

In The Supreme Court of Nigeria

On Friday, the 9th day of July 1965

Before Their Lordships

Sir Lionel Brett Justice, Supreme Court
Charles Dadi Onyeama Justice, Supreme Court
Michael Oguejiofo Ajegbo Justice, Supreme Court

SC. 66/1964

Between

Gulab (Nigeria) Ltd Appellant

And

Sachdeva Respondent

Judgment of the Court

Delivered by
Michael Oguejiofo Ajegbo. J.S.C.

In an action before the High Court of Lagos the plaintiff claimed the sum of £912-6s-5d being an amount due from the defendants as acceptors of bills of exchange for £500 and £375 dated 2nd August, 1962 and 3rd August, 1962 respectively drawn by the plaintiff and accepted by the defendants payable to the order of the United Bank of Africa Limited which bills of exchange upon being presented for payment at maturity by the said Bank were dishonoured.

On the 20th March, 1963, the defendants, through their solicitor, filed a "Notice of Intention to defend" the suit and a "Notice of Counterclaim" for a sum of £1,658-17s-8d. They followed this up with a motion on notice under Order 26, rule 4(a) of the former Supreme Court (Civil Procedure) Rules asking that they be allowed to set up the counterclaim out of time and that the proceedings in the action be stayed until the plaintiff has given security to comply with the orders and judgment of the court with regard to such counterclaim and for costs.

The motion came before Lambo. J. on the 16th April, 1963. He granted the application to set up a counterclaim but without giving any reasons he refused to make an order that the plaintiff give security for the counter-claim and for costs. It is against that decision refusing to make the order that the defendants have brought this appeal.

Arguing the appeal for the defendants, Mr Impey submitted that having granted the defendants' application to set up a counterclaim, the learned judge was wrong to have refused to make an order that the plaintiff give security for the counter claim and for costs as the defendants have disclosed in paragraph 10 of their affidavit, which was not contradicted, that the plaintiff resides outside the jurisdiction of the court and has no assets in Nigeria to which the defendants could resort were they to succeed in their counterclaim. He also made the point that the defendants would find it extremely difficult to enforce any judgment in their favour because the Reciprocal Enforcement of Judgments Act does not apply to Italy, where the plaintiff resides.

This submission seems to us well-founded. A plaintiff in any suit may be required to give security for costs under Order 14, rule 6, and a suit brought by or on behalf of a plaintiff who is out of the jurisdiction may be stayed under Order 5 until the plaintiff gives security to comply with the orders and judgment of the court on a bona fide counterclaim. But as Mr Adoki, counsel for the plaintiff, has rightly pointed out, this is a matter within the discretion of the trial judge and we cannot say that he has exercised his discretion wrongly in refusing the application to make an order for security for the counterclaim. We are of opinion, however, that a case was made out for an order for security for costs. A court of appeal can

"examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order": *Evans v. Bartlam* [1937] A.C.473 at page 486.

The appeal against the judge's refusal to make an order that the plaintiff should give security for costs is allowed with costs assessed at 40 guineas to the appellant.

It is ordered that the plaintiff give security for the defendants' costs in this action in the sum of one hundred and thirty-five pounds by payment into court or to the satisfaction of the Chief Registrar of the High Court of Lagos, and that in the meantime all further proceedings be stayed.

Counsel

G. L. Impey For the Appellant

C. E. Adoki For the Respondents