Privy Council Appeal No. 15 *of* 1961

Musabhai Noormohamed Tejani and others – – – – *Appellants*

v.

The Official Receiver – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD DECEMBER, 1962

Present at the Hearing :
LORD JENKINS.
LORD GUEST.
LORD PEARCE.
[*Delivered by* LORD JENKINS.]

This litigation arises in the winding-up by the Court of a company incorporated in Uganda on 28th July, 1951, under the name of " Industrial Oil Products Corporation Limited " (hereinafter called " the company ").

The winding-up order was compulsorily made on the 3rd April, 1959. On the 22nd October, 1959, the Official Receiver made a Further Report, as she was empowered to do under section 182 of the Companies Ordinance (Cap. 212 of the Laws of Uganda) stating that in her opinion a fraud had been committed by four Directors (including the appellants) since the formation of the company.

By section 214 (1) of the Companies Ordinance:—

> " Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director, or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof."

On the 25th January, 1960, the High Court of Uganda (Bennett, J.) ordered the appellants to attend for public examination as to the conduct of the business of the company and as to their conduct and dealings as directors.

By an order of the High Court dated the 9th March, 1960, (Sheridan, J.) a motion by the appellants for the discharge of the order (apparently made *ex parte*) for the public examination of the appellants was dismissed, and leave was given to appeal to the Court of Appeal for Eastern Africa against the said order of dismissal.

The appellants duly availed themselves of such leave and their appeal was heard on the 27th July, 1960, before Sir K. K. O'Connor P., T. J. Gould J. (acting Vice-President) and R. Windham Esq., Justice of Appeal when the appeals of the two Tejanis and of Allibhai S. Kaba were dismissed, and the appeal of H. J. Ismail was allowed, the latter having, as it had turned out, no interest of any substance in any of the matters in question.

Final leave to bring the present appeal was granted by Order of the Court of Appeal for Eastern Africa dated 4th May, 1961.

The main judgment in the Court of Appeal for Eastern Africa was delivered by the Acting Vice-President Mr. Justice Gould, and contains the following passages from which their Lordships have derived much assistance in their consideration of the case:—

" I am, with respect, unable to accept what was said in *Re: Medical Battery Co. Ltd.* as a full exposition of the meaning of the section under consideration then and here, and I think that the further report alleges fraud of a type covered by the section and that this ground of appeal must consequently fail."

" The last ground is that the further report does not contain a *prima facie* case of fraud against each of the Appellants. Sheridan J. took the view that he could not discharge the order of Bennett J. who was satisfied that the report warranted the public examination of the Appellants. He did not think that the matter could be argued as a question of jurisdiction. With respect I do not think this is quite the right approach. *In re Great Kruger Gold Mining Co.* (supra) at p. 314 Vaughan Williams J. pointed out that the order for examination would be discharged if it was made without jurisdiction, or if it was oppressive or an abuse of the court's powers. It would I think be clearly oppressive if the order were made upon a report which did not, as required by *In re Barnes* (1896) A.C. 146, contain allegations which would amount to a *prima facie* case against the individual to be examined. The order for examination is normally made *ex parte* and, in my opinion, upon an application for its discharge the judge hearing the application must be satisfied upon this question. In the case of *In re Civil, Naval and Military Outfitters, Ltd.* (1899) 1 Ch. D. 215, Wright J. was the judge who heard the application for discharge. On appeal from his order Lindley M.R., at pp. 232–3, said:—

> " Now, putting these facts together, is there not some basis for the opinion of the Official Receiver ' that fraud has been committed by Mr. Long in the promotion or formation of this company '? I do not say that this charge is proved in such a way as would authorise a court of civil jurisdiction to compel Mr. Long to make good the profits which he has made; still less do I say that there is such a charge as Mr. Long should be called upon to meet in a court of criminal jurisdiction. The question we have to consider is whether this report is so flimsy, so sketchy, so unfair that Wright J. exceeded his jurisdiction, or exercised his discretion wrongly, in saying that Mr. Long ought to be publicly examined under the provisions of the Act. In my judgment, although the report might have been plainer (and I hope that on any future similar occasion the report will be plainer, so that we shall not have to waste a day in discussing the matter), this report gave Wright J. ample jurisdiction to make the order, and that he exercised his discretion in the way in which I myself should have exercised it."

In that case both Wright J., and on appeal from him, the Court of Appeal, considered whether the further report sufficiently supported the opinion of the Official Receiver. That would appear to be the approach which ought to have been adopted in the present case in the Supreme Court.

I have considered the further report in the present case and, without going into detail, am of the opinion that it clearly supports the opinion of the Official Receiver, in the cases of the Appellants Musabhai Noormohamed Tejani, Ebrehim Noormohamed Tejani and Allibhai S. Kaba."

On the appellants' side points were sought to be made (*inter alia*) in regard to the need for a *prima facie* case to have been made out before any public examination could properly be held, and in regard to the failure of the Official Receiver to attribute to each appellant some particular piece of alleged fraud. Their Lordships cannot accept these arguments. The need for a *prima facie* case must surely be satisfied by a *prima facie* case of the highly qualified kind which was regarded as sufficient by Lindley M. R. in the *Civil Naval & Military Outfitters Ltd.'s* case [1899] 1 Ch.215 at pp. 232, 233 (present Record p. 53). As to the attribution of particular pieces of alleged fraud to particular individuals, this appears to their Lordships to compel the

conclusion that if a company with say three directors was carrying on some business in a fraudulent manner, none of the directors could be brought to book unless he or they chose to tell the Official Receiver which of the three directors had been the actual perpetrator or perpetrators of any of the fraudulent acts in question. This would be a *reductio ad absurdum* which their Lordships find impossible of acceptance.

In conclusion their Lordships would only say that nothing they have heard in the course of the full argument presented to them has sufficed to satisfy their Lordships that the order of Her Majesty's Court of Appeal for Eastern Africa dated the 17th July, 1960, was in any respect erroneous.

Their Lordships will accordingly humbly advise Her Majesty that the appeal ought to be dismissed. The appellants must pay the costs of this appeal.

(86591) Wt. 8004/82 75 12/62 Hw.

In the Privy Council.

MUSABHAI NOORMOHAMED TEJANI
AND OTHERS

v.

THE OFFICIAL RECEIVER

DELIVERED BY
LORD JENKINS

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