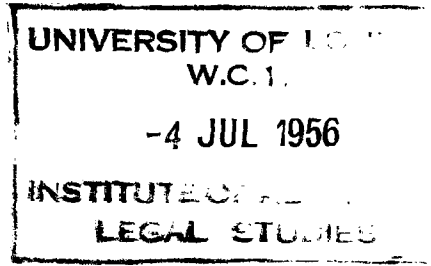


~~G.H.G. 3~~

27, 1955



In the Privy Council

No. 34 of 1954.

43596

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

THE LAGOS CHAMBER OF COMMERCE (INC)
(Plaintiffs) APPELLANTS

AND

1. THE REGISTRAR OF COMPANIES and
2. ASSOCIATION OF MERCHANTS AND INDUSTRIALISTS
(Defendants) RESPONDENTS.

CASE FOR THE SECOND RESPONDENT

RECORD

1.—This is an Appeal from a Judgment and Order of The West African Court of Appeal, dated 17th November, 1952, affirming the Judgment of The Supreme Court of Nigeria, dated 8th May, 1951, dismissing the Appellant's (Plaintiff's) claim for an Injunction restraining the First Respondent (First Defendant) from registering the proposed new name of the Second Respondent (Second Defendant).
p. 17
p. 12
p. 3, l. 24

2.—Proceedings were commenced by the issue of a Writ of Summons by the Appellant addressed to the Respondents and dated 31st August 1950 in which the Appellant claimed an Injunction restraining the First Respondent from proceeding with the registration of an application by the Second Respondent for a change of name of the Second Respondent to that of "African Chamber of Commerce."
p. 1
p. 2, l. 3
10

3.—On 23rd October, 1950, the Statement of Claim was delivered and sets out the Appellant's case as being that the name "African Chamber of Commerce" so nearly resembles that of the Appellants as to be calculated to deceive.
p. 3, l. 20

The Statement of Claim sets out the objects of the Appellant Association and states that the Appellant Association believes the objects of the Second Respondent to be substantially the same as theirs.
p. 2, l. 20
p. 3, l. 6

20 The Statement of Claim also states that the Appellants have been commonly known and addressed as "The Chamber of Commerce Lagos," and that a large proportion of the correspondence received by them particularly from abroad is so addressed.
p. 3, l. 1

- p. 4 4.—The Defence of the Second Respondent, dated 2nd November, 1950, was similar to the Defence of the First Respondent, dated 1st November, 1950. The Defence contended (a) that the name “ African Chamber of Commerce ” did not so nearly resemble that of the Appellants as to be calculated to deceive and (b) that the words “ Chamber of Commerce ” constituted a generic designation for particular associations or bodies of persons and could not therefore be exclusively claimed by one of the associations or bodies that could normally answer to that designation.
- p. 4, l. 5
p. 5, l. 9
p. 4, l. 8
p. 5, l. 12
- p. 12 5.—The action was heard by Mr. Justice Robinson, who delivered his Judgment on 8th May, 1951, dismissing the action. The relevant part of the said Judgment which deals with the question as to whether or not the name proposed so nearly resembled that of the Appellant as to be calculated to deceive is as follows :— 10
- p. 14, l. 6 “ But if good sense is not going to prevail, is there any legal objection to the Second Defendants being registered as the “ ‘ African Chamber of Commerce ’ with an address in Lagos “ and thus almost certainly receiving a number of letters addressed “ ‘ Chamber of Commerce-Lagos ’ ? I think not—The words “ ‘ Chamber of Commerce ’ are descriptive—It describes what the “ company is and there could be no objection to each locality 20 “ having one so long as the name of the locality is only taken “ by one. Chambers of Commerce are differentiated from the “ point of view of Registration, by the name of the Chamber— “ I think the Registrar is right when he says that his duty is to “ ignore the words ‘ Chamber of Commerce ’ and to see whether “ ‘ African ’ so nearly resembles ‘ Lagos ’ as to be calculated to “ deceive. If letters are correctly addressed, they will arrive “ at their respective addresses without confusion—Confusion “ will arise in fact because foreign correspondents, knowing the “ proper and ordinary practice of Chambers of Commerce, i.e. 30 “ one for each place, would not expect a choice of addresses if “ they sent their letters to ‘ Chamber of Commerce, Lagos.’ “ They would expect their letters to find their way to the Lagos “ Chamber of Commerce, but I do not think that because the “ Second Defendants choose to break away from common form “ that it can be said in the legal sense to be calculated to deceive. “ There could be no difficulty at all if their address was not in “ Lagos. But the Registrar, and the Court is only concerned “ with the name, not the address. ”
- p. 15 6.—Notice of Appeal from Mr. Justice Robinson’s Judgment was given on 10th May, 1951, and the grounds of appeal as set out were : 40
- p. 16, l. 8 (a) that the Judge was wrong in holding that the words “ Chamber “ of Commerce ” were descriptive ;
- (b) that the Judge was wrong in holding that the name “ African “ Chamber of Commerce ” did not so nearly resemble the

name "Lagos Chamber of Commerce" as to be calculated to deceive.

7.—The Appeal was heard by The West African Court of Appeal p. 17 which delivered its Judgment on the 17th November, 1952, dismissing the Appeal. The Judgment was concurred in by all three Judges constituting the Court of Appeal, and the relevant part is as follows :

10 " I do not myself consider that if a company chooses to p. 18, l. 21
 " incorporate into its own name words descriptive of, and
 " universally used to describe an organisation for promoting
 " commerce, it can fairly claim a monopoly of the use of those
 " words. The words ' Chamber of Commerce ' are clearly
 " descriptive and it seems to me that the addition of the word
 " ' African ' ought to be sufficient to distinguish the two
 " organisations. It certainly would be if reasonable care is
 " used. In my view, it would not be right to deprive the
 " Appellants of the use of a descriptive name like ' Chamber
 " ' of Commerce ' merely because mistakes may arise through
 " lack of knowledge or carelessness on the part of persons making
 " enquiries from abroad. It follows that, in my opinion, the
 20 " decision appealed against was right, and ought to be affirmed.
 " I would therefore dismiss this Appeal with costs.

" During the course of his Judgment the learned trial Judge
 " embarked upon a dissertation regarding the undesirability of
 " having more than one Chamber of Commerce in the same
 " locality and asserted that it is the ordinary practice and good
 " sense not to do so. The observations were not necessary for
 " the decision in this case and I only refer to them lest it be thought
 " that in agreeing with his decision I also agree with the
 " observations I have referred to, because such is not the case."

30 8.—From this decision of The West African Court of Appeal, Special
 Leave to Appeal to Her Majesty in Council was granted on 19th November, p. 19
 1953.

9.—The Second Respondent submits that

- (a) since none of the letters produced by the Appellant was
 addressed " African Chamber of Commerce," there could,
 in fact, be no confusion between " African Chamber of
 " Commerce " and " Lagos Chamber of Commerce " ;
- (b) the real objection of the Appellant is to having any other
 Chamber of Commerce in Lagos ; although in fact the p. 9, l. 28
 40 Appellant Association is not confined to Lagos, i.e. one
 locality ;

- (c) careful consideration was given by the Supreme Court of Nigeria and The West African Court of Appeal to the question whether the proposed new name so nearly resembles that of the Appellants as to be calculated to deceive.

10.—The Second Respondent therefore humbly submits that this Appeal should be dismissed with costs and the Judgment of The West African Court of Appeal should be affirmed for the following amongst other

REASONS

1. BECAUSE the concurrent findings of the Courts below that the name “ African Chamber of Commerce ” does not so nearly resemble the name “ Lagos Chamber of Commerce ” as to be calculated to deceive, is correct and ought to be affirmed. 10
2. BECAUSE the decisions of the Supreme Court of Nigeria and of the West African Court of Appeal are right and ought to be affirmed.

K. NARAYAN.

In the Privy Council.

No. 34 of 1954.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL.

BETWEEN

LAGOS CHAMBER OF COMMERCE
(INC) ... (*Plaintiffs*) APPELLANTS

AND

1. THE REGISTRAR OF COMPANIES
and
2. ASSOCIATION OF MERCHANTS
AND INDUSTRIALISTS
(*Defendants*) RESPONDENTS.

CASE FOR THE
SECOND RESPONDENT

BURCHELLS,
68, Victoria Street,
Westminster, S.W.1,
Solicitors for the Second Respondent.