Commercial Bank of Africa Ltd v Copal Limited

Court of Appeal, at Nairobi

February 20, 1985

Kneller JA, Chesoni & Nyarangi Ag JJA

Civil Appeal No 6 of 1984

(Appeal from the High Court at Nakuru, Masime J)

Civil Practice and Procedure - striking out of – pleadings – order VI rule 13(1)(a) and (d) of Civil Procedure Rules - Banking law - customers instructions – whether oral instructions are good enough.

The appellant bank removed from the respondent's account with them the sum Kshs 1,533,300 which sum was credited to the account for a company by the name Plants & Erections Ltd.

The respondent demanded reimbursement of the said sum with interest but the appellant refused to pay prompting the respondent to file proceedings via the High Court.

The appellant files a defence contending that part of the pliant which alleged law of request or consent or authority of the transfer was bad in law and should be struck out.

The respondents successfully moved the High Court under order VI rule 13(1)(a)(d) of the Civil Procedure Rules for the striking out of the appellants defence on the ground that it disclosed no reasonable defence.

Held:

1. Order VI rule 13 ought to be treated like an application for summary judgment in he sense that the court should be careful not to purport to decide a suit upon the parties' affidavits and the court should be slow to shut any party out of court.

2. If there is a triable issue leave to amend pleading should be preferred to striking out the pleadings.

3. The issue for this learned judge to decide was not the relationship between a customer and the bank nor was it whether or not the bank had authority to debit and credit the two accounts but whether or not the defence of the appellant disclose a reasonable defence.

4. A defence does not disclose a reasonable defence if there is no question or issue on it for a judge to determine.

5. Where money is standing to the credit of a customer on current account with a a banker, in absence of a special agreement, a demand by a customer is a necessary ingredient in the cause of action against the banker for the money. Whether he must demand it in writing is not necessary to determine at interlocutory stage.

6. (Obiter) The appeal not being a difficult one the respondent should not be made to pay for the luxury enjoyed by the bank in having two advocates p resent its case so a certificate for two advocates is not justified.

Appeal allowed.

February 20, 1985, Kneller JA delivered the following Judgment.

Copal Limited (the company) was incorporated in this country on April 3, 1974 with a nominal share capital of Kshs 500,000 divided into shares of Kshs 100 each which by note of an ordinary resolution filed on December 21 that year was increased to Ksh 1,000,000 divided into 10,000 shares of Kshs 100 each. Its registered office is in Nakuru and its directors are Mr Jackson Harvester Angaine and two Panchmatias, one British and one Tanzanian. KK Ismail & co were named as its secretaries in the notification of directors filed on June 20, 1976 and up to July 6, 1983 no notices of change have been recorded in the Companies' registry.

A search of the same date revealed that the company's assets were subject to:

- A legal charge dated April 30, 1975 with Kenya Commercial bank, Nairobi for Kshs 100,000;

- A debenture dated September 1, 1975 with Commercial Bank of Africa, Nairobi (the bank) for Kshs 1,602,000;

- A legal charge dated December 3, 1975 with the bank for Kshs 1,602,000;

- A debenture dated November 10, 1976 with the bank for Kshs 400,000; and

- A further charges dated April 19, 1977 with the bank for Kshs 400,000.

and the total of all those comes to Kshs 4,104,000 of which the bank's share was Kshs 4,004,000 from September 1, 1975.

On September 13, 1982 the bank filed notice of the appointment of joint receivers and managers for the company and on September 24 Chunga Limited filed a notice declaring that it had ceased to act as receiver and manager of the company's affairs.

One of the company's interests is a copper oxychloride plant in Nakuru which by March 1979 it was going to move to Mombasa in early June 1979.

Its managing director was the British Pachmatia and its advocates were Makhecha & Company. It did not file any annual return up to July 6, 1983.

Nor did what Mr Justice Masime called its either sister company with the inelegant name of Plants and Erections Limited (P&E) which was incorporated here on September 22, 1976 with a nominal capital of Kshs 20,000 divided into 1,000 shares of Kshs 20 each. Its directors were then a Britisher called Noble and a Kenya Panchmatia but Noble resigned on September 15, 1978 and the Tanzanian Panchmatia from the company replaced him from that date. It shared the same advocates, secretaries and registered office. It had no registered charges and debentures on its assets before July 6, 1983.

At some stage in the history of the company, probably in early 1979, the government paid it Kshs 2,200,000 towards the transfer of the plant from Nakuru to Mombasa which the company alleges it paid into its current account 10395 with the bank (though the statement showing this was not produced) and the company expected the government to pay it another Kshs 1,200,000 or Kshs 1,500,000 later.

The company had guaranteed the bank's temporary overdraft facility of Kshs 900,000 to P&E which also had a current account, 10127, with it.

The company's managing director wrote to the bank's manager, J S Muriu, on March 21, 1979, telling him that with this first windfall from the government the company would liquidate the overdraft of Kshs 480,375 for which he enclosed its cheque on the P&E current account with the bank and that would leave about Kshs 1,100,000 which would be spent on paying off the company's creditors who together were owed about Kshs 1,300,000. (The arithmetic of all that does not bear scrutiny by anyone outside the banking or business professions). Panchmatia explained that the company's creditors had been so helpful and patient during the period of negotiations for the transfer they had to be paid off if the company was to be able to hold up its head in the market. He thanked the bank for its help in the past.

The next day, March 212,1979, there appears to have been a telephone conversation between Muriu and Panchmatia (the company's managing director Panchmatia) of which there is some account in a letter from Muriu of the same date to the company.

Muriu declares in that letter that Panchmatia and he agreed that the government hand-out would go to quench the overdrafts on the current account of the company and P&E and the company would then ask for overdraft facilities on one or both accounts with the bank which could be met by the company (and P&E's?) cash flow and for which the security would be the fixed and current (?) assets, the directors' guarantees and the bank's mortgage on the property. The bank wanted to see the company's audited balance sheet so that it could see just what the current assets were worth.

Muriu wrote in the same letter statements of the balance of each current account before and after government sum had been divided between them would follow. He returned the company's cheque for Kshs 480,375 to Panchmatia.

He complimented Panchmatia in this letter on his successful negotiations which, he said, characterized his business experience and acumen. The reply to this has not been produced yet. The point is, however, that Muriu for the bank writes in that letter that Panchmatia for the company agreed to the bank's proposal that the company should first liquidate the overdrafts and then ask it for renewed facilities for borrowing.

It is on that date that the bank transfers Kshs 1,533,300 from the current account of the company to that of P&E.

Staying with the correspondence exhibited in the appeal still, there is a letter from the company's advocates dated September 13, 1982 to the bank, for the attention of someone called Denissen, in which the advocates states that they were holding Kshs 870,000 for the company which was sufficient to cover the principal amount and interest owed by the company to the bank to date which was Kshs 865,520 but, pausing there for a moment, it is not immediately clear what the debt is for.

The same letter continues, however, to remind the bank that the company disputed two of its claims. First, one for Kshs 61,700 for the receivers' fee and disbursements and, secondly, one for Kshs 27,000 for the bank's advocates' costs because the company thought these were excessive. The company agreed'to pay them under the protest and have them taxed or put to arbitration later. Then in the same letter, the company's advocates assert that it was agreed that the company would pay the bank Kshs 955,220, which the company owed it, if the bank undertook to discharge the mortgages, debenture and charges, and directors' guarantee given to the bank to secure the bank's overdraft facilities granted to the company and lift its appointment of the receivers and managers of the affairs of the company made on September 13, 1982 which is also the day of that letter.

The next event in the relations between the bank and the company was a letter dated 9, 1982 from the bank to the company which the company received the next day demanding payment of Kshs 785,632.40 which the company agreed to pay provided the bank discharged 'the' debenture it had on the assets of the company.

This does not seem to have been acceptable to the bank for it appointed receivers and managers for the affairs of the company on September 13, 1982.

Then on December 22 the same year the company's advocates wrote to Denissen demanding repayment of the Kshs 88,700 fees and disbursements of the receivers within 7 days or the company would file an action for that sum.

And then for the first time, in the correspondence exhibited in this appeal, the company, through its advocates, alleges that the transfer of that Kshs 1,533,300 form the company's account to that of P&E (which the advocates refer to as just 'a company', as if the bank had selected it at random) was without its authority and if the bank did not reply it to the company it would file suit for it.

The bank repaid neither sum and the company filed a plaint in the High Court Nakuru on April 9, 1983 for the sum of Kshs 1,533,300 with interest at bank rates from March 26, 1979 until payment in full, damages and interest at court rates on any damages awarded from March 26, 1979 until payment in full. There was no specific claim for the costs of the action. In the plaint the company and bank were formally described and their relationship was said to be that of customer and bank.

Then follows these paragraphs:

"4. On or about the 2nd day of March 1979, the defendant bank unilaterally and without the request, consent or authority of the plaintiff removed and debited the plaintiff's said account with the sum of Ksh 1,533,300 and transferred the same to account 10127 of one Plants and Erections Limited with the defendant and thereby deprived the plaintiff of the benefit and use of the said amount and further caused the plaintiffs liability to the defendant wrongfully to be created or increased.

5. The plaintiff further contends that the transfer was unauthorized and therefore invalid as a consequence whereof the plaintiff has been unlawfully made liable for the said amount with interest.

6. Further, or in the alternative, the plaintiff contends that in breach of its contractual duty of the care and skill expected of the defendant as the bankers and without any consideration, the defendant and its servants and agents debited the plaintiff's said account with Kshs 1,533,300 and transferred the said Kshs 1,533,300 to the said accounts of the Plants and Erections limited on about March 26, 1979 reasons whereof the plaintiff suffered loss and damage and claims the'same from the defendants."

The bank's written statement of defence was filed on May 3, 1983 and the relevant paragraphs read as follows:

"2. The defendant contends that paragraph 4 and 5 of the plaint are bad in law and ought to be struck out in that they do not disclose any cause of action.

3. The defendant further contents that paragraphs 4 and 5 of the plaint ought to be struck out in that the cause of action, if any, (which is denied) is time barred by the Limitation of Actions Act (cap 22) Laws of Kenya.

4. (a) In the alternative and without prejudice to the foregoing the defendant totally and categorically denies the contents of paragraphs 4, 5 and 6 and 7 of the plaint and puts the plaintiff to strict proof thereof.

(b) The defendant avers that one Anil Panchmatia, who was at the material time the managing director of both Copal Limited and Plants and Erections Limited, expressly instructed or, alternatively, expressly or impliedly agreed with the bank that the bank should make the debit and credit entries referred to in the plaint.

5. The defendant admits that this honourable court has jurisdiction to hear and determine this suit.

6. Save as has been expressly admitted aforesaid, the defendant denies each and every allegation contained in the plaint as if the same had been set out seriatim and traversed herein."

The company asked the bank for particulars of the defence that paragraphs 4 and 5 were bad in law and did not disclose any cause of action, what section and what statute of limitation the bank relied on, and were Panchmatia's express instructions in writing and, if so, would the bank photocopy them for the company and send them to its advocates or, if they were verbal, specify the date, time and place Panchmatia gave them and to whom. The company required these for its reply.

The bank's advocates gave the particulars: the alleged cause of action as framed was not one known in law, section 4 of the limitation of Actions Act (cap 22) and photocopies of the letter of March and 22, 1979 between Muriu and Panchmatia were supplied for the details of the express or implied written and/or verbal instructions.

The company filed no reply but, instead, applied to the High Court, Nakuru on June 23, 1983 by summons in chambers under Order VI rule 13(1)(a) and 13(1)(d) of the Civil Procedure (Revised) Rules to:

1. strike out paragraphs 2, 3 and 4 of the defence;

2. strike out the whole defence as disclosing no reasonable defence;

3. enter judgment for the company as prayed in the plaint; and

4. order the bank to pay the company the costs of and occasioned by this application on the grounds that:

(a) the defence disclosed no reasonable defence;

(b) it was otherwise an abuse of the process of the court because there was no foundation for it in fact or in law, and it had been filed to vex the company and to delay it from obtaining judgment, more particularly as:

(i) there was no resolution of the Board of Directors of the plaintiff company for the alleged transfer of the money; and

(ii) in any event, the particulars supplied do not form the basis of any authority to make the debit and credit.

This was supported by an affidavit of Frank Ndungu Kamau of June 22, 1983 of Nakuru who described himself as the secretary of the company.

Denissen, the bank's Credit Adviser, replied in an affidavit of July 19 the same year that as a result of the searches he did not accept Kamau as the company's secretary, maintained the bank's defence was one that was reasonable, not an abuse of the process of the court, raised substantive issues of law and fact and he asserted the bank's transfer of the sum of Kshs 1,533,300 from the company's account to that of P&E was done at the request of and with the full knowledge and agreement of Panchmatia, the managing director of both the company and P&E, so there was no need for the bank to have notice of any resolution of the company's board of directors before it did this.

By July 20, 1983, there was agreement that that sum had been transferred by the bank from one account to the other on March 22, 1979 without the resolution of the company's board of directors, there had been no complaint about this by the company before December 22, 1982 which was 3æ years later, and P&E owed the bank that sum.

The issues on the pleadings and affidavits were:

a) Was Kamau the secretary of the company?

b) Was a resolution of the company's directors required, in law or practice, before the bank could make

that transfer?

c) If not, did Panchmatia, the company's managing director, have authority to agree to this?

d) If so, did he agree to it (on the telephone to Muriu on March 22, 1979)?

e) If so, was his word authority for the bank to make the transfer?

f) Were the claims in the alternative of the company against the bank known in law?

g) If so, were they time barred by section 4 of the Limitation of Actions Act (cap 22) and

h) If not, damages, if any?

The company was represented by Mr Lakha with Mr Makecha and Mr Patel and the bank by Mr Nowrojee with Mr Otieno when the application was heard by Mr Justice Masime at Nakuru on August 31, 1983.

Mr Lakha abandoned the ground that because there was no resolution of the board of directors of the company for the alleged transfer the defence was an abuse of the process of the court because there was no foundation for it in fact or in law so the second issue shrivelled away.

The learned judge in his ruling of September 14, 1983 allowed the application. He struck out paragraphs 2, 3 and 4 of the written statement of defence which meant the defence disclosed no reasonable defence and then he struck out the rest of it. He entered judgment for the plaintiff against the defendant as prayed in the plaint and awarded the costs of the application to the company. The issue of damages was adjourned to another date but none was fixed because the company decided not to press for them.

He held that the bank was bound to require written instructions from the company before debiting its account. He based this on his own decision in Kenya Commercial Bank v Mwenge Industries Ltd, Nakuru High Court Civil Case 175 of 1975 and a passage in Lord Chorley's The Law of Banking, 6th edition, (1974) page 29 dealing with an infallible test for a repayment, namely a written order or mandate called a cheque, and another from Halsbury's Laws of England, 4th edition (1983) volume 3 page 49, paragraph 61 dealing with the liability of a banker who pays a cheque drawn without authority, in contravention of a customer's order or negligently. In short, he found "no authority, arrangement or instruction emanating from the "company to the bank" for the debit of its account and transfer of the proceeds to the account of P&E." So, the bank's claims were unknown to law.

He did not refer to Mr Lakha's submission that the relationship between a customer and his bank was contractual and in this one the agreement, if there were one, was not in writing and there was no consideration for it.

He persuaded, however, that if there were such a contract, then its breach accrued on March 22, 1979, and when the action was brought on April 9, 1983 it was not time barred for the relevant period is from the end of 6 years from the date on which the cause of action accrued. Section 4, The Limitation of Actions Act (cap 22).

There were two preliminary matters that ought to be cleared up. First, was Frank Ndungu Kamau the secretary of the company when he swore his affidavit on June 22, 1983? Secondly, was Larry George Denissen right when he said Anil Panchmatia was the managing director of the company and of P&E on March 22, 1979? If not, then that is another issue. It arises in this way. John Mutunga on July 7, 1983 described the directors of the company as:

Jackson Harvester Angaine;

Anil Kumar Bhanulal Panchmatia; and

Ila Anilumar Panchmatia

And those of P&E as

Anil Bhanilala Panchmatia

David Frank Noble until September 15, 1978; and Ila Anil Panchmatia thereafter and for the life of me I cannot find an Anil Panchmatia director common to both in those lists.

Supposing, however, that by consent or evidence that answer to those conundrums is – yes, Kamau was its secretary and Anil Panchmatia the managing director of both companies – then it is significant that Anil Panchmatia has not answered in affidavit form the allegation that he told Muriu to make that transfer and so for the purpose of this appeal, it must be taken that he did, and since it was not suggested in the submission in the High Court or this one he did not have authority to do so or resolutions of either or both boards to authorize this transfer one, at least, one of the original issues in the trial remains. It is:

'was it lawful for Muriu of the bank to act on the oral command, order or agreement of Panchmatia to transfer that sum from the one account of the other?'

The facts in'Kenya Commercial Bank Limited v Mwenge Industries Ltd, Nakuru Suit 175 of 1975, were different. Mwenge's account at the bank's branch at Nyahururu was debited with some sums in favour of Marmonet Sawmills Limited's account at the same branch by the manager on instructions from that bank's government road branch and not on the orders, written or oral, of anyone in Mwenge Industries Limited.

The passages cited from The Law of Banking, 6th edition, (1974) by Lord Chorley or Halsbury's Laws of England, 4th edition (1973) volume 3 page 49 paragraph 61 et sequentes do not cover the point.

One characteristic among others of a bank has been said to be that deposits of money on current account or otherwise with it was subject to withdrawal by cheque, draft or order; see Bank of Chettinad Ltd of Colombo v Income Tax Commissioner, Colombo, [1948] AC 378; United Dominions Trust v Kirkwood, [1966] 1 All ER 968, CA Whether or not 'order' was written or oral or both was not made clear. Atkin LJ in N Joachimson (a firm) v Swiss Bank Corporation, [1921] 3 KB 110, 127 (CA) agreeing with Bankes and Warrington LJ, that:

"Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement, a demand by the customer is a necessary ingredient in the cause of action against the banker for the money lent."added

"Whether he must demand it in writing it is not necessary now to determine." Mr Gautama and Mr Lakha could find no direct authority in any jurisdiction on the point. My researches have not turned up one.

Mr Lakha submitted this was because the law was clear; Muriu had to have Panchmatia's order in writing to transfer the sum. Otherwise, he suggested, you would have the following dialogue:

Banker: You gave verbal instructions for this

Customer: No, I did not

Banker: Yes you did.

Which would lead to uncertainty, chaos, fraud and open wide the flood gates of litigation.

These arguments in terrorem do not deter me from the view that without authority, preferably local, then it was for the bank in this case before the High Court, in Nakuru, to establish on the balance of probabilities that, among other things, Panchmatia's oral instructions on the telephone were a sufficient

warrant for Muriu's transfer of that sum from the one account to the other. The learned judge in my respectful view, should not have said it was not so before he had heard evidence from the parties and their local banking law and or practice witnesses on this.

In short, the defence disclosed a reasonable defence. It was not an abuse of the process of the court and should not have been struck out. I agree with Nyarangi, Ag JA, for the reasons he gives that the parties may have to apply to the court to amend their pleadings to embrace all the matters in issue between them.

Since the bank, in my view, has succeeded in this appeal and as the award of costs should follow the event, unless there is good reason to order otherwise, and I can discover now the bank should have the costs of the appeal.

This was not a difficult appeal if its nature is appreciated and I am not persuaded that the respondent should be made to pay for the luxury enjoyed by the bank in having two advocates to present its case so I would not conclude that a certificate for two is justified. See Farrell J in In Re W T Potts, Ex parte Epstein v The Trustee and the Bankrupt, [1935] 1 Ch 334, 341 and Sir Charles Newbold P in Pollock House Ltd v Nairobi Wholesalers Ltd (No 2), [1972] EA 172, 175 (CA-K).

For these reasons, I propose that the appeal be allowed with costs, the rulings of Mr Justice Masime of September 14 and of November 11, 1983 and the decree of November 10, 1983 be set aside and the action be remitted to the High Court to settle the issues and proceed to trial according to law.

Chesoni, Ag JA and Nyarangi Ag JA agree so those are the orders of this court.

Chesoni Ag JA. The respondent, Copal Ltd was the appellant bank's customer through current account No 10395 at the appellant's head office at the Standard Street, Nairobi. A company by the name Plants & Erections Ltd also maintained a current account No 10127 with the appellant bank.

On March 26, 1979 the appellant removed and debited the respondent's account with the sum of Kshs 1,533,300 which sum was transferred and credited to the account of Plants & Erections Ltd. The respondent demanded reimbursement of the said sum with interest but the appellant refused to pay it and in the result the respondent filed a suit in February, 1983 against the bank by way of plaint. The appellant filed a defence in which it contended inter alia that part of the plaint which alleged lack of request or consent or authority of the respondent for the transfer of the said sum was bad in law and should be struck out and that a Mr Anil Panchmatia, who was at the material time, the managing director of both Copal Ltd and Plants and Erections, expressly instructed or alternatively expressly and impliedly agreed with the bank for the debit and credit of the sum in question to be made to the two accounts respectively.

In June 1983 the respondent applied to the High Court by way of chamber summons brought under Order VI rule 13(1)(a) and (d) of the Civil Procedure Rules for the defence to be struck out on the ground that it disclosed no reasonable defence and that judgment be entered for the respondent (original plaintiff) as prayed in the plaint. Mr Justice Masime heard and allowed the application, and this appeal is against the learned judge's judgment.

Paragraphs 4, 5 and 6 of the plaint and 2, 3, 4, 5 and 6 of the defence respectively which are relevant to the appeal are set out in the judgment of Kneller, JA and I need not reproduce them.

The learned judge held that the bank should have had written instructions from M/s Copal Ltd to debit the latter's account. Mr Lakha for the respondent had correctly argued that the relationship between a customer and his bank was contractual and even if there was any agreement between the parties it was not in writing and there was no consideration. Mr Gautama submitted, in this appeal, that the bank's correspondence showed that the managing director, Mr Panchmatia gave express instructions for the payment and he confirmed his instructions in a telephone conversation.

The chamber summons was supported by Mr Kamau's affidavit in which he said that he was Copal Ltd's company Secretary. The appellant's replying affidavit was sworn by Mr Denissen who was the bank's

adviser and he disputed Kamau's assertion that he was a company secretary to Copal Ltd. Apart from the parties' counsel's submissions the learned judge had only affidavits before him on which he decided the suit.

In my view the issues whether:

1) Kamau was or was not Copal Ltd's company secretary;

2) Panchmatia gave instructions and could legally do so and

3) Whether there was proper authority for the transfer could be determined only upon a full trial of the suit after all the evidence had been heard and both Kamau and Panchmatia had been examined and cross-examined on oath.

It was essential also to examine and cross-examine the bank's witnesses on the issue of the instructions and the alleged telephone conversations with Panchmatia. I would agree with Mr Gautama that an application for summary judgment in the sense that the court should be careful not to purport to decide a suit upon the parties' affidavits and the court should be slow to shut any party out of court. That is the last step a court can take and if there is a triable issue leave to amend the pleadings should be preferred to striking out the pleadings and thus barring the parties from being heard.

The issue for the learned judge to decide was not the relationship between a customer and a bank nor was it whether or not the bank had authority to debit and credit the two accounts respectively, but whether or not the defence of the appellant disclosed a reasonable defence. A defence does not disclose a reasonable defence if there is no question or issue in it for a judge to determine.

In the defence filed in this case there were issues to be decided as can be seen from the issues set out in Kneller JA's judgment and in my judgment.

Consequently in my opinion the learned judge erred in striking out the defence and giving judgment for the respondent/plaintiff. He should have ordered the parties to set down the suit for hearing.

I agree with Kneller JA that this appeal should be allowed with costs, and, as the matter was not complicated such costs should not be certified for two counsel; the learned judge's judgment should be set aside and the suit remitted back to the High Court for hearing according to law.

Nyarangi Ag JA. Before writing this judgment I have had the advantage of seeing in draft the judgment of Kneller JA with which I agree and I would add only this. The learned judge referred to paragraph 4 of the defence and to rule 9(3) of Order 6 of the Civil Procedure Rules accepted Mr Lakha's submission that the denials of the averment in paragraphs 4,5,6 and 7 of the plaint were omnibus and therefore not good enough.

Nevertheless a general or omnibus denial may be valid and effectual: Shah v Patel [1961] EA 397, CA-K. There was no suggestion that the material averment or denials were evasive: see Joshi v Uganda Sugar Factory Ltd [1968] EA 570 CA-K.

The defence may not be a model. The same could be said of the plaint.

However, the suit had not gone beyond a stage where the whole nature of the action would be changed if an application to amend pleadings were allowed and, as a general rule, leave to amend pleadings ought not to be refused unless the court is satisfied that the party applying is acting mala fide McCoy v Allibhai (938) EACA 70. Leave to amend a defence should be given where it is sought at an early stage of the litigation: Kara v Makan (1950) 17 EACA 16.

There are weighty matters that require investigation and the defence discloses a reasonable cause of action. There was no justification for the appellant's request for a certificate for two advocates.

I agree that the appeal be dismissed as proposed by Kneller JA and concur with the order on costs.