

Lagos Chamber of Commerce (Inc.) - - - - - Appellants

v.

Registrar of Companies and another - - - - - Respondents

FROM

THE WEST AFRICAN COURT OF APPEAL

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1955

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*Present at the Hearing:*

LORD OAKSEY  
LORD MORTON OF HENRYTON  
LORD KEITH OF AVONHOLM  
MR. L. M. D. DE SILVA

[*Delivered by* LORD OAKSEY]

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This is an appeal by special leave from a judgment of the West African Court of Appeal (Foster Sutton, P., Verity, C.J., and Coussey, J.A.), delivered on the 17th day of November, 1952, dismissing the appellants' appeal from the judgment of the Supreme Court of Nigeria (Robinson, J.), delivered on the 8th day of May, 1951, dismissing the action brought by the appellants against the respondents.

The appellants in this action sought to obtain an injunction against the first respondent prohibiting him from proceeding with the registration of a change of the second respondents' name from "Association of Merchants and Industrialists" to the "African Chamber of Commerce."

It is convenient to set out the material sections of the Companies Ordinance.

"COMPANIES ORDINANCE

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LAWS OF NIGERIA, 1948. Cap. 38.

(1) No company shall be registered by a name which

(a) is identical with that by which a Company in existence is already registered or so nearly resembles that name as to be calculated to deceive, except when the Company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires or

(b) contains the words 'Chamber of Commerce' unless the Company is a company which is to be registered under a licence granted in pursuance of section 21 of the Ordinance without the addition of the word 'Limited' to its name

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(4) Any company may by special resolution, and with the approval of the Registrar, change its name.

(5) When a company changes its name the Registrar shall enter the new name in the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case."

It was common ground that both the appellant and the second respondent fell within the class of companies dealt with in section 21.

The appellants are an Association established for the purposes of the promotion of Trade and Commerce in Nigeria and under their Articles any person, firm or company established in trade in the Western Provinces of Nigeria and the Colony of Lagos can become a member of the Association.

On the 23rd of June, 1950, the appellants who had been for many years known as the "Lagos Chamber of Commerce", were incorporated under the provisions of the Companies Ordinance of Nigeria, as "The Lagos Chamber of Commerce (Incorporated)".

Most of the large companies in Nigeria were members of the appellants and the members were of many different nationalities. Nineteen member companies were wholly owned or managed and directed by Africans.

Many letters inaccurately addressed have been delivered to the appellants and accepted by them and a substantial proportion of these were addressed to "Secretary, Chamber of Commerce, Lagos."

It appears that the second respondent was in 1950 engaged in Lagos in substantially the same activities as the appellants under the name of Association of Merchants and Industrialists.

On the 26th of June, 1950, the appellants' solicitors were notified by the first respondent that an application had been made to him by the second respondents for the registration of their Association under a different name, namely, "African Chamber of Commerce" and asked whether the appellants had any objection to the proposed registration.

On the same date the appellants objected to the registration but in spite of their objection the first respondent wrote on the 2nd August, 1950, to the appellants as follows:—

"The Lagos Chamber of Commerce (Incorporated).

With reference to your letter No. 248 of the 10th ultimo, I have to state that after further considering the matter I have arrived at the conclusion that the name 'African Chamber of Commerce' does not so nearly resemble the above-mentioned name 'as to be calculated to deceive.'

2. In the circumstances, I am proceeding with the registration of the change of name of the 'Association of Merchants & Industrialists' to 'African Chamber of Commerce.' If, however, your Company is aggrieved by this registration, you are at liberty to apply to the Court for an Order that the registration be invalidated."

The appellants thereupon brought the action out of which this appeal arises.

Mr. Justice Robinson in the Supreme Court and the West African Court of Appeal are agreed in finding that the change of name applied for by the second respondent does not so closely resemble the name of the appellants as to be calculated to deceive and their Lordships are not prepared to differ from them.

It has been argued for the appellants that companies such as Chambers of Commerce which are not formed for the purpose of making direct profit stand upon a different footing from ordinary trading companies, that correspondence has in the past been inaccurately addressed to the appellants as for instance Chamber of Commerce, Lagos, and that if such inaccurate methods of address continue to be used it may lead to confusion between the appellants and the second respondent, that the word

“African” may be taken to have a geographical signification and that as Lagos is in Africa the name Lagos Chamber of Commerce may be confused with the name African Chamber of Commerce.

Their Lordships are not however satisfied that when the two names are contrasted having regard to all the surrounding circumstances there is such likelihood of deception as to make it right that the injunction should be granted. They are not satisfied that the word “African” will be taken to have a geographical signification or that if it is it will lead to deception. Africa it is true includes Lagos but it is a very large continent which includes many countries and a Chamber of Commerce formed to serve the continent of Africa if such were a possibility would be a very different Chamber to one formed to serve Lagos and its surrounding territories.

In their Lordships’ opinion there is no difference of principle for the present purpose between non profit making organisations such as Chambers of Commerce and trading companies and they consider that inaccurate forms of address which have been used in the past will not necessarily continue when two Chambers of Commerce as such are established.

Their Lordships do not find it necessary or useful to refer to the number of cases which have been decided in English Courts on the analogous provisions of the English Act since each case depends upon its own facts. The question in each case is as Viscount Simonds said in *Office Cleaning Services Ltd. v. Westminster Window and General Cleaners Ltd.* 63 R.P.C. 39 “Have the appellants proved facts that are calculated to lead to the belief that the business of the respondents is the appellants’ business.”

On this question having considered all the facts which may be taken to be in evidence their Lordships are of opinion that the appellants have not proved such facts.

Their Lordships were invited by counsel for the first respondent to lay down the rule that the Registrar is not entitled to consider any evidence, his duty being merely to compare the proposed name of the company asking for registration or change of name with the names of other companies on the Register. Their Lordships do not find it necessary to deal with this argument, which was not raised in the Courts below and is inconsistent with several cases in the English Courts.

For these reasons their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. The appellants must pay the costs of both respondents on the appeal.

In the Privy Council

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LAGOS CHAMBER OF COMMERCE (INC.)

v.

REGISTRAR OF COMPANIES  
AND ANOTHER

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DELIVERED BY LORD OAKSEY

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