

37/81
E 11 OF 1980



REPUBLIC OF THE GAMBIA.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

APPEAL NO:

BETWEEN:

MOHAMED B. A. BENSOUDA

APPELLANT

AND

ROXEY CINEMAS LTD.

RESPONDENT'S

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

BETWEEN:

MOHAMED B.A. BENSOUDA . . . APPELLANT

AND

ROXY CINEMAS LIMITED . . . RESPONDENTS

I N D E X

ITEM NO.	PARTICULARS	PAGE	LINE	PAGE	LINE
1.	Writ of Summons	1	-	-	-
2.	Statement of Claim	2	-	3	-
3.	Defence	4	-	5	-
4.	Amendment to para. 5 of Defence	8	-	-	-
5.	Amendment to para. 4 & 5 of Defence	10	-	-	-
6.	Reply	11	-	-	-
7.	Reply to Defence to Counter-Claim	12	-	-	-
8.	Amendment to para. 5 of Reply	13	-	-	-
9.	Order for Pleadings	14	5	14	6
10.	Macauley opens	15	10	19	33
11.	Raidan Ibrahim Raidan (Plaintiff)	20	15	27	11
12.	Cross-Examination by S.A. N'Jie	27	20	32	31
13.	Re-examination by Macauley	33	1	33	21
14.	Salim Kasmi Saab	33	22	36	2
15.	Cross-examination by S.A. N'Jie	36	23	40	2
16.	Re-examination by Macauley	40	3	41	1
17.	Henny Musa	41	2	41	36
18.	Cross-examination by S.A. N'Jie	41	38	42	28
19.	Mohamed Bensouda	42	29	47	39
20.	Cross-examination by Macauley	48	1	50	2
21.	Re-examination by S.A. N'Jie	50	4	50	14
22.	Baboucar N'Jie	50	15	50	19
23.	Cross-examination by Macauley	50	20	50	27
24.	Mrs Andrei Bensouda	50	33	52	13
25.	XXD by Macauley	52	14	52	16
26.	Famara Badji	52	19	52	38
27.	Rebecca Gabisi	53	7	53	11

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ITEM NO	PARTICULARS	PAGE	LINE	PAGE	LINE
28.	Ousman Amara Touray	53	13	53	24
29.	Tia Jatta	54	34	53	12
30.	Omar Sonko	55	14	55	27
31.	Abdul Latif Bensouda	56	3	56	16
32.	Cross-examination by Macauley	56	17	56	22
<u>A D D R E S S E S</u>					
33.	Address S. A. N'Jie	56	25	58	6
34.	Macauley replies	58	7	60	17
35.	Judgment	61	1	70	10
36.	Notice of Motion	71	-	-	-
37.	Affidavit	72	-	-	-
38.	Withdrawal of Motion	74	-	-	-
<u>R E C O R D O F E X H I B I T S</u>					
39.	Exhibit 1 Certificate of Incorporation Roxy Cinema Ltd.	75	-	-	-
40.	Exhibit 2 - Agreement made between Roxy Cinemas Ltd, and Mohamed Bensouda	76	-	79	-
41.	Exhibit 3 - Index	80	-	-	-
42.	Exhibit 7 - Monthly average	88	-	-	-
43.	Exhibit 5 - Letter from M.B.A. Bensouda to Mr. Raidan	89	-	-	-
<u>G A M B I A C O U R T O F A P P E A L</u>					
44.	Notice of Appeal - Roxy Cinemas	90	-	-	-
45.	Notice of Appeal - M.B.A. Bensouda	92	-	-	-
46.	Application by Macauley	94	15	94	15
47.	Reply by S. A. N'Jie	94	16	94	16
48.	Order	94	17	94	19
<u>A D D R E S S E S</u>					
49.	Macauley	94	20	95	23
50.	N'Jie (S. A.)	95	31	96	6
51.	N'Jie (S. F.)	96	7	96	9
52.	Judgment	97	20	100	10
53.	Notice of Motion I	101	-	-	-
54.	Affidavit in Support of Motion	102	-	-	-
55.	Notice of Motion II	103	-	-	-
56.	Affidavit in Support of Motion	104	-	-	-

ITEM NO.	PARTICULARS	PAGE	LINE	PAGE	LINE
57.	Notice of Motion III (Leave to Appeal)	105	-	-	-
58.	Affidavit in Support of Motion	106	-	-	-
59.	Order Motion III	107	-	-	-
60.	Order Motion I	107	-	-	-
61.	Notice of Motion IV	108	-	-	-
62.	Affidavit in Support of Motion	109	-	-	-
63.	Notice of Motion (Counter to Motion III)	110	-	-	-
64.	Affidavit in Support of Motion	111	-	-	-
<u>ADDRESSES MOTIONS II & IV</u>					
65.	Macaulley	112	11	112	21
66.	Janneh	112	28	112	28
67.	Order Motions II & IV	113	-	114	-
68.	Notice of Motion V	115	-	-	-
69.	Affidavit in Support of Motion	116	-	117	-
70.	Annexure A	118	-	-	-
71.	Annexure B	119	-	-	-
72.	Affidavit in reply	121	-	-	-
73.	Notice of Motion VI	122	-	-	-
74.	Affidavit in Support of Motion	123	-	-	-
75.	Ruling	125	-	-	-

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

ROXY CINEMAS LIMITED PLAINTIFFS

5

AND

MOHAMED B.A. BENSOUA DEFENDANT

10 TO: M. B. A. Bensouda,
Brikama,
Western Division,
The Gambia.

15 You are hereby commanded in the name of the Republic
to The Gambia to attend this Court at Bathurst on Tuesday
the 16th day of January, 1973 at 9 o'clock in the forenoon
to answer a suit by Roxy Cinemas Limited of Serekunda Kombo
Saint Mary against you.

The Plaintiff's claim is for damages for breach of
contract entered into between the Plaintiff and the
Defendant and dated the 18th day of March, 1970.

Issued at Bathurst the 6th day of January, 1973.

20

(Sgd.) Phillip Bridges
CHIEF JUSTICE

25 Take Notice:- That if you fail to attend at the hearing
of the suit or at any continuation or adjournment thereof,
the Court may allow the Plaintiff to proceed to judgment and
execution.

CERTIFICATE OF SERVICE BY BAILIFF

30 Upon the day of , 1973 this summons was
served by me to defendant. This I did by serving a copy
of the above summons (and the particulars of claim on the
said defendant personally at

Bailiff or Officer of Supreme Court.

./.

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

ROXY CINEMAS LIMITED ... PLAINTIFFS
 5 AND
 MOHAMED B. A. BENSUDA ... DEFENDANT

- STATEMENT OF CLAIM -

1. The Plaintiff is a limited Liability Company and the Defendant is the Proprietor of a chain of cinemas known as Arts Cinemas.
10
2. By an Agreement made on the 18th day of March, 1971 the Plaintiff agreed to provide suitable daily programmes of film show for each of the Defendant's cinemas situate at Brikama, Bakau, Gunjur and Serékunda, and to supply all motion picture films for this purpose.
15
3. By letter dated the 13th June, 1972 the Defendant gave the Plaintiff one month's notice to terminate the said Agreement.
4. Earlier on the 6th day of June, 1972 the Defendant had refused to accept films for the Bakau Arts Cinema for a period of eight days, but later on the 15th day of June, 1972 the Defendant resumed accepting films supplied by the Plaintiff for the Bakau Arts Cinema.
20
5. The Defendant inspite of a warning by the Plaintiff terminated the said Agreement.
25
6. The Defendant is in breach of the said Agreement.
7. Consequent upon the said breach the Plaintiff has suffered loss.
8. And the Plaintiff claims Special Damages in the sum of 30 136 Dalasis.

./.

- PARTICULARS OF SPECIAL DAMAGE -

As a result of the Defendant's refusal to accept films for the Bakau Arts Cinema for the period of eight days the Plaintiff lost 136 dalasis representing the sum the Plaintiff would have recovered from the Defendant had the Defendant not refused to accept the said films.

- 5
9. AND the Plaintiff claims General damages.

Dated the 21st day of January, 1973

10

(Sgd.) Sol. F. N'Jie
Counsel

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

ROXY CINEMAS LIMITED ... PLAINTIFFS

5

AND

MOHAMED B. A. BENSOUDA ... DEFENDANT

- D E F E N C E -

1. The Defendant admits paragraphs 1 and 2 of the Plaintiff's Statement of Claim.
- 12 2. By a letter dated 14th July, 1971, the Defendant wrote the Plaintiff indicating that he has acquired four 35 mm. Projectors for his four cinemas situated at Bakau, Serakunda, Brikama and Gunjur and requested the Plaintiff to supply him with a list or lists of 35 mm. film in the Plaintiff's possession but there was no reply. Copy of letter attached as Exhibit B1.
- 15 3. The letter dated 14th July, 1971, was followed by a letter written on the 21st December, 1971, whereby the Defendant requested that he be supplied with new films to enable him to keep up his clientele and boost his profit but there was no reply to this letter. Copy attached as Exhibit B2.
- 20 4. That on the 6th June, 1972, having obtained films from the Plaintiff at about 7.30 p.m., the Plaintiff or his agent or servant a Mr. Salim took away the films even though posters were exhibited and seen by many people who intended to see the films exhibited and this caused annoyance to intending viewers which resulted in a report to the Police at Bakau to avoid a breach of the peace. This was repeated at Brikama and for almost 25 30 8 days there were no film supplies.
5. That the Defendant has in no way been in breach of the contract entered into by the parties on the 18th March, 1971. The breach was caused by the Plaintiff.

./.

- COUNTER-CLAIM -

5 6. The Defendant had always wanted to work with the Plaintiff and was ready to go for films whenever they were available but the Plaintiff refused to supply him with films as agreed upon.

7. The Defendant denies that the Plaintiff supplied him with proper films which he refused to screen and this was a condition precedent to any liability on the part of the Defendant.

10 The DEFENDANT CLAIMS D140.00 as Special Damages.

- PARTICULARS OF SPECIAL DAMAGES -

15 By withdrawing films which had already been advertised to the public at Bakau and Brikama and substituting them with films which had been so often the Defendant lost D140.00 which represented the amount he would have realised from 6th to 15th June, 1972, had he screened all the films that he were entitled to screen during the said period.

AND THE DEFENDANT CLAIMS General Damages.

DATED AT BATHURST, this 7th day of FEBRUARY, 1973.

20

(Sgd.) S. A. N'Jie Esq.,
19, Buckle Street,
Bathurst, The Gambia.
SOLICITOR FOR THE DEFENDANT

25 The Master & Registrar,
Supreme Court,
Bathurst, The Gambia.

AND

30 S. F. N'Jie, Esq. B.L.,
Bedford Place,
Bathurst, The Gambia,
SOLICITOR FOR THE PLAINTIFF

"EXHIBIT B1"COPY

THE ARTS CINEMA
(Proprietor M. B. A. Bensouda)

5 P. O. Box 548,
Bathurst,
The Gambia,
West Africa.

14th July, 1971

10 BRANCHES:-

Brikara
Serekunda
Bakau.

15 Mr. Raidan Raidan,
Managing Director,
ROXY CINEMAS LIMITED,
Pipe Line Road,
L A T R I K U N D A.
Kombo Saint Mary Division.

20 Dear Sir,

I am writing to inform you that in accordance with paragraph 16 of the Agreement entered into between the Roxy Cineras Limited and the writer dated 18th March, 1971, and to inform you that I have now four 35 mm Projectors for all
25 my cinemas as enumerated in the said Agreement. Accordingly, I should be glad if you would supply me with a list of 35 mm films in your possession ready for distribution so that I could make my selections in advance. An early attention to my letter would be appreciated.

30

Yours faithfully,
(Sgd.) M. Bensouda.

"EXHIBIT B2"

COPY

S. A. N'JIE ESQ.,

BARRISTER-AT-LAW & SOLICITOR

5

19, Buckle Street,
Bathurst, The Gambia.

21st December, 1971

10 Mr. Raidan Raidan,
Managing Director,
Roxy Cinema Limited,
Pipe Line Road,
Iatrikunda,
Kombo Saint Mary Division.

Dear Sirs,

15

SUPPLY OF FILMS

My client and I had written to you several letters to which you have never replied, it would seem that you have deliberately refrained from replying to them and I am asked to write to you again on behalf of my client Mr. Mohamed B. A. Bensouda of Brikama Village in the Western Division of The Republic of The Gambia, the Proprietor of the Arts Cinema in Brikama, Bakau, Gunjur and Serekunda and if new films are not being supplied forthwith, he would have to resort to breaking the Agreement you had entered into on the 8th March, 1970, and to seek supplies elsewhere for films that might suit his clients.

2. My client has been losing clients because of the repetition of films you supply which have been invariably seen so often that they are of no interest to viewers because they are merely a repetition. This has been causing a loss both to you and my client since you have to go into shares of the proceeds of sale at the box. If you are not in the position to supply new films then it would seem that you should take this letter as a month's notice to terminate our relationship commencing the 1st January, 1972.

Yours faithfully,

35

(Sgd.) S. A. N'Jie

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 1973-B-2

BETWEEN:

5 ROXY CINEMAS LIMITED PLAINTIFFS
AND
MOHAMED B. A. BENSUDA DEFENDANT

AMENDMENT TO PARAGRAPH 5 OF DEFENCE
BY ADDING THE CLAUSE BELOW:-

10 AND the Defendant further says that the Agreement dated 18th March, 1971, and entered into between the Plaintiffs and Defendant is oppressive and unconscionable.

DATED AT BATHURST, this 7th day of March, 1973.

15 (sgd.) S. A. N'Jie,
19 Buckle Street,
Bathurst, The Gambia.
SOLICITOR FOR THE DEFENDANT

20 The Master & Registrar,
Supreme Court,
Bathurst, The Gambia.

AND

31 S. F. N'Jie Esq., B.L.,
Bedford Place,
Bathurst, The Gambia.
SOLICITOR FOR THE PLAINTIFFS.

NO. OF FILMS SUPPLIED FROM MARCH 1971 TO MARCH, 1973

MONTH	HOLLY WOOD	ROXY MONROVIA	ABESS	BYBLON	GLOBE	AMPLICA	F/TOWN ROXY	TOTAL
<u>1971</u>								
MARCH							5	5
APRIL							13	13
MAY							7	7
JUNE			18				5	23
JULY							7	7
AUG.							15	15
SEPT.							16	16
OCT							11	11
NOV.							12	12
DEC.					5		14	19
<u>1972</u>								
JAN.	5				5		7	17
FEB.							18	18
MARCH						6	9	15
APRIL	7					5	6	18
MAY						12	4	16
JUNE						8	4	12
JULY							12	12
AUG.		5			5		4	14
SEPT.		4				1	11	16
OCT.		3					5	8
NOV.		17					5	22
DEC.		6					11	17
<u>1973</u>								
JAN.							10	10
FEB.							10	10
MARCH							10	10
	12	35	18		15	32	231	263

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

ROXY CINEMAS LIMITED ...PLAINTIFFS

5

AND

MOHAMED B. A. BENSOUDA ...DEFENDANT

AMENDMENT TO PARAGRAPHS 4 AND 5 OF DEFENCE

4. That on the 6th June, 1972, the Defendant received films at Serekunda from the Plaintiffs for showing at the four Arts
 10 Cinemas (Bakau, Serekunda, Brikama and Gunjur) at about 7.30 a.m. The films and posters so programmed for showing at the Arts Cinema, Bakau was the film "Karim". This was so advertised at Bakau for showing on the night of the 6th June, 1972, but at about 5.30 p.m. Mr. Salim Saab, agent for the Plaintiffs, with-
 15 drew the film "Karim" which was programmed for the Arts Cinema Bakau, and this film was shown at Vero's Cinema Bakau instead. This caused lot of annoyance to intended viewers which resulted in the report of the matter to the Police by Omar Sonko, agent for the Defendant, to avoid any breach of the peace. No film
 20 was shown at the Arts Cinema, Bakau, that night and for further seven days. Again at Brikama on the same day the Plaintiffs' agents delivered a film ("Kindar") to the Defendant's Arts Cinema at Brikama and withdrew it before the spectators saw the film in motion though advertised and the Inspector in Charge of the Police
 25 Station had to come to Defendant's aid to allay the Defendant's customers from causing any form of breach of the peace.

5. That in accordance with paragraph 4 as amended the Plaintiffs are in breach of the contract entered into on the 18th March, 1971.

30

(Sgd.) S. A. N'Jie
 19, Buckle Street,
 Bathurst, The Gambia.
 SOLICITOR FOR THE DEFENDANT

The Master & Registrar,
 35 Supreme Court,
 Bathurst, The Gambia.

AND

S. F. N'Jie Esq., B.L.,
 Bedford Place,
 40 Bathurst, The Gambia
 SOLICITOR FOR THE PLAINTIFFS

./.

BETWEEN:

ROXY CINEMAS LIMITED ... PLAINTIFFS

5

AND

MOHAMED B. A. BENSOUDA ... DEFENDANT

R E P L Y

1. The Plaintiffs admit the facts alleged in paragraph 2 of the Defence but aver that the Plaintiffs' agent on receipt of the said letter approached the Defendant personally.
2. The Plaintiffs aver that subsequent to the letter of the 21st December, 1971 there was a reply sent to the Defendant's solicitor and that later there was a meeting at the Defendant's solicitors offices.
3. As to paragraph 4 of the Defence the Plaintiff aver that they had erroneously sent to the Defendant a film which the Defendant had not asked for and that the said film was scheduled for showing somewhere else. It is denied that this was repeated at Brikama for eight days or for any time at all. It is also denied that there were no supplies of films.

DEFENCE TO COUNTERCLAIM

1. Paragraph 6 of the Defence and counterclaim is denied.
2. The Plaintiffs deny that the Defendant is entitled to the sum of D140 or to any sum at all.
3. The Plaintiffs deny the particulars of Special Damage.
4. The Plaintiffs deny that the Defendant is entitled to any Special or General Damages.

Dated the 19th day of February, 1973.

30

(Sgd.) Sol. F. N'Jie
Counsel

THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

ROXY CINEMAS LIMITED ... PLAINTIFFS

AND

MOHAMED B. A. BENSOUDA ... DEFENDANT

REPLY TO DEFENCE TO COUNTER-CLAIM

1. That after the lodging and service of defence it became known that the Plaintiffs' Company was not registered in The Gambia then as in accordance with the Plaintiffs receipt No. 6 dated 31st December, 1971, that the Plaintiffs Company was then registered in Freetown, Sierra Leone.
2. The Defendant says that the letter dated the 21st December, 1971, was written on behalf of the Defendant and the only letter that was written by the Plaintiffs addressed to me but meant for the Defendant was written on the 28th December, 1971. There was no meeting in the Defendant's solicitor's office where by the Plaintiffs and Defendant met and discussed matters relating to films supplies.
3. The Defendant puts the Plaintiffs in strict proof of the matters raised in paragraph 3 and the subsequent paragraphs (1 - 4) in the defence to Counter-Claim. (Although the Reply by the Plaintiffs was filed on the 21st February, 1973, it never reached Defendant's solicitor's office until 10.30 a.m. on the 26th February, 1973, when the Defendant's solicitor was in Court.

Dated the 26th day of February, 1973.

(Sgd.) S. A. N'Jie
19, Buckle Street,
Bathurst, The Gambia.

The Master & Registrar,
Supreme Court.

AND

S. F. N'Jie Esq., B.L.,
Bedford Place,
Bathurst, The Gambia.
SOLICITOR FOR THE PLAINTIFF

IN THE SUPREME COURT OF THE GAMBIA
CIVIL SUIT NO. 1973-B-2

AMENDMENT TO PARAGRAPH 3 of the Reply Consequent
upon Defendant's Amendment to Paragraphs 4 & 5 of the Defence

- 5 (a) The Plaintiff says that the film "Karim" was a 16 milli
metre film which had been mistakenly sent to the Arts
Cinema on the 6th June, 1972, and had in fact not been
programmed for that cinema; that according to the terms
of the Agreement, referred to in paragraph 1 of the State-
19 ment of Claim and paragraph 5 of the Defence, he was en-
titled to recall the film in the circumstances. The Defen-
dant for a period of seven days, contrary to the said
Agreement, refused to receive films programmed for the
the said theatre supplied to him by the Plaintiff.
- 15 (b) That in fact a film was supplied to the Arts Cinema
Brikama on 6th June, 1972, was accepted by the Defendants
and indeed shown in the said cinema on the night of the
said 6th June, 1972; that thereafter and every succeeding
day in the said month of June, 1972 the Defendant accepted
20 films programmed for the Arts Cinema Brikama and such films
were shown in the said cinema.
- (c) That if the Plaintiff were in breach in the cricumstances
alleged in paragraph 5 of the Defence herein (which is
denied), the Defendant has waived the said breach and/or
25 is estopped from founding a claim for damages on the same.

(Sgd.) B. Maccauley.
Counsel,
30th March, 1973.

Tuesday the 16th day of January, 1972
 Before the Honourable Justice A. Nithianandan.

Mr. S. F. N'Jie for Plaintiff
 Mr. S. A. N'Jie for Defendant.

5 Statement of Claim in 7 days and
 Statement of Defence within 21 days.

Call case on 13/2/73
 (Sgd.) A Nithianandan

10 Tuesday, 13th February, 1973
 Before the Honourable Mr. Justice A. Nithianandan
 Mr. S. F. N'Jie for Plaintiff
 Mr. S. A. N'Jie for Defendant
 Mr. S. F. N'Jie moves to file a Defence to the Counter-claim.
 Defence in 7 days.

15 Trial 27/2/73
 (Sgd.) A Nithianandan

20 Tuesday the 27th day of February, 1973
 Before the Honourable Mr. Justice A. Nithianandan.
 Mr. S. F. N'Jie for Plaintiff
 Mr. S. A. N'Jie for Defendant
 Mr. S. F. N'Jie states that Mr. B. Macaulay Q.C. is leading
 Counsel for the Plaintiff.
 Mr. B. Macaulay Q.C. is only available on Friday 2/ 3/73.
 Mr. S. A. N'Jie states that 2/3/73 is not suitable to him. He
 25 further states that the reply to the Counter-claim was filed
 on 21/2/73 and was served only on 26/2/72 when he was in Court.
 It was served in his office at 10.30 a.m. and he states that he
 saw it only at 3.30 p.m. on Monday - i.e. yesterday.

30 I have typed out a reply to the Counter-claim. I was unable
 to file it as the Cashier is not available.

Call case on 2/3/73 to fix date of trial.
 (Sgd.) A. Nithianandan.

Friday the 2nd day of March, 1973.
 Before the Honourable Mr. Justice A. Nithianandan.

Mr. B. Macaulay Q.C. for Plaintiff and Mr. S. P. N'Jie
Mr. S. A. N'Jie for Defendant.

Of consent trial on 7/3/73
(Sgd.) A. Nithianandan.

5 Wednesday the 7th day of March, 1973
Before the Honourable Mr. Justice A. Nithianandan.
Mr. B. Macaulay Q.C. with Mr. S. P. N'Jie for Plaintiff
Mr. S. A. N'Jie for Defendant.

Mr. B. Macaulay opens his case:

10 Plaintiff is a limited Liability Company registered in
The Gambia.
(Certificate of Incorporation No. 3-/INT/1968 dated 9th
October 1968 - Tendered; Marked Exhibit 1) -

15 See Section 385 Companies Act. The Defendant is the Pro-
prietor of a chain of cinemas called Arts Cinemas.

On 18th March, 1971 Plaintiff acting through his Managing
Director Raidan Ibrahim Raidan entered into an Agreement with
the Defendant to supply films to the Defendant. Part of the
Agreement that the Plaintiff is responsible for arranging the
20 programmes - the 4 cinemas Arts Brikama, Bakau, Gunjur and
Serekunda. Agreement signed by Raidan and Defendant -
Agreement is not stamped. Undertaking given that the document
will be stamped and duly paid. Stamp Act Ch 176 Section 14
see Schedule 1 Sh. Penalty D25. See also paragraphs 2
25 of Statement of Claim and Statement of Defence 1. See
Gafara Akanni v. J. A. Sejuwadi Vol. 14 W.A.C.A. 75.
(Agreement tendered; marked Exhibit 2.) Under the terms of the
Agreement - Refers to para. 3, 4, 12, 13, 16 & 17.

30 According to Exhibit 2 the Defendant did not have 35 mm
but undertook to get some from Russia. He said so to Mr.
Mr. Raidan, Managing Director - (letters in record with Index
tendered; marked Exhibit 3).

35 Defendant undertook to inform the Managing Director Mr.
Raidan when he got his 35 mm Projector from Russia. See letter
1 of 14 July, 1971. When letter 1 was received by the Plaintiff,
he Plaintiff went to the Defendant and told him that he was not
obliged to supply him with a list of films to select pictures.

~~Defendant agreed. See Exhibit 4 and para 13 of the Agreement.~~
 Defendant wanted to go over to the Plaintiffs cinema and see
 some pictures. Plaintiff agreed. Plaintiff also supplied
 American films. Defendant used to go the stores of Roxy
 5 Cinema at Serekunda and select films for Brikama either from
 Raidan or a Mr. Saab - for the other cinemas it was the practice
 of Roxy Cinemas at Serekunda to send the films. See paras 1 & 2
 owner is defined as Roxy Cinemas Ltd.

On the first films supplied on 24 July 1971 - 3 or 4 after
 10 the Agreement - the practice was for the Managing Director Plain-
 tiff to go to the Arts Cinema Serekunda and there meet the Defen-
 dant and his wife, go through the ticket sale and collect 50% of
 the taking. The Defendant kept an Invoice Book which disclosed
 the number of tickets sold. When Plaintiff received his 50% he
 15 would sign a receipt on the Invoice - Invoice in duplicate.
 Original given to the Plaintiff. On 21.xii.1971 the solicitor
 for the Defendant wrote a letter to the Plaintiff: Letter 2.
 Para 1 flagrant violation of the Expressed Agreement particular-
 ly para 12 of Exhibit 2. Refers to para 2 of letter 2. Agree-
 20 ment is for a fixed term of 2 years. Evidence would be led to
 show one letter only and not several letters at letter 2 para 1.

After letter 2 a meeting was held at the solicitor's house,
 Mr. S. A. N'Jie's house.

At this stage, Counsel moves to amend para. 2 of the Reply -
 25 the word office to read as 'house'. Amendment granted.

Refers to para. 2 of the Reply to the Defence to the Counter-
 Claim para. 2. Evidence will be given of the meeting alledged
 and what took place.

After that meeting the Plaintiff as a matter of favour
 30 permitted the Defendant to go to Roxy Cinema Stores and choose
 films. Sometime later on 28/12/71 the Defendant replied to the
 letter 2 by letter 3. Letter No. 3 was received by Defendant's
 solicitor. On 25 April 1972 letter 4 was written by the Plain-
 tiff complaining about damage to films let on hire. This letter
 35 4 should be read with Clause No. 9 of the Agreement.

On 6/6/1972 the Plaintiff mistakenly supplied a film called
 Karim which had previously been supplied to the Defendant for

showing at Serékunda and Brikama. This was a mistake on the part of the Plaintiff and they sent to Bakau to collect it. They explained this to the Defendant. For 8 days the Defendant refused to accept films between 6/6/72 - 13/6/72 both dates inclusive for Arts Cinema Bakau. Moves to amend para. 4 of Statement of Claim - Delete 8th to read 7th and 15th to read 14th June.

Amendment allowed - this is subject to a claim for special damages para. 8. It has been suggested in the last sentence in para. 4 on Statement of Defence that no films were supplied to certain cinemas for 8 days. Evidence would be led to deny this. On 13/6/72 another letter was received by my client and written by Defendant himself, Letter No. 5. This is the breach of the Agreement. Plaintiff took legal advise and by letter 29/6/72 - Mr. S. F. N'Jie Solicitor for Plaintiff - see letter 6. Breach of Contract.

On 13/6/72 breach of Contract took place when Defendant did not accept films. At the material date 10/6/72 there was in The Gambia 10 theatres operating - 2 of which belonged to the Plaintiff and he in fact supplied films to all the other 8 theatres. As a result of this termination Plaintiff lost 50% of his market. Defendant had 4 theatres. Evidence would be led to show that Plaintiff obtained his films from abroad and this cost a lot of money. Plaintiff had to pay the cost of the hire but also shipment. Defendant knew this - see para. 12 of the Agreement. Plaintiff not only lost a profit but incurred a loss. In the computation of damages, it must include the loss of profit, but the loss incurred in getting the films.

Mr. S. F. N'Jie instructed to institute a Writ of Summons. Writ taken out on 6/1/73. Refers to pleadings. Para. 1 of Statement of Claim admitted in para. 1 of the Defence. Refers to Counter-claim para. 6. Refers to the Reply to Defence to Counter-claim. Moves to strike out para. 1 as para. 1 is an attempt to go back on para. 1 of Statement of Defence. Refers to Rule 10 Sch. 4 O23 page 1034, Refers to R.17. No application was made to the Court to obtain leave to amend the Statement of Defence. Refers to Section 385 and 17(1) of The Companies Act. Moves to strike out para. 1. Reply to Defence to Counter-claim dated 26 day of February, 1973.

Mr. S. A. N'Jie: Refers to Order 25 Sch. 11 R.1. Refers to XXIV R.1.

Mr. B. Macaulay, Q.C.: Refers to Section 385 of The Companies Act and Section 17 of the same Act.

5 Further proceedings tomorrow 8/3/73 at 9.30 a.m.

Thursday the 8th day of March, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

10 Mr. S. A. N'Jie now states that he has no objection to para. 1 of the Reply to Defence to Counter-Claim being deleted and Struck out.

Statement of Claim - para. 1 admitted by Defence. Para. 2 is also admitted. Para. 3 of Statement of Defence is letter 5. There is no reference to para. 3 on the Statement of Defence. 15 By operation of Sch. 11 23 R.7. By virtue of this rule para. 3 of Statement of Defence is admitted.

Para. 3 of Statement of Defence is impliedly denied by Statement of Defence para 4. Should be read with para. 3 of the Reply of 19/2/73.

20 Refers to para. 5 of Statement of Claim - this is established by operation of Sch. 11 Order 23 R.7. Warning referred to Statement of Defence para. 5 is letter 6.

Para 6 of Statement of Claim is denied in para. 6 Statement of Defence. Paras. 7, 8 & 9 is impliedly denied in para 5 of Statement of Defence.

25 Refers to Statement of Defence:

Para. 1 and 2 - comments made earlier applies.

Para. 2 is admitted in Reply dated 19/2/73.

What is admitted in para. 2 of the Statement of Defence is letter 1.

30 Para 3 of Statement of Defence is letter No. 2.

Para 3 of Statement of Defence is dealt with by the Plaintiff in his reply para. 2.

The word Solicitor's Office to read Solicitor's House.

35 Para. 4 of Statement of Claim should be read with Statement of Claim. Comments already made.

Para. 5 of the Statement of Defence is a denial of Statement of Claim para. 6.

The last sentence of para. 5, must be treated as part of para. 6 Counter-claim.

5 Para 6 is denied in reply; is denied in para. 6 of Defence to Counter-claim.

Para. 7 to the end of the Counter-claim is denied in 2, 3 and 4 of Defence to Counter-claim.

Now refers to Reply to Defence to Counter-claim.

10 Para. 3. There is no para. 1. Para. 2 is letter 3.

In the Statement of Defence para. 3 states that there was no reply, but in the Reply to the Statement of Defence para. 2 it is averred that a Reply was indeed sent and this finds admission in para. 2 of the Reply to the Counter-claim. See letters 2 & 3.

15 Para. 2 of the Reply to Defence to Counter-claim is a Rejoinder. Para. 39 Reply to Defence to Counter-claim is a Rejoinder.

There would appear to be only 2 issues:-

- 20 1. Was the Defendant entitled to terminate an Agreement for a specified period when there is no provision in the Agreement for termination before expiration of the period?
2. Did the Plaintiff refuse to supply the Defendant with films (Para. 6 of Counter-claim) if so whether this entitled the Defendant to terminate the Agreement.

25 On the question of Damages:-

1. To award General Damages which should include loss of profits.
2. Special Damages which is:-
 - 30 (a) Expenditure incurred in preparation in fulfilling the contract.
 - (b) The loss incurred in sending the films back.
 - (c) D136 and 8 days loss of profit from 6th of June 1972 to 13th June 1972 at Bakau Arts Cinema.

Mr. S. A. N'Jie states that before the Plaintiff calls his witness he wants an amendment to para. 5 of Defence by adding the Clause.

Amendment supplied.

5 Mr. B. Macaulay Q.C. has no objection.

Amendment is allowed.

Further Mr. S. A. N'Jie states that the words and "to inform you" in letter 1 must be out, again in letter 2 of the word "our relationship" should read "your relationship."

10 In letter 3 - "on several occasions asked you" the word you must not mean Mr. S. A. N'Jie but "your client".

Letter 4 is not part of the Pleadings.

Mr. B. Macaulay Q.C. states the copies of letters are exact copies of letters 1 and 2.

15 Plaintiff: RAIDAN IBRAHIM RAIDAN S.O.K. English. I live at Pipe Line, Serekunda. I am Managing Director of Roxy Cinemas Ltd. (Shown Exhibit 1). This is the Certificate of the Incorporation. It is kept by my Auditors. I brought it from Auditor and gave it to my lawyer, Mr. S. P. N'Jie. This company was formed in 1968. I am one of the original directors. I have been Managing Director since 1968. I know the Defendant. He is the Proprietor of Arts Cinema at Bakau, Brikama, Gunjur and Serekunda. (Shown Exhibit 2). On 18th March, 1971 Roxy Cinemas entered into an Agreement with the Defendant Mohamed Bensouda. It is signed by me and Mr. Bensouda the Defendant. There was some correspondence between me, the Defendant and the Solicitor for the Defendant. I have copies of those letters. (Reads letter of 14 July, 1971). This is the original - letter 1 of Exhibit 3 now part of Record. It is signed by Mr. M. Bensouda the Defendant. Letter 2 in Exhibit 3 is dated - (Shown original of letter 2). Signature of that letter is that of Mr. S. A. N'Jie. (Read) (Shown letter 3 Exhibit 3) (Shown original) - bears my signature. (Read) Letter written on my letter head. (Shown letter 4 of Exhibit 3) (Shown original). It bears my signature. Written on my letter head.

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Letter 5 of Exhibit 3 - This is signed by the Defendant. This is what I received.

Letter 6 of Exhibit 3 - This is the original, signed by my Solicitor Mr. S. F. N'Jie.

5 Before my company entered into Exhibit 1, I talked to the Defendant. Mr. Toufic Masry was present. This discussion took place in Mr. Toufic Masry's house. Mrs. Bensouda - the Defendant's wife was present and during our discussion we agreed that I would supply pictures on 50:50 basis. I also undertook to
10 make for the Defendant all the programmes for his 4 cinemas. The Defendant agreed to this proposal. I said that I must get my pictures from abroad. Our Agreement was reduced to writing, so that we could stick to the Agreement. I did not force him to make this. I did not force him to make this Agreement. The
15 Defendant approached me to supply him with films. Roxy Cinemas also had 2 picture houses here. There were 8 other cinema houses. The Defendant has 4 cinema houses.

Before I supplied to 4 cinema houses films before I entered into this Agreement. When I entered into the Agreement Exhibit
20 2, I became the sole supplier to all theatres in The Gambia. At the time of the proposals at Mr. Toufic Masry's house the Defendant said that he did not have 35 mm Projectors, but would order them from Russia. When the Projectors arrived Defendant undertook to inform me.

25 On 17 March'72, I entered into this Agreement Exhibit 2. The Agreement was signed by Mr. Mohamed Bensouda the Defendant. The Agreement was explained to me before I signed it. It was also explained to Mr. Bensouda. The person who explained the document to Mr. Bensouda is Mr. Cates and the Defendant also
30 took the document away. He said that he wanted someone to explain it to him again before he signed. On the 18th March, 1972 the Agreement was signed. There were one original. There was some duplicate originals. Both of us signed all three copies. The Defendant took the original away.

35 Mr. Bensouda had no engineer. I had an engineer. I offered him the Defendant my services to fix the 35 mm. Projectors. I do not know whether my Engineer actually helped.

On 14 July, 1971 I received letter 1 of Exhibit 3. The Defendant wrote this letter to me when the 35 mm Projectors arrived. (Reads this letter from the words "Accordingly" to Selection in advance".) When I received this letter I had not changed my terms of Agreement and I was surprised,
 5 (Shown Exhibit 2). Refers to para. 13 of Exhibit 2, but realising that the night etc. When I got letter 1 of Exhibit 3, I did not reply to that letter. I went to the Defendant's shop and I told him that I received his letter of 14 July 1971 and that I am surprised how he can ask for a list of films,
 10 because he has no right to do so according to our Agreement. The Defendant said nothing. The Defendant asked me whether he could come to my stores and see the films in my possession. I said yes come and see. He went to my stores and saw the films I had in my stores and he asked me which was the one I was going to start with and I showed him all the programmes, which I had for his 4 cinemas. This was ^{at} Roxy Cinema at Serekinda. The Defendant left.

Brikama:

20 The Defendant used to come to Roxy Cinema Stores and take the films - that is the programme of the day to Brikama. My store boy brings the film to the Defendant's car. My Assistant Salim Saab knows about the Agreement. Either I or Mr. Saab arranges the programme. We give the Defendant
 25 Posters as well.

We take the films directly to the other cinemas - to Serekunda, Bakau and Gunjur. The film for Gunjur we hand over at Arts Cinema at Serekunda. (Reads para. 1 & 2 of Exhibit 2) We used to share the profits daily, and sometimes after a day
 30 or two. We kept a strict account. We kept these accounts in an Invoice book. Every cinema had a different Invoice book. The Defendant had the Invoice book. The entries in the Invoice book is written out by Mrs. Bensouda and when the profits are given, the Defendant is present. I sign the Invoice book. It
 35 is in duplicate. A carbon is used. I take the original and the duplicate remains in the book.

She tears out and gives me the original. The first takings was on 24th July 1971. I have the Invoices which I signed when I received the money. I have invoices from

July 1971 to July 1972. I do not have every Invoice. Some are missing. I have made a note of those that are missing. I have a note of the missing Invoice.

Further proceedings tomorrow

9/3/73

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Friday the 9th day of March, 1973.

Before the Honourable Mr. Justice A Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K. English. The note is amended.

10 Number of days missing in a month to number of missing Invoices for the days as indicated. I tender the document - Exhibit 4.

(No objection from Defendant's Counsel.)

I have the Invoices for the other days between July 1971 and July 1972. I have also prepared a note of the number of
 15 Invoices available and they have been prepared from the Invoices I have in Court. My note is known as number of Invoices available and the takings from each cinema. (Document tendered - Exhibit 5 - No objection by Defendant Counsel).
 The Invoices in Court is reflected in Exhibit 5. The Invoices
 20 are in 4 bundles. I have the bundle from Brikama. The first Invoice is 24 July 1971. The last Invoice 13/7/72. This is for Brikama. (Bundle tendered - Exhibit 6A), I have the Invoice for Bakau.

31/7/71 the last Invoice is 13/7/72. (Tendered Exhibit
 25 6B). I have the Invoices for Gunjur. The first Invoice is 3/8/71 and the last Invoice is 13/7/72. (Tendered Exhibit 6C). I have the Invoices for Serekunda. The first Invoice 24/7/71 shows as Gunjur. It is really reflect Bakau. Invoice No. 92 under Exhibit 6C is Gunjur and not Bakau. The total
 30 takings from Brikama Cinema period 24th July 1971 to 13 July 1972 from the available Invoices is D19,405.50, the monthly average for Brikama is D2376.00. Total takings from Bakau 31/7/71 to 13/7/72 is D5,981.00. The monthly average is D794.00. Total takings for Gunjur 3/8/71 to 13/7/71 is D6,414.20
 35 and the monthly average is D879.00. The average monthly amount is D2,587.00. The Gross Average Monthly takings from 4 cinemas

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is D6,636.00 and my average monthly takings in terms of the Agreement Exhibit 2 is 50% of D6636.00 i.e. D3318. Average for 12 months D39,816.00. No films were taken from July 13 1971 onwards. The Agreement expires on the 18th of March 1973.

5 This would mean for about 9 months the defendant refuses to take any films. For the 9 months the average 50% takings is D29,862.00. I did prepare this takings and average. (Tendered Exhibit 7).

(Shown Exhibit 6A) The date and name of the cinema is
10 written by the Defendant's wife. We have on the Invoice in some the name of the film, then the costs of the ticket - then ticket numbers - showing the number of tickets sold, and then a receipt of the amount acknowledged. Mrs. Bensouda does this in the authority of the Defendant and the amount is paid
15 that is 50% in the presence of the Defendant. I hire films as per Exhibit 2 para. 12. I had an Agreement with American Motion Pictures. The Agreement is dated 14 March 1972. I have other Agreements with other film companies - Roxy Cinema, Freetown, Abess Cinemas Ltd., Freetown - they are companies incorporated
20 in Sierra Leone. Roxy Cinemas, Monrovia, Hollywood Cinema also in Freetown for import of pictures. I pay freight for the transportation of the films. I pay Gambia Airways. I have to return the films through Gambia Airways. I make transfer through Standard Bank.

25 Further proceedings on Monday 12/3/73.

Monday the 12th day of March, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Case adjourned to 13/3/73 as Plaintiff's Counsel is indisposed.

30 (Sgd.) A. Nithianandan

Thursday 22nd March, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Both Counsel move for an adjournment until tomorrow.

Case adjourned to 10 a.m. tomorrow.

(Sgd.) A. Nithianandan.

Friday 23rd March, 1973

5 Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K. English. Between 14/6/72 and 27 September 1972 I paid monies to Gambia Airways against the Freight charges. I paid D2,749.19. I distribute for cinemas.
10 When the films come into the country they are here for a month. I make the Order in advance - supplied regularly. This amount D2,749.19 includes freight back as well.

On July 13'72 Defendant refused to take any films. I had to return the balance. I have a duplicate copy of the bill.

15 (Shown Exhibit 3 - letter 2 of 29 December 1971). Refers to Court. My client and I had written to you etc. you never replied. This is not correct. I had no letters from Mr. S. A. N'Jie. The Defendant did write to me on the 14th July 1971 only one letter. The Defendant has been away from The Gambia.
20 Mr. Abdul Latiff Bensouda collected the films when the Defendant went away. When I received the letter of 21 December 1971 I went to the Defendant's shop. I met him. I asked him why he wrote to me the letter of 21/12/71. He said this is the way he wanted to write to me. Later we had a meeting at the residence
25 of Mr. S. A. N'Jie. I was told by Mr. S. A. N'Jie that his client wanted new films and was not making any business. I told him that I had new films - and that I owed to supply him new films. I invited his client to come and choose in my stores new films. Mr. S. A. N'Jie said that this was fair and asked
30 his client to go and choose the films. We left Mr. S. A. N'Jie's house. On the way to Brikama to his residence the Defendant on the same day came to my store. I replied to Exhibit 3 letter 2. My reply to that letter is Exhibit 3 - letter 3. In that letter when I said "You" I referred to the Defendant. I wrote the
35 letter of 28 December 1971 as a reply to the 21 December'71.

At this stage Mr. B. Macaulay refers to para. 4 of Statement of Claim and para. 4 Statement of Defence and para. 3 of

of the Reply - cannot be maintained. Paras 4 and 8 of the Statement of Claim be struck out.

Mr. S. A. N'Jie states:

Refers to Cap. 36 Order 24 Rule 1.

5 6th June 1971 is the vital date - if the incident did not take place then, the contract would have continued.

Mr. B. Macaulay:

Replies 3, 5 & 7 of Statement of Claim.

10 ORDER: Application is allowed.

Mr. Raidan's evidence continues:

On 6/6/1972 - refers to Statement of Defence. On 6/6/72 we supplied two pictures - this was for Bakau. Mr. Salim Saab prepared the programme. In my reply para. 4. The film involved is Karim. My Assistant took the film Karim to the Defendant's cinema in Bakau in the morning. When my Assistant returned to the office he said something. I asked him to go to Bakau and take the film back as I had programmed it for Vero Cinema in Bakau. This film had been shown in the Defendant's Cinema in Brikama and Serekunda. It is my decision that matters. I had not programmed Karim to Bakau. Mr. Saab took the film Karim and gave the Defendant another film. On this day the Defendant refused the programme and refused for 7 days to take the films for Bakau. This did not happen in Brikama. Not to my knowledge. For all the other 3 theatres the Defendant took films.

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Refers Invoice Nos 32 - 61 Exhibit 6A. 1st June to 30th June for Brikama. It is incorrect that there was any non supply of films at Brikama.

30 Refers to Exhibit 4. Missing Invoices none. Exhibit 5 shows takings for 30 days.

Refers to Exhibit 3 letter 5 - I did not fail to comply with the Agreement. The Agreement 18 March 1972 is a reference to 18th March 1972. I did not reply as my Agreement is dated 18 March 1971.

35 Refers to Exhibit 3 - letter No. 6. I requested my lawyer to write that letter. On 14th July 1972 Defendant reported

to take any films. The Defendant never took any films after 14th July 1971 from me. This was so for all the four cinemas. Then I instructed Mr. S. F. N'Jie to institute proceedings.

5 I remember the freight I paid. On June 2 1972 to July 24 1972. I paid D5,345.00 for hire of films. I have made a breakdown of the amount. I have put the freight also in this amount. Identification A.

I never refused to supply films to the Defendant at anytime.

10 I claim damages for breach of contract, loss of profit for 9 months as per Exhibit 7-D29,862 - Special damages half of the cost of freight D1,374.59.

Further proceedings on Monday 26/3/73 at 10 a.m.

(Sgd.) A. Nithianandan.

Monday 25th day of March, 1973.

15 Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K.

Mr. S. A. N'Jie states that he accepts the two issues of leading Plaintiff's Counsel.

20 There is only one Agreement between me and the Defendant made on 18 March 1971. The Agreement was to expire on 17/3/73. The Agreement becomes operative from 18th March 1971. My company Roxy Cinema was incorporated 9 October 1968 in The Gambia. We are quite distant from Roxy Cinema Freetown. I did give
25 receipts to the Defendant in the name of Roxy Cinema, Freetown, Sierra Leone.

Refers to Exhibit 2 - Clause 13. The Agreement. Mr. Saab handed the film Karim to the Arts Cinema in the morning - I think. Mr. Saab my assistant gave the film Karim. On 6/6/72
30 my assistant gave Arts Cinema at Bakau the film Karim - and the posters - I think. This film was withdrawn around noon. I told my assistant Mr. Saab to withdraw the film Karim. I had programmed this film Karim to another Cinema at Bakau. I gave my assistant Saab 2 other films. I don't remember the name of
35 the other film.

Q. What is the meaning of programme?

A. When I deliver a film to^a person that is the programme for the evening. This film Karim was withdrawn about noon. Mr. Saab my Assistant came to my office; came to me in the morning about 10 or 10.30 a.m. to my office. I asked him if he had delivered all the programmes. He said yes. I asked for the distribution list. I found that he had given the film Karim mistakenly to Arts Cinema Bakau. I told him that this film had been programmed for Vero Cinema at Bakau. I asked him to take another film to Arts Cinema, Bakau and to give the Karim film to Vero Cinema. I have records of programmes. I give oral orders about programmes. We have two books for the two theatres at Bakau. (Both books tendered for identification B & C). (Bakau B, C Vero). I do not know if anything happened at Bakau when Karim was not shown at Arts Cinema 6/6/72. I don't remember the defendant making a complaint about my withdrawal. I was not seen by the Police. As a result of the withdrawal of the film Karim, correspondence passed between the Defendant and me. Refer to Exhibit 3 - letter No. 1 by Defendant dated 14 July, 1971. Letter 2 from S. A. N'Jie dated 21/12/1971. The word "our" in the concluding paragraph of letter 2 refers to me and Bensouda the Defendant. Letter 3 of 28/12/71 - "our" in that letter para. 2 is a reference to the Defendant. Refers to letter 4. Some reference to clippings in a film. Abdul Latiff Bensouda did write to me. I do not have the original. I received that letter. Abdul Latiff Bensouda was acting for the Defendant when the Defendant was away.. There were in all 3 letters from Abdul Latiff Bensouda.

Our Company is a distant corporate body. After 18 March 1971 the Defendant had nothing to do with Roxy Cinemas, Freetown. We have our Company Stamp. Sometimes we don't stamp everything. (Shown 9 receipts). It is all signed by me, stamped Roxy cinema Freetown. These receipts were given at the request of the defendant to evade Income Tax but I have proper account in the books where the takings are indicated and my share of the 50% set out. (Letters tendered Exhibit 8 A - J). In certain F, G, H & I the money is set out in Dalasis. Other receipts in Leones - legal tender of Sierra Leone.

I told the Defendant that I would refuse to supply him

with a list of films - as it is not a part of Agreement. He the Defendant came to my stores and examined my films. I had programmes for him.

5 Refers to para. 12 of Exhibit 2 - there is no Agreement that the Defendant bears the cost of frieght. It is not in the Contract. There is no provision in Exhibit 2 that the Defendant should bear the cost of the Projector to The Gambia.

Q. One poster and film is called a programme?

A. Yes.

10 Every delivery of Poster and Film is a Programme for the Cinema. Poster illustrates what is going to be shown in the theatre. The poster is the advertisement of the film.

The programme is distributed by my Assistant Mr. Saab. He would take to Bakau and Serekunda. The Defendant on his way go-
15 ing to Brikama would take the programme for Brikama. The man incharge of Gunjur would collect the film for Gunjur at Arts Cinema, Serekunda. My agent delivers the films in the morning about 8.30 or 9 a.m. We have no Way-Book for film dilivery. Mr. Salim Saab delivers the film and also one Henny Musa used
20 to assist Mr. Salim Saab.

Refers to Exhibit 2 Clause 13. Hire is the Defendant. Clause 13 of Exhibit 2 has been observed when the Defendant comes and chooses the films.

25 Q. How many films did you order from abroad after 18 March 1971?

A. I must check my Invoices.

Further proceedings tomorrow, Tuesday 27/3/73

Tuesday 27th March, 1973

Before the Honourable Mr. Justice A. Nithianandan.

30 No sittings.

Wednesday 28th March, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K. After 13th July 1972, I ordered 12 films. In March 1971 I ordered 5 films but supplied nothing - so too in April. I must have supplied the first film to the Defendant on or about 22 or 23 July 1971. By the time I supplied films to the Defendant. What films I had received for the month of March - later.

At this stage a short adjournment is taken to get the witness to collect the relevant papers from his office.

Later both counsel informed me that in view of the mass of document, they would want a postponement today to study and pick out the relevant documents.

Application is allowed.

Case adjourned to tomorrow, Thursday 29/3/73.

(Sgd.) A. Nithianandan.

Thursday 29th March, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K. Invoice for June 1971 shows that I had 23 films. The film Up Jumped a Swagman arrived 30/6/71 in Gambia and left on 29/11/71; the next film is called Jonny Yuma arrived in Gambia 23/6/71, left for Freetown 15/9/71. The third film Quintane arrived in The Gambia on 23/6/71 and left for Freetown 14/9/71.

At this stage learned leading counsel for Defendant wishes to withdraw the Special Damages claim mentioned in 8/3/73 and proceeds to say that he withdraws the entire claim for Special damages.

Cross-examination continued:

I deliver films at Serekunda for Gunjur and we take the film to Bakau by 10 a.m. or latest 10.30 a.m. I gave the instructions to my assistant. I go to my store at Serekunda and give instructions or I do so from my office at Bathurst. The film Karim was delivered in the morning of the 6th June, 1972, just like any other day. The film Karim goes with the poster. I don't know

that this poster was displayed outside. I got this film from a man from Senegal. This film Karim was on 16 mm. This film was shown at Brikama and Serekunda at the Defendant's cinema. In all his cinemas the Defendant had 16 mm Projectors. At Bakau before the Agreement of 18/3/71, Exhibit 2, Defendant had 16 mm. Mr. T. M. Jagne brought the man who had the film called Karim. He is the Proprietor of Odeon Cinema. Mr. T. M. Jagne had a contract for supply of films from me. Hire for it was 35mm. I hired the films from the owner of Karim and put it out to the theatres, I had contracts with them existing. Refers to memorandum of Association.

A Washir Raidan and I are members of the Roxy Cinema Ltd. Washire Raidan became a member 5th December, 1968.

At this stage Mr. S. A. N'Jie wishes to amend his Statement of Defence para. 4 to read "Having obtained films from the Plaintiff at about 7.30 a.m. the Plaintiff or his agent etc. breach of the peace". This was repeated at Brikama. The rest of the pleadings is now deleted.

Moves to amend para. 5 of Statement of Defence to read "The breach was caused by the Plaintiff by his acts pleaded in para. 4.

At this stage Mr. S. A. N'Jie wants time to think about the proposed amendment.

Time granted. Case adjourned tomorrow.

Further proceedings 30/3/73.

(Sgd.) A. Nithianandan.

Friday 30th March, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Mr. S. A. N'Jie now moves Order 24 Rule 1 to file amended Statement of Defence. The amendment has been filed on typed sheets.

Mr. B. Macaulay Q. C. consequent to the amendment now allowed and filed by Defendant's Counsel. Mr. B. Macaulay files amendment to fresh amendment now filed by Defendant's Counsel.

Application is allowed.

Mr. S. A. N'Jie concedes that the amendment now filed and allowed by this Court replaces 4 and 5 of the Statement of Defence.

5 Raidan Ibrahim Raidan: S.O.K. I did have the film Kindar. On
6/6/72 there were two films, Young Cassedy and the War of the
Garganthus. I also instructed the necessary posters to be sent
along the films. I do not have any knowledge about having sent
any poster for 'Kindar'. 'Karim' was by mistake taken to Bakau.
10 'Karim' was taken to Arts Cinema, Bakau. I directed my agent
to withdraw this film as it was not programmed for Arts at Bakau.
'Karim' was withdrawn about noon about 12.30 or 1 p.m. I gave
instructions to withdraw the film 'Karim' before noon. I did
not see the film, the reels. Karim was delivered to Arts Cinema,
15 Bakau with the posters. Posters advertise the intended film to
be shown on the screen. The film Karim is 16 mm.

When the Defendant refused to take films as from the 6th of
June '72 at Bakau I approached him and he said that he was taking
films for Bakau because we withdrew Karim. I told the Defendant
20 that if he did not accept films for Bakau I would take legal
action. Films imported into this country remains here for 5 months
and these films were programmed for the 8 cinemas in The Gambia.
I did receive a letter from Mr. Abdul Latiff Bensouda 26/X/71. I
did not reply in writing. I went to his shop personally. When
25 the Defendant returned to The Gambia I spoke to him about Abdul
Latiff Bensouda's letter to me. I did not have the letter written
to me by Abdul Latiff Bensouda. I did not programme Karim for
Bakau on 6/6/72. I had programmed Karim for Vero Cinema. I
have visited the Arts Cinema. I have not been to Gunjur. I
30 have been to Serekunda. I have been to Brikama when their pro-
jectors gave trouble.

Re-examination on Monday 2/4/73

(Sgd.) A. Nithianandan.

Monday 2nd April, 1973

35 Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Raidan Ibrahim Raidan: S.O.K. The nine receipts Exhibits 8A - 8J which I referred to in cross examination was given at the request of the Defendant. I have the hire accounts in my ledger. Exh. 6A - D is in my ledger. I told the defendant
 5 that receipts Exh. 6A - D must go to my ledger and Income Tax must see them. They will question me about the different amounts that is shown in Exh. 8A - I and my ledger. Defendant said please help me and that he will fix away. Karim film is on 16 mm. I have a card for it. I played this film for the Senegambia
 10 Secretariat and I had to borrow a 16 mm projector to play this film. It was free for the Government.

Shown letter written by Latiff on 26th October, 1971. Ten dered Exh. 9. I went to Mr. Latiff Bensouda at his shop and spoke about this letter Exh. 9. I asked him why he wrote
 15 to me Exh. 9. He said that the films had been shown at the Arts Cinema. Then I said that those films may have been in French obtained from Dakar and is 16 mm. projectors. Later when the Defendant returned from his leave I told him that Mr. Abdul Latiff Bensouda had written Exh. 9. The Defendant said
 20 that his agent showed enterprise but not to take the letter seriously.

P. W. 2: Salim Kasmi Saab: S.O.K. English. I live at Pipe Line Road, Fajara. I am Cinema film technician and Cinema film projector technician. I have been in this business in Africa
 25 since 1966. I was similarly employed in Lebanon for one year before 1966. I also worked in Monrovia - ther I programmed films and distributed films.. I was so employed for 8 months. I came here in 1967 to Roxy Cinema to relief Plaintiff. I worked for 4 months in 1967. When Plaintiff returned I went to Freetown on
 30 a similar assignment at Rex Cinema at Bo. I came back to The Gambia in 1969. I kept on doing the same job for Roxy Cinema Gambia. In March, 1971 I took ill and went back to Lebanon. I came back in September, 1971 to Roxy Cinema. I am still with Roxy Cinema. I know the defendant Mr. Bensouda. I know that
 35 Roxy Cinema have an agreement with CD Bensouda the defendant to supply him with films. Shown Exh. 2. This is the agreement. I have seen this before. My duties are to programme films for our cinemas and for the cinemas to which we supply films. Whatever programme I make out is given to Mr. Raidan the Plaintiff
 40 for his approval or to make any changes. This is besides my technical duties. My guide when I come to select films is the fame of the Actors, fame of the Producers.

I am also guided by the Posters and about films I know their popularity. For the defendant I used to make a list of films. Then I give it to Mr. Raidan for his approval. Mr. Raidan is a busy man. Sometimes the defendant used to select films -

5 this was not quite often. Mr. Raidan and I used to make the selection of films for the defendant. We prepared programmes for Roxy Cinema Serrekunda, Ritz in Bathurst, 'Vero' in Bakau. We supply films to Arts Cinema in Serrekunda, Bakau, Brikama and Gunjur. Sometimes the defendant was happy with the selection

10 and sometimes he used to say that a film would not be popular. It is quite usual for the person who receives films to say that he does not expect a particular film to be popular. This is done to ensure that he get the best. We sometimes complaint to our supplier about films. When the defendant did not like a film I

15 convinced him that I had made a very good selection and sometimes I used to change the selection. We supplied to the Defendant 3 to 4 new films a week. By new films I mean new to that particular theatre. We have records to show this. These records are kept on cards and Exercise Books. We supplied the same films that we

20 played in Roxy Cinema Serrekunda. I have been inside the Arts Cinema at Serrekunda, Bakau, few times to Arts Brikama. I have not been inside Arts Cinema Gunjur. These cinemas are not as comfortable as Roxy. In Arts Cinema, the projectors are portable type and designed for a different cycle per second. This affects

25 the speed of the projector, this affects the sound quality. I remember telling Mr. Bensouda the defendant about this reaction. I have seen Exh. 2 the agreement before. I know that we, that is Roxy Cinemas should collect 50% of the gross takings of each of the defendant's Arts Cinemas. There have been complaints that

30 the defen dant's cinemas have not been successful. This is due to many reasons. The quality of the projection on the screen. Here the electricity is 50 cycles per second - the projectors are 60 cycles per second. This affects the sound quality of the film and the action of the film. Makes the sound base. Frequent

35 stopping of the film annoyes the customers. This is due to lack of attention of the film before mounting it in the projector. The comforts in the Cinema and foot space. Advertising the films. I have never seen the defendant advertising films. He never does advertise films. About the fault in the Electricity I told the

40 defendant to write to the makers of the projector stating his complaint. I lent the defendant 12 spools.

On 6/6/72 Mr. Raidan made the programme for the cinemas.
I distribute these films. I made a mistake and took to Vero
Cinema programme for Arts Bakau. / I took the Arts Cinema Film to Vero Cinema, Bakau.
This was in the morning at
10 a.m. When I went to Mr. Raidan's office at Bathurst. Mr.
5 Raidan discovered that I have made a mistake. Then Mr. Raidan
asked me to go to Bakau and correct this mistake. I did this
about noon. The film Karim was the one that was involved. There
is a card for the film Karim. This is the card for the film
Karim. Karim is a 16 mm. film. This film was played at the Arts
10 Cinema, Serekunda 29/5/72, 30/5/72, 1/6/72 then at Arts Brikama
2/6/72 - 5/6/72. I got this film back in the morning of the 6th
of June '72 at 9 a.m. in Serekunda. This film Karim was played at
Roxy Cinema Serekunda. 7 time. After 6/6/72 the Defendant did
not receive any film for Bakau. He did so for 8 days. He
15 accepted films for all other Cinemas. On 13/6/72 or 14/6/72
the Defendant came to Roxy Cinema, met me and said that I should
resume giving films to Bakau. I did resume giving films to
Bakau. On 7/6/72 I took films for Bakau and the Defendant's
agent refused to take any supplies. Then I came to Bathurst
20 and went to the Defendant's shop and asked him whether he had
given instructions to his employees in Bakau not to accept films
and he said yes. On 8/6/72 I took films to Arts Cinema Bakau;
none of the Defendant's accepted films. I came to the Defendant
in his shop and he refused to take any films. I cannot remember
25 about 9/6/72. He the Defendant told me that he was determined
not to accept films for Bakau. I know of an incident at Brikama
about the film 'Kindar'. We have a card for 'Kindar'. On 6/6/72
Kindar was not played at Brikama. It was shown at Arts Cinema
Serekunda. On 8/6/72 Kindar was played at Brikama. One of the
30 Defendant's employees who came from Brikama about 10 p.m. or
9.45 p.m. said that I had given him wrong print. By wrong print
I meant that I did not give Kindar. I then received the film I
had given and gave the employee, Kindar. The employee took Kindar
away. I met the Defendant on 9/6/72 and apologised for the mis-
35 take. I cannot remember what the Defendant said but I gave D5.00
as transport charges as a taxi had been chartered to take Kindar.

Further proceedings tomorrow

Tuesday 3rd April, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Mr. S. A. N'Jie is indisposed

Case adjourned to 4/4/73.

Wednesday 4th April, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

5 Salim Kassmi Saah: S.O.K. English.

On 14 July'72 Raidan was not in town. I came to Bathurst after I left my assistant, Henny Musa in charge of distributing the films I programmed for the cinemas on the 13th July night. At 10.30 a.m. on 14/7/72 Henny Musa made a report to me. Acting
10 on the report made to me I went to the Defendant's shop. I met the Defendant. I spoke to him. I told him that his employee at the Arts Cinema refused to receive that day's programme. The Defendant said that this was in compliance with a month's notice he has given Mr. Raidan one month before, that he was
15 going to stop taking films from Roxy Cinema. I asked him about the consequences and he said that he was aware of them. That same day 14/7/72 about noon I was passing Arts Cinema Serekunda, I saw two posters for films displayed on the Poster Board of that cinema. These were not posters supplied to him by us. On
20 15 July, 1972 I repeated the same procedure and received the same answer.

XX by Mr. S. A. N'Jie for Defendant:-

I live in the same house with Mr. Raidan the Plaintiff. On 6/6/1972 at about 9.15 a.m. I went to work. I went to Roxy
25 Cinema at Serekunda. I must have got there about 20 minutes after 9 a.m. The distance between Roxy Cinema and Arts Cinema Serekunda is about a mile. The film Karim was played in Brikama on 2/6/72 to 5/6/72. I received the film Karim at Roxy Cinema Serekunda on 6/6/72 at about 9.30 a.m. or 9.45 a.m. I took
30 this film Karim by mistake to Arts Cinema Bakau. I took the film and the posters and also other films. I wrote that the film Karim should go to Vero Cinema Bakau. I wrote this on the 5/6/72. On the card there was something - it has been erased. (Card tendered as Exhibit 10).

35 On the 5th June'72 Mr. Raidan and I drew out the programme for 6/6/72. On 6/6/72 I mistakenly took the film Karim to Bakau. On 5/6/72 about 9 a.m. or 10.30 p.m. Mr. Raidan went to Roxy

Cinema. It was then that I discussed about the programmes for 6/6/72. On the 5/6/72 I knew what film was to be handed and for which theatre. The poster will not reflect the nature of the Projector on which the film would be shown. A Poster will have
 5 a picture and a writing - sometimes a card. The purpose of the Poster is to announce the film. The cards Exhibit 10 and the like are kept at Roxy Cinemas. On 6/6/72 I gave the films to Sonko and the Posters. Sonko takes the film from the boot of the car. I usually point out the films. Those are the films
 10 he takes away. Sonko understands a little English. I went to Sonko about noon - before 4 p.m. I start from Bathurst. I went to Sonko well before 4 p.m. I cannot remember at what time I had my lunch. When I went to Arts Cinema Bakau - the poster Karim was outside. When I asked Sonko for the film Karim he
 15 asked me why and I said that it was a mistake. Sonko was very polite. The supply of films to Brikama Arts and Serekunda was deliberate act. I think the name of the operator at Arts Cinema Bakau is Saihou. I think it is Saihou and not Sonko the operator. I think that Sonko is a caretaker, but I have not seen his letter
 20 of appointment.

16 mm film is thinner than 35 mm. One is 16 mm. wide and the other is 35 mm. wide.

I have a card for the film 'Kindar'. (Card referring to Kindar tendered Exhibit 11). On the 6/6/72 Kindar was played
 25 at Serekunda Arts - on 7/6/72 not played. On 8/6/72 at Arts Brikama. On the 7/6/72 along with the film 'Commandos'. I should have given Kindar but I had made a mistake. On the 8/6/72 at about 10 or 10.15 p.m. I met one of the Defendant's employees in a white Peugeot taxi. He reported that I had
 30 given a wrong film. I immediately gave the film Kindar to the Defendant's employee. I cannot remember what film I gave by mistake in place of Kindar. Unfortunately I did make serious mistakes. The distance between Brikama and Serekunda is almost 14 miles. I was told by the Defendant that there was a big
 35 row at Brikama. The Defendant said that he had the Police to assist him to calm down the crowd. I had told the Defendant that films should be checked in well before time as mistakes can happen. The men working for the Defendant are not as good experts as myself. According to the Agreement we have to make
 40 the programme. The Defendant collects the film meant for the 7th on the 6th. The cards such as Exhibit 10 do not show

the time or date when the film was delivered. Sometimes Roxy Employees would give films in the morning for showing in the Arts Cinema in the evening. The Gunjur film is collected at Arts Cinema Serekunda. I take the films to Arts Bakau and to Vero Cinema Bakau. For Brikama the supply is collected by a man from Brikama. This was expensive. Later the defendant used to collect the films. I dont know about Gunjur. Antoine had a Cinema at Gunjur in 1969. We supplied Arts Cinema at Brikama, Gunjur, Serekunda and Bakau, Vero and Ritz - Roxy Serekunda. This was before 13th July, 1972. I remember film being supplied to Odeon but that was long before 13th May, 1972. Sometimes the defendant would select films after a discussion with me, and sometimes with the approval of Mr. Raidan. The Roxy Cinema advertises in the Bulletin. On page 3 of Bulletin there used to be Arts Cinema Advertisement. I know Sonko of Arts Cinema Bakau. I remember that Sonko once complained about the sequence of the films. Sonko did not tell me anything arising from the withdrawal of the film Karim, nor did the defendant. On 14th July, 1972 I came with my assistant Henny Musa to deliver films to the defendant - the defendant refused to accept them - refers to an exercise book in which there are evidence of delivery of films. Each of the Arts Cinemas have a different Exercise Book. The Exercise Books are tendered 12A to 12D. The defendant used to see the Cards such as Exhibit 10 and Exhibit 11. The defendant cannot take the cards nor did he know what we wrote on them. Whatever was delivered by us was accepted as a programme. By list I also mean oral discussions. I was once instructed by Mr. Raidan to go to Brikama and to repair the Defendant's Arts Cinema Projector. I dont remember the date. Witness is shown letter 4 of Exhibit 3. I think it was after this date of the letter.

Further proceedings tomorrow.

(Sgd.) A. Nithianandan.

Thursday 5th April, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

35 Same representation.

./.

Salim Kassmi Saab: S.O.K. English. I gave the D5.00 to the Defendant. I obtained no receipt for this D5.00. This money was not accounted for in the books as I paid it out of my pocket. The man who came from Brikama to take the film is the man who I have seen at Brikama in the Defendant's cinema. I don't know whether he works there now. He used to be working there. I had met this man twice, excluding the 8/6/72. I cannot recognize him now. This man met me in front of Roxy Cinema. It was not a busy night. This ^{man} gave me the film I had mistakenly sent in place of Kindar. (Shown Exhibit 11) On 6/6/72 I cannot say what was written before the present word Ritz. I had not programmed 'Kindar' for Arts Cinema Brikama. I may have sent the posters to advertise the picture 'Kindar' on 7/6/72 or on the 8/6/72. It is usually sent together most of the time the Defendant collects the film for Brikama. I don't remember exactly the dates when I sent the posters relating to Kindar to Brikama. A film sometimes contains 5 or 6 spools. By sequence I meant that a spool is played out of turn. When a film is delivered that is the programme for the evening.

20 Q. I put it to you that neither the film Karim nor its posters have anything to show it is 16 mm. film.

A. The poster would not show that it is 16 mm. but the film would indicate that it was 16 mm. When I delivered the film Karim to Sonko there was no marking to indicate 16 mm. but the 16 mm. film is smaller and I knew it was 16 mm.

Q. You gave a film Karim and it was a 35 mm. film?

A. No. It was a 16 mm.

At Brikama I gave a poster but that did not relate to the film. (Shown Exhibit 2)

The Agreement - Mr. S. A. N'Jie refers to paragraphs 1 and 12.

We do sometimes repeat a picture at the same theatre. I have not read Abdul Latiff's letter. Sometimes the film which had been advertized by the poster is not available and monies are often returned to the customers. I do not know about any trouble when the film Karim was withdrawn at Bakau. I was told

that there was trouble at Brikama when Kinder was not shown as advertized.

5 Re-examination: There are erasures in Exhibit 10. There are several cards with erasures. The erasures do not always refer to the Defendant or his cinemas. Some cards are shown to Mr. S.A. N'Fie, with erasures. There are cards having erasures before our Agreement with the Defendant.

(Shown Exhibit 11). On the 8/6/72 there is no erasure. Arts Cinema Brikama only stopped taking films on 14th July, 1972. On 6, 7 and 8th June, Arts Cinema Brikama obtained films from me. (Shown Exhibits 6A to D and shown 6D Invoices Nos. 32 - 61 - refers 1/6/72 to 30/6/72 the daily collection of Brikama Arts Cinema). I do admit that on two occasions I made mistakes in regard to the films Karim and Kinder. In respect of the film Karim I made a mistake and corrected the mistake in the same date at about noon time. As to Kinder I corrected the mistake about 10 p.m. When my mistake over Kinder was shown to me I corrected my mistake immediately. On the 6/6/72 (Exhibits 12A - D) refers. The programme for 6/6/72 was Young Cassadey and The War of the Gargantous was programmed for Brikama. Again for the same theatre for 7/6/72 the film programmed was Commandos Head or Heads, and for the same theatre for 8/6/72 was Commandos and Kinder. This is shown in my records. We advertize our films over Radio Gambia and over Radio Syd in addition to the Bulletin. I don't know if the Defendant advertizes in Radio Gambia or Radio Syd. I was shown the Bulletin of 23 March, 1973 - a film is advertized called Tuez Jonny Ringo. This not one of our films.

Films are repeated in the same theatres. I act on instructions from Mr. Raidan. The guiding factors for this exercise is the popularity of the films and availability of films.

30 Refers to Exhibit 9, letter of Abdul Latiff. Before the Agreement the Defendant ran his cinemas and obtained his own films. I know of a film called Texas Adios was shown by the Defendant in his Cinema. I supplied this film after Exhibit 2. This was not the first time that this picture was shown at the Defendant's cinema. This film was shown on two occasions before Exhibit 2. Arts Cinema was also called Star Cinema Serekunda and this film Texas Adios was shown in this cinema. I have a

On 6/6/72 I was at Roxy Cinema at 9.15 a.m. I did not deliver any films at Arts Serekunda or Arts Bakau. I was on this day checking new arrivals of films. P.W.2 Mr. Salim Saab made the delivery for the cinemas that day. I did not do so and I don't know whether Mr. Salim Saab delivered films for all the cinemas. I was at the Roxy Cineam before Mr. Salim Saab on 6/6/72. I remember Mr. Salim Saab coming in. I don't know exactly the time but it was before 9.30 a.m. He stayed for about 20 minutes. Before he came no programmes had been prepared. I received a slip of paper from Mr. Salim Saab. I don't know who prepared the programmes for 6/6/72. There was no programme prepared when I came in. I don't see the programme when I come in. I have to wait for Salim Saab. (Shown Exhibit 12B) Starting from 28/6/72 to 7/7/72 I find my handwriting 'Lady in Cement'. On this occasion Mr. Salim Saab came in with a sheet of paper indicating the programme for that day. On this day Mr. Salim Saab made the delivery of films to the various theatres. After Mr. Salim Saab left I took the sheet of paper and posted the names of the films in Exhibit 12B. On 6/6/72 I was supervising the incoming films. I cannot state the days when I supplied films from looking at the books.

Further proceedings tomorrow.

Friday 6th April, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Henny Musa: S.O.K. English. I have been to Gunjur. It is further than Brikama. Gunjur is by the sea beach facing the Atlantic.

Re-examination: Nil.

This is the Plaintiff's case.

Mohammed Bensouda: S.O.K. Wollof. I live at Brikama. I am a businessman, part of my business is at No. 22 Wellington Street. I am also a Cinema Proprietor. I have been a Cinema Proprietor since 1954 - 1955. There was no Roxy Cinema operating in this country. I used to get films from Senegal Commerce Culiso and Nigeria - Ghana. I also get films in Senegal from Sitmar. I never dealt with Roxy Cinema Freetown. The first time Roxy Cinema

came to The Gambia, time after time I received letters from
 Roxy Cinema and once from Gerald Davies about films. Mr. Salim
 Saab, P.W.2 used to come to Serekunda and take pictures of
 posters. At that time it was called Star Cinema and Salim Saab
 5 used to take pictures outside the Star Cinema and also at my
 Star Cinema Bakau. These pictures are sent by Salim Saab to
 Europe, London and America. I don't know where he actually
 sent them but later I received a letter from a company that
 the films I was playing I had no right to play. I received a
 10 letter from Gerald Davies, that if I did not stop playing such
 films in The Gambia he would take action against me. This
 letter was written at the instruction of Mr. Raidan. That
 letter I gave to the late E.D. N'Jie. I replied to Mr. Gerald
 Davies that I got them from Senegal, from Sisko and Sitmar in
 the proper way. Since my reply Mr. Gerald Davies took no
 15 further steps. There was too much of talk going on between Mr.
 Raidan and myself. Toufic Massry had to come into the matter
 and to bring a settlement.

We - Raidan and I arrived at a settlement and we agreed
 20 upon half shares - I will pay my workmen and also Electric
 bills. Agreement in writing. We agreed upon taking 50%
 each of the takings. I have 4 cinemas. Brikama, Gunjur, Ser
 Serekunda and Bakau. They are called Arts Cinema. The Agree-
 ment was entered into 18 March 1971. (Exhibit 2). The copy
 25 I have is the one in Counsel's hands. It is not the original
 - the other one is registered - Raidan said so.

Further proceedings on Monday 9/4/73

(Sgd.) A. Nithianandan.

Monday 9th April, 1973.

30 Before the Honourable Mr. Justice A. Nithianandan
 Same representation.

Mohammed Bensouda: S.O.K. Wollof. I have a copy of
 Exhibit 2. Raidan has the original. We met Raidan. Toufic
 and I at Toufic's house to enter into the Agreement. The Agree-
 35 ment was signed on 18/3/71 - the operation of the Agreement did
 not start then. See Exhibit 3 letter No. 1. I asked for a
 list of films in letter Exhibit 3 No. 1. Mr. Raidan did not
 write a reply to me. Again another letter Exhibit 2 letter 2

was written reply Exhibit 3 letter 3. Exhibit 3 letter 4 refers to a complaint about film. I did not spoil his film. I wrote Exhibit 3 letter 5. Last letter 29/6/72 Exhibit 3 letter 6. Mr. Raidan came to meet me when he received letter No. 1
 5 Exhibit 3. He said - I received your letter and if we start our business you will see our films. I am unable to make out a list as he had many films. I told him very well. I have been to the stores of Mr. Raidan. It is 5ft x 6ft. It can take in only 2 persons. When my machines had arrived I went
 10 to the stores of Mr. Raidan and I saw about 30 films. He asked me to select what I wanted. I cannot make any selection -- the films looked old.

For Brikama. I take films on the 10th for the 11th. Sometimes Raidan puts the film in my vehicle and I take 2 films
 15 and 2 posters. Sometimes this is done by Salim Saab, sometimes the operators from Roxy Cinema would supply the films. Then I go to Brikama.

For Gunjur I have an operator who comes to Roxy Cinema -- in a transport I had provided. He would come and collect and
 20 take the films and posters. The distance between Bathurst to Brikama is 22 miles and from Brikama to Gunjur is 11 or 13 miles.

For Serekunda Arts theatre -- Salim Saab and Henny Musa would bring over the films. Sometimes I take the films and posters to Bakau and sometimes only films and no posters and sometimes
 25 Salim Saab would bring them to Bakau. The takings of the 4 cinemas is divided on a 50:50 basis. I am responsible to my workmen. I was shown Exhibits 6A -D. Now refers 6B -- Bakau Arts Cinema. Refers to 6A Brikama Arts Cinema -- commencing from 24th July -- amounts correct. I can recognize my wife's
 30 handwriting. 6C Gunjur, 6D Serekunda. All these receipts are normally written by my wife -- some have been written by Abdul Latiff Bensouda. Abdul Latiff Bensouda was my agent when I was away.

(Shown Exhibits 8A - I) I got these from Raidan. In
 35 January 1972 Raidan came to me and said I have an idea. He said our present receipts we must cancel and I shall give you receipts which are in my possession -- this will help Income Tax and if anybody comes from Freetown -- don't show these receipts Exhibits 6A-D. Somebody from Roxy in Freetown may come (even to Saab) don't

show 6A-D. (Shown Exhibits 6A-D and 9A-I)

The witness now states that Raidan did not want me to tell the Freetown Roxy people or Salim Saab about receipts Exhibits 8A-I. I always gave the original receipts to Raidan - these are Exhibits 5 6A-D. At the beginning strict accounts were kept by Mr. Raidan later this was not. Exhibits 6A-D are profit accounts.

Further proceedings tomorrow 10/4/73.

(Sgd.) A. Nithianandan.

Tuesday 10th April, 1973

10 Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Mohammed Bensouda: S.O.K. I have a ledger in which I keep my accounts. The entries begin from 1st August '71 to 13th July, 1972 in respect of all 4 cinemas. According to Exhibit 2 I should have 15 35 mm. projectors. I only played films in accordance with the Agreement. On 6/6/72 for Bakau Arts I received posters for the film Karim. I got them from Salim Saab. I got these posters in the morning around 7.30 a.m. I took them, the Posters, to Bakau. I gave the Posters to Sonko. He sees after the Cinema and sleeps 20 there - he is a doorman. I came to Bathurst. I opened the poster. I saw Karim's picture in French. On the poster there was nothing to indicate the millimeter of the intended film. Salim Saab took that film Karim there in the morning. I dont know the time Karim was played at Brikama. Karim was shown at Serekunda on 29/5/72 and 25 30/5/72 and also shown at Arts Brikama. I dont remember the number of days it was shown in that theatre. The film Karim shown at Serekunda was 35 mm. On 6/6/72 Salim Saab came to my shop at about 12 to 12.30 in the noon - said that Raidan had sent him to say that the Karim film had to be collected at Bakau Arts Cinema and to take 30 the film to Vero Cinema Bakau. I said that this will not be possible. I published it already and people knew that I would play that film today. I told Salim Saab that if you touch these posters our business would be spoilt. I referred to both the film and poster. Karim was not shown at Arts Cinema that day. No sooner Salim Saab 35 left my shop, I left my shop in Bathurst to go to Bakau to meet Sonko. I saw him. I told Sonko that if Salim came for the film and poster, hand them over and have no argument. Salim Saab had not reached Bakau up to this time. I did not go to Bakau again that day. I told Sonko that if Salim Saab comes and takes the film and poster 40 of Karim, report that matter to the police.

./.

He did report. People came and saw no poster they went away. In my Cinemas we play two films every night. On 6/6/72 I met Sonko at Bakau only twice once in the morning and once in the afternoon. I have never seen Exhibit 10 before. I don't read them. I don't read Exhibits 12A - D. In our relation between me and Raidan we deal in films posters and distribution of the collection. After 6/6/72 I did not take films for Arts Bakau. On 13th June, 1972 I wrote a letter Exhibit 3 letter 5. After this letter I continued to take films for Arts Cinema Bakau. Raidan came to my shop after Exhibit 3 letter 5 to collect moneys. He said I see you are vexed and you are not taking films for Bakau after the Karim incident. I said I will take films when you receive a letter from my Lawyer. After that I started to take films to Bakau.

I stopped taking films for Bakau on 6/6/72. I cannot remember when I started again to take film on 14/6/72.

Q. Did you let Arts Bakau, Serekunda, Brikana and Gunjur to Roxy Cinema Serekunda ?

A. No.

Further proceedings tomorrow.

(Sgd.) A. Nithianandan.

Wednesday 11th April, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

Counsel engaged in Supreme Court No. 1 and therefore not available in this Court.

Thursday 12th April, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Mohammed Bensouda: S.O.K. Wollof. I resumed taking films for Bakau on 14/6/72. My letter Exhibit 3 letter 5 had already been dispatched to Managing Director Roxy Cinema. I then received a letter Exhibit 3 letter No. 6 dated 29/6/72 from the Plaintiff's Lawyer.

On 7 June 1972 at Arts Cinema Brikama I took two films and two posters on the 6/6/72 for Kinder and the other one I have forgotten the name. Two films were given on 6/6/72 along with posters. On 7/6/72 when the first film was being played nothing happened. When the 2nd film started people started to shout. They said this is not the film advertised in the poster. I was not present. Someone went and complained to the Police. He is Famara. He is my operator. When a film is brought in the afternoon or in the evening it is turned on to another reel and kept ready for the show. This is done round about 7 or 8 p.m. but if the boys come early then the time would be earlier. The films were brought on 6/6/72 in the evening. Round about 10 or 10.30 p.m. on 6/6/72 the films were turned into the new reel. I was not there when this was done. I went to Brikama about 11.30 p.m. on 7/6/72. When I entered the compound on 7/6/72 Famara came to me. I entered my own compound. The theatre Arts Cinema is on the main Road. My compound is at the back. My residence and the theatre are in the same ^{compound} separated by a wall. When Famara told me something I told him to go and report to the Police. He said that there were some policemen watching the film. I took the films and posters to Salim on 8/6/72 at about 8.30 a.m. or 9.00 a.m. I told Salim all what had happened the previous night. I told him that if the Police and good people had not been present my cinema would have been broken altogether. He said is that so. I said look at the film. He tendered his apologies to me and said he will scold his boys. Salim did not tell me anything about anyone telling him about the wrong film. I did not receive D5.00 from Salim for the transport of the film Kinder. This film Kinder was given to me, but not on the same night. I cannot remember the date. Salim does not come to my shop everyday. He comes once in a while. The film Karim was a 35 mm film. I have 16 mm film projectors in the cinema. I keep them in a corner in the same room. Exhibit 3 letter 5. I wanted to terminate the Contract. My Agreement with Roxy was for them just to show their films. They received 50% of the takings.

My boys the operators fitted the 35 mm Projectors when they arrived. I had no assistance from anyone outside. I had no breakdown.

Cross-examination: When we entered into Exhibit 2 we did not make any provision for termination before the end of two years. We never even discussed this matter at Toufic's house.

5 Raidan was always willing to supply films. I did not go to Raidan's office to make the Agreement. Mr. Cates is known to me. He explained Exhibit 2. I then took it away. Exhibit 2. I then took it away to get someone to help me. When I was satisfied I signed the Agreement Exhibit 2. When I got the films I did not know that he was getting the films from abroad. 10 When I received the 35 mm. Projectors I wrote to Raidan for a list of films, but I had no Agreement to secure a list of films. (Shown Exhibits 6A-D) are proper accounts. I would not have expected to make the same amount of money as in the past. Raidan was repeating films and therefore I would not have the 15 same profits. New films if they are not fighting films they would not bring the same profits. Perhaps if the full period of the Agreement was continued under similar condition, we may perhaps make more or less profits. For each theatre every week you never supplied 2 to 3 new films. There is provision in our Agreement for new films. I asked Salim Saab to supply me with 20 films for Bakau after the incident of 6th of June 1972. The supply continued until the 13th of July. As to Brikama I never stopped taking films. I used to show 16 mm films which I got from Senegal. I paid no duty. I never declared to the Customs 25 importation of films. At the Customs I signed a paper that the films would not be in this country for more than 6 months. This was long before Mr. Gerald Davies' letter. Roxy Cinema were complaining that I was violating copy-rights and I had a letter from Europe that I should not display these films. 30 This affected my supply of films from Senegal. I felt that Roxy Cinemas were responsible for all this. I did not in these circumstances approach Toufic Massry to get Roxy Cineam to supply me with films. It was Toufic who arranged this meeting with Raidan. I stopped getting films from Senegal. Now I get films 35 from Senegal. I only show 35 mm. Since December, 1971 to July 13 1972 I never contemplated taking films from Senegal. I thought so after letter 3 Exhibit 3, this was not why I asked my lawyer to write Exhibit 3 letter 2. Films from Senegal is not cheaper - but they are more profitable. I don't pay 50% but 40 I pay them full price. I pay sometimes less sometimes more.

I am making ~~some months more~~ and ~~sometimes less~~ money from my present arrangement. Even if I was not making money I wanted to get rid of Raidan's association. I have property in this country - I own all the properties in which the Cienmas are built. I own a shop and
 5 sells goods cloth at 2/6 a yard. I always wanted to work with Raidan - according to the terms of the agreement if nothing happens.

Exhibit 6A - D is prepared by my wife on my behalf. I instructed my staff not to accept films at all my theatres on 13th July, 1972. I had already had Exhibit 3 letter 6. I did not have any need to see
 10 Mr. S. F. N'Jie.

Further proceedings tomorrow.

(Sgd.) A. Nithianandan.

Friday 13th April, 1973

Before the Honourable Mr. Justice A. Nithianandan,

14 Same representation.

Mohammed Bensouda: S.O.K. Wollof.

Q. I put it to you that the incident at Brikama took place on the 8/6/72 ?

A. No.

20 Q. I also put it to you that one of your boys took the film to Mr. Salim Saab. The film is Kinder ?

A. I took it myself.

Q. I also put it to you that Mr. Salim Saab came to your shop on the next day, apologised to you and gave you D5.00 ?

25 A. No.

The film Karim was shown at Arts Brikama and Serekunda then sent to Bakau. The film Karim was played on a 35 mm. Projector.

Q. You could not have used a 35 mm Projector as the film Karim is a 16 mm Projector.

30 A. No it is a 35 mm Projector.

I did say that I took Exhibit 2 to a person who I thought was intelligent to explain it to me. I did not take it to a lawyer.

35 Q. Have you lost any money since July 13 1972 when you did not get films from Raidan ?

A. Yes. It is true I refused to take films as from the 13th July, 1972.

Re-examination:

Nobody from my cinema in Brikama took the film Kinder to
 5 Roxy Serekunda. I brought back a film on the 8/6/72 and gave
 it to Salim Saab. I did not ask for any money from Salim Saab
 for the expenses, nor did I receive D5.00. Salim Saab did not
 come to my shop at all. You were asked yesterday about Exhibit
 2 and said that there was no provision for any termination with-
 10 in 2 years. From 14th July, 1971 to 13th July, 1972 I did not
 play any 16 mm. films coming from Roxy Cinemas. I signed a paper
 with the Customs that the films from Senegal will not remain here
 for more than six months. I make a loss as a result of transport
 of films from Dakar.

15 D.W.1 Baboucarr N'Jie: S.O.K. English. Sgt. Gambia Police Force
 No. 313 stationed at Brikama. I have been in Brikama for 10
 months. I was there on 7/6/72. On 8/6/72 at 5.17 (17.17 hrs.)
 Famara Badji of Brikama Town made a complaint. I did not go out
 on the 7/6/72.

20 Cross-examination: I know nothing about the present case between
 Roxy Cinemas and Mohammed Bensouda.

Mr. B. Macaulay refers to ~~Anenid~~ para. 4 pursuant to my Order of
 23rd March, 1973 the Plaintiff admits all the facts therein stated
 with the exception of the following:-

- 25 (1) The film Karim was not programmed for Arts Cinema Bakau.
 (2) That the incident at Brikama took place on 6/6/72.
 (3) That the Plaintiff withdrew the film Kinder from Brikama.

Further proceedings on 17/4/73

(Sgd.) A. Nithianandan.

30 Tuesday 17th April, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

35 Mrs. Andrei Bensouda: S.O.B. Wollof. I am a housewife and I
 help in my husband's business. I live at Brikama. Besides the
 shop I run at No. 20 Wellington Street, I help in the Cinemas.
 The names of the Cinemas are Arts Cinema, at Brikama, Bakau,
 Gunjur and Serekunda. I know Mr. Raidan P.W. 1.

He comes to the shop to receive monies - takings from cinemas.
I know Mr. Raidan in 1971 - I know on the 18/3/1971 there was a
contract entered into between Roxy Cinema and my husband. Exhi-
bit 2 is the Contract. We did not start work in terms of the
5 Contract on 18/3/71, but waited until the projectors arrived.
The projectors were 35 mm. (Shown Exhibits 6A-D). Seen 6C they
are in my handwriting, but some written by Abdul Latiff Bensouda.
(Shown Exhibit 6A) Brikama receipts, they are in my handwriting
and also in Abdul Latiff Bensouda's writing. It is so in 6D
10 Serekunda and 6B Bakau. (Shown 6A) Brikama - the first receipt
is dated 24/7/71 and the last receipt 13/7/72.

(Shown 6B) - Bakau - the first receipt is dated 31/7/71
and the last 13/7/72.

(Shown 6C) - Gunjur - the first receipt is dated 3/8/71
15 and the last receipt is 13/7/72.

(Shown 6D) - Serekunda - the first receipt is dated 24/7/71
and the last receipt is dated 13/7/72.

These receipts Exhibits 6A-D - are given to Raidan. He would
come to my shop sometimes three days after the showing of the films,
20 then he would check the amounts, then sign my book. I would give
him his share of the money and the receipt. I do not have all the
invoice books. Some of the invoice books have passed on to Raidan.
I don't know exactly how pictures and posters are supplied to us
by Raidan. I travel by car from Brikama in my husband's car. In
25 the evening we go to Brikama via Serekunda. Then at Serekunda at
Roxy Cinema we would collect posters. Sometimes we would call in
the morning at Serekunda on our way to Bathurst and we may not know
then what films and posters we would get in the evening. I don't
know about Bakau. For Arts Gunjur the boy come to Salim Saab to
30 collect films.

Kinder film was played in Serekunda in Arts Cinema. I was
in the theatre when this film Kinder was played. It is 35 mm.
I did not see the film Kinder played in Brikama. On the 7th of
June, 1972 I was in Dakar. On the 6/6/72 I was in Dakar. I know
35 Famara Badji. He works for our theatre at Brikama. I know Ousman
N'Yassi. He works for us. I also know Omar Sonko. He is the
watchman at Arts Bakau. I came back from Daka on 9/6/72. I know
Salim Saab P.W. 2. Between 18/3/71 and 13th July, 1972 Salim

Saab used to come to the shop when Raidan is away to collect monies. I was in The Gambia on 21 December 1971. I think I saw Mr. Raidan on 21 December 1971. (Shown Exhibit 3 letter 2). I have heard about this letter.

5

Further proceedings tomorrow.

(Sgd.) A. Nithianandan

Wednesday 18th April, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

10

Mrs. Andrei Bensouda: S.O.B. Wollof. The film Kinder was played at Serekunda. It is a 35 mm. I know that the film Karim was played at Brikama. It was intended to show this film at Bakau, but it was not done.

15

Cross-examination: I prepared documents Exhibit 6A - D. They were prepared for and on behalf of my husband - the Defendant. They are accurate takings of the amounts at the theatres. On 6/6/72 and 7/6/72, I was away in Dakar. I returned on 9/6/72. I was not here when the film Kinder was played at Brikama.

20

D.W.3: Famara Badji: S.O.K. Wollof. I was the operator of Arts theatre Brikama. I live at Brikama. I know Mr. Raidan, Mr. Bensouda and Mr. Salim Saab. On 6, 7 June '72 we had posters and films for a showing at Brikama. The films were Johnny Hesney and Kinder. These pictures were sent in the morning to be played in the evening. Salim Saab sent me the films on 7/6/72 to be played in the evening. On the 7/6/72 Salim Saab sent two posters to Brikama. In the evening the Defendant brought them. I started on Johnny Hesney the first film. When that was over I was to play Kinder - when I played it - it was not Kinder, but 1000 heads; the people at the theatre - they came to me and asked a refund as I played a wrong film. I called Sub-Inspector Touray, to beg the people for me. If they like - I would play the 1000 heads. The Sub-Inspector spoke to the people and they agreed. When my master returned from Serekunda I reported the matter to him. That night I went nowhere. The Sub-Inspector of Police Mr. Touray was all the time present. I never went to Serekunda and obtained the film Kinder. I did not send anyone to get the film Kinder from Serekunda. On 7/6/72 in the night I did not meet Mr. Salim Saab - I did not play the film Kinder At Brikama after 7/6/72.

25

30

35

Parties present.

Mr. S.A. N'Jie ill.

Case adjourned 21/5/73

Monday 21st May, 1973

5 Before the Honourable Mr. Justice A. Nithianandan.

Parties present.

Mr. S.A. N'Jie ill.

Case adjourned to 23/5/73

Wednesday 23rd May, 1973

10 Before the Honourable Mr. Justice A. Nithianandan.

Mr. S.A. N'Jie ill.

Case adjourned to 28/5/73.

Monday 28th May, 1973.

Before the Honourable Mr. Justice A. Nithianandan.

15 Parties present.

Same representation.

D.W.6 Tia Jatta S.O.K.

Mr. S.A. N'Jie refers to Sch. 11 Order 22 Rule 4.

20 Refers to p.5 of Evidence typed. Refers to the issues set out therein. Then refer to page 12 of the Evidence (typed) the times Mr. N'Jie states that he accepts the two issues etc. Then refers to page 34 the last Question and Answer of the typed sheets of evidence - also refers Exhibit 2 - refers to "Whereas the owners have agreed to hire" etc.

25 What is the Interest created by Exhibit 2.

Suggest a 3 Issue to read.

What does the Agreement Exhibit 2 purports to create in favour of the Plaintiff.

30 Mr. S.F. N'Jie objects to the suggested issue on the ground that the argument has been in two issues only. This cannot be an issue but address.

Mr. S.A. N'Jie does not wish to frame additional issue.

Case to proceed.

35 D.W.6 Tia Jatta: S.O.K. Mandinka. I live at Brikama. I work at the Defendant's cinema at Brikama. I collect tickets at the

door. In June on or about the 7th June, 1972. There were two films. 1st film was good - 2nd film and the picture not good. Chairs broken - people demanded their money. Then I wanted to go the Police. S.I. Touray (D.W.5) was at the cinema.
 5 I asked him to restore peace. People who supplied the films made the mix up. Some people got their monies and went away and others stayed on and said that this must not occur again. I told this matter to the Defendant. I did not go anywhere that night - no one went. The correct film was not handed over that
 10 night. I don't know what time the film was over. I did not go to Serekunda. I know Roxy Cinema at Serekunda. I did not go to Serekunda that night.

Cross-examination: Nil.

D.W.7 Omar Sonko: S.O.K. Mandinka. I live at Bakau. I work
 15 at the Defendant's Cinema at Bakau. On 6/6/72 I received films from Salim. I received the advertisement from the Defendant. I exhibited it outside. I received the film from Salim at 10 a.m. on 6/6/72. I got the advertisement between 7.30 a.m. and 8 a.m. on 7/6/72. The film given was Karimo. This film was not shown
 20 and there was trouble and we went to the Police. The Defendant came and told me that Salim was coming to take the film back. He said - don't quarrel - give him the film and report the matter to the Police. The Sergeant was there - he is Basir Fye. After 6/7/72 I was given another film, but my boss the Defendant said
 25 that I must not play them. Later the Defendant asked me to receive films and we did so. I cannot remember when we finally refused to take films.

Cross-examination: Nil.

Further proceedings tomorrow.

30 (Sgd.) A. Nithianandan.

Tuesday 29th May, 1973

Before the Honourable Mr. Justice A. Nithianandan.

Same representation.

Mr. S.A. N'Jie states that Exhibit 2 was to be stamped.
 35 It has been done. He further states Exhibit 9. Refers to case in 1960 Gibril George alias Pengu. George vs. Alahji Momodou N'Jie - an absent witness.

Mr. S.A. N'Jie calls Abdul Latiff Bensouda.

No objection by Plaintiff's Counsel.

5 D.W.B. Abdul Latiff Bensouda: S.O.K. Wollof. I carry on
business at No. 23 Wellington Street. I live at No. 11 and 12
Buckle Street. (Shown Exhibit 9). I wrote that letter. I
cannot read this letter. Mr. A.S.B. Saho the lawyer wrote this
letter on my instructions. During the time I asked for the
Defendant I used to receive monies and I paid half the amount
to Roxy Cinemas. I did sign some receipts and they were also
10 acknowledged by Mr. Raidan. I acted for the Defendant on August
1971 and the Defendant returned in November 1971. The supply of
films was not good. It is brought to me at or about 5 p.m. Many
of their films were supplied to me over and over a number of times.
Mr. Raidan told me that this reflection was due to the irregular
15 plane service. When I wrote to Mr. Raidan, neither he nor Salim
Saab came to see me.

Cross-examination: I can read and write Arab - not English.
Mr. Saho read what he wrote to Raidan to me. I knew of the
Agreement between Roxy Cinema and the Defendant. I had a copy
20 of the Agreement. I did not read the Agreement. The Defendant
did not tell me about the supply of films and about any protest
I can make.

This is the Defendant's case.

Mr. S.A. N'Jie addresses Court:

25 Mr. S.F. N'Jie refers to page 2 of the typed Evidence p.2.
Plaintiff is a limited liability company. Refers to Exhibit 2.
Refers to the Recital - becomes operative as from 18 March '72
save for the limitable para. 16.

30 2nd paragraph recital of Exhibit 2 refers to the word 'only'
- refers to paragraph 1 of Exhibit 2. 35 mm. film restricted to
the four cinemas - refers to paragraph 7 of Exhibit 2. Refers
to films Kinder and Karim. Refers to page 15. This film Karim
was on 16 mm, again at page 16. The film Karim is a 16 mm. Refers
to Exhibit 10 and 11. Karim 16 mm. - Refers to page 26 Q and A
35 to witness. There is a breach of Clause 7. No. 16 mm. films
should be shown in the 4 Arts Cinema. We did not accept the 16
mm. film Karim as we had contracted for 35 mm.

~~Refers to Exhibit 5(3) letter written on 28/11/1971 to~~
Mr. S.A. N'Jie. Film Karim was mistakenly supplied to Arts
Cinema Brikama. Evidence from P.W.1 that Karim was supplied
to Arts Cinema Serekunda and Bakau - page 15. Refers to the
5 issues page 5. 1 and 2. Chitty on Contract 23rd Edition
Vol. I page 709 paragraph 708. Implied terms as to duration
of Contract Ch. Div. 1901 Vol. I William v. Tavener p.587.
Here in Exhibit 2 Contract was for 2 years. 1901 Vol. 2 Ch
Div. Lowe and Adams p.598.

10 1952 QBB Vol. 2 page 556 Martin Baker Air Craft v.
Canadian Flight Ltd. etc. 1966 WLR Vol. I 1582.

Refers to the differences that arose from the supply of
Kinder and Karim. Film Kinder Refers to p.34. Refers to
Exhibit 2.

15 Did Exhibit 2 show whether it was a Contractial License or
whether it created a property interest in favour of the Plaintiff.
Chitty on Contract paragraph 709. Plaintiff had no property
interest at all. Refers to Vol. 8 Halsbury p. 205 paragraph 346
and A.C. (1948) p. 173 Winter Garden Theatres Ltd. v. Aluminuim
20 Products Ltd.

What led to the writing of letter 5 Exhibit 3? Months
notice. Refers to Evidence of P.W.2 page It is quite
usual etc. This tampers the Contract. Refers to page 22
bottom of the page to page 23 - See page 7, 10, 12,,13 and 23.

25 Reads page 10 - On 6/6/72 we supplied two pictures - See
again p.23. Talks of Offer and Acceptance Principle. Reads
page 13. Every delivery of a poster etc. 'Page 18' Evidence
of P.W.2. P.W.2 makes the programme. He delivered Karim to
Bakau. Refers to page 23 "The supply of films to Brikama etc."
30 Exhibit 10 and Exhibit 11 entries not known to the Defendant,
there were erasures.

Serious events have taken place almost leading to a breach
of the peace at Brikama and Bakau, therefore can't we not terminate
the contract. Refer to the evidence of Gabisi. 120 Exempts.
35 Company Law.

Statement of Claim paragraph 4 and 8 is no of interest. It
has been advertised.. Statement of Defence paragraph 3, 4 - al-
though Counter Claim was set out it was abandoned. 8 days no more.

Refers to Reply.

Court to restrict its examination of evidence to Statement of Claim and Statement of Defence as Counter Claim abandoned and special damages also abandoned.

5 Refers to Evidence of Defendant page 37. "I always wanted to work with Raidan etc.

Mr. B..Macaulay reply:

FACTS:

The Karim incident - Refers to pleadings.

10 Amendment to para. 4 and 5 of Defence. (Amendment to paragraph of the reply consequent upon defendant's Amendment to paragraph 4 & 5 of the defence).

Reads 3(A).

15 Refers to Exhibit 2 - paragraph 13. Right of Choice of film and proportion etc.

Agreement signed by defendant. Page 32 of the record. We met Raidan, Toufic etc. Cross examination page 36. I did not go to Raidan's Office etc. See page 26 Q & A last Q.

20 By paragraph 13 of Exhibit 2 defendant has no choice in the selection and preparation of films - preparation means to put together. They have no right at all in the preparation.

25 We do admit that Karim is a 16 mm. film. After Karim incident - cross-examination page 36 two lines from the bottom of page 36. I asked Salim Saab to supply etc. Defendant asked for films.

Refers to page 20. On 13/6/72 or 14/6/72 - read this cross-examination page 36. Brikama incident.

There was a mistake - a film was shown that night. See page 36. As to Brikama I never stopped taking films.

30 Refers to 3A - Bakau.

Halsbury Vol. 8 page 205 paragraph 346. He took films for Brikama. See also Vol. 8 page 175 (paragraph 299 second part). Compliance etc. - paragraph 300 page 176.

Refers to Issues. Page 5.

Issue 2 would appear to be abandoned as Counter Claim is abandoned. Issues page 12. Mr. S.A. N'Jie accepts.

5 Refers to Case. 1966 Vol. 1 WLR p. 1582. (All legal work and incidental to etc.) Not a specified time or period. Reads page 1587 paragraph (e) to 1588 paragraph (h).

10 Mr. S.A. N'Jie would be right if the period is not set out. Reads Vol. 8 p.156 and 157 - paragraph 267. Contracts indefinite to time. 268 Contracts for fixed term. Contract for fixed term - read the law as set out. See Odyus Ltd. v. Nelson etc. 1914 2 KB 770.

Must look at the intention of the parties. Refers to cross-examination of the Defendant p.36. "When we entered" etc.

15 Answer Issue 1. Agreement speaks for itself. Mr. Cates is known to me page 36. ~~Circumstances when~~ the Contract was signed.

Issue II page 36 Raidan was willing to supply films.

20 The whole tenour appears that no new films were being supplied. Refers to Exhibit 9 - Refers to Exhibit 3(1) 14 July 1971 and not 17 July '71 and set out in Exhibit 9. See page 32. See Exhibit 3 letter No. In July they have compromised in July but refer to this in October in letter Exhibit 9. See letter 3(2). Reply Exhibit 3(3).

25 Refer page 36. There is provision for new film paragraph 12 of Exhibit 2. Paragraph 12 makes provision for repetition but not undue repetition.

Cross-examination of D.W.7. Reason for wriggling out - see page 36 "I wrote to Raidan etc." Last line p.36-47. Now see paragraph 7 of Exhibit 2 No.

30 Showing of 16 mm. page 36 "I keep them in a corner in the same room." See p.37. "I paid no duty. Now I get films from Senegal." See paragraph 5 Exhibit 2 - It is the Defendant's responsibility. See paragraph 17 of Exhibit 2. See paragraph 17. In view of the paragraphs mentioned Exhibit 9 paragraph 2 is useless.

35 Damages: Paragraph 15 should be involved by them. Principle for Damages. Principle of calculation. Belling Ham v Dhillon 1973. 1 AER 20.

Inter Office Telephones v. Robert Freeman Co. Ltd. 1958
1 QB 190. Robertson Facilities Ltd. - 1966 1 WLR 1428 at 1435 -
1437 paragraphs (d & e). Justice Hammond at 1439 paragraph
Deflucck J p.1442 e to g.

5 Discount principle cannot apply here. See Exhibit 2
Agreement made 18th March 1971 for 2 years - seeks interest at
4% from 18 March 1973.

Refers Exhibit 7. Ask for D29,862.00. 50% takings for
9 months.

10 Refers to p.11 of Record of Proceedings. See page 33 "I
always gave the original receipts etc." Exhibit 6A to D proper
account. See page 36 Exhibit 6A to D are proper account. Page
37 - 6A -D made by wife. Wife's evidence page 40. Page 41 cross-
examination. They are accurate takings. Plaintiff's action
15 be allowed with costs - damages interest 18 March 1973 costs 4%.
Refers to Vol.II Sch. I Order 8 Rule 7 for costs. Proceedings
lasted 31 days.

Order reserved.

(Sgd.) A. Nithianandan.

20 Wednesday 27th June, 1973.
Before the Honourable Mr. Justice A. Nithianandan.

Mr. S.F. N'Jie for Plaintiff
Mr. S.A. N'Jie for Defendant.

Judgment read.

IN THE SUPREME COURT OF THE GAMBIA

ROXY CINEMA LIMITED PLAINTIFF

AND

B. A. BENSOUDA DEFENDANT

5 Mr. B. Macaulay, Q.C. with Mr. S.F. N'Jie
for Plaintiff
Mr. S.A. N'Jie for Defendant.

J U D G M E N T

10 Roxy Cinema Ltd. the Plaintiff was incorporated under the
Company Act 1955 as a Limited Liability Company on the 9th day
of October, 1968. See Exhibit 1. Raidan Ibrahim Raidan is the
Managing Director.

15 B.A. Bensouda the Defendant is a businessman. He resides
in Brikama and carries on business at Wellington Street, Banjul.
He is also a Cinema Proprietor, engaged in this trade ever since
1954 - 1955. He is the owner and proprietor of the chain of
cinemas then called Star, and presently Arts Cinema Gunjur,
Brikama, Serekunda and Bakau.

20 Sometime prior to 18th March, 1971 the Managing Director
of Roxy Cinemas Ltd. and the Defendant met in the house of a
Toufic Massry for the preliminary stage of negotiation and the
result of their deliberation is the commercial agreement dated
18th March, 1971. Exhibit 2.

25 Prior to the Agreement became binding on the parties,
evidence in the case has disclosed that copies of the proposed
Agreement made was studied by the Defendant. He had the assis-
tance of a Mr. Cates to explain the conditions and terms of the
Agreement, and being a sagacious businessman he took with him
30 a draft copy to have it explained to him again by another in
whom he reposed the necessary confidence. He was satisfied
with the terms and conditions set out in the Agreement. It was
then signed on the 18th March, 1971 as a commercial contract to
bind the Plaintiff and the Defendant as to their respective
35 roles in the business. This Agreement related to all the four
cinemas of which the Defendant was and is the owner and pro-
prietor. As a result of this Agreement the Plaintiff came to

./.

hold the sole monopoly in supplying films to all the cinemas in The Gambia.

5 The Agreement Exhibit 2 did not become operative simultaneously with the signing of the Agreement. The Plaintiff had to wait until the Defendant installed in all his four
cinemas 35 mm. projectors. See Exhibit 2 Clause 16.

10 The Defendant arranged for and having obtained 35 mm. projectors from Russia, he installed them in all his cinemas and thereafter informed the Plaintiff that he was in a position to receive the films. See Exhibit 3 letter No.1. The first supply of films by the Plaintiff to the Defendant commenced on 24th July, 1971. When the Defendant wrote Exhibit
15 3 letter No.1 to the Managing Director of Roxy Cinema he also wanted to be supplied "with a list or lists of 35 mm. films in your possession ready for the distribution so that I could make my selection in advance." These lines in the Exhibit 3
letter No.1 almost crippled the contract at its birth. However it was passed over, but later it assumed some proportions in the conduct of business between the parties.

20 The Contract became actually operative by 24th July, 1971 and the Plaintiff were supplying films and advertising the show in the cinemas as set out in the Agreement Exhibit 2 Clause 3 and 13. The evidence did disclose that all was not well, and the first positive indication is the letter dated Exhibit 9
25 written by Abdul Latiff Bensouda on 26th October, 1971. The Defendant was away from The Gambia and Abdul Latiff Bensouda was in charge of the business of the Defendant. He instructed learned Counsel Mr. A.S.B. Saho to write Exhibit 9 to the
30 Managing Director Roxy Cinemas Ltd. The pen-ultimate part of that letter Exhibit 9 is as follows:-

"This position can no longer be tolerated and unless you comply with the terms of the said Agreement, there will be no alternative but to seek ways of terminating the Agreement."

35 These are prophetic words. All avenues to seek ways to terminate the Agreement Exhibit 2 was vigorously pursued.

On 26th December, 1971 the Defendant who had now returned to The Gambia instructed his learned counsel to write Exhibit 3 letter No.2. He wrote up his letter with these words:

"If you are not in a position to supply new films then it would seem that you should take this letter as a month's notice to terminate our relationship commencing from 1st January, 1972".

5 This letter Exhibit 3 letter No.2 cuts across completely against the condition set out in Exhibit 2 Clause 12.

To Exhibit 3 letter No.2 of 21st December, 1971, the Managing Director of Roxy Cinemas replied by his letter Exhibit 3 letter No.3 concluding his letter thus "Our contract is a bilateral and
10 we have to meet each other all the way". "There are films and you can make your selections, but it should be clear that you will not wriggle out of your undertaking without cause".

The correspondence discloses in no uncertain terms that the storm was gathering and only awaited a chance wind. In early June,
15 1972 two incidents occurred - one in Bakau and another in Brikama - events to which this Court shall refer to in greater detail at the appropriate stage. Consequent upon these two incidents the Defendant wrote on 13th June, 1972. Exhibit 3 letter 5. "I am writing to give you one month's notice commencing from 14th June, 1972 to terminate the Agreement we entered into on the 18th March, 1971 as you
20 have always failed to comply with conditions contained therein", and to this letter learned counsel Mr. S.F. N'Jie replied by his letter Exhibit 3 letter No.6 of 29th June, 1972 inter alia.

"I am informed by the Managing Director of Roxy Cinemas Ltd. that on 6th June 1972, you had refused films for the
25 Bakau Arts Cinema for a period of eight days, but however since the 15th June you resumed accepting films supplied by that cinema.

My instructions are to warn you that if you refuse films
30 as you have indicated you intend to do, on 13th July, 1972 I should institute proceedings against you forthwith for breach of Contract.

I trust that this will not be necessary and that you
35 will communicate to me the revocation of your intention as expressed in your letter of 13th June to my clients".

These letters would disclose clearly that the contract was sliding down on the rocks, and as set out in Exhibit 9 "to seek ways to terminating the Agreement" two such ways came upon the Defendant - the Bakau and Brikama incidents.

./.

It would appear that Raidan Ibrahim Raidan directed his agent to hand over certain films and posters to Arts Cinema at Bakau on 6/6/72. The agent entrusted with this duty is Salim Saab. It should be noted that Roxy Cinemas were also
5 supplying films to Vero Cinema in Bakau and to Arts Cinema Bakau. Salim Saab mistakenly handed over the film Karim billed for Vero Cinema to Arts Cinema Bakau along with the posters. On his return to Roxy Cinema Serekunda the Managing Director detected this error and forthwith directed his agent
10 to proceed to Bakau and to withdraw the film Karim from Arts Cinema Bakau and to hand over another film. Salim Saab carried out the instructions proceeded to Arts Bakau, withdrew the film Karim and handed over another film. This has caused annoyance to the Defendant, who has said in evidence that the failure to
15 screen the picture Karim as advertised almost led to a breach of the peace.

In Brikama too in early June, 1972, two films were supplied by Salim Saab to the Defendant along with usual posters the day previous to the screening of the films at the Cinema. One of
20 the films supplied was to have been Kindar. When the first film was screened it was in order - as advertised but the second film was not Kindar as advertised but another. Here the evidence revealed that the customers registered their protest in visible ways and a breach of the peace was eminent but for the salutary
25 presence of Police Inspector Touray who was himself attending the show. Peace was restored by this officer and some people having obtained their ticket fare - left the cinema.

These two incidents are not totally denied by the Plaintiff's agent, but contends that they are bona fide mistakes made in
30 the hustle and bustle of normal business.

To the Brikama incident the Plaintiff's agent while admitting the error in passing over another film and not Kindar contends that an employee of the Defendant called on him that
very night and he replaced the wrong film with the correct film.
35 and also paid out D5 being taxi hire. This is completely denied by the Defendant.

Arising from the event in Bakau the Defendant directed his employee at Arts Cinema Bakau not to accept films commencing from 6/6/72. On 15/6/72 the Defendant revoked his own orders

and began to accept films for Bakau. At no stage did the Plaintiff Company refuse to supply any films during the days the Defendant failed to accept films.

5 Then by virtue of Exhibit 3 letter 5 the Defendant as from 14th July 1972 declined to accept films for all the four theatres and thereby breached the Agreement Exhibit 2. On the score of this breach the Plaintiff company instructed counsel to take out a Writ of Summons on 6th January, 1973.

10 At the trial arising from the pleadings both Counsel for the respective parties agreed upon these issues.

- A. Was the Defendant entitled to terminate an Agreement for a specified period when there is no provision in the Agreement for termination before expiration of that period?
- 15 B. Did the Plaintiff refuse to supply the Defendant with films (paragraph 6 of the Counter Claim) if so did this entitled the Defendant to terminate the Agreement?

and the Plaintiff Company has sought by way of remedy:

- (a) General Damages which includes loss of profit.
- 20 (b) 1. Special Damages which includes expenditure incurred in the preparation in fulfilling the contract.
- 25 2. The loss incurred in sending the films back. D136 for 8 days loss of profit from 6/6/1972 to 13/6/1972 at Arts Cinema Bakau.

30 In the course of the trial learned leading Counsel for the Plaintiff abandoned the relief by way of special damages, and on the score of the evidence preferred by the Defendant, his learned counsel readily conceded that the Counter Claim cannot be maintained.

35 The evidence in this case has positively disclosed that both parties to the Contract adopted standards of easy going tolerance rather than aggressive insistant punctuality and efficiency. In such a situation the events complained of did take place in Bakau and Brikama. It should be observed that the Brikama event could have been avoided if the Defendant's employees were vigilant in the execution of their duties. They

had ample time on their hands to examine the films delivered to them and rectify any mistakes, but they let events overtake them, as they desired that it should be so. In corss-examination the Defendant admitted "even if I am making no money I
5 wanted to get rid of Raidan's associstion."

The incidents of Bakau and Brikama afforded the Defendant the spring board which he was anxiously looking forward to jump out of his contractual obligation with the Plaintiff. And this he did.

10 Is the Defendant entitled on the score or these two incidents to terminate the Contract. In Schuler AG v Wickman Machine Tool Sales Ltd. (1973) 2 AER p.39. Lord Reid, Lord Morris of Borth-y-Gest, Lord Wilberforce, Lord Simon of Glaisdale and Kiblrandon posed the question "can any breach
15 however small would entitle the German Firm immediately to repudiate the whole contract?" Their Lordships unanimously held that it was not permissible in English Law to construe a written commercial contract by reference to the conduct of parties after the Agreement has been made.

20 Learned Counsel for the Defendant has pointed out that on several occasions there has been a breach of the Agreement. He contended that the screening of Karim a 16 mm. film was in breach of Exhibit 2 Clause 7. The invitation by the Managing Director on behalf of the Plaintiff Company to come and select
25 films was a breach of Exhibit 2 Clause 5 and 17. It is a Universal Principle of Law that a party shall never take advantage of his own wrong.

In Vol. 8 Halsbury's Laws of England 3rd Edition p.204 paragraph 345 not every refusal to perform a material part of
30 contract amounts to a repudiation which entitled the other party to treat the Contract as at an end, there must be refusal to perform something which goes to the root or essence of the Contract. Mersey Steel Iron Co. v. Naylor Benzon & Co (1884) 9 AC 343. In the light of this decision, can this Court state
35 that the two incidents at Bakau and Brikama goes to the root or essence of the contract that the Defendant was justified first for length of eights days for Arts Cinema Bakau and then for all theatres as from 14th July '72 in refusing to accept films that were supplied to him. Does this refusal by the Defendant constitute a breach of the Contract? It certainly does.
40

Mr. S.A. N'Jie in the course of the cross-examination and in the concluding address raised the question whether Exhibit 2 was a contractual license or whether it created a proprietary interest in favour of the Plaintiffs and claimed that the Plaintiff Company had no proprietary interest. This is certainly of academic interest, but the Court would if it left the pleadings and digressed in an intellectual exercises may find out itself completely out of tune with the settled issues in this case.

The Agreement Exhibit 2 has no precise Clause setting out under what given circumstances it may be terminated. In cross-examination the Defendant made the Court to understand that this unkind thought never entered into the minds of the contracting parties - This Agreement Exhibit 2 was made on 18/3/1971. See recitals in paragraphs 2 of Exhibit 2. This Contract has not set out any conditions under which it may be terminated. Chitty on Contracts 23rd Edition paragraph 709 page 70 - on Contractual Licenses states "The position of a a contractual license or implied, that the license shall not be revoked until the effluxion of a specified period of time or the happening of a particular event, then such a license is irrevocable until the expiration of the period or the happening of the event and again J.H. Milner & Son v. Percy Bilton Ltd. (1966) 1 WLR 1582 Fenton Atkinson said "If a Contract is entire, then unless a term is implied enabling a party to terminate it, termination thereof by a party before the time for performance is completed or has arrived gives the other party a right of action. The present Agreement Exhibit 2 if it had its full course would run until 18/3/1973; but by July 1972 the Agreement has been breached and the Contract terminated by the Defendant. See Exhibit 3 letter 5. At the time of the breach the Contract had another period of nine months to run so, that, by effluxion of time the contract would have come to an end. In Exhibit 7 the monthly average takings based on 30 days has been set out, and the average gross monthly takings in all four Cinemas is D6,636 per month. Under the Agreement Exhibit 2 Clause 1 the parties share the takings on a 50:50 basis and therefore the Plaintiff Company would be entitled to D3,318 per month and for the remaining period of nine months, the amount would be D29,862. This the Plaintiff Company now seeks to obtain as General Damages.

In Radocmlin v Milburn (1886) 18 Q.B.D. 67 at 68 it was held that even where the Plaintiff can prove his loss damages are hardly ever full recompense since "It must be remembered that the rules as to damages are in the nature of things must only be just." Forbes J in Bellingham v Dhillah and another (1973) 1 AER p.20 held. "Where a Plaintiff claims for damages was based on loss of profits of his business the damages were to be calculated in the same way whether the claim was in contract or tort i.e. by taking the profits which the business would have earned but for the wrong which the Plaintiff had suffered at the hands of the Defendant and subtracting from that figure the profits which had in fact been earned after the wrong had been suffered. In making that calculation the Court was bound to take into account any steps which the Plaintiff as a reasonable and prudent man of business had taken to mitigate his loss.

And again Lord Haldane in the celebrated case of British Westing-house (1912) AC 689 said:-

" I think that there are certain broad principles which are quite well settled. The first is that, as far as possible he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far money can do it, in as good a situation as if the contract had been performed. The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach but this principle is qualified by a second which imposes on a Plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damage which is due to his neglect to take such steps.

This second principle does not impose on the Plaintiff an obligation to take any step which a reasonable and prudent man would not ordinarily take in the course of the business. But when in the course of his business he has taken action arising out of the transaction which action has diminished his loss the effect in actual diminution of the loss he had suffered may be taken into account even though there is no duty on him to act."

I think that this decision illustrates a principle which has been recognized in other cases that provided the course "taken to protect himself by the Plaintiff in such an action was one which a reasonable and prudent person might in the ordinary conduct of business properly have taken, and in fact did take whether bound to or not, a jury or an arbitrator may properly

look at the whole of the facts and ascertain the result in estimating the Quantum of damage."

In the present case what steps if any the Plaintiff has taken to mitigate his loss. There is no evidence of it in the record at all. The breach occurred on the 14th July 1972 and the Writ of Summons was issued out on 6th January, 1973.

One of the ways to mitigate the loss would have been for the Plaintiff company to market his goods. It transpired in the course of the evidence that the Plaintiff Company had a monopoly in this trade in this country. The company may have saturated the market, locally but a duty still prevails upon the Plaintiff Company to prospect for market in the neighbouring countries to mitigate the loss he had suffered. Nothing was done.

I now come to answer the issues:-

Issue A - in the negative

Issue B - in the negative

It would be deplorable to grant the full amount of General Damages claimed when the Plaintiff Company failed to take any steps to mitigate its loss.

Mr. S.A. N'Jie with consummate skill has urged that the contract which contains no express provision for its determination may yet be determined by reasonable notice on the part of one or both of the parties. This theory is negated by the principles set out in Vol. 8 Halsbury's Laws of England 3rd Edition page 204 paragraph 345. If the principle enunciated by learned counsel for the Defendant commands acceptance by this Court, then the question of reasonable notice would arise; and in, contracts of this nature where if the contract is 'entire', indefinite as to time, a reasonable period for notice based on decided cases would appear to be six months. This would result in casting the Defendant to incur a heavier damage than he would be presently ordered.

This Court is guided by the principles set out in cases cited in this judgment on the quantum of damages. It further takes into consideration the indolence of the Plaintiff Company in taking no steps to mitigate its loss, and also the fact that the breach having taken place in July, 1972 it instituted proceedings only in January 1973; and orders that a sum of D14,931.00

is the loss of profit suffered by the Plaintiff Company consequent upon the breach of the contract Exhibit 2. The amount is arrived at on the basis that out of the damages claimed for 9 months, this Court has refused for reasons set out earlier
5 it should be denied damages for four months and fifteen days and damages be allowed at the rate of D3,318 per month for a period of four months and fifteen days totalling a sum of D14,931 and costs of suit.

I do so Order.

10

Dated the 27th day of June, 1973.

(Sgd.) A. Nithianandan
PUISNE JUDGE

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT No. 1973-B-2

BETWEEN:

MOHAMMED B.A. BENSOUDA APPLICANT/DEFENDANT

5

AND

ROXY CINEMAS LIMITED RESPONDENT/PLAINTIFFS

- NOTICE OF MOTION -

TAKE NOTICE that the Court will be moved on Tuesday
the 17th day of July, 1973, at 9.0'Clock in the forenoon or
10 so soon thereafter as counsel can be heard by SHERIFF AIDARA
N'JIE, Counsel for the Applicant/Defendant, that this Honour-
able Court may be pleased to make an order to pay the decretal
amount as indicated in this Honourable Court's Judgement dated
27th June, 1973.

15

(Sgd.) S. A. N'Jie, Esq.,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPLICANT/DEFENDANT.

20 The Registrar & Master,
The Supreme Court,
Banjul, The Gambia.

IN THE SUPREME COURT OF THE GAMBIA

CIVIL SUIT NO. 1973-B-2

BETWEEN:

MOHAMMED B. A. BENSOUDA APPLICANT

5

AND

ROXY CINEMAS LIMITED RESPONDENT

A F F I D A V I T
ORDER 40 RULE 8

I, MOHAMMED B.A. BENSOUDA of Brikama, Western Division
10 and Businessman of 20-21 Wellington Street, Banjul, The Gambia,
make Oath and say as follows:-

1. That I am the Applicant herein.
2. That on the 27th day of June, 1973, judgment was
15 given against me in the sum of D14,931 and costs
(not yet ascertained) in favour of the Respondents.
3. That I am ready and willing to pay half the decretal
amount on the 31st July, 1973, and the balance on the
31st January, 1974.
- 20 4. That business is rather dull and income rather
negligible owing to the near famine that prevalent
in the centres where my cinemas operate and the
sales from my shop that I run in Bathurst are so
lamentable, because the customers, that is the small
25 businessmen that I cater goods for are the Senegalese,
who because of restriction on the customs posts (borders)
and scarcity of money due to several years of drought
make negligible purchases and we are left with our local
people whose purchasing power is meagre to bring about
any reasonable improvement in our lot.

(Sgd.) M. Bensouda
D E P O N E N T. /

SWORN AT BANJUL,
This 14th day of July, 1973.

BEFORE ME

(Sgd.) R. R. G. Joiner,
5 A COMMISSIONER FOR OATHS.

Tuesday 17th July, 1973.

Before the Honourable Mr. A. Nithianandan.

Mr. S. A. N'Jie withdraws the motion.

(Sgd.) A. Nithianandan.

EXHIBIT 1

G A M B I A

CERTIFICATE OF INCORPORATION

No. 3/INT./1968

5 I Hereby Certify that the

ROXY CINEMA LIMITED

is this day Incorporated under the Companies Act, 1955,
and that the Company is Limited.

10 Given under my Hand at Bathurst this Ninth day of
October One Thousand Nine Hundred and Sixty-eight.

Fees and Deed Stamps	£29	15	0
Stamp Duty on Capital	1	-	-
	<hr/>		
TOTAL	£30	15	0
	<hr/>		

15 (Sgd.) S. K. O'Brien Coker,
Resittrar of Companies.

L.S.

THIS AGREEMENT made the eighteenth day of March in the year One Thousand Nine Hundred and Seventy One BETWEEN ROXY CINEMAS LIMITED a Company registered in the Republic of The Gambia and having its registered office at Serekunda in the Kombo Saint Mary Division of The Republic of The Gambia represented by its Managing Director Raidan Raidan of Pipe Line Road, Latrikunda in the Kombo Saint Mary Division aforesaid (hereinafter called the "Owners" which expression shall where the context so admits include their Successors-in-Office and Assigns) of the one part and MOHAMMED B.A. BENSOUA of Brikama Village in the Western Division of The Republic of The Gambia Proprietor of The "Art" Cinema at Brikama in the Western Division aforesaid, the "ARTS" Cinema at Bakau Village in the Kombo Saint Mary Division aforesaid, the "ARTS" Cinema at Gunjur Village in the Western Division aforesaid and the "ARTS" Cinema at Serekunda Village in the Kombo Saint Mary Division aforesaid residing at Brikama Village in the Western Division aforesaid (hereinafter called the "Hirer" which expression shall where the context so admits include his heirs executors administrators and Assigns) of the other part.

WHEREAS the owners have agreed to hire and the hirer has agreed to take on rentage from the date of entering into this agreement 35 mm Cinema Motion Picture Films for screening only at each of the following Cinemas owned by the Hirer; at the rate of 50% (fifty per centum) of the daily gross income from Ticket sales at each Cinema mentioned above: "ARTS" Cinema, Serekunda and "ARTS" Cinema Bakau both in the Kombo Saint Mary Division aforesaid and the "ARTS" Cinema Gunjur and the "ARTS" Cinema Brikama, both in the Western Division aforesaid, for a period of two years upon the terms and conditions hereinafter contained.

NOW THE OWNERS AND THE HIRER AGREE as follows:-

1. The Owners shall supply on hire and the Hirer shall take on rentage 35 mm Motion Picture Films for exhibition only at the four Cinemas owned by him and mentioned above to be paid for as follows: 50% (fifty per centum) of the daily gross income from Ticket sales from each of the four Cinemas mentioned above.
2. The Hirer has agreed with the owners that the daily sale of Cinema tickets at each Cinema shall be controlled jointly by the Owners and the Hirer who shall together keep a strict account

for all monies collected from the sale of the tickets and shall daily distribute all such income proportionately as provided for in clause 1 above.

5 3. The Owners shall be responsible to arrange suitable daily programme of film-show for each of the four Cinemas mentioned above and shall supply all Motion Picture Films for this purpose.

10 4. The Hirer shall each day return all films exhibited as programmed in all the four Cinemas mentioned above to and shall in turn collect from Roxy Cinema Projection Room at Serekunda in the Kembo Saint Mary Division aforesaid another set of films for exhibition the same night in all the four Cinemas mentioned above.

15 5. The Hirer shall be responsible to distribute to all his four Cinemas mentioned above the sets of films programmed for exhibition each night and shall deliver the prints to each of the four Cinemas mentioned above in good time for the evening projection.

20 6. The Hirer shall meet the salaries and other emoluments and remuneration to all employed in all the four Cinemas mentioned above and shall pay all licences and rateable taxes as well as water and electricity consumed in all the four Cinemas.

7. During the continuation of this Agreement the Hirer shall NOT screen any 16 mm Motion Picture Films either for entertainment or for advertisement in any of the four Cinemas named above.

25 8. The Owners shall from time to time instruct one of his technicians to carry out a thorough inspection of all the projectors in use in all the four Cinemas mentioned above with a view to ascertain that the projection mechanism shall not ~~out~~ or damage the Motion Picture Films on hire and advertisement films for exhibition in the event of any fault which when located by the technician and reported to the Hirer the Hirer shall immediately remedy the defect which will be re-inspected by the technician before any more Motion Picture Films is supplied to the particular Cinema with the defected Projector.

30

35 9. The Hirer shall be responsible for any loss or damage done to the Motion Picture Films hired to him and occasioned by him

and hereby agrees to pay to the Owners any claim costs demands or expenses which they may suffer by reason of such loss or damage occasioned by him.

5 10. The Hirer shall only screen commercials and other advertising filmlets supplied directly to him by the owners at the commencement of the main performance of each show in each Cinema at the rate of 50% (fifty per centum) of the screening fees payable to the owners by the clients or the Media Planner of Advertiser.

10 11. The Hirer shall not screen any of the Motion Picture Films on hire from the Owners in any other place except at the four Cinemas mentioned above.

15 12. The Hirer shall realize that the Owners import from abroad similarly on hire all 35 mm Motion Picture Films and may now and again suffer from inevitable delays in shipment or other unforeseen circumstances in which case the Hirer shall not protest at the failure of the inclusion of new films in the daily programmes but rather the hirer shall appreciate the fixing of the programmes by the Owners as best as possible without undue repetition.

20 13. The Hirer may from time to time by mutual arrangement with the owners make a special choice of available films for distribution to any of the four Cinemas mentioned above but realising that the right of choice of films and the preparation of the daily programmes rests entirely on the Owners as provided for in clause
25 3 above.

30 14. The Hirer shall pay to the Owner 50% (fifty per centum) of any charges paid to him for the hire of any one of the four Cinema halls mentioned above for any other purpose in lieu of a film show and the Hirer shall not so hire any of the four Cinema halls mentioned above for more than two nights in any one month.

35 15. The Hirer may at his discretion give at least three days notice in writing to the Owners of his intention to close down temporarily the "ARTS" Cinema, Gunjur in the Western Division aforesaid during the rainy season and shall again similarly give the Owners three days notice in writing of his intention to resume the film-shows towards the end of the rainy season.

16. The Owners shall supply and the Hirer shall take on rentage in the manner provided for in clause 4 above the first set of films

programmed by the Owners as provided for in clause 3 above
as soon as the Hirer shall have advised the Owners of the
receipt and installation of 35 mm Projectors with complete
equipment in all the Cinemas mentioned above, the "ARTS"
5 Cinema, Gunjur in the Western Division aforesaid excepted as
this may be during the rainy season.

17. The Owner shall be willing to distribute daily programmed
films to all the four Cinemas mentioned above in the event the
Hirer is unable to do so as provided for in clause 5 above
10 because of illness absence from his headquarter in which case
this will have been made known to the Owners by the Hirer in
good time.

IN WITNESS whereof the parties hereto have hereunto set their
hands the day and year first above written

15 Signed and Delivered by the
within-named Raidan Raidan for
and on behalf of the Roxy Cinemas Limited (Sgd.) R. Raidan
in the presence of:-
(Sgd.) J. J. Cates,
20 5, Leman Street, Bathurst,
The Gambia.

Singed and Delivered by the
within-named Mohamed B.A. Bensouda (Sgd.) M. Bensouda
in the presence of:-
25 (Sgd.) A.K. Bensouda,
38, Grant Street, Bathurst,
The Gambia.

EXHIBIT 3I N D E XPAGES

- 5 1. Letter of 24th July, 1973, from Mr. M.B.A. Bensouda to Mr. Raidan Raidan.
2. Letter of 21st December, 1971, from Mr. S. A. N'Jie to Mr. Raidan Raidan.
3. Letter of 28th December, 1971 from Mr. R. I. Raidan to Mr. S. A. N'Jie.
- 10 4. Letter of 25th April, 1972, from Mr. R. I. Raidan to Mr. Sidi Bensouda.
5. Letter of 13th June, 1972 from Mr. M.B.A. Bensouda to Managing Director, Roxy Cinemas Limited.
- 15 6. Letter of 29th June, 1972, from Mr. S. F. N'Jie to Mr. M.B.A. Bensouda.

C O P Y

1

THE ARTS CINEMA
(Proprietor M.B.A. Bensouda)

Cable Star Cinema
5 Tele Brikama 107

BRANCHES:-

Brikama
Serrekunda
Bakau

P. O. Box 548

BATHURST
THE GAMBIA
WEST AFRICE

10

14th July, 1971.

Mr. Raidan Raidan
Managing Director
ROXY CINEMAS LTD
Pipe Line Road
15 LATRIKUNDA
Kombo Saint Mary Division.

Dear Sir,

I am writing to inform you that in accordance with
paragraph 16 of the agreement entered into between the Roxy
20 Cinemas Limited and the writer dated 18th March, 1971, and
to inform you that I have now four 35 mm projectors for all
my cinemas as enumerated in the said agreement. Accordingly,
I should be glad if you would supply me with a list or lists
of 35 mm films in your possession ready for distribution so
25 that I could make my selection in advance.

An early attention to my letter would be appreciated.

Yours faithfully,

(SGD.) M.B.A. Bensouda.

S. A. N'JIE, ESQ.,
BARRISTER-AT-LAW & SOLICITOR

2

19, Buckle Street,
Bathurst, The Gambia.

5

21st December, 1971.

Mr. Raidan Raidan,
Managing Director,
Roxy Cinemas Limited,
Pipe Line Road,
10 Latrikunda,
Kombo St. Mary Division.

Dear Sir,

SUPPLY OF FILMS

My client and I had written to you several letters
15 to which you have never replied, it would seem that you have
deliberately refrained from replying to them and I am asked
to write to you again on behalf of my client Mr. Mohamed B. A.
Bensouda of Brikama Village in the Western Division of The
Republic of The Gambia, the Proprietor of the Arts Cinema at
20 Brikama, Bakau, Gunjur and Serrekunda and if new films are not
being supplied forthwith, he would have to resort to breaking
the agreement you had entered into on the 8th March, 1970, and
to seek supplies elsewhere for films that might suit his clients.

My client has been losing clients because of the
25 repetition of films you supply which have been invariably seen
so often that they are of no interest to viewers because they
are merely a repetition. This has been causing a loss both to
you and my client since you have to go into shares of the pro-
ceeds of sale at the box. If you are not in the position to
30 supply new films then it would seem that you should take this
letter as a month's notice to terminate our relationship commencing
the 1st January, 1972.

Yours faithfully,
(SGD.) S. A. N'Jie.

C O P Y

3.

28th December, 1971

S.A. N'Jie, Esq.,
 Barrister-At-Law & Solicitor,
 5 19, Buckle Street,
Bathurst.

Dear Sir,

I am in receipt of your letter dated 21st December, 1971,
 on behalf of your client Mr. B.A. Bensouda. I appreciate the
 10 points raised in it, but you should remember that I have on
 several occasions asked you to come over to my film stores to
 make selections on the arrival of new films.

Our contract is bi-lateral and we have to meet each other
 all the way. There are films and you can make your selections,
 15 but it should be clear that you will not wriggle out of your
 undertakings without cause.

Thank you very much.

Sincerely yours,

(Sgd.)

20

Managing Director

(R. I. Raidan)

./.

C O P Y

4

Mr. Sidi Bensouda,
Proprietor,
Arts Cinemas,
5 Brikama, Serrekunda, Bakau and Gunjur.

Dear Sir,

On examination of the last films which you played
on 24th April, 1972 in Brikama we found that the film "Devil
was an Angel" was seriously damaged. This damage consisted
10 of torn and strained sprockets and largestrips of film
entirely torn away.

It would appear that the damage was caused by a
combination of worn sprocket, which should be replaced
immediately, and carelessness on the part of your projec-
15 tionist in threading the film into the projector.

Also scratches throughout the film indicate that
your projectionist is failing to clean the gates before
threading up.

We enclose a few clippings of the film to illustrate
20 the damage of which we speak.

We are not charging you for the considerable damage
caused to "Devil was an Angel" but are putting you on notice
that any future damage resulting from bad equipment or care-
lessness will be charged to you at the rate of 50 (fifty)
25 bututs per foot for the entire reel damaged and may lead to
the stopping of the supply of our films to you.

We trust that you will take the necessary steps to
ensure the adequate care of our films in the future.

Yours sincerely,

30

(Sgd.) R. I. Raidan
Managing Director
ROXY CINEMA LIMITED.

Enc.

C O P Y

5

5

M.B.A. Bensouda, Esq.,
Proprietor Arts Cinema,
BRIKAMA
Western Division,
The Gambia.

13th June, 1972.

10

The Managing Director,
Roxy Cinemas Limited,
MacCarthy Square,
Bathurst, The Gambia.

Dear Sir,

15

I am writing to give one month's notice commencing
14th June, 1972, to terminate the Agreement
we entered into on the 18th March, 1972 as you have always
failed to comply with the conditions contained therein.

Yours faithfully,

(Sgd.) M.B.A. Bensouda

C O P Y

SOLOMON FRANCIS N'JIE, ESQ.,
BARRISTER-AT-LAW & SOLICITOR

P.O. BOX 242 BEDFORD PLACE
Tel. Bathurst 8445 BATHURST,
THE GAMBIA.

5 Your Ref:
My Ref:

29th June, 1972

Mr. M.B.A. Bensouda,
P. O. Box 548,
Bathurst.

10 Dear Sir,

AGREEMENT BETWEEN ROXY CINEMA LIMITED
AND MOHAMED D. A. BENSOUA

I have been instructed by the Managing Director of
Roxy Cinemas Limited that you intend to breach the terms of
15 an agreement which you entered into with Roxy Cinemas on the
18th March, 1971. According to the agreement, Roxy Cinemas
Limited, Gambia, were to arrange suitable daily programmes
of film show at each of four cinemas/^{owned}by you, that is:-

20 Arts Cinema at Brikama
Arts Cinema at Bakau Village
Arts Cinema at Gunjur Village
Arts Cinema at Serrekunda Village.

By letter dated 13th June, 1972 addressed to the Managing
Director, you had this to say:-

25 "I am writing to give one month's notice commencing
14th June, 1972 to terminate the Agreement we entered
into on the 18th March, 1972 as you have always failed
to comply with the conditions contained therein".

30 Incidentally, I have no doubt that, although you refer
in your letter to the 18th March, 1972 you had in mind the
agreement dated 18th March, 1971.

I am informed by the Managing Director of Roxy Cinemas
Limited that on 6th June, 1972 you had refused films for the
Bakau Arts Cinema for a period of eight days but, however, since
35 the 15th June, you resumed accepting films supplied by that
cinema.

./.

My instructions are to warn you that if you refuse films as you have indicated you intend to do, on 13th July, 1972. I should institute proceedings against you forthwith for breach of contract.

5

I trust that this will not be necessary and that you will communicate to me the revocation of your intention as expressed in your letter of 13th June to my clients.

Yours faithfully

(Sgd.) S. F. N'Jie.

GROSS (TO NEAREST DALASI)
MONTHLY (i.e. 30 DAYS) AVERAGE FORM
AVAILABLE FIGURES

	BRIKAMA	D2,376.00	
5	BAKAU	D 794.00	
	GUNJUR	D 879.00	
	SERREKUNDA	D2,587.00	AVERAGE GROSS
		D6,636.00	MONTHLY TAKINGS 4 CINEMAS

50% = D3,318.00

Average 12 months takings (50%)

D39,816.00

Average 9 months takings (50%)

D29,862.00

EXHIBIT 9

Mr. Raidan,
Managing Director,
Roxy Cinemas Limited,
5 Pipe Line Road,
Latrikunda,
KOMBO ST. MARY DIVISION.

Dear Sir,

I have been asked by my predecessor, Mr. M.B.A.
10 Bensouda, before his departure, to write to you protesting
against the way you have been implementing your Agreement
of 18th March, 1971.

In particular, I have been asked to refer you to his
15 letter to you dated 17th July, 1971 to which, unfortunately,
there is still no reply.

It is noticed that only films that have been played
by you until they are worn out have been supplied to us,
and also Posters are never delivered until a few hours before
the Show should start. This practice has caused us great
20 losses apart from the inconvenience.

You will agree that your action tantamounts to a
serious breach of the said Agreement.

This position can no longer be tolerated and, unless
you comply fully with the terms of the said Agreement, there
25 will be no alternative but to seek ways of terminating the
Agreement.

It is hoped that you will co-operate and so avoid
any unpleasantness within us.

I am

30

Yours faithfully,
(Sgd.) Abdul Latiff Bensouda

FOR: M.B.A. BENSOUDA.

IN THE GAMBIA COURT OF APPEAL

CIVIL APPEAL No. 15/73

EX. CIVIL SUIT NO. 1973-B-2

BETWEEN:

5

ROXY CINEMA LTD.

PLAINTIFFS/APPELLANT

AND

MOHAMED B.A. BENSOUDA

DEFENDANT/RESPONDENT

Take notice that the Plaintiff/Appellant being dissatisfied with that part of the decision more particularly stated in paragraph 2 of the Judgment of The Supreme Court contained in the Judgment of Nithianandan J. dated the 27th day of June, 1973 doth hereby appeal to The Gambia Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

15

1. And the Appellant further states that the name and address of the person directly affected by the appeal is that set out in paragraph 5.

2. Part of Decision of Lower Court complained of:-

The Quantum of Damages awarded.

20

3. GROUNDS OF APPEAL:

1. The Learned Trial Judge erred in Law in his assessment of the damages in that he applied principles of 'Mitigation' which are clearly inapplicable in a case of hire agreement where the Plaintiff has the monopoly of the market.

25

2. The Learned Trial Judge erred in Law and in fact in considering Mitigation of loss not within the context of Gambia Jurisdiction but within the context of what he described as 'the neighbouring countries' which are non-English speaking.

30

4. RELIEF SOUGHT FROM THE GAMBIA COURT OF APPEAL:

That the amount of Damages be increased to D29,862 at least.

./.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

Mohamed B.A. Bemsouda
Wellington Street,
Banjul.

5 DATED this 3rd day of September, 1973.

(Sgd.) Sol. F. N'Jie

SOLICITOR FOR THE PLAINTIFF/APPELLANT.

I N T H E G A M B I A C O U R T O F A P P E A L

CIVIL APPEAL No. 18/73

BETWEEN:

MOHAMED B. A. BENSOUDA APPELLANT/PLAINTIFF

5

AND

ROXY CINEMA LIMITED RESPONDENTS/DEFENDANTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellant/Plaintiff being
 dissatisfied with the decision of The Supreme Court of The
 10 Gambia contained in the judgment of the Puisne Judge,
 Mr. A. Nithianandan, dated the 27th June, 1973 doth hereby
 appeal to The Gambia Court of Appeal upon the grounds set
 out in paragraph 3 and will at the hearing of the Appeal seek
 the relief set out in paragraph 4.

15 AND the Appellant further states that the name and
 address of the persons directly affected by the appeal is
 that set out in paragraph 5.

2. The whole decision.

3. GROUND S O F A P P E A L:

20 (1) That the Learned Trial Judge was wrong in law to
 hold that the Appellant had waived his right to sue
 when the Respondents failed to supply him with the
 right films at the Arts Cinema Bakau on the 6th June,
 1972.

25 (ii) That the Learned Trial Judge was wrong to hold
 that the Appellant did not wish to enlarge the
issues in which the dispute between the parties were
 alleged to have been tried as this was raised in the
 course of the proceedings and up to the time of
 30 addresses by Counsel.

5 (iii) That the Learned Trial Judge was wrong in law when he held that the Respondents were not in breach of the contract when they failed to supply the Film Kinda at the Arts Cinema Brikama on the 7th June, 1972 as advertised.

(iv) That the Judgment of the Learned Trial Judge cannot be supported having regard to the evidence adduced.

4. RELIEF SOUGHT FROM THE GAMBIA COURT OF APPEAL:

10 The whole decision of the Trial Judge be set aside and judgment entered in favour of the Appellant.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

15 Roxxy Cinemas Limited,
Pipe Line Road,
Latrikunda,
Kambo St. Mary District,
The Gambia.

20 (Sgd.) S. A. N'Jie, Esq.,
19, Buckle Street,
Banjul, The Gambia.

SOLICITOR FOR THE APPELLANT

The Master & Registrar,
The Supreme Court,

and

25 The above-named Respondent.

IN THE GAMBIA COURT OF APPEAL

G.C.A. No. 15/73

G.C.A. No. 18/73

BETWEEN:

5 ROXY CINEMA LTD. PLAINTIFF/APPELLANT

AND

MOHAMED B.A. BENSOUDA DEFENDANT/APPELLANT

Wednesday, 28th November, 1973.

GORAM: Adeyinka Morgan, C.F.P. -- President

10 Sir Phillip Bridges, K.E.C.M.G. -- C.J.

C.O.E. Cole, C.M.G., O.B.E. -- J.A.

Berthan Macaulay, Q.C. (with him S. F. N'Jie)
for Roxy Cinema Limited.

S. A. N'Jie for Mohamed B. A. Bensouda

15 Macaulay:- I apply that both appeals be consolidated.

N'Jie :- I have no objection.

COURT:3- It is hereby ordered that both appeals be consolidated.
Roxy Cinema Ltd., will be referred as Plaintiff/
Appellant and Bensouda as Defendant/Appellant.

20 Macaulay:- Grounds of our appeal at P. 80 Lines 18 - 25.

I refer to P. 59 Lines 15 to 26.

Page 60 Lines 9 - 16 & 28.

Page 61 Lines 1 - 24

Page 64 Lines 6 to the end - page 69 lines 17 - 19

25 Page 65 line: 1.

The Company was registered here in 1968 - Exh. 1 page 74.

Agreement at pp. 75 - 80. Letter notifying Plaintiff/Appellant

that he had acquired the necessary projectors at page 81 - Exh. 3(1).

I refer to page 56 lines 10 - 14

Ground 1 impugns the record. But see page 56 lines 10 - 11. I invite the court to look at the evidence as regards quantum was never challenged. On the contrary it was confirmed by defendant and two of his witnesses. Page 20 lines 40 - end, page 21, page 22 lines 1 - 6, page 24 lines 26 - 7. I refer to page 42 last line and page 43 lines 1 - 3, page 45 lines 32 to the end; page 46 lines 7 & 8, page 47 line 3, page 49 lines 16 - 20, page 50 lines 14 - 16.

Ground 1 (page 89), page 89 lines 9 - 11, 41 - 42, page 19B lines 1 - 3, page 60 lines 11 - 13.

The question that films are exported on basis of hire. I refer to page 20 lines 7 - 11; page 69 lines 11 - 15 Mayns & Megrogor on Damages 12th Edn. page 825 para. 986. I refer to the authorities I cited - page 58 lines 15 - 22. Bellingham caes (1973 1 ALLER 20, 25B) The Learned Judge did not consider the other two cases I cited. Where the hirer holds a monopoly of the market the damage must be assessed on the basis of the market. Interoffice Telephones v Robert Freeman Co. Ltd. (1958) 1 QB 190. (1957) 3 ALL ER 479, 481E, 482A & F, 488E, 484I, 485E. Pobophone Facilities Ltd. case (1966) 3 ALL E R 128, 135G:h, 137D.H., 139B-D, 140A-C.

We ask for at least D29,862.00 at least and interest at 4%. Also for costs. This appeal required the examinations of many documents of an accounting machine.

N'Jie:- I refer to page 78 clause 16.

Adjourned till 29th November, 1973.

(Sgd.) Adeyinka Morgan P.

29th November, 1973.

Same appearances.

S. A. N'Jie:-

Ground 1 at page 90. I refer to page 63 Lines 11 - 20. I refer to 8 Hals. page 175 para. 299. Page 25 lines 17 - 18. There was a breach as a result of the events of 6th June, 1972 and another on 7th June, 1972. We gave notice of intention to terminate the contract. (see Exh. 3 (5) at p. 85).

Ground 2. I abandon this.

Ground 3. I refer to Branca v Cobarro (1947) KB. 854.

Ground 4. I refer to evidence of Raidan Ebrahim Raidan
pp. 19 - 21, page 30, page 51 lines 19 - 28.

5 We have paid the damage awarded against us and I submit the
Plaintiff/Appellant should not be awarded more damages.

S.F. N'Jie:- I refer to page 76 clause 3 and clause 5.
If the plaintiff took the films to the cinemas
it was helping the defendant.

10 Court will rise for a short while.

(Sgd.) Adeyinka Morgan P.

S. F. N'Jie for Plaintiff/Appellant.

S. A. N'Jie for Defendant/Appellant.

Judgment read by Sir Phillip Bridges.

15 S. F. N'Jie:- I am asking for D500.00

S. A. N'Jie:- I prefer that costs be taxed.

COURT:

It is hereby ordered that the costs of this appeal
be taxed.

20

(Sgd.) Adeyinka Morgan P.

IN THE GAMBIA COURT OF APPEAL
GENERAL SITTING HOLDEN AT BANJUL NOVEMBER, 1973.

CORAM: MR. JUSTICE ADEYINKA MORGAN, C.F.R. - PRESIDENT
MR. JUSTICE C.O.E. COLE, C.M.G., O.B.E. - JUSTICE OF APPEAL
5 SIR PHILLIP BRIDGES, Kt. C.M.G. - JUSTICE OF APPEAL

Civil Appeal No. 15/73

BETWEEN:

ROXY CINEMA LTD. APPELLANT

Vs.

10 MOHAMED B. A. BENSOUA RESPONDENT

Berthan Macauley with S.F. N'Jie for Appellant
S. A. N'Jie for Respondent.

Civil Appeal No. 18/73

BETWEEN:

15 MOHAMED B. A. BENSOUA APPELLANT

Vs.

ROXY CINEMA LTD. RESPONDENT

S. A. N'Jie for Appellant
Berthan Macauley with S. F. N'Jie for Respondent.

20 J U D G M E N T

Judgment delivered on the 30th day of November, 1973

Sir Phillip Bridges, Kt. C.M.G. - J.A.

25 These are two appeals (consolidated) from the judgment
of Nithianandan J. in The Supreme Court delivered on the 27th June,
1973.

./.

in that court the plaintiff company Roxy Cinema Ltd., had brought an action for damages for alleged breach of contract against the defendant Mr. Mohamed B. A. Bensouda.

On 18th March, 1971 the parties entered into an agree-
 5 ment under hand by which the Plaintiff Company agreed to supply Mr. Bensouda with 35 mm films for projection at his four cinemas and he agreed to pay to the company half of the gross receipts for each performance. The agreement, according to a recital in the document embodying the agreement was expressed to be for a
 10 period of two years. The agreement contained no provision for termination by either party before the expiration of the contract term of two years.

The defendant, however, on 13th June, 1972 wrote to the Company giving the company one month's notice begining on 14th.
 15 June, 1972 of the termination of the contract. From 14th July, 1972 the defendant refused to accept any of the Company's films at his Cinemas.

At the hearing before the Learned Trial Judge the issues were settled in the form of the following two questions:-

- 20 A. Was the defendant entitled to terminate an agreement for a specified period when there is no provision in the agreement for termination before expiration of that period ?
- 25 B. Did the plaintiff refuse to supply the defendant with films (para 6 of counterclaim) if so did this entitle the defendant to terminate the agreement ?

The Learned Judge answered both these questions in the negative and held further that the refusal of the defendant to accept the company's films constituted a breach of the contract.
 30 I am of the opinion that the Learned Judge was right in coming to this decision.

He then turned to the assessment of the damages which had been claimed as general damages on basis of what the plaintiff would have received from the defendant as its half-share of box-
 35 office takings had the contract proceeded to its full two-year term. This in fact means the average monthly receipt figure for the nine months by which the contract was terminated. On the full and clear evidence before him the Learned Judge assessed the sum at D29,862.00.

Judgment, however, was given for half this sum namely D14,931.00 on the grounds that the company had failed to take any steps to mitigate its loss.

The Learned Judge cited the well known words of Lord
 5 Haldane in British Westinghouse Co. v Underground Electric
 Railway of London (1912) AC 673 at 689 namely "..... he
 who proved a breach of a bargain to supply what he contracted to
 get is to be placed, as far money can do it, in as good a situa-
 tion as if the contract had been performed. The fundamental basis
 10 is thus compensation for pecuniary loss naturally flowing from the
 breach but this principle is qualified by a second which imposes
 on a Plaintiff the duty of taking all reasonable steps to mitigate
 the loss consequent on the breach and debars him from claiming any
 part of the damage which is due to his neglect to take such steps".

15 "This second principle does not impose on the Plaintiff an
 obligation to take any step which a reasonable and prudent man would
 not ordinarily take in the course of the business. But when in the
 course of his business he has taken action arising out of the transac-
 tion which action has diminished his loss the effect in actual dimuni-
 20 tion of the loss he had suffered may be taken into account even though
 there is no duty on him to act". "I think that this decision
 illustrates a principle which has been recognized in other cases that
 provided the course taken to protect himself by the Plaintiff in such
 an action was one which a reasonable and prudent person might in the
 25 ordinary conduct of business properly have taken, and in fact did
 take whether bound to or not, a jury or an arbitrator may properly
 look at the whole of the facts and ascertain the result in estimat-
 ing the quantum of damages".

And held that the plaintiff Company had not attempted in any way
 30 to mitigate its loss. But he also said "one of the ways to mitigate
 the loss would have been for the Plaintiff Company to market his goods.
 It transpired in the course of evidence that the Plaintiff Company
 had a monopoly in this trade in this Country. The Company may have
 saturated the market, locally but a duty still prevails upon the
 35 Plaintiff Company to prospect for market in the neighbouring countries
 to mitigate the loss he had suffered".

Now it seems to me, with respect, that this would preclude
 the possibility of mitigation in this case since the Company can hardly
 market its goods to itself and ought not in my view to be compelled to
 40 undertake overseas trading operations because of the breach of contract
 committed by the defendant.

I would allow the appeal of the Appellant Company and award damages in the sum of D29,862.00 and costs.

There is in my view no merit in the appeal of the Defendant/ Appellant which I would dismiss with costs.

5

(Sgd.) Phillip Bridges
JUSTICE OF APPEAL

I agree

(Sgd.) Adeyinka Morgan
P R E S I D E N T

10

I agree

(Sgd.) C. O. E. Cole
JUSTICE OF APPEAL.

IN THE GAMBIA COURT OF APPEAL
G.C.A. 15@1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- NOTICE OF MOTION -

TAKE NOTICE that Court will be moved on Friday the 14th day of December, 1973 at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard by SHERIFF AIDARA N'JIE, Counsel for the Applicant that this Honourable Court may be pleased to make an order for stay of execution of the judgment delivered by the Gambia Court of Appeal on 29th November 1973, until the determination of the Appeal to the Judicial Committee of the Privy Council against the said judgment.

DATED AT BANJUL, this 4th day of December, 1973.

(Sgd.) S. A. N'Jie
(S. A. N'Jie Esq.)
19 Buckle Street,
Banjul, The Gambia
SOLICITOR FOR THE APPLICANT

The Master & Registrar,
Supreme Court,
Banjul, The Gambia.

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT/APPELLANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- A F F I D A V I T -

I, MOHAMED BEN AHMAD BENSOUDA, Businessman of Brikama, Western Division, The Gambia, make oath and say as follows:-

1. That I am the Applicant herein.
2. That on the 29th day of November, 1973, the Respondents obtained judgment against me for the sum of D29,862 plus costs to be taxed. Earlier in the Supreme Court the Respondents obtained judgment against me for half the said amount except the cost in the former proceedings was higher and all sums due then were paid.
3. That execution on the Applicant's properties was carried on a Saturday after 12 p.m., my wife had to request the Manager, International Bank for Commerce and Industry who paid the amount on my behalf. It was a condition precedent that I was to pay back the Bank by instalments which I am still paying.
4. I have now filed an application for leave to appeal to the Judicial Committee of the Privy Council.

(Sgd.) M.B.A. Bensouda
D E P O N E N T

SWORN AT BANJUL, this 11th day of
December, 1973

BEFORE ME

(Sgd.) J. Omo Agege

A COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT
 AND
ROZY CINEMA LIMITED ... RESPONDENTS

EX PARTE:

- NOTICE OF MOTION -

TAKE NOTICE that the Court will be moved on Monday the 10th day of December, 1973, at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard by SHERIFF AIDARA N'JIE, counsel for the applicant that this Honourable Court may be pleased to make an order for stay of execution of the judgment delivered by the Gambia Court of Appeal on 29th November, 1973, until the determination of the Appeal to the Judicial Committee of the Privy Council against the said judgment.

DATED AT BANJUL, this 4th day of December, 1973.

(Sgd.) S. A. N'Jie
(S. A. N'Jie, Esq.)
19, Buckle Street,
Banjul, The Gambia.
SOLICITOR FOR THE APPLICANT

The Master & Registrar,
Supreme Court,
Banjul, The Gambia.

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT/APPELLANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- A F F I D A V I T -

I, MOHAMED BEN AHMAD BENSOUDA, Businessman of Brikama,
Western Division, The Gambia, make oath and say as follows:-

1. That I am the Applicant herein.
2. That on 29th November, 1973, judgment was given against me in the sum of D29,862 and costs in favour of the Respondents.
3. I now appealed to the Judicial Committee of the Privy Council against the judgment of The Gambia Court of Appeal dated 29th November, 1973.

(Sgd.) M.B.A. Bensouda
D E P O N E N T

SWORN AT BANJUL, this 5th day of December,
1973.

BEFORE ME

(Sgd.) J. Omo Agege

A COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT/APPELLANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- NOTICE OF MOTION -

TAKE NOTICE that the Court will be moved on Monday the 10th day of December, 1973 at 9.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by SHERIFF AIDARA N'JIE, Counsel for the Applicant, that this Honourable Court may be pleased to make an order allowing the Appellant to appeal to the Judicial Committee of the Privy Council against the judgment of the Gambia Court of Appeal No. 15/18/1973, delivered on the 29th November, 1973.

DATED AT BANJUL, this 4th day of December, 1973.

(Sgd.) S. A. N'Jie

(S. A. N'Jie Esq.)

19, Buckle Street,

Banjul, The Gambia.

SOLICITOR FOR THE APPLICANT/APPELLANT

The Master & Registrar,
Supreme Court,
Banjul, The Gambia.

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- A F F I D A V I T -

I, MOHAMED BEN AHMAD BENSOUDA, Businessman of Brikama, Western Division, The Gambia, make oath and say as follows:-

1. That I am the Applicant herein.
2. That on the 16th day of January, 1973, the Respondents issued a writ of summons against me claiming Inter Alia damages for breach of contract entered into between the Respondents and me on the 18th March, 1971. The suit was decided in favour of the Respondents.
3. This judgment was appealed against by the Respondents partly on the quantum of damages awarded and I lodged an appeal covering the whole proceedings. The Gambia Court of Appeal on 29th November, 1973, gave judgment in their favour in the sum of D29,862 (£5,972.40), although the sum of D14,931 and costs awarded in Civil Suit No.1973-B-62 have been paid.
4. The Applicant now applies to this Court to appeal to the Judicial Committee of the Privy Council as provided for in Appeals to the Judicial Committee Note Vol.8 Laws of The Gambia page 5081, The Gambia (Appeals to Privy Council) Order in Council, 1961, Rules 3 and 5.

(Sgd.) M.B.A. Bensouda
D E P O N E N T

SWORN AT BANJUL, this 5th
day of December, 1973.

BEFORE ME
(Sgd.) J. Omo Agege

A COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/73

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT

Vs.

ROXY CINEMA LIMITED ... RESPONDENT

Monday, 10th December, 1973

Before the Hon. Sir Phillip Bridges Justice of Appeal

Friday 14th December, 1973

Before the Hon. Sir Phillip Bridges C.J.

Mr. S. A. N'Jie for applicant

Mr. S. F. N'Jie for respondent.

Court: This is an appeal as of right - no leave is needed. The appeal may proceed forthwith.

(Sgd.) Phillip Bridges
C. J.

Representation as before.

Application for stay of execution.

Affidavit read.

S. A. N'Jie: The Company has no property here all is on lease - we are prepared to deposit when the trade season develops.

S. F. N'Jie: This application ought to have been made in plenary session. Company is successful. No question of it being inpecunious. No tangible reasons advanced.

Order: Execution of judgment stayed until 14th February 1974. Decretal sum to be then paid into court.

(Sgd.) Phillip Bridges
JUSTICE OF APPEAL

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT/APPELLANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- NOTICE OF MOTION -

TAKE NOTICE that the Court will be moved on Monday the 11th day of March, 1974 at 9.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by SHERIFF AIDARA N'JIE, Counsel for the Applicant that this Honourable Court may be pleased to make an Order that the sum of D14,923 paid into Court on deposit, be treated as deposit, pending the determination of the appeal in the Judicial Committee of the Privy Council.

DATED AT BANJUL, this 13th day of February, 1974.

(Sgd.) S. A. N'Jie
(S.A. N'Jie Esq.)
19, Buckle Street,
Banjul, The Gambia.
SOLICITOR FOR THE APPLICANT

The Master & Registrar,
The Supreme Court,
Banjul, The Gambia.

IN THE GAMBIA COURT OF APPEAL

G.C.A. 15/1973

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPLICANT/APPELLANT

AND

ROXY CINEMA LIMITED ... RESPONDENTS

- A F F I D A V I T -

I, MOHAMED BEN AHMAD BENSOUDA, Businessman of Brikama, Western Division, The Gambia, make oath and say as follows:-

1. That I am the Applicant herein.
- 2.. That on 29th November, 1973, judgment was given against me in the sum of D29,862 and costs in favour of the Respondents.
3. That I have paid into Court the sum of D14,939 on Treasury Receipt No. 874717 dated 16th July, 1973, on the understanding that the appeal in the Privy Council would be heard.
- 4.. That I have lodged an appeal to the Judicial Committee of the Privy Council against the judgment of the Gambia Court of Appeal, dated 19th December, 1973, through the Solicitors Messrs. Wilson Freeman, 6/8 Westminster Palace Gardens, Artillery Row, Victoria Street, London who work with Mr. Eugene Coutran, but the appeal has not been heard as yet.
5. That I have paid into Court, on deposit, the sum of D14,923 being the balance of the decretal amount due, pending the determination of my appeal to the Privy Council and I further request that the amount be retained pending the Privy Council's decision.

(Sgd.) M.B.A. Bensouda

D E P O N E N T

SWORN AT BANJUL

this 13th day of February, 1974

BEFORE ME

(Sgd.) J. O. Agege

A COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

CIV. APP. NO. 15/1973

BETWEEN:

ROXY CINEMA LTD. ... APPLICANTS/APPELLANTS

AND

MOHAMED B. A. BENSCUDA ... RESPONDENT

- NOTICE OF MOTION -

Take notice that the Court will be moved on Monday the 11th day of March, 1974 at 0 o'clock in the forenoon or so soon thereafter as counsel can be heard by Solomon Francis N'Jie that the Court may order payment of the sum of D14,923 now paid in Court to the Applicants/Appellants, and that the Respondent's application for leave to appear to the Privy Council and the order made therein be struck out.

Dated at Banjul, the 2nd day of March, 1974.

(Sgd.) Sol F. N'Jie

SOLICITOR FOR THE APPLICANTS/APPELLANTS

To: S. A. N'Jie Esq.,
19, Buckle Street,
Banjul.

IN THE GAMBIA COURT OF APPEAL

CIV. APP. No. 15/1973

BETWEEN:

ROXY CINEMA LTD. ... APPLICANTS/APPELLANTS

AND

MOHAMED B. A. BENSOUDA .. RESPONDENT

- A F F I D A V I T -

I, SOLOMON FRANCIS N'JIE of Counsel, Gambian make oath and say as follows:-

1. I am the solicitor for the Applicants herein.
2. By order of this Court made the 14th day of December, 1973, it was ordered that Respondent shall pay into court the sum of D14,923 by the 14th day of February, 1974.
3. I have read the affidavit of Mohamed Ben Ahmed Bensouda sworn the 13th day of February, 1974.
4. I verily believe the Applicants/Appellants being the Judgment Creditors herein are entitled to immediate payment of the sum of D14,923 now in Court in satisfaction of their judgment debt.

(Sgd.) S. F. N'Jie
D E P O N E N T

SWORN AT BANJUL this 9th day
of March, 1974 BEFORE ME

(Sgd.) J. O. Agege
A COMMISSIONER FOR OATHS

Mohamed B. A. Bensouda ... Applicant

and

Roxy Cinema Ltd. ... Respondent

Monday, 11th March, 1974

Before the Hon. Sir Phillip Bridges - J.A.

Mr. Berthan Macauley Q.C. for Roxy Cinema
with him Mr. S. F. N'Jie.

Mr. Semega Janneh holding for Mr. S. A. N'Jie
for Mr. Bensouda.

The two applications be heard together.

Macauley: Leave to appeal required even though appeal is as of right - Hopes v Chettia 1968 AC 887 limits of discretion. Application made without conditions - Now too late to apply for conditions therefore there is no order because there are no conditions. I ask that the balance of the judgment be paid out of court forthwith with interest at 4% for Court of Appeals judgment and the previous order to be vacated.

Janneh:

Court: We'll hear Mr. Janneh tomorrow.

(Sgd.) Phillip Bridges

J. A.

Tuesday 12th March, 1974

Before the Hon Sir Phillip Bridges - J. A.

As before.

Janneh: Hopes not relevant. To Macauley's contention that leave without condition is no leave - a single judge cannot alter his decision. Full court can Section 6 of Order in Council leave. Duty of appellant to ask for conditions was for appellant to ask for conditions. Thirdly - full sum of D14,00 odd has been put into court and the Privy Council limit is £500 - D2,500.00

Macauley: "Fix security for the appeal". They cannot apply
for final leave. Request

Cur ad vult.

(Sgd.) Phillip Bridges
J. A.

IN THE GAMBIA COURT OF APPEAL

CIV. APP. NO. 15/73

BETWEEN:

MOHAMED B. A. BENSOUDA ... APPELLANT

AND

ROXY CINEMA LTD. ... RESPONDENT

Mr. Berthan Macauley Q.C. for Roxy Cinema
with him Mr. S. F. N'Jie.

Mr. Semega Janneh folding for Mr. S. A. N'Jie
for Bensouda.

O R D E R

These are two applications to a single Judge of the Court
of Appeal.

The first is that of Mr. Mohamed B. A. Bensouda asking
that the sum of D14,923.00 paid into court by him should be,
in the words of the Notice of Motion "treated as deposit,
pending the determination of the appeal in the Judicial Com-
mittee of the Privy Council."

The second is that of Roxy Cinema Ltd. asking for pay-
ment out of court of the D14,923.00 and further that the
order for leave to appeal made on the 14th December, 1973
should be struck out.

In the Supreme Court judgment was entered for Roxy
Cinema Ltd. in the sum of D14,931.00. This judgment was
satisfied by Mr. Bensouda.

Roxy Cinema Ltd. then appealed to the Court of Appeal on the question of quantum of damage and that court increased the sum awarded in the Supreme Court. It is the amount of this increase that is partly the subject of these applications. The cross appeal of Mr. Bensouda was dismissed.

The present appellant (Bensouda) sought leave to appeal to the Judicial Committee and leave was granted on 14th December 1973. At the same time counsel for Mr. Bensouda offered to pay the amount of the increase into court and an order was so made.

Leave was granted without the imposition of any conditions and Mr. Macauley who appeared for the respondent argues that such leave is no leave. Mr. Semega-Janneh contends that the decision of a single judge cannot be altered by that judge, but only by the full court.

I see there is force in both these arguments. I am not disposed to interfere with what has already been done and these applications are both dismissed with costs.

(Sgd.) Phillip Bridges
JUSTICE OF APPEAL

27th March, 1974.

IN THE GAMBIA COURT OF APPEAL

CONSOLIDATED CIVIL APPEAL NO. 15/1973

and No. 18/1973

BETWEEN:

ROXY CINEMA LIMITED ... APPLICANTS/APPELLANT

AND

MOHAMED B. A. BENSOUDA ... RESPONDENT

- NOTICE OF MOTION -

Take notice that the Court will be moved on Monday the 20th day of May, 1974 at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard by SOLOMON FRANCIS N'JIE that the Court may be pleased to vary, discharge or reverse its order made on Wednesday the 27th day of March, 1974 and to order as follows:-

1. That the sum of D14,923 now in Court be paid to the Applicants forthwith.
2. That the order for Leave to Appeal to the Judicial Committee of the Privy Council made on the 14th day of December, 1973 be set aside.
3. That the Costs of this Application be borne by the Respondent.

(Sgd.) S. F. N'Jie
SOLICITOR FOR THE APPLICANTS

To: Mohamed B. A. Bensouda,
22, Wellington Street,
Banjul.

IN THE GAMBIA COURT OF APPEAL

CONSOLIDATED CIVIL APPEAL NO. 15/1973
and No. 18/1973

BETWEEN:

ROXY CINEMA LIMITED ... APPLICANTS/APPELLANTS
AND
MOHAMED B. A. BENSOUDA ... RESPONDENT

- A F F I D A V I T -

I, SOLOMON FRANCIS N'JIE of Counsel, Gambian, make oath
and say as follows:-

1. I am the Solicitor for the Applicants herein.
2. In Consolidated Civil Appeals Nos. 15/73 and 18/1973 Judgment was entered by this Court in favour of the Applicants herein on the 29th day of November, 1973.
3. On the 14th day of December, 1973, the Respondent herein sought and obtained leave to appeal to the Judicial Committee of the Privy Council against the said Judgment. The order is herein attached and marked Annexure "A".
4. The said leave to appeal was granted but without conditions.
5. On the 11th day of March, 1974, the Respondent herein moved the Court for an order that the sum of D14,923 deposited by him in Court "be treated as a deposit pending the determination of the Appeal to the Judicial Committee of the Privy Council."
6. On the same day the Applicants herein moved the Court for orders that the said sum of D14,923 paid into Court by the Respondent be paid out to the Applicants and that the order for Leave to Appeal to the Judicial Committee of the Privy Council be struck out.
7. Both Applications were consolidated and by its Order made on the 27th day of March, 1974, both applications were dismissed vide Annexure "B" herein attached.
8. That because of the said dismissal of both applications, the Court has failed to make effective order as to how the money now paid into Court by the Respondent should be treated.

9. That I verily believe the Applicants are entitled to payment of the said sum.

(Sgd.) Sol. F. N'Jie
D E P O N E N T

SWORN AT BANJUL this 13th
day of May, 1974

BEFORE ME

(Sgd.) J. Omo Agege
COMMISSIONER FOR OATHS

ANNEXURE "A"

IN THE GAMBIA COURT OF APPEAL

CIV. APP. No. 15/73

BETWEEN:

ROXY CINEMA LIMITED

AND

MOHAMED B. A. BENSOUDA

Before the Hon. Sir Phillip Bridges, J.A.

S. A. N'Jie for Applicant

S. F. N'Jie for Respondent

This is an appeal as of right. No leave is needed.
The appeal may proceed forthwith.

(Sgd.) Phillip Bridges
C.J.

This is the paper writing marked
"Annexure "A" and referred to in
the Affidavit of Solomon Francis
N'Jie and sworn on the 13th day
of May, 1974.

(Sgd. J. Omo Agege
COMMISSIONER FOR OATHS

ANNEXURE "B"

IN THE GAMBIA COURT OF APPEAL

CIV. APP. NO. 15/73

BETWEEN:

MOHAMED B. A. BENSOUA ... APPELLANT

AND

ROXY CINEMA LTD. ... RESPONDENT

Mr. Berthan Macauley Q.C. for Roxy Cinema
with him Mr. S. F. N'Jie.

Mr. Semega-Janneh holding for Mr. S. A. N'Jie
for Bensouda.

O R D E R

These are two applications to a single Judge of the Court of Appeal.

The first is that of Mr. Mohamed B. A. Bensouda asking that the sum of D14,923.00 paid into Court by him should be, in the words of the Notice of Motion "treated as deposit, pending the determination of the appeal in the Judicial Committee of the Privy Council."

The second is that of Roxy Cinema Ltd. asking for payment out of court of the D14,923.00 and further that the order for leave to appeal made on the 14th December, 1973 should be struck out.

In the Supreme Court judgment was entered for Roxy Cinema Ltd. in the sum of D14,931.00. This judgment was satisfied by Mr. Bensouda.

Roxy cinema Ltd. then appealed to the Court of Appeal on the question of quantum of damage and that court increased the sum awarded in the Supreme Court. It is the amount of this increase that is partly the subject of these applications. The cross appeal of Mr. Bensouda was dismissed.

The present appellant (Bensouda) sought leave to appeal to the Judicial Committee and leave was granted on 14th December 1973. At the same time counsel for Mr. Bensouda offered to pay the amount of the increase into court and an order was so made.

Leave was granted without the imposition of any conditions and Mr. Macauley who appeared for the respondent argues that such leave is no leave. Mr. Semega-Janneh contends that the decision

of a single judge cannot be latered by that judge, but only by the full court.

I see there is force in both these arguments. I am not disposed to interfere with what has already been done and these applications are both dismissed with costs.

(Sgd.) Phillip Bridges
JUSTICE OF APPEAL

27th March, 1974.

THIS IS THE DOCUMENT MARKED "ANNEXURE B"
and referred to in the Affidavit of
SOLOMON FRANCIS N'JIE and SWORN on the
13th day of May, 1974.

(Sgd.) J. Omo Agege
COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

CONSOLIDATED CIVIL APPEAL NO. 15/1973

and No. 18/1973

BETWEEN:

ROXY CINEMA LIMITED ... APPLICANTS/APPELLANTS

AND

MOHAMED B. A. BENSUDA ... RESPONDENT

- AFFIDAVIT IN REPLY -

I, SHERIFF AIDARA N'JIE, Advocate of the Supreme Court of The Gambia, Gambian, make oath and say as follows:-

1. I am the Solicitor for the Respondent herein.
2. In Sonsolidated Civil Appeals Nos. 15/73 and 18/73 Judgment was entered by this Court against the Respondent herein on the 29th day of November, 1973, for which leave to appeal was sought and obtained on the 14th da day of December, 1973. The Chief Justice's Order of that date annexed.
3. The said leave to appeal was granted by the Gambia Court of Appeal in accordance with Cap. 80 of our laws which says that any party to a suit of £500 (D2,500) or over can appeal to the Privy Council as of right.
4. On the 11th day of March, 1974, the Respon- dent herein moved the Court for an order that the sum of D14,923 deposited by the Respondent in Court "be treated as deposit pending the determination of the Appeal to the Judicial Committee of the Privy Council", because, the only member of the Roxy Cinema Limited, Rydan Ib rahim Rydan left the country with all his family and property on or about December, 1973. Rydan Ibrahim Rydan lastly collected the only ca that he owns sometime in January, 1974, and now resides with his people in Lebanon. There is nothing to levy execution upon should the Respondent succeeds in his appeal. The Company is only nominal.
5. That an appeal from The Gambia Court of Appeal lies in the Privy Council and it would seem there is no provision for variation of orders in our laws after a lapse of two months or more.
6. That I verily believe the Applicants are not in any way entitled to the payment of the said sum prior to the determina- tion of the appeal to the Judicial Com- mittee of the Privy Council, and I asked for stay of execution pending the deter- mination of the appeal to the Judicial Committee of the Privy Council.

(Sgd.) S. A. N'Jie
D E P O N E N T

SWORN AT BANJUL, this
20th day of May, 1974

BEFORE ME
(Sgd.) J. O. Agege
A COMMISSIONER FOR OATHS

IN THE GAMBIA COURT OF APPEAL

CONSOLIDATED CIVIL APPEAL NO. 15/1973

and No. 18/1973

BETWEEN:

ROXY CINEMA LIMITED ... APPLICANTS/APPELLANTS

AND

MOHAMED B. A. BENSOUDA ... RESPONDENT

- NOTICE OF MOTION -

Take notice that the Court will be moved on the day of 1974 at o'clock in the forenoon or so soon thereafter as counsel can be heard by SOLOMON FRANCIS N'JIE that the Court may be pleased to rescind its order made on Friday the 14th day of December, 1973 and to order as follows:-

1. That the order for Leave to Appeal to the Judicial Committee of the Privy Council made on the 14th day of December, 1973, be rescinded.
2. That the sum of D14,923 now in Court be paid to the Applicants forthwith.
3. That the Costs of this Application be borne by the Respondent.

(Sgd.) Sol. F. N'Jie
SOLICITOR FOR THE APPLICANTS

To: Mohamed B. A. Bensouda,
22, Wellington Street,
Banjul.

IN THE GAMBIA COURT OF APPEAL

CONSOLIDATED CIVIL APPEAL NO. 15/1973
and No. 18/1973

BETWEEN:

ROXY CINEMA LIMITED ... APPLICANTS/APPELLANTS

AND

MOHAMED B. A. BENSOUDA ... RESPONDENT

A F F I D A V I T

I, SOLOMON FRANCIS N'JIE of counsel, Gambian, make
oath and say as follows:-

1. I am the solicitor for the Applicants herein.
2. By order of this court made on the 14th day of December 1973 leave was granted to the Respondent to appeal to the Judicial Committee of The Privy Council.
3. It was further ordered that the Respondent shall pay into court by the 14th day of February 1974 the sum of D14,923.
4. The Respondent has since paid the said sum of D14,923 into court.
5. The Respondent has to the best of my knowledge and belief failed to apply with due diligence to the court for an order granting him final leave to appeal.
6. The reason for my knowledge and belief is that neither the Applicants nor their solicitor have been served with any documents relating to the prosecution of the appeal in the Judicial Committee of the Privy Council.

(Sgd.) Sol. F. N'Jie

SWORN AT BANJUL this 23rd
day of July, 1974

BEFORE ME

(Sgd.) J. Omo Agege
COMMISSIONER FOR OATHS

15/18/73

S. F. N'Jie for the Applicant
S. A. N'Jie for the Respondent

S. F. N'Jie: I ask for leave to file a ~~counter~~-affidavit.

Court: Leave is granted. Motion adjourned till next
Session.

(Sgd.) Adeyinka Morgan
PRESIDENT

C/15, 18/73

S. F. N'Jie for Roxy Cinema Ltd.
Secka for M.B.A. Bensouda.

N'Jie: I have nothing to add to what are contained
in the affidavits. We are prepared to give
bond with sureties to refund the money if
we lose the appeal.

Court: Motion to stand over till later.

(Sgd.) Adeyinka Morgan
President

C/15+18/73

Same appearances.

Order read by President.

IN THE GAMBIA COURT OF APPEAL

BEFORE: ADEYINKA MORGAN C.F.R. - PRESIDENT
 S. J. FORSTER - JUSTICE OF APPEAL
 LIVESEY LUKE - JUSTICE OF APPEAL

CIVIL APPEAL NO. 15/73

BETWEEN: ROXY CINEMA LTD. ... APPELLANTS
 Vs.
 MOHAMED B. A. BENSOUA ... RESPONDENT

AND

CIVIL APPEAL NO. 18/74

MOHAMED B. A. BENSOUA ... APPELLANT
 Vs.
 ROXY CINEMA LTD. ... RESPONDENTS

S. F. N'Jie for the Respondents/Applicants
 Pap-Cheyassin O. Secka for the Appellant/Respondent.

Ruling delivered on the 18th day of November, 1974

Adoyinka Morgan C.F.R. - President

R U L I N G

There are two cross applications before us. The first:

- a) That the sum of D14,923.00 now in Court be paid to the Respondents/Applicants (Roxy Cinema Ltd.)
- b) That the order for leave to appeal to the Judicial Committee of the Privy Council, made on the 14th day of December, 1973 be set aside.

The second, that the sum of D14,923.00 deposited by the Appellant/Respondent be treated as a deposit pending the determination of the Appeal to the Judicial Committee of the Privy Council.

The Appellant applied for leave to appeal to the Privy Council and the learned Chief Justice, sitting as a single Judge of this Court, had made the following order:-

" This is an Appeal as of right - no leave is needed. The Appeal may proceed forthwith."

(See page 5 of the Record.)