgd) Saikuba N'Jie
Division in the presence of:-

50

(1) ? (Sgd) Samba Sonko
of Essau
(2) S.S. Jawara

EXHIBITS

"O"
Lease, Land
at Barra
23rd February
1965
(continued)

of Kerewan and
Executed before me
(Sgd) ?

For: Commissioner Lower River Division.

Signed by the above named (Sgd) Emile Abouritz
in the presence of:

(1) (Sgd) G.J.N. N'Jie
of.....

(2) (Sgd) Sally H.O. Cole
of Health Centre Essau

10

Executed before me
(Sgd) ?

For: Commissioner Lower River Division.

APPROVED this 23rd day of February 1965

(Sgd) ?

Senior Commissioner
by powers delegated under
Order No.3 of 1948

This instrument was delivered to me for
registration by Emile Abouritz of Barra this
thirtieth day of August in the year One
thousand nine hundred and sixty-six at 10.35
o'clock in the forenoon.

20

(Sgd) N'Jie Sol.

L.S. REGISTRAR GENERAL

I HEREBY CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF A LEASE FROM THE REGISTRAR
OF DEEDS FROM THE REGISTRAR GENERAL'S OFFICE
MADE IN PURSUANCE WITH THE LAND REGISTRATION
OF DEEDS ACT, AND THAT THE SAME IS NOW UNDER
MY CUSTODY AMONG OTHER REGISTRARS.
DATED THIS TWENTY-THIRD DAY OF MARCH 1976.

30

(Sgd) A.N.M. Darboe
REGISTRAR GENERAL

CHECKED BY
(K. Williams) Sgd.

EXHIBITS

"Q"

LETTER, A.A.M. DRAMEH
TO E. ABOURIZK

EXHIBITS

"Q"

Letter, A.A.
M. Drameh to
E. Abourizk.

13th January
1975

ALHAJI A.M. DRAMEH, 8 MacCarthy Square,
LL.B. Cert. I.C.L. Banjul, The Gambia.
Barrister-at-Law
Solicitor of the
Supreme Court

13th January, 1975

10 My ref: AAMD/AJC

Mr. Emile Abourizk,
Barra Village,
North Bank Division,
The Gambia.

Dear Sir,

In the last fortnight or so I have been discussing your accounts with my clients, BP, and your elder brother, Mr. Farid Abourizk.

20 Some time last week I called at Barra Villa and explained to him the need for him to meet the Local Manager of BP with a view to finalising the said accounts and to re-open the station at Barra which has been closed for over one month and which is contrary to your operational agreement.

30 I succeeded in getting him to Banjul when last Tuesday morning your brother met Mr. N'Jie and after a lengthy discussion he promised to return to him in Banjul to finalize the few points he raised.

This afternoon it was brought to my knowledge that he had failed to keep his appointment with Mr. N'Jie to meet him last Thursday and that Mr. N'Jie waited since then and had not seen him.

I accordingly telephoned your brother this evening but it would appear that he had changed his mind to settle this matter amicably as he insisted in receiving an account stated.

40 Mr. N'Jie has since my telephone conversation with your brother called on me and showed me the monthly statement of accounts he has been sending to you and the general accounting procedure the Company operate.

I am satisfied from what I have seen -

EXHIBITS

"Q"

Letter, A.A.M.
Drameh to
E.Abourizk

13th January
1975

(continued)

including copy monthly statement of accounts you have been receiving, and I strongly recommend that you immediately contact Mr. N'Jie with a view to settling your account that has now been outstanding for some time now.

I am further instructed that certain cheques drawn by you and handed to the Company have been returned marked ("Refer to Drawer").

10

The total sum outstanding against you is D20,945.40 being deliveries in respect of August, September, October and November, 1974. There is no doubt that the Company has been very generous with you in among other things, allowing accounts outstanding as far back as August, 1974, without taking steps in recovering them.

From the books etc., in possession of the Company there is no doubt that you have had all the information you need for your accounts, and that I am now convinced that you have no reason or justification whatsoever to insist that a statement of account from 1971 to date be sent to you.

20

In other words it would appear that you have adopted delaying tactics which may lead to unpleasant relationship with the Company.

I am instructed that unless you take steps to remedy the situation by either settling the account outstanding or making arrangements satisfactory to the Company to do so in 2 days from the date of this letter my clients hold themselves free to accept any advice that may be tendered to them.

30

Yours faithfully,

(Sgd) Alhaji A.M.Drameh

c.c. BP

EXHIBITS

"R"

LETTER, F. ABOURIZK TO
A.A.M. DRAMEH

FARID ABOURIZK,
Barra-Point, N.B.D.,
Banjul, The Gambia

16th January 1975

EXHIBITS

"R"

Letter,
F.Abourizk
to A.A.M.
Drameh

16th
January
1975

10 Alhaji A.M.Drammeh,
LL.B. Cert. I.C.L.
Barrister-at-Law,
Solicitor of the Supreme Court.

MY REF: AAMD/AJC

Dear Sir,

Your letter Ref: AAMD/AJC dated 13th
January was received in regard to our mis-
understanding between my brother Emile Abourizk,
and the local Manager of BP Banjul.

20 If Mr. N'Jie had told you about our
lengthy discussion and my promise to call to
settle the matter - he must have been mistaken
- for I pointed out clearly that only a complete
statement of Account between my Brother Emile
Abourizk and BP Ltd. can clear up the matter,
as complete statement of account can enable us
to see our faults if any, and so come to a
compromise.

30 Since you stated that you have seen the
accountant book of BP and well satisfied -
we are not satisfied, as Mr. N'Jie has failed
to comply in sending us the necessary accounts
statement.

40 Letter of request to payment is Not
statement of account. Where credits and Debits
are plainly stated, to each parties satisfaction.
A Company as important as BP Ltd. or even the
less important businessman should provide
monthly statements of account to their clients
and receipts of payment. Can Mr. N'Jie recall
in the past when only ordinary slips of papers
were sent stating payments, and when that was
done a few times we complained personally that
we cannot accept such, but a decent statement
of account. He then started sending a letter
of request to payments, but no monthly account
statement showing credits and debits.

EXHIBITS

"R"
Letter,
F.Abourizk
to A.A.M.
Drameh
16th January
1975
(continued)

If that is the procedure of a company of BP prestige then my Brother cannot accept to pay such amount as stated owing to BP. unless we have complete record of all credits and debits. How can we come to a compromise when we have no BP record of account to balance our own account and so find our mistakes.

We hope that Mr. N'Jie will show some co-operation and send us a complete statement of account, and receipts for all payments in the past years.

10

Thanking you most sincerely for your kindness and brotherly co-operation.

I remain,
Sincerely yours,

(Sgd) Farid Abourizk

EXHIBITS

"S1"

SUMMARY OF DELIVERIES

S. DE Petrol
B.P.
BANJUL.

EXHIBITS

"S1"

Summary of Deliveries

2nd July 1974
to 22nd
February 1975

TO FUEL DELIVERED ON YOUR BEHALF
FROM MR. EMIL ABOURIZK
BARRA POINT N.B. DIV. TRANSPORT
GA 9219

10

Date of Order	Order Number	Name and Co.	Bill No.	Gallon Petrol or Gas Oil	Amount D	b
5/11/74	268339	Balfour Beathy	32	1000	20	00
11/11/74	268368	G.U.C.	33	1500	208	50
6/12/74	268583	G.U.C.	34	1500	208	50
20/12/74	268732	G.U.C.	do	1000	208	50
3/12/74	268542	Gambia Port Auth.	35	1000	10	00
30/12/74	268786	Wing Afric	36	1800	36	00
7/12/74	268551	Balfour Beathy	37	1000	20	00
12/12/74	268668	- do -	37	1000	20	00
3/ 1/75	268804	G.U.C.	38	1500	208	50
26/ 1/75	000144	G.U.C.	do	1500	208	50
Carried forward					D1148	50

20

Date of Order	Order Number	Name and Co.	Bills No.	Gallon Petrol or Gas Oil	Amount D	b
2/ 7/74	267780	Hassan Gaye K.T.R.	34	1800	150	00
13/ 8/74	268100	"	do	1800	150	00
16/11/74	268258	Al Saiku Kanteh	35	1800	150	00
21/11/74	268443	Hassan Gaye K.T.R.	38	1800	150	00
13/12/74	268682	Al Saiku Kanteh	41	1800	150	00
2/12/74	268538	Al.M.N'Jie & Sons Ltd.	42	1800	225	00
30/11/74	000020	Al Saiku Kanteh	47	1800	225	00
1/11/74	268312	M.A.N'Jie	39	1800	18	00
4/11/74	268330	- do -	do	1800	18	00
11/11/74	268356	- do -	do	1800	18	00

30

D1254 00
1148 50

40

B/forward

Carried Forward

D2420 50

EXHIBITS

"S2"

Summary of Deliveries

22nd February to 24th March 1975

EXHIBITS

"S2"

SUMMARY OF DELIVERIES

TO FUEL DELIVERED ON YOUR BEHALF

FROM EMIL ABOURIZK

BARRA POINT - N.B. DIV. TRANSPORT LORRY
GA 9219

Date of Order	Order Number	Name and Co.	Bill No.	Gallon Petrol or Gas Oil	Amount
				Brought forward	D2402 50
24/2/75	000325	G.U.C.	39	1500	243 00
24/3/75	000472	- do -	41	1500	243 00
22/2/75		- do -	42	1800	243 00
		A/C paid by B.P. for the lorry to B.I.C.I.			3131 50 1678 64
				from a/c	D1452 86
		Balance up to August 1975	40		18 00

(Sgd) on behalf of
Emil Abourizk

EXHIBITS

"T"

LETTER, PAP C.O.SECKA
TO DODOU N'JIE

28th April, 1975

The Hon. Dodou N'Jie, M.P.,
Local Agent for B.P.
Wellington Street,
Banjul, The Gambia.

10 Sir,

RE: GA 9219 ON HIRE TO YOU FROM
EMILE ABOURITZ

Please refer to my letter to you dated the 1st March, 1975, on the above subject matter. It is unfortunate that you didn't consider it necessary to even acknowledge receipt of the letter.

20 According to the bank statement (B.I.C.I.) received by my client, dated the 3rd of April, 1975, the balance due on the lorry account is D1,678.64.

My client's Account with you stands at D3,147.00. It is axiomatic that, if you had paid over the sums due to my client as and when they are due, my client would have been in a position to liquidate the lorry account long since.

30 I am instructed to request you to pay the sum due to my client's account at the B.I.C.I. forthwith.

Please be informed that my client wishes to dispose of the vehicle as soon as he can free it from its present incumbrance. Your delay in paying over the sum due can only have the effect of frustrating my client's business plans.

40 My client cannot think of any reason why you shouldn't pay over the sum due; and he is greatly disturbed by the fact that you have chosen not to enlighten him either.

Respectfully,

(Sgd) Pap Cheyassin O.Secka

cc: 1. The Manager
B.I.C.I. Ltd., Leman Street,
Banjul, The Gambia.

EXHIBITS

"T"

Letter, Pap
C.O.Secka to
Dodou N'Jie

28th April
1975

EXHIBITS

2. Client

"T"

Letter, Pap
C.O.Secka to
Dodou N'Jie

3. File

20th April
1975

(continued)

"U1"

Summary of
Bank Payments
1970

EXHIBITS

"U1"

SUMMARY OF BANK PAYMENTS
1970

PAYMENTS TO B.P. THROUGH BANK, 1970

Feb.	11	Cheque 1531401	£1100	0	0	
	16	" 402	324	1	0	
March	20	" 406	714	10	0	10
April	23	" 407	717	0	0	
May	20	" 408	739	3	0	
June	19	" 409	567	13	0	
	19	" 411	8	15	0	
	26	" 412	60	0	0	
July	18	" 413	488	10	0	
August	17	" 414	744	1	0	
	22	" 415	70	0	0	
Oct.	22	" 416	838	7	0	
	22	" 417	730	17	0	20
Nov.	22	" 418	773	15	0	
Dec.	18	" 419	798	19	0	
			<hr/>			
			£8675	11	0 =	
						D43,377.75

EXHIBITS

"U2"

SUMMARY OF BANK PAYMENTS

EXHIBITS

"U2"

Summary of
Bank
Payments
1971

PAYMENTS TO B.P. THROUGH B.I.C.I. 1971

	January	11	Cheque 1531421	£1481	1	0	
		19	" 422	233	0	0	
	Feb.	10	" 423	1882	1	0	
	March	24	" 427	1565	15	0	
		31	" 428	148	11	0	
10	April	13	" 429	140	5	0	
		24	" 430	841	0	0	
	May	10	" 432	39	12	6	
		24	" 433	1150	19	0	
	June	24	" 434	1079	11	0	
				<hr/>			
				£8561	15	6	= D42,808.87

Dalasis)

	June	26	" 436	6,925.75			
	August	25	" 437	6,868.41			
	Oct.	6	" 438	8,352.90			
20	Nov.	6	" 441	6,116.69			
	Dec.	6	" 442	5,761.16			
		31	" 444	7,477.86	+	<u>D41,502.77</u>	
							D84,311.64

EXHIBITS

"U3"
Summary of
Bank Payments
1972

EXHIBITS

"U3"
SUMMARY OF BANK PAYMENTS

PAYMENTS TO B.P. THROUGH B.I.C.I. 1972

1972					
January	26	Cheque	1531445	D11,603.51	
Feb.	25	"	447	11,639.99	
March	28	"	449	12,005.17	
April	30	"	450	8,945.51	
July	14	"	1576751	11,963.19	
August	4	"	752	14,865.95	10
Sept.	15	"	753	8,819.40	
Oct.	20	"	754	8,220.60	
Nov.	20	"	755	10,011.95	
Dec.	20	"	757	1,000.00	
	25	"	758	6,646.86	
				<hr/>	
				D105,722.13	

EXHIBITS

"U4"

SUMMARY OF BANK PAYMENTS

EXHIBITS

"U4"

Summary of
Bank Payments
1973

PAYMENTS TO B.P. THROUGH B.I.C.I. 1973

	January	15	Cheque 1576759	D10,871.30
		29	" 760	1,626.54
	Feb.	20	" 761	8,847.15
		28	" 762	17,209.30
	March	5	" 763	500.00
10	April	18	" 764	10,841.30
	May	22	" 766	13,332.30
	June	9	" 767	2,797.98
		20	" 768	1,942.74
		22	" 769	12,613.30
	July	22	" 770	10,072.19
	August	30	" 773	11,203.30
	Sept.	30	" 775	9,635.00
	Oct.	10	" 776	1,530.01
		30	" 777	6,669.00
20	Nov.	15	" 778	6,248.20
				<hr/>
				D125,939.61

EXHIBITS

"U5"

Summary of
Bank Payments
1974

EXHIBITS

"U5"

SUMMARY OF BANK PAYMENTS

PAYMENTS TO B.P. THROUGH B.I.C.I. 1974

January	3	Cheque 1576780	D 9,015.60	
	20	" 781	8,088.70	
	25	" 782	2,297.70	
Feb.	10	" 783	3,875.63	
March	7	" 784	9,720.00	
April	9	" 785	8,600.70	10
	9	" 786	1,094.00	
	30	" 787	11,941.45	
June	1	" 788	6,367.95	
	30	" 789	9,447.65	
July	16	" 790	12,815.85	
	16	" 791	1,035.00	
Sept.	3	" 792	9,444.40	
	30	" 793	6,488.00	
Oct.	4	" 794	3,111.00	
	10	" 795	2,381.00	20
Dec.	31	" 796	3,130.20	
			<hr/>	
			D108,854.83	

EXHIBITS

"AA1"

SUMMARY OF SUPPLIES
RECEIVED

EXHIBITS

"AA1"

Summary of
Supplies
received

12th January
1974 to 6th
August 1974

E.ABOURTIZ VS B.P.

SUPPLIES DULY RECEIVED

(Period 12th Jan. 1974/6th August, 1974)

	<u>Date</u>	<u>Delivery Note No.</u>	<u>Invoice No.</u>	<u>Amount</u>	
10	Jan. 12	224452	000162	2502.00	
	14	224464	000172	2502.00	
	17	224499	000190	2358.00	
	21	239786	000214	<u>2358.00</u>	9720.00
	Feb. 2	239906	000367	2808.00	
	12	239979	000430	2838.00	
	25	241 24	301055	<u>2808.00</u>	8454.00
	March 5	241370	301038	2826.00	
	6	241376	301074	2378.00	
	20	241448	301157	3166.00	
20	21	241492	301171	<u>3078.00</u>	11448.00
	April 2	241559	301223	3078.00	
	5	241583	301236	70.65	
	12	241633	301304	3078.00	
	29	241717	301422	<u>3133.00</u>	9359.65
	May 6	244509	301447	3111.00	
	27	244608	301539	3111.00	
	31	244630	301550	<u>3111.00</u>	9333.00
	June 4	244667	301628	81.00	
	4	244668	301629	<u>160.00</u>	241.00
30	July 5	267801	301771	3078.00	
	15	267841	301795	3111.00	
	30	267916	301886	<u>215.80</u>	6404.80
	Aug. 6	267956	301874	<u>3078.00</u>	<u>3078.00</u>
			TOTAL		D 58038.45

N.B.

The above by FACT that all copies of delivery Notes herein are duly signed by E.Abouritz or his Agents, correct with their respective Invoices and Amounts.

22/6/76

(Sgd) L. Thomasi

EXHIBITS

"AA2"

Summary of
Supplies
received

26th August
1974 to 13th
December 1974

EXHIBITS

"AA2"

SUMMARY OF SUPPLIES
RECEIVED

E. ABOURITZ VS B.P.

SUPPLIES DULY RECEIVED

(Period 26th August 1974/13th December 1974)

<u>Date</u>	<u>Delivery Note No.</u>	<u>Invoice No.</u>	<u>Amount</u>	
August 26	268034	301991	61.20	10
31	268052	302003	<u>3078.00</u>	3139.20
Sept. 5	268073	302014	61.20	
9	268087	302024	3111.00	
13	268103	302036	61.20	
23	268155	302064	<u>3111.00</u>	6344.40
Oct. 11	268237	302195	61.20	
16	268250	302205	3078.00	
	268259	302213	<u>61.20</u>	3200.40
Nov. 11	268358	302301	2011.20	
	268369	302350	61.20	20
13	268376	302353	3111.00	
18	268403	302364	3078.00	
19	268423	302555	<u>61.20</u>	8322.60
Dec. 13	268683	302648	<u>61.20</u>	61.20
				<u>21067.80</u>

N.B. 6/12/74, Delivery Note 268584 (61.20) unsigned

22/6/76

(Sgd) L.Thomasi

EXHIBITS

"AA3"

PAYMENTS MADE BY
E. ABOURITZ

EXHIBITS

"AA3"

Payments made
by E.
Abouritz
1974

PAYMENTS MADE BY E.ABOURITZ TO B.P.
(ZPeriod January 1974/December 1974)

<u>Month</u>	<u>Cheque No.</u>	<u>Amount</u>	
10 January	1576780	9015.60	
	781	8088.70	
	782	<u>2297.70</u>	19402.00
February	783	3875.63	
	784	<u>9720.00</u>	13595.63
March	785	<u>8600.70</u>	8600.70
April	786	1094.00	
	787	<u>11941.45</u>	13035.45
May	788	<u>6367.95</u>	6367.95
June	789	<u>9447.65</u>	9447.65
July	790	<u>12815.85</u>	12815.85
August	792	<u>9444.40</u>	9444.40
20 September	793	<u>6488.00</u>	6488.00
October	794	<u>3111.00</u>	3111.00
November		2381.00	
	795	- <u>3.00</u>	<u>2378.00</u>
December	796	<u>3130.20</u>	3130.20
			<u>D107816.83</u>

N.B. on Ex.H :-

1. The packful Invoices on Ex.H are of no purpose (invoices repeated 13 times, Invoices 301991, 302003, 302014 and 302024 repeated on Ex.A.
2. Ex.H is only a part of a statement of E.B's Account, the other part not at all entered into the statement of account because being uncertain to BP and full of repeating mistakes.
3. Also a Cart before the horse. In a statement of a/c of a Trader, the receipts are before the payments.

22/6/76

(Sgd) L.Thomasi

EXHIBITS

"AA4"
Summary of
Accounts
1974

EXHIBITS

"AA4"
SUMMARY OF ACCOUNTS

IN THE CASE E. ABOURITZ VS B.P. BANJUL

SUMMARY OF ACCOUNTS

Ex L

Total Supplies received,
January/August, 1974 58038.45

Ex A

Total supplies received,
August/December, 1974 21067.80

Ex H

Total cash payments to
B.P. through BICI 107816.83

	<u>79106.25</u>	
CREDIT BALANCE E.B.	28710.58	
	<u>D107816.83</u>	<u>D107816.83</u>

Due E.B. to date on Barra Petrol
Station..... D28710.58

22/6/76

(Sgd) L. Thomasi

EXHIBITS

"AA5"

SUMMARY OF FUEL TRANSPORT
BY LORRY GA 9219

EXHIBITS

"AA5"
Summary of
Fuel
Transport
by lorry
GA 9219

E. ABOURITZ VS B.P.

FUEL TRANSPORT TO BP'S CUSTOMERS BY E.A.'S
LORRY GA 9219

	<u>Order No.</u>	<u>Customer's Name</u>	<u>E.A. Bill No.</u>	<u>Amount</u>	
10	268339	Balfour Beathy	32	20.00	
	268368	G.U.C.	33	208.50	
	268583	G.U.C.	34	208.50	
	268732	G.U.C.	"	208.50	
	268542	Port Authorities	35	10.00	
	268786	Wing Afric	36	36.00	
	268551	Balfour Beathy	37	20.00	
	268668	Balfour Beathy	"	20.00	
	268804	G.U.C.	38	208.50	
	000144	G.U.C.	"	208.50	
20	000325	G.U.C.	39	243.00	
			-40	18.00	
	000472	G.U.C.	41	243.00	
	22/7/75	G.U.C.	42	<u>243.00</u>	1877.50
	267788	Hassan Gaye, Kuntaur	34	150.00	
	268100	Hassan Gaye, Kuntaur	"	150.00	
	268258	Alhaji Saiku Kanteh	35	150.00	
30	268443	Hassan Gaye, Kuntaur	38	150.00	
	268682	Alhaj Saiku Kanteh	41	150.00	
	268538	Alhaji M.N'Jie & Sons	42	225.00	
	000020	Alhadj Saiku Kanteh	47	225.00	
	268312	M.A.N'Jie	39	18.00	
	268330	M.A.N'Jie	"	18.00	
	268356	M.A.N'Jie	"	<u>18.00</u>	1254.00
40			TOTAL DUE		3131.50
			Paid by BP to BICI for E.B.'s lorry account		<u>1678.64</u>
			BALANCE DUE AB ON TRANSPORT ACCOUNT		<u>D1452.86</u>

N.B.

1) The first part above (called by BP OFFICIAL), admitted long by BP on which BP paid D1678.64 to the BICI for AB's lorry account leaving a balance of D198.86 unpaid on account of

EXHIBITS

"AA5"
Summary of
Fuel
Transport
by lorry
GA 9219

(continued)

accounts dispute between the parties.

- 2) The second part above (called by BP PRIVATE CUSTOMERS) refuted by BP on BP's ground that EB should have collected directly this amount of D1254.00 from the customers.

Balance on OFFICIAL	198.86
Due on PRIVATE CUSTOMERS	<u>1254.00</u>

TOTAL DUE AS ABOVE	<u>1452.86</u>
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10

22/6/76

(Sgd) L.Thomasi

No. 39 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE GAMBIA COURT OF APPEAL

B E T W E E N :

BRITISH PETROLEUM LIMITED

Appellants
(Plaintiffs)

- and -

EMILE ABOURITZ

Respondent
(Defendant)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & Co.
61 Catherine Place,
Westminster, SW1E 6HB

CHARLES RUSSELL & Co.
Hale Court,
Lincoln's Inn,
London, WC2A

Solicitors for the Appellants

Solicitor for the Respondent