ASSOCIATED CHEMICALS LIMITED v HILL AND DELAMAIN ZAMBIA LIMITED AND ELLIS AND COMPANY (AS A LAW FIRM) (1998) S.J. 7 (S.C.)

SUPREME COURT
NGULUBE,C.J., MUZYAMBA AND LEWANIKA, JJ.S.
2ND DECEMBER, 1997 AND 3RD MARCH, 1998.
(S.C.Z. JUDGMENT NO. 2 OF 1998)

Flynote
Company Law - Legal status of a company - Body Corporate - Independent of its shareholders, etc.

Headnote
The respondent company took out a writ to recover money owed for services rendered at the instance and request of the appellant company. The claim was that between October, 1992 and November ,1993, the respondent cleared and forwarded the appellant's goods from Dar es Salaam in Tanzania to Ndola. The defence at the time was simply a denial that the appellant had entered into any such transaction with the respondent. When the trial opened, the witness for the respondent testified how they had been verbally instructed and also given some documents concerning the shipment of the goods and how the cargo was cleared and forwarded to Ndola. The appellant's lawyers of record at the time sought adjournments, one of which was for the purpose of attempting an out of court settlement. As the learned trial judge observed, the then advocates - the proposed third parties - even wrote to their opponents accepting liability on behalf of their client. Later the appellant's new lawyers sought to add Ellis and Company as parties to the suit.

Held:

(i) A company is a person distinct from its members or shareholders, a metaphysical entity or a fiction of law, with 25 legal but no physical existence.

For the Appellant : Henry Mbushi, of Ndola Chambers .
For the respondent : L. Matibini of Matibini and company .
For the proposed 3rd party : Lagos Nyembele, of ellis and company .

Judgment

NGULUBE ,C.J.: delivered the judgment of the court.

On 2nd December, 1997, when we heard this appeal, we dismissed it with costs and said we would give our reasons later. This we now do.

The respondent company took out a writ to recover money owed for services rendered at the instance and request of the appellant company. The claim was that between October ,1992 and November, 1993, the respondent cleared and forwarded the appellant's goods from Dar es Salaam in Tanzania to Ndola. The defence at the time was simply a denial that the appellant had entered into any such transaction with the respondent. When the trial opened, the witness for the respondent testified how they had been verbally instructed and also given some documents concerning the shipment of the goods and how the cargo was cleared and

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Meanwhile, the appellants changed lawyers. Their present lawyers came across a share purchase agreement dated 30th November, 1993, drawn by Messrs Ellis and Company under which the previous shareholders (two Patels) sold all the issued shares in the appellant company to a new shareholder (Mr Kilasa). There were clauses in the share purchase agreement whereby the vendors undertook to indemnify the purchaser and the appellant company against outstanding financial liabilities incurred prior to the sale of the shares. On the basis of this agreement Counsel for the appellant applied to the learned trial judge to join Messrs. Ellis and Company as third party to indemnify the appellant and meet the respondent's claim. He also applied to amend the defence so as to claim in effect that, because of the indemnity clauses, the new shareholder and the new management of the appellant company were not liable for this old debt and that the former lawyers should be made liable as third party for their alleged negligence in not resisting the claim on the basis of the indemnity clauses in the share purchase agreement.

The attempt to implead the former lawyers did not impress the learned trial judge who saw no connection between the debt owed by one company to another for services rendered and the indemnity in the share purchase agreement. He did not see why the respondent should be denied the enjoyment of a judgment in their favour on account of matters that had nothing to do with the respondent company when the appellant could bring separate proceedings if they thought they had a claim against their former lawyers.

We agree with the learned trial judge. In seeking to distringuish between old and new shareholders and between new and old management, indeed in seeking to treat the business transaction giving rise to the respondent's claim as one essentially between individuals, Mr Mbushi fell into grave error. A principle of the law which is now too entrenched to require elaboration is the corporate existence of a company as a distinct legal person: See Salomon v Salomon And Company (1897) A.C. 22 and also the Companies Act, Cap.388 of the 1995 Edition of the Laws of Zambia. Upon the issue of the certificate of incorporation, the company becomes a body corporate. As the learned authors of Palmer's company Law (22nd Ed.) suggest in chapter 18, a company is:

> ".....not, like a partnership or a family, a mere collection or aggregation of individuals. In the eyes of the law it is a person distinct from its members or shareholders, a metaphysical entity or a fiction of law, with legal but no physical existence."

There are occasions when it may become necessary to look at who are the shareholders or the managers: an action to recover money for services rendered by one company at the instance and request of another and for the latter's obvious benefit is decidedly not one of the occasions to consider shareholders and managers. The argument based on old and new shareholders and managers or on the share purchase agreement must fall of its own inanition.

It was for the foregoing reasons that we dismissed this appeal.
Appeal dismissed.
