University of Seychelles American Institute of Medicine v Attorney-General

(2013) SLR 17

Egonda-Ntende CJ

22 March 2013 SCCS 97/2011

Counsel A Derjacques for the plaintiff

D Esparon for the defendant

EGONDA-NTENDE CJ

[1] The plaintiff is seeking to recover from the defendant the sum of R 250,212,500.00 with interest at the legal rate plus a multiplicity of other non- monetary relief and costs. The defendant opposes this action, denying that the plaintiff is entitled to the said sum or any portion thereof or to any of the other relief claimed. The defendant prays that this claim should be dismissed with costs.

[2] After protracted hearings over 18 months I reserved this case for judgment. And while I was reviewing the case for judgment I realised that there was an important question of law that had not been addressed by the parties. I invited counsel to address the Court on whether the plaintiff was actually a party to the contract that was the subject of the claim in this case. It had become apparent that the contract in question had been signed and concluded on 23 June 2000 while the plaintiff had been incorporated in Seychelles on 11 January 2001.

[3] The root of the plaintiff's claim is set in paragraphs 1 to 3 of the plaint. I will set them out below:

> 1) The University of Seychelles - American Institute of Medicine Incorporation Ltd, hereinafter referred to as the Plaintiff, was a private medical university, incorporated in Republic of Seychelles and which received a charter to establish itself, in the jurisdiction of Seychelles, from the Government of Seychelles, on the 23 June 2000.
>
> 2) The Government of Seychelles, hereinafter referred to as the Defendant, granted a charter, to the Plaintiff, through an agreement in writing, dated 23 June 2000, to establish[ed] a private medical university, within the Republic of Seychelles.
>
> 3) Inter alia, the said written agreement provided for the Plaintiffs to establish the said, university, confer medical degrees on students, that medical graduates of the Plaintiff would be eligible for licence within the Republic as medical practitioners, that the plaintiff would offer medical degree programs in accordance with United States Medical Licensing Examination programs, and that the said agreement would be in effect as long as the plaintiff operated a University within the Republic. It was further

> agreed that either party may terminate the said agreement by issuing one year's notice of its intention to do so, and in writing.

The defendant admitted the said three paragraphs in its written statement of defence.

[4] In spite of that admission it transpired in evidence that the plaintiff was incorporated in Seychelles on 11 January 2001. The plaintiff was therefore not in existence at the time the agreement was signed on 23 June 2000. The plaintiff could not therefore have been party to the agreement in question. It would follow that the plaintiff was suing on an agreement to which it was a stranger. The party mentioned in the agreement of 23June 2000 is 'University of Seychelles -- American Institute'. This person [if it qualifies to be a person] is not and cannot be the plaintiff.

[5] Mr Derjacques, counsel for the plaintiff, submitted that there was a mistake made by both the parties and that this was excusable under art 1110 of the Civil Code of Seychelles [hereinafter referred to as CCS] by a court. He referred the Court to a number of decisions by this Court on the doctrine of mistake in the law of obligations.

[6] Mr Esparon, counsel for the defendant, submitted that the said provision and whole concept of a mistake was inapplicable as mistake would only relate to the substance of the object of the contract which was not the case here. He submitted that in light of art 1108 of the CCS which provided the essential conditions of a valid contract, this contract before the Court was void ab initio. The plaintiff was not in existence at the time the contract was made. He had no capacity to enter into the contract. The only way he could have taken benefit of it was by novation, which is neither pleaded nor

proved. He submitted that this action should be dismissed.

[7] Article 1110 provides:

> (1) Mistake shall only be a ground of nullity of the contract if it relates to the very substance of the thing which is the object of the contract. It shall not be a ground of nullity if it relates to the person with whom it was intended to enter into a contract, unless the personal qualities of that person are a principal consideration in the agreement.
>
> (2) There is a mistake as to the substance if the parties would not have concluded the contract had they known of the true circumstances. However, the Court, in deciding whether a party made an operative mistake, shall be entitled to take into account whether the mistake was excusable in the circumstances.
>
> (3) The innocent party to a contract that has been rescinded for mistake may claim damages under article 1382 of this Code if he sustains any damage as a result of the rescission of the contract.

[8] It is clear that in the first place in order to consider whether a contract was entered into by mistake there must be two or more consenting parties to the contract who may have made the mistake. This is not the case here. The plaintiff was not a party to the

agreement in question. The plaintiff was not in existence at the time the contract was made. The plaintiff is not the successor in title to the party that signed the contract. So the question of mistake cannot even arise given that in effect there was no contract to which the plaintiff was a party so as to enable the plaintiff to invoke the concept of whether or not the mistake was excusable by court or not.

[9] Secondly as submitted by Mr Esparon the mistake must relate to the substance of the object of the agreement. This is not the case here. I have read the cases referred to me by Mr Derjacques on the issue of mistake and do not find them helpful at all in this case. The doctrine of mistake and whether it is excusable or not does not find application in the circumstances of this case.

[10] It is not in dispute that the plaintiff is a stranger in law to the contract in question. The plaintiff was not a party to the agreement in question for the simple reason that it was not in existence at the time the contract was made. When the plaint claims that the plaintiff signed the agreement in question this is a false averment, regardless of whether it is contested or not.

[11] Ordinarily, in accordance with art 1119 of the CCS, a contract binds only parties to the contract. A third party may take the benefit of a contract instead of the party who entered into the contract but such party must ratify that contract as his contract in accordance with art 1120 of the CCS. This was not done in this case.

[12] Article 1119 of the CCS states:

> Generally a person may only bind himself or stipulate in his own name for his own account, except as provided hereafter.

[13] Article 1120 of the CCS of states:

> Nevertheless, a person may undertake that another shall perform an obligation; but the person who has given the undertaking or has promised that a contract shall be ratified by another party, shall be liable for damages if that party refuses to do so. However, if that party ratifies the contract, it becomes retroactively effective as from the date of the original undertaking.

[14] The other party apart from the defendant that signed the agreement in question did not undertake that another person would undertake or perform its obligations. Neither did it promise that another person would ratify this agreement and take over its obligations. The plaintiff has represented itself as the party that entered into the agreement in question. This is false. I am satisfied that the plaintiff cannot sue on this contract which it neither subscribed to nor ratified. This Court, as a matter of law and policy, will not lend its support to the pursuit of such claims. The plaint is dismissed with costs.