

IN THE COURT OF APPEAL

R.M.C.A. No. 27/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Ag.)

LESTER CAMPBELL v. EVA FRANCIS

Appellant appeared on his own behalf.

Respondent not represented.

3rd December, 1965.

DUFFUS, P:

This appeal between Lester Campbell, plaintiff/appellant and Eva Francis, defendant/respondent, has caused the Court some amount of concern. The appellant has appeared before us in person, not represented by counsel; the respondent has not appeared and the Court has been informed by the appellant that the respondent has left the island, apparently permanently. The Deputy Registrar has informed the Court that the notice of the hearing of this appeal was despatched to the solicitor on the records for the respondent.

The appellant took as a first ground of appeal, that the learned Resident Magistrate, now a judge of the Supreme Court, who heard the case in the month of February, 1964, failed, in spite of repeated requests, to give his reasons for judgment until some nine months later. These reasons we observe are dated the 23rd December, 1964 and the notice from the Acting Deputy Clerk of the Court, Kingston, to the parties informing that the reasons for judgment had been filed, is dated the 18th of January, 1965.

It is quite clear that there was an unreasonable and perhaps excessive delay by the learned Resident Magistrate in giving his reasons for judgment and as this Court has had occasion to remark time and again, it is extremely important that Resident Magistrates endeavour to give their reasons for judgment with all possible despatch after the judgment has been delivered, while all the facts are still fresh in their minds.

The appellant has referred us to the case of Mair v. Jamaica Utilities Ltd. (1951), 4J.L.R., 7. That was a case in which there was considerable delay by the Acting Resident Magistrate for Kingston, in giving his judgment and then when there was an appeal, in giving his reasons for judgment. It appears from the remarks of Furness, Chief Justice, at page 8 of the report, that that particular case was a running down case and the trial itself was spread over a period of nine months. Judgment was reserved for a period of eleven months and upon notice of appeal being given, reasons for judgment were not lodged until a further sixteen months had elapsed. The learned Chief Justice spoke very strongly about the delay that had occurred in that case and for reasons which are not included in the report, the Court decided to order a new trial.

This court, more recently, has had to consider cases in which there has been delay by the learned Resident Magistrate in giving his reasons for judgment but each case stands on its own particular facts. If the Court is satisfied that as a result of the delay in giving reasons for the judgment the learned Resident Magistrate has not dealt adequately or properly with the facts of the case, or it is otherwise made to appear that some injustice may result following on the delay, the Court will, of course, order a new trial.

The appellant in this case has endeavoured to show reasons why a new trial should be ordered, and the Court has listened with care and attention to his submissions, but speaking for myself, personally, I am not satisfied that any injustice has been done in this case to the appellant as a result of the delay of nine months which occurred. It is necessary, of course, to refer to the evidence which was given before the learned Resident Magistrate and as I will refer briefly to that evidence, I should perhaps state what the case was all about. The appellant sued the respondent for the sum of £100 for fees which he claimed were due to him as a commission for procuring a purchaser for the sale of certain premises belonging to respondent. The appellant and the respondent entered into an agreement - exhibit 1 - which was dated the 13th of November, 1962, reading as follows:

" I authorize and instruct Mr. Lester Campbell to secure a person to buy my property 36 and 38 Rum Lane

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in the parish of Kingston, in the amount of Three Thousand Pounds, subject to an offer of not less than Two Thousand Seven Hundred Pounds, and agree to pay a commission of 4%. This contract stays good for one month. Anyone selling within the period, the said Lester Campbell will be paid."

That agreement was signed by the parties in the presence of a witness, one A. Bruce.

The appellant claimed that on the 11th of December, that is two days before the expiration of the agreement (exhibit 1) he found a purchaser for the premises, one Beckford, and he entered into a contract for sale with this Henry G. Beckford, which he signed on behalf of the respondent, and agreed to sell the place for £2,700. A deposit of £200 was made thereon and acknowledged in the agreement between Beckford and the appellant. The appellant claims, as I stated, that this agreement was made on the 11th of December, and he further stated in evidence, that on that day he took the purchaser to the respondent and the respondent thereupon refused to conclude the sale, stating that she could get more money for the land and drove away the appellant and the prospective purchaser, Mr. Beckford.

Certain correspondence seemed to have passed between the parties and their solicitors after that and then action followed, the appellant abandoning the sum of £8 on his commission of £108 in order to bring the matter within the jurisdiction of the Resident Magistrate's Court.

At the hearing, the appellant called Anthony Bruce who described himself as an Assistant Wharfinger, and in his evidence-in-chief Bruce stated that he had witnessed the agreement - exhibit 1 - which was made and signed between the parties. Under cross-examination Bruce stated that a day or two after the expiration of the month given to the appellant to find a purchaser, as set out in the agreement, that he saw both parties at 7 Lascelles Avenue and there he heard the appellant saying that he had a prospective buyer for the premises at Rum Lane and he was asking respondent to give an extension on his contract, of two weeks and the respondent refused to do so. The witness Bruce said that he was positive that at the time of this

conversation the contract entered into by the respondent with the appellant, had already expired.

It seems that this evidence of Bruce, elicited in cross-examination, took the appellant's counsel by surprise and the appellant's counsel asked the Court to permit him to treat the witness Bruce as hostile. The learned Resident Magistrate enquired into the matter and ascertained that no statement had been taken from the witness Bruce by the appellant or his legal adviser; and in the circumstances, in my view quite correctly, refused to permit the witness to be treated as hostile, there being nothing whatever to show that he had made any previous inconsistent statement. All that had happened was that cross-examination had disclosed a state of affairs which was most unfavourable to the appellant.

Well, the case proceeded and the learned Resident Magistrate reserved his decision and later that month, he delivered his decision, finding for the defendant - that is the respondent in this appeal - with costs to be taxed or agreed on. In his reasons for judgment, the learned Resident Magistrate, as he then was, reviewed the evidence which had been given in the case and he stated that he rejected the evidence of the plaintiff and the prospective purchaser, Beckford, giving a number of reasons for so doing. In fact, he had arrived at the conclusion that the story of the proposed purchase by Beckford was entirely fictitious and self-serving to the appellant's case. He referred also to the evidence of the witness, Bruce, and he said that "Bruce's evidence on behalf of the plaintiff, unless neutralized or rendered worthless, was most damaging to his case", and that was clearly so. The learned Resident Magistrate decided that on consideration of the case as a whole "the preponderating weight of evidence was on the defendant's side and he rejected the evidence of the plaintiff and Beckford except where it coincided with certain other findings in the case", which he referred to.

It seems to me that the fact that the reasons for judgment were filed some nine months late can have no bearing whatever on the result of this appeal in view of the evidence of the witness, Bruce. Bruce was called as a witness for the appellant and so long as Bruce

was accepted as a witness of truth, then his evidence, quite clearly, put the appellant completely out of court. It supported the case for the respondent quite amply and in these circumstances, in spite of the sympathy I have for the appellant in his complaint with regard to the delay in the filing of the reasons for judgment, I feel that the learned Resident Magistrate, once he accepted Bruce as a witness of truth and also accepted the defendant as a witness of truth, could have arrived at no other conclusion but that the respondent was entitled to judgment and so the appellant's case was bound to fail. In these circumstances, I would dismiss this appeal but as the respondent has not appeared, I would make no order as to the costs. The result will be that the appellant will be entitled to get back from the Resident Magistrate's Court the sum of Ten Shillings deposited as security for the prosecution of the appeal, and the sum of Ten Pounds deposited as security for any costs that may have been ordered on the hearing of the appeal.

HENRIQUES, J.A.:

I am somewhat disturbed by the state of the record in this case. Judgment was delivered on the 21st of February, 1964, the notice of appeal was filed on the 2nd of March, 1964 and reasons for judgment were only forthcoming on the 23rd of December, 1964. No reason has been stated to this Court for the delay in the delivery of reasons for judgment. I think that Magistrates might well adhere to the words of the learned Chief Justice in the case of *Mair v. Jamaica Utilities*, which has been referred to by the learned President, and in particular, to these words: "We are aware that at times there are circumstances which make it extremely difficult for a Resident Magistrate to deliver without some delay or prepare his reasons for judgment a reserved judgment after notice of appeal without some delay, but at whatever inconvenience and though it may entail the postponement of other trials, reserved judgments should be delivered and reasons for judgment should be written while cases are still fresh in a Resident Magistrate's mind. A delay such as the delay which has occurred in this case may result in a denial of justice to the party."

It is only because I am of the view that on the facts of the present case, that there has not been a denial of justice that I have not

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been minded to accept the submission of the appellant in this case. I agree that on the facts of the case as found by the learned Resident Magistrate, this appeal must fail. I agree, also, that the appeal should be dismissed without any order as to costs.

MOODY, J.A (Ag.):

I agree with the views expressed by my learned Brothers.