

Mohamed B. A. Bensouda - - - - - Appellant

v.

Roxy Cinemas Limited - - - - - Respondent

FROM

**THE GAMBIA COURT OF APPEAL**

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ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER 1981

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*Present at the Hearing :*

LORD KEITH OF KINKEL

LORD SCARMAN

LORD ROSKILL

[*Delivered by* LORD KEITH OF KINKEL]

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This is an appeal from a judgment of the Gambia Court of Appeal delivered on 30th November, 1973. The action in question is one for damages for breach of contract and the only issue which arises on the appeal relates to quantum of damages.

Briefly, the facts are that the respondent ("the plaintiff company"), which carried on business as distributors of cinematographic films, entered into an agreement with the appellant ("the defendant"), who is a cinema operator, dated 18th March, 1971. This agreement provided for the supply of films to the defendant by the plaintiff company for a period of two years, the plaintiff company to be remunerated by receiving one half of the receipts which the defendant earned by showing the films. Disagreement broke out between the parties in the summer of 1972 and in June or July of that year the defendant refused to accept any more films from the plaintiff company.

It is not now in dispute that his conduct constituted an anticipatory breach of contract. The plaintiff company did not at once accept this as a repudiation of the contract but in January, 1973, they issued a writ claiming damages and thereby they accepted the repudiation by the defendant.

The trial judge, Mr. Justice Nithianandan, by his judgment dated 27th June 1973, found that the plaintiff company was entitled to damages for breach of contract and assessed these damages at D14,931. This figure was arrived at on the basis that if the agreement had run to its natural term the plaintiff company would have received from the defendant by way of remuneration for supplying the films the sum of D29,862. However, the learned judge found that the plaintiff company had failed to take the proper steps to mitigate their loss and he consequently awarded them only one half of the latter sum.

When the case went to the Gambia Court of Appeal that court (Adeyinka Morgan P., Bridges and Cole JJA.), took the view in substance that there was no material upon which the trial judge could properly arrive at the conclusion that he did on the matter of mitigation of damages. The defendant now appeals to this Board seeking to have the order of the learned trial judge restored in relation to the quantum of damages.

Mr. Jubb has said everything that could reasonably be said on behalf of the defendant and has said it most attractively, but the great problem which confronts him is that the question of mitigation of damages was not explored in evidence to any extent at all. It appeared from the evidence that the plaintiff company had a monopoly of the film distribution market in The Gambia. There were only eight cinemas there, of which four were operated by the defendant. In the circumstances it is plain that there could have been no opportunity for the plaintiff company to market elsewhere in The Gambia the films which the defendant refused to take under the agreement.

It also appeared from the evidence, however, that the principal shareholder of the plaintiff company was also the principal shareholder of two other companies incorporated in Sierra Leone which carried on business of a similar kind in distributing films to cinema operators. The learned trial judge appears to have taken the view that the plaintiff company might have marketed in Sierra Leone, or possibly some other neighbouring country, the films which the defendant refused to take.

But the matter was not gone into in evidence to the extent of making it possible to say that there were indeed any opportunities of marketing these films in Sierra Leone or elsewhere and it is to be noted, in particular, that it might not be reasonable for the plaintiff company to seek to market these films in Sierra Leone in competition with the other companies there which had the same principal shareholder. So, in the result, the conclusion is inevitable that there was no evidence before the trial judge upon which he was entitled to reach the conclusion which he did on the matter of mitigation of damages.

There was a subsidiary point taken in argument which related to the circumstances that the plaintiff company did not raise proceedings, thereby accepting the defendant's anticipatory breach of contract, until six months after that breach. But this is not, in the circumstances, of any materiality whatever.

It follows that the Court of Appeal reached the right conclusion in varying the order of the learned trial judge as regards the quantum of damages and their lordships accordingly dismiss the appeal.



**In the Privy Council**

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**MOHAMED B. A. BENSODA**

v.

**ROXY CINEMAS LIMITED**

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**DELIVERED BY  
LORD KEITH OF KINKEL**