Abeles v Viola

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Banda CJ
Cause Number:	Civil Cause Number 1226 of 1990 (15 MLR 1)
Date of Judgment:	October 01, 1992
Bar:	Chikopa, Counsel for the Plaintiff Mhone, Counsel for the Defendant

Head Notes

Civil Procedure – Appeals – Rehearing – Appeal from Registrar to be treated as a rehearing before a Judge.

Civil Procedure – Admission – Liability to pay interest – Admission requires an unequivocal expression.

Contract Law – Formation – Offer and acceptance – A retraction of an offer before acceptance means no binding contract exists.

Civil Procedure – Costs – Discretion – A successful litigant is entitled to costs unless there is a good reason to be deprived.

Summary

The Plaintiff appealed to the High Court, Principal Registry, against a ruling by the learned Registrar. The Registrar had found that the Defendant had not made any admission regarding the payment of interest on the purchase price of several plots of land. The appeal was treated as a rehearing of the application, and the Court considered the findings of the Registrar but was not bound by them. The Plaintiff contended that the Defendant's letter dated 19 June 1990 constituted a clear and unequivocal admission of liability to pay interest. The Plaintiff argued that the Plaintiff's letter of 7 June 1990 contained an offer which the Defendant accepted in his subsequent letter, thereby forming a binding contract.

The Court found that there was no definite offer made by the Plaintiff capable of being accepted by the Defendant. The Defendant's letter of 19 June 1990, even if it was an offer, was not accepted and was in fact retracted before any acceptance could take place. Therefore, no binding contract for the payment of interest existed. Consequently, the Court found there was no admission of liability. The appeal was dismissed with costs to the Defendant. The Court held that a successful litigant is generally entitled to costs unless there is a good reason to deny them, and noted that the Registrar had failed to exercise this discretion judicially. The Court therefore ordered that the Plaintiff should receive his costs up to the time of payment, which was on 16 January 1991.

Legislation Construed

N/A

Judgment

This is an appeal from the ruling of the learned Registrar when he found that the defendant had not made any admissions on the issue of payment of interest on the purchase price for a number of plots of land which the defendant bought from the plaintiff.

It is trite law that an appeal from the Registrar to this Court is treated as an actual rehearing of the application which led to the order under the appeal. I must, therefore, treat the matter as if it is coming before me for the first time. I must consider the findings of the learned Registrar and give them due weight although I am not bound by them nor am J fettered by the Registrar's exercise of his discretion.

Mr. Chikopa who appeared for the plaintiff filed four grounds of appeal and all of them attacked the findings of the learned Registrar. Mr. Chikopa contended that the defendant had admitted that he was liable to pay interest on the balance of the amount of the claim. Mr. Chikopa relied upon the defendant's letter dated 19th of June, 1990 which, he has argued, contains a clear and unequivocal admission of liability to pay interest.

Secondly, Mr. Chikopa has contended that the letter written by the plaintiff dated 7th of June, 1990 contained the offer which the defendant accepted in his letter dated 19 of June, 1990. It was Mr. Chikopa's submission that theré was, therefore, a binding contract between the plaintiff and the defendant on the issue of interest. It was a further contention of Mr. Chikopa that acceptance need not always be expressed in words or writing as acceptance can .be by conduct and that in this particular case the defendant made the offer to pay interest and that it was accepted by the plaintiff

through conduct in that the latter refrained from taking any further action to recover the amount.

The Registrar's finding that the admig§sions must be "very very clear'' before judgment can be signed or granted was also attacked by Mr. Chikopa. He submitted that the learned Registrar misdirected himself in that the standard of proof which is required before judgment can be granted on an admission is that the admissions must be clear and not "very very clear" as the Registrar stated in his ruling. Mr. Chikopa submitted that had the Registrar applied the correct standard of proof he would have found that the defendant did admit to pay interest.

The other ground of appeal which Mr. Chikopa canvassed before this Court was that the learned Registrar erred for not making an order for costs.

Mr. Mhone who appeared for the defendant resisted the appeal on all the grounds that Mr. Chikopa argued except the last ground relating to the order for costs where Mr. Mhone appeared to concede that some order for costs could have been made up to a certain stage in the proceedings. Mr. Mhone contended that the original agreement for sale was not produced in Court and this would have enabled the Court to determine whether the question of interest was or was not part of the agreement. It is also Mr. Mhone's contention that from the way the payments were made as set out in the defence, it is possible to infer that the agreed purchase price of K250,000 was payable in instalments without interest. Mr. Mhone further contended that by the time the plaintiff's legal practitioner raised the issue of interest, six instalments had already been paid within a space of two months and without any interest. It is, therefore, Mr.

Mhone's contention that even if it is assumed that the issue of interest was part of the original agreement to purchase land, the fact that six instalments were paid without interest constituted a waiver by the plaintiff. Mr. Mhone also submitted that even if it is assumed that the letter by the defendant dated 19th of June, 1990 was an acceptance to pay interest, it hardly agrees with the calculations made in that letter which established the total payment of K156,000. He submitted that these calculations did not include interest and he, therefore, submitted that the letter of 19th of June, 1990 was an offer to negotiate the question of interest which the plaintiff did not accept.

I have carefully considered the issues which have been canvassed before this Court and the crucial point to determine, in my judgment, is whether or not there was an offer made by one party and accepted by the other. In order to decide whether parties have reached an agreement, it is usual to enquire whether there has been a definite offer by one party and a definite acceptance of that offer by the other party. There must be some evidence from which a Court can infer an acceptance. As Mr. Chikopa rightly submitted, acceptance can take different forms. It may be expressed in words either in writing or orally or it can also be inferred through the conduct of the parties. But conduct will only amount to acceptance of an offer when it is clear that the offeree did act with the intention of accepting the offer.

Now what is the offer in this case which was capable of being accepted? As I understand it, the argument is couched in the alternative and it is that the letter from the plaintiff dated 7th of June, 1990 was an offer which the defendant accepted by his letter dated i9th of June, 1990. Or, alternatively, it is contended that the letter by the defendant of the 19th of June, 1990 was an offer which was accepted by the plaintiff

through conduct in that he forebore to take any further action to recover the amount against the defendant.

The difficulty that arises from the first alternative argument is that the letter which allegedly contained the offer was not produced either before the Registrar or before this Court. It is, therefore, difficult for this Court to discover whether that letter contained a definite offer which was capable of being accepted by the defendant. From the defendant's letter dated 19th of Jum, 1990 it i¢ élear that the plaintiff's letter must have stated that the defendant must pay the balance or else it would attract interest at the rate of 15%. On that basis the Registrar's finding that the plaintiff's letter "was in terrorem" to persuade the defendant to pay was not off the mark.

The other difficulty that belies the second alternative argument is that the letter from the plaintiff's legal practitioners dated 3rd of January is categorically stating that the respondent's letter of 19th of June, 1990 did not conform to the letter. dated 7th of June, 1990. If that is the plaintiff's case, then clearly there was no acceptance of the plaintiff's’ offer because the law states that the acceptance must conform with the offer made.

I am satisfied, on the basis of the evidence'that was before the Registrar and before this Court, to find that there was no definite offer made by the plaintiff which was capable of being accepted by the defendant. If the letter of the 19th June, 1990 £rom the defendant was making an offer to the plaintiff, the letter of 3rd of July makes it clear that that offer was not being accepted. However, even if the letter of 19th June, 1990 did make an offer to pay interest, that offer was retracted before it was accepted

and, therefore, there was no binding contract as to the payment of interest. Consequently, I find that there was no admission as to the payment of interest.

The issue of costs has exercised my mind. The general principle is that a successful litigant is entitled to his costs unless there is some good reason why he should be deprived of his costs. Costs are always in the discretion of the Court and the learned Registrar did not give any reasons why no order for costs was made. In those circumstances, it is difficult to know whether the learned Registrar did excercise his discretion which must always be exercised judicially.

After considering all the issues carefully, I am satisfied that this is a proper case in which the plaintiff should have his costs only up to the time of payment in which was on 16th of January, 1991.

This appeal must, therefore, fail and it is dismissed with costs.

MADE in Chambers this list day of October, 1992 at Blantyre.