1939 *Present* : **Abrahams C.J.**

DULFA UMMA *et al. v.* URBAN DISTRICT COUNCIL, MATALE.

172—C. R. Matale, 4,737.

Urban District Council—Notice of action given by some plaintiffs only—Right to continue the action—Notice given to Chairman and not Secretary—Validity of notice—Form of notice—Local Government Ordinance, ss. 228 and 230.

Where an action was brought against an Urban District Council by several plaintiffs, some of whom had given notice of action and the others had not, the former may be allowed to continue the action in respect of their claim alone.

A communication addressed to the Chairman of the Urban District Council and received and considered by the Council is a valid notice of action under section 230 of the Local Government Ordinance, although it had not been addressed to the officer authorized by section 228 of the Ordinance to receive notices.

It would be a sufficient notice of action if it stated properly the injury complained of and disclosed an intention to bring an action, claiming specified relief.

APPEAL from a judgment of the Commissioner of Requests, Matale.

B. H. Aluwihare, for the plaintiffs, appellants.

C. E. S. Perera (with him *S. N. B. Wijeyekoon*), for the defendant, respondent.

Cur. adv. vult.

January 31, 1939. ABRAHAMS C.J.—

This case has been admirably argued by Counsel on both sides, though the points taken were mostly of a highly technical nature. The appellants in this case brought an action against the Urban District Council of Matale for recovery of the sum of Rs. 286.75 damages sustained by reason of the respondents having demolished a cement pavement and having encroached upon a piece of land belonging to the appellants for the purpose of constructing part of a public road.

Under section 230 of the Local Government Ordinance, No. 11 of 1920, no action shall be instituted against a District Council for anything done or intended to be done under the powers granted by the Ordinance or by any by-law or regulation made thereunder until the expiration of one month next after notice in writing shall have been given to the Council, stating with reasonable certainty the cause of such action and the name and place of abode of the intended plaintiff and of his proctor or agent, if any, in the cause.

On November 23, 1937, the plaint was filed. On August 30 of the same year, Mr. Sallay, Proctor, wrote the following letter to the Chairman of the Urban District Council, Matale :—

"Dear Sir,—My clients, Dulfa Umma, Abdul Sattar, and M. M. Haniffa (the latter as father and natural guardian of the minors, Abdul Sakkur and Abdul Rahouf), the owners of all those houses and premises bearing assessment No. 12, Taralanda Road, Matale, complain that some workmen of your Council without any intimation to them did demolish a pavement in extent 50 ft. by 3 ft., built opposite the said houses with bricks and cement, and build a drain taking in the said portion of pavement and also a portion of bare land, of the total extent of 97 ft. by 3 ft. My clients complain that their tenants in occupation of these houses are greatly aggrieved at the demolition of the said pavement, and have given notices to quit the said houses.

My clients are very greatly aggrieved that this arbitrary and high-handed method should have been adopted in this connection, especially because at the time the road was first widened a large portion of the said land was given to the Council without compensation.

My clients estimate the damages sustained by them at Rs. 500 and instruct me to demand the same from your Council, with further instructions to sue your Council in default of payment for the recovery of the same with costs of suit.

I shall thank you for an early reply.

Yours faithfully,
(Sgd. M. Y. SALLAY,
Proctor, S. C."

and on September 8, Mr. Sallay followed up this letter by another in the following terms :—

Premises No. 12, Taralanda Road.

"Sir,—Yours of the 4th instant, in reply to mine of the 30th ultimo is duly to hand; and the contents of the same were duly conveyed to my clients. My clients take exception to the bitter adjectives employed by you—'exacting', 'silly', 'preposterous', 'absurd', 'want to drink the blood of the Council', &c.,—and say that you are only adding insult to the injury already committed by you in most arbitrary fashion.

They therefore instruct me to give you notice in terms of section 641 of the Civil Procedure Code that an action will be instituted against you for the recovery of Rs. 300 (restricted damages) caused to them by your demolishing without any notice to them of the cement pavement 53 ft. by 3 ft., built with bricks and foundation, opposite their houses bearing assessment No. 12, Taralanda Road, by the misappropriation of the bricks and foundation stones used for building the said pavement, and the encroachment and wrongful appropriation of an extent of 97 ft. by 3 ft. out of their land Polwatte. My clients state that by the destruction of the pavement the value of their houses has been prejudicially affected.

The above would constitute the causes of the action, which my clients instruct me to file at the expiration of a month from this notice, unless you have the fairness to admit the wrong inflicted by you and pay them the damages due.

My clients, as already stated in letter of the 30th ultimo, are—(1) Dulfa Umma, (2) Abdul Sattar, and S. M. M. Haniffa of No. 633, Trincomalie Street, Matale.

Yours faithfully,
(Sgd.) M. Y. SALLAY,
Proctor".

When the case was called a preliminary objection was taken on behalf of the Council to the effect that due notice in terms of section 230 of the Local Government Ordinance had not been given. The plaintiffs contended that the letter of August 30, was a sufficient compliance with the section. On the other hand it was contended for the Council that as the minor Abdul Faroof (third plaintiff in the plaint) had not been mentioned in the notice, compliance had not been made with the section, which it was argued, demanded that the name of every intending plaintiff should be stated with reasonable certainty. The proctor for the plaintiffs appeared to realize the difficulty which existed, for he moved to delete the name of the third plaintiff from the plaint and to reduce the amount of the claim to Rs. 250.91. This the learned Commissioner refused to permit. In his judgment he agreed with the contention put forward on behalf of the Council that the notice did not comply with the section, namely, in that the third plaintiff's name had been omitted. He went on to say that he did not permit the amendment asked for because to do so "would have altered the whole character and scope of the action and

would not have been permitted". He said that as the notice did not correctly set out the persons claiming relief he held that it was not a due notice as required by law, and he dismissed the plaintiffs' action with costs.

It has been argued on behalf of the appellants that first of all the real plaintiff is Haniffa, the natural guardian of the three minors. That is an argument that I have no difficulty in rejecting. The father in this case cannot be the plaintiff because he himself claims no rights nor have any wrongs been done to him, and the law does not enable a minor to institute a suit himself but somebody must do it on his behalf. It is also argued that even if the minor Faroof is a plaintiff the required information has been given with reasonable certainty, because in the letter of September 8, it is mentioned that Haniffa is one of the clients. It is further argued that there has been a substantial compliance with section 230 because even if Abdul Faroof is a plaintiff no difference will be made by leaving out his name, considering that Haniffa was mentioned in his capacity as guardian. I fail to follow that argument because in spite of the fact that Haniffa is only a guardian, it is certainly desirable that the Council should have known the number of people whose rights it was alleged to have infringed, as it might have desired to meet the demand made upon it, and the omission of one of the minors from the notice would not have precluded an action being brought on his behalf at a subsequent date.

It was argued for the Council that the notice was bad as regards every-body mentioned in it because according to the terms of section 228 of the Ordinance the notice should have been sent to the Secretary whereas it was directed to the Chairman. I have no difficulty in rejecting that argument because the section states that the notice may be received by the Secretary of the Council, and that does not satisfy me that a communication directed to the Chairman, as in this case, and obviously received and considered by the Council, ought to be regarded as invalid because it is addressed to an officer of the Council not authorized to receive it.

Then it was contended that the letter of August 30, was not a proper notice but might be taken rather as a threat of criminal proceedings which would leave the door open to negotiation between the parties. In support of this argument I was referred to *Norris v. Smith* [1], which led me to the consideration of *Lewis v. Smith* [2]. Both these cases are distinguishable from this case on the facts. I do not think that one should demand a particular form of words for a notice. The question as to whether there was an actual notice of the intention to institute an action, should be decided by seeing whether the injury complained of is properly stated, and an intimation disclosed that an action will be brought claiming some specified relief. The fact that the communication states that the action will be instituted unless the claim is met does not I think remove it from the category of notices to place it in the category of a mere letter of courtesy, the writing of which indicated that negotiations for a rectification of the wrong are expected. Mr. Aluwihare said very aptly that

[1] *10 Ad. & El. 188.* [2] *Holt. 27.*

both the letters from the plaintiffs' proctor merely contain specifically what they otherwise would contain impliedly, since the defendant can always prevent the action by payment of the demand made.

In my opinion the notice is not bad as regards those plaintiffs who are mentioned therein. The question arises as to whether the learned Commissioner was wrong in refusing to permit an amendment of the plaint in the manner sought by the plaintiffs' proctor, that is by the deletion of Abdul Faroof's name and the consequential reduction of the claim for damages. I am quite unable to understand what the learned Commissioner means when he says that the amendment sought would have altered the whole character and scope of the action and would not have been permitted. It has not been shown to me how the Council would have been prejudiced had the amendment been permitted nor has any authority been cited to me in support of the refusal. It seems to me that to deprive the other plaintiffs of their cause of action merely because by some slip the name of Abdul Faroof was not inserted in the notice would be a grave injustice. Of course compliance with the provisions of section 230 is necessary, and non-compliance with respect to any particular plaintiff disables him from joining in the action brought by the others, whatever may be his rights to bring an action separately and subsequently. But that is a very different thing from disqualifying the rest of the parties on account of a tiny error made as regards one of them.

It happens, perhaps too frequently in this Court, that the language which the Legislature has chosen to employ in enacting certain rules of procedure compels the Court in applying the principles of construction to hold that non-compliance with a rule is fatal to an action. But I see no such compulsion on me in this case. Civil procedure should be a vehicle which conveys a litigant safely, expeditiously and cheaply along the road which leads to justice, and not a juggernaut car which throws him out and then runs over him leaving him maimed and broken on the road.

This appeal must be allowed with costs. I set aside the judgment and order the case to proceed in due course.

Set aside.