

sation, any such claim would arise only on the occasion of the appellant leaving the land without fault and, in view of the forfeiture for misconduct, I do not consider that native custom would recognise any such claim in this case.

5 In my opinion, therefore, the appeal should be dismissed with costs.

BERKELEY, J. (Nig.) concurred with the judgment of KINGDON, C.J. (Nig.).

Appeal dismissed.

10

YASKEY v. CITY COUNCIL OF FREETOWN (No. 2)

West African Court of Appeal (Kingdon, C.J. (Nig.), Macquarrie,
15 Ag. C.J. (Sierra Leone) and Berkeley, J. (Nig.)):
October 10th 1932

20 [1] Civil Procedure — appeals — appeal in forma pauperis — application to appeal in forma pauperis granted only where applicant's worth below £5 — pension to be included in assessing worth: An application for leave to appeal to the West African Court of Appeal *in forma pauperis* can only be granted by that court on proof that the applicant is not worth £5, his wearing apparel and the subject-matter of the litigation excepted, but including any pension payable to him (page 336, line 33—page 337, line 14).

25 [2] Courts — West African Court of Appeal — appeals — leave to appeal in forma pauperis — West African Court of Appeal may give leave if applicant's worth below £5 — pension to be included in assessing worth: See [1] above.

30 The applicant brought an action against the defendants in the Supreme Court. The Supreme Court (Macquarrie, J.) gave judgment for the defendants, the City Council of Freetown, and the applicant applied unsuccessfully to the court for leave to appeal *in forma pauperis*.

35 The applicant applied to the West African Court of Appeal for (a) leave to appeal against the judgment of the Supreme Court; (b) such appeal to be *in forma pauperis*; and (c) an order exempting him from payment of court fees under the West African Court of Appeal Rules, 1929, r. 31, in the event of his application not being granted.

40 The court granted leave to appeal and made an order exempting the applicant from payment of court fees.

Case referred to:

- (1) *Kydd v. Liverpool Watch Committee* (1908), 24 T.L.R. 257; on appeal, [1908] A.C. 327; (1908), 99 L.T. 212, followed.

Legislation construed:

Supreme Court Rules (Laws of Sierra Leone, 1925, *cap.* 205), O.XVI, r. 21:

“Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth £5, his wearing apparel and the subject matter of the cause or matter only excepted.”

West African Court of Appeal (Civil Cases) Ordinance, 1929 (No. 9 of 1929), s.6A:

The relevant terms of this section are set out at page 336, lines 12—14.

West African Court of Appeal Rules, 1929, r. 8:

“Every appellant shall give security to the satisfaction of the Court below, either by deposit or by bond . . . for payment of all such costs as may be awarded to any respondent by the Court.”

r. 30: “In all matters for which no express provision is made by these Rules the practice and procedure hitherto prevailing in appeals from each Court to which the West African Court of Appeal Order in Council 1928 applies shall apply in appeals from that Court, in so far as they are not inconsistent with these Rules.”

r. 31: “The fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned The Court below may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, . . . dispense, if it sees fit, with payment of any fees.”

Beoku-Betts for the appellant;
Boston for the respondents.

KINGDON, C.J. (Nig.):

This is an application for leave to appeal against a judgment of Macquarrie, J. delivered on February 8th, 1932 and further, for an order that the applicant may be at liberty to prosecute such appeal *in forma pauperis*.

The application for leave to appeal is in order, and this court has already intimated that it will be prepared to grant it. The question then arises whether leave should be given subject to the usual conditions or whether the application to proceed *in forma pauperis* should be granted. On this, two points arise, *viz.*: First, has this court power to grant leave to prosecute an appeal *in*

forma pauperis? and secondly, if it has, should the grant be made on the merits of this case?

5 The applicant has already made an application to the court below for leave to appeal *in forma pauperis* and been refused. But the present application is not an appeal from that decision either in form or in substance, for the powers of this court in respect of the matter in question are very much wider than those of the court below. In particular, s. 6A of the West African Court of Appeal (Civil Cases) Ordinance, 1929 gives this court a very wide
10 discretion both in the matter of entertaining an appeal and on the question of the terms upon which leave may be granted. It reads as follows: "Notwithstanding anything hereinbefore contained the Court of Appeal may entertain any appeal from a Court below on any terms which it thinks fit."

15 At first sight it might appear that r. 8 of the West African Court of Appeal Rules, 1929 is in conflict with this. Rule 8 says that every applicant shall give security either by deposit or by bond for the respondent's costs. This seems, by implication, to rule out any procedure *in forma pauperis*. But r. 30 of these same West African
20 Court of Appeal Rules indicates clearly that these Rules do not pretend to be comprehensive. Rule 30 lays down the practice and procedure to be adopted in all matters for which no express provision is made. The procedure *in forma pauperis* is one of these matters for which no express provision is made. It is therefore
25 governed, in accordance with r. 30, by the practice and procedure hitherto prevailing in appeals in the Supreme Court of Sierra Leone: see Supreme Court Rules, O.XVI, r. 21. We are of opinion that s. 6A of the West African Court of Appeal Ordinance gives us power to entertain the application now before us. We express no
30 opinion as to the powers of the court below in regard to the granting of leave to appeal on conditions other than those imposed by r. 8.

35 Upon the merits we accept the affidavit of the applicant, which is the only evidence we have before us, but it does not enable us to grant him the order he desires. In para. 5 of his affidavit the applicant states that besides his wearing apparel and the subject-matter of this action he is not worth the sum of £5, but in the next paragraph he states he is in receipt of a pension of £2.10s.0d. monthly.

40 These facts are on all fours with the facts in the case of *Kydd v. Liverpool Watch Committee* (1). In that case an applicant for leave

to appeal *in forma pauperis* made an affidavit that he was not worth £25, his wearing apparel and the subject-matter of the appeal alone excepted, and that he was in receipt of a pension as a retired police constable of £1.8s.0d. a week, but that the amount was inadequate to provide the necessities of life for himself and his wife after paying 8s.6d. rent. The pension was not assignable except for the benefit of his family, and it was held that the appellant had not shown that he was not worth £25 within the meaning of O.XVI, r. 22, of the Rules of the English Supreme Court, and therefore he could not be admitted to appeal *in forma pauperis*. 5 10

On that precedent we are bound to hold that the present applicant has not shown that he is not worth the sum of £5, and to refuse his application to appeal *in forma pauperis*.

Counsel for the applicant has asked us, if we do not grant him leave to appeal *in forma pauperis*, at any rate to make an order dispensing with payment of fees under r. 31 of the Court of Appeal Rules. 15

We think that we have power to make such an order, and that in all the circumstances of this case it would be a just and proper one to make. The order will be that the applicant do have leave to appeal subject to the following conditions: 20

(a) The appellant shall within one month from this date give security to the satisfaction of the court below either by deposit or by bond in the sum of 25 guineas for payment of all such costs as may be awarded to any respondent by the court. 25

(b) The appellant shall be exempted from the payment of the fees specified in Appendix B to the West African Court of Appeal Rules, 1929, and from payment into the court below of the amount of the expense of making up and transmission to the court of the record of appeal. 30

(c) The appellant shall within one month from this date give notice of the appeal to the defendants, and to such others, as respondents, as the court below thinks fit to direct. 35

MACQUARRIE, Ag. C.J. (Sierra Leone) and BERKELEY, J. (Nig.).
concurred.

Order accordingly.

40