Solomon Islands

Samson Poloso (On behalf of H.M. Salo Store) v. Honiara Consumers Co-operative Society Ltd.

High Court
Ward C.J.
18 January 1988

Legal Practitioners Act 1987, s. 14(1)—whether body corporate may carry on proceedings by authorized agent—proper interpretation of High Court (Civil Procedure) Rules 1964, O. 5, r. 2

10 *Irregularity in judgment—non-compliance with Rules—whether defendant entitled to have judgment set aside—time for making application under O. 69, r. 1*

Facts:

A writ was issued on 23 September 1987 and served on the appellant on 30 September 1987. Judgment was entered in default of appearance on 2 November 1987.

The appellant applied before the Registrar to have the judgment set aside on the grounds that section 14(1) of the Legal Practitioners Act 1987 prevented an unqualified person, in this case the representative of the plaintiff company, from acting on behalf of a company, and that there were defects in the writ which rendered 20 the judgment irregular; namely, that the statement of claim endorsed on the writ was inadequate and that the plaintiff failed to enter its address on the writ.

The Registrar refused the application and the appellant appealed against his ruling to the Chief Justice.

HELD:

(1) Order 5, rule 2 of the High Court (Civil Procedure) Rules 1964 does not establish any restriction on corporations issuing writs on their own behalf by an authorized agent where that agent is an employee of the corporation acting in the normal course of his employment and for no additional remuneration. In so doing, an employee cannot be held to be acting as a legal 30 practitioner within the terms of section 14 of the Legal Practitioners Act 1987. Any other unqualified person who takes such steps on behalf of a corporation would clearly be in breach of section 14.

(2) There is a difference between a case where the judgment itself is irregular—as, for example, where it has been entered before the time for defence has expired or in the wrong sum—which will be set aside as of right, and cases such as this where the proceedings have been irregular but the judgment has been otherwise properly obtained. *Anlaby* v. *Praetorius* (1888) 20 Q.B.D. 764 applied.

(3) Although in the present case the defendant was entitled to apply under 40 Order 69, rule 2 to have the proceedings set aside for irregularity, the Court must consider whether such an application has been made within a

reasonable time. If it has not, the Court shall refuse it. On the facts of this case the Registrar was entitled to reach the conclusion that there had been unreasonable delay and was right to refuse the application.

Other cases referred to in judgment:
Anlaby v. *Praetorius* (1888) 20 Q.B.D. 764
Frinton and Walton L.D.C. v. *Walton and District Sand and Mineral Co.* [1938] 1 All E.R. 649

Counsel:
50 *J. Corrin* for the appellant
Mr. Haack for Honiara Consumers Co-op Society Ltd., the respondent

WARD C.J.:

By a writ issued on 23 September 1987, and served on the present appellant on 30 September 1987, the present respondent obtained judgment on 2 November 1987, in default of appearance.

The appellant applied before the Registrar to have that judgment set aside and on 31 December 1987 the application was refused. The defendant now appeals against that decision on the following grounds:

60
1. that the Registrar erred in law in holding that section 14(1) of the Legal Practitioners Act does not prevent an unqualified person from acting on behalf of a company;
2. that the Registrar erred in law in holding that judgment was regularly entered irrespective of the fact that the Writ —
   (i) did not comply with order 3 rule 3 of the High Court (Civil Procedure) Rules 1964; and
   (ii) did not state the plaintiff's address.

These were substantially the grounds that were argued before the learned Registrar.

The first ground deals with section 14 of the new Legal Practitioners Act 1987. Put simply, the appellant's case is that, as the respondent is a body corporate, it must
70 appear by an agent and, by section 14, that agent must be a legal practitioner for the issue of any proceedings.

Section 14(1) reads:

> No unqualified person shall act as a legal practitioner or as such issue out any writ or process or commence, carry on or defend any action, suit or other proceedings, in the name of any other person, in any court of civil or criminal jurisdiction or act as a legal practitioner in any cause or matter, civil or criminal, to be heard or determined before any court.

In rejecting the application, the learned Registrar correctly pointed out the section is mandatory and that the person issuing the writ for the company was an unqualified
80 person. He continued:

> The section is clearly drafted to prohibit unqualified person from acting as legal practitioners or acting as such i.e. holding themselves out as legally qualified and

> acting in the name of another.
> A company is a separate legal entity. It must act through its proper officers, by its very nature a corporation cannot act in person but only through an agent.
> The High Court (Civil Procedure) Rules 1964 Order 5 Rule 2 states that Writs of Summons shall be prepared by the Plaintiff or his advocate. There is no further restriction. The Supreme Court Practice (White Book) Order 5 Rule 6(2) states that with exceptions a body corporate must not begin or carry on proceedings i.e. act in person, otherwise than by a solicitor. The Rules in operation here do not contain a similar prohibition.

He later amplified that in the following way:

> Section 14(1) is a prohibition on persons acting as legal practitioners or in that capacity taking certain steps in proceedings. It does not prohibit persons acting 'in person' nor in my opinion prohibit an employee acting as an agent for his principal, i.e. his company. The agent is not acting as a legal practitioner nor holding himself as such. He is merely acting on behalf of the company and is not receiving any reward for that aspect of his work over and above his usual salary. If Parliament wished to place an absolute prohibition it should use clear words. The section is qualified by including 'as such' and is not an absolute prohibition. This interpretation is supported by looking at the Act as a whole and the mischief sought to be prohibited. It is clearly an Act to regulate the legal profession and to make provisions in respect of its members. The offences it creates are to protect the public from lay persons from holding themselves out and preparing certain documents as lawyers.

These are attractive arguments based as they are on sound common sense and the fact that, undoubtedly, the Court has allowed unqualified persons to represent companies in this way for many years. In considering them, there are two matters the Court must consider. Does order 5 rule 2 allow a company to be represented by a person other than a lawyer and, if so, has that right been removed by section 14(1)?

Order 5 rule 2 is part of the High Court (Civil Procedure) Rules which were made in 1964 under the now revoked Western Pacific Order in Council 1961, and came into operation on 1 May 1965. It reads:

> 2. Writs of summons shall be prepared by the plaintiff or his advocate, and shall be written, typewritten or printed, or partly written or typewritten and partly printed, at the option of the plaintiff:
>
> Provided that where a plaintiff suing in person is illiterate and is unable to prepare the writ himself, the writ may be prepared by the Registrar from the dictation of the plaintiff, and any duplicates required shall also be made by the Registrar.

This closely follows the wording of the old English order 5 rule 10:

> 10. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these Rules directed in the case of proceedings directed to be printed.

The present English order 5 rule 6 referred to by the learned Registrar replaced the

former order 5 rule 10 and reads:

6 (1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

(2) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

It is relevant that this rule first appeared in the 1962 revision of the English rules which came into force on 1 January 1964.

Clearly our 1964 rules were based on the English rules, and the Rules Committee, with both to consider, preferred the wording of the pre-1962 rule rather than the later one. It is reasonable to assume the Committee had some purpose in so doing. There is thus some force in the Registrar's argument that, as our rule does not contain the prohibition in the present order 5 rule 6(2), it was not intended to include such a restriction. In view of the lack of qualified lawyers in the Solomon Islands at that time, the Committee would have had good reason to avoid such a restriction.

It is relevant that the Pacific (Barristers & Solicitors) Order in Council, 1912, contained at clause 9 a restriction on unqualified persons acting which was similar in effect to section 14(1) of the Legal Practitioners Act. However, (despite the impression given by section 22 of the Legal Practitioners Act) the 1913 order was revoked, save for some rules made under it, by the Western Pacific (Courts) Order 1961, and no equivalent provision appeared in that later order. The 1964 High Court Rules were made under that order and the Rules Committee, knowing of the removal of the restriction and clearly acting in the same spirit, chose the wording of the old order 5 rule 10 rather than the more specifically restrictive form of the new order 5 rule 6.

However, Miss Corrin points out that the revised rule was only stating specifically what had always been the position at common law and thus the old rule did, in practice, impose the same restriction. There is ample authority for this proposition and indeed, since the 1962 revision of the English rule, the footnote in each edition of the White Book has read that, in relation to a body corporate: "this rule embodies the previously existing practice". Whilst the two cases cited in the footnote are unavailable here, the position has been repeated frequently. Thus, in *Frinton and Walton L.D.C.* v. *Walton and District Sand and Mineral Co.* [1938] 1 All E.R. 649, Morton J. ruled that a company cannot sue or appear in person in the High Court.

Similarly, Halsbury (4th. edn.) in vol. 7, paragraph 778 makes the proposition: "A company must employ a solicitor to initiate legal proceedings".

How far, then, is this Court bound by the common law position? As I have already stated, I feel the Rules Committee in 1964 must have had good reason for preferring the wording of the older English rule. That it felt there was a need for special provisions to suit the particular conditions in the Solomon Islands is shown by the Committee's addition of the proviso to order 5 rule 2. It is also clear that, in recent years, the Court has allowed a practice whereby corporations can be represented by authorized employees. I cannot, by my researches, discover when this first occurred. However, by schedule 3 of the Constitution, the principles and rules of the common law and equity shall have effect here, save insofar as they are inapplicable to or inappropriate in the circumstances of the Solomon Islands from

time to time. I feel that order 5 rule 2 has been interpreted by the Court here in this way because of the circumstances in the Solomon Islands. As such it can prevail over the common law position in England and, as far as order 5 rule 2 is concerned, I rule that it does not establish any restriction on corporations issuing writs on their own behalf by an authorized agent where that agent is an employee of the corporation acting in the normal course of his employment and for no additional remuneration.

180 However, with the passing of the Legal Practitioners Act, the matter no longer stops there. Section 14 prevents any unqualified person acting as a legal practitioner and suing out any process as a legal practitioner. Clearly the steps taken by the plaintiff in this case would be in breach of the section if done by a unqualified person acting as a legal practitioner but the section does not prevent a person performing these acts on his own behalf. The purpose of the act cannot be to take away a person's right to present his own case. He only acts as a legal practitioner when he does it for someone else.

I have found that practice under order 5 rule 2 allows a company in the Solomon 190 Islands to prepare a writ by its authorized employee. As such, it is, in effect, doing no more than a plaintiff in person, and so the employee cannot be held to be acting as a legal practitioner. It would be different if the company instructed anyone outside its employees to do so. That person would clearly, if he should take any step referred to in section 14(1), be acting as a legal practitioner. To that extent I do not agree with the learned Registrar's interpretation of section 14, and I cannot find the words "as such" qualify the section in the way he suggests. The wording of section 14(1) does make a clear prohibition. An unqualified person, apart from a litigant who carries out any of the acts listed in that subsection, is clearly acting as a legal practitioner in contravention of the prohibition.

200 The purpose of the Act is, as the learned Registrar states, to regulate the legal profession and protect the public from lay persons holding themselves out as legal practitioners or acting as such. Many professions in various parts of the world have been granted a monopoly by the legislature because it is seen as the surest way to protect the public. It is only reasonable that, if the Act restricts lawyers by a series of rules intended to achieve and maintain a high standard of expertise and professional conduct, it should also protect them by preventing others who are not subject to such restrictions from carrying out the same work. Thus I make it clear that, whilst a company here which is a party to an action may conduct its case through one of its employees, any other unqualified person who takes such steps on their behalf is 210 clearly in breach of section 14(1).

I now pass to the second ground of appeal.

Miss Corrin points to two specific defects in the writ, either of which she suggests will render the judgment irregular so that the defendant can have it set aside as of right. She suggests that the learned Registrar erred in that he only considered whether these defects could make the writ a nullity, when her submission had been that they simply made the proceedings irregular. That is not correct. In his ruling, the Registrar stated that "non-compliance with the rules does not render any proceedings void unless the Court so orders". That is clearly correct under order 69 rule 1.

220 The irregularities of which Miss Corrin complains are:

1. that this was a specially endorsed writ and the statement of claim was inadequate and lacked particularity;
2. that the plaintiff failed to enter his address on the writ.

In considering the endorsement, the Registrar said that what is required is a concise statement of the nature of the claim made or the relief or remedy required. Miss Corrin correctly points out this is effectively the wording of order 2 rule 1. In a case such as this, where the writ was specially endorsed, order 3 rule 5 applies and the endorsement shall be the effect of the forms in the Appendix to the rules or in a similar form.

230 The endorsement of the writ reads:

> The Plaintiff's claim is for the sum of $9,044.98 being value of goods supplied on credit to HM Salo Store during the year of 1982. This summon is addressed to Mr Samson Poloso, he being the Managing Director.

The learned Registrar felt this was clear and precise. I am afraid I cannot agree. It does not make clear whether these were the total goods supplied in that year or only part. If they are not, and in the absence of any particulars, how is the defendant to identify the transactions? If he wishes to admit some but plead payment on others, how is he to draft a defence? Had the suggested form of endorsement in the appendix been followed, particulars would have been supplied. They were not and 240 they should have been. Such an endorsement is inadequate as a statement of claim, and both that and the failure to supply an address are sufficient to render the proceedings irregular. In those circumstances, Miss Corrin suggests the judgment was irregularly obtained and the Registrar, therefore, had no alternative but to set it aside on the defendant's application.

It is, of course, good law that a defendant may have a judgment that has been obtained irregularly set aside *ex debito justitiae*. However, I cannot agree that this is such a case. There is a difference between a case where the judgment itself is irregular—as, for example, where it has been entered before the time for defence has expired or in the wrong sum—which will be set aside as of right, and cases such as 250 this where the proceedings have been irregular but the judgment has been otherwise properly obtained.

The position was stated in *Anlaby* v. *Praetorius* (1888) 20 Q.B.D. 764 where a judgment had been entered prematurely. Fry L.J. at page 768 pointed out that, in such a case, "the Court acts upon an obligation; the order to set aside is made *ex debito justitiae*".

In considering order 70 rule 1 which is identical to our order 69 rule 1, he stated:

> But in the present case, we are not concerned with an instance of non-compliance with a rule, nor with an irregularity in acting under any rule. The irregular entry was made independently of any of the rules, the plaintiff had no right to obtain 260 any judgment at all. . . . There is a strong distinction between setting aside a judgment for irregularity, in which case the Court has no discretion to refuse to set it aside, and setting it aside where the judgment, though regular, has been obtained through some slip or error on the part of the defendant.

In cases such as the present one where the irregularity is non-compliance with the Rules, the defendant may apply to the Court to have the proceedings set aside in accordance with order 69. That is, in effect, what was done before the Registrar.

However, order 69 rule 2 provides that the Court may decide whether the application to set aside has been made within a reasonable time. If it has not, the

Court shall refuse it. In this case, the learned Registrar considered on the facts that 270 there had been delay and it was, in all the circumstances, unreasonable. This was a conclusion he was entitled to make and this Court will not interfere. Having reached that conclusion he had no discretion to allow the application.

Appeal dismissed with costs to the respondent.

Reported by M.L.