In my view, the appeal ought to be allowed and the matter referred back to the trial judge for him to find out the question raised by first defendant in his affidavit whether he is an accounting party or not. When this has been done he would then be in a position to order the accounts or dismiss the application.

C. A.
1962
THOMAS AND OTHERS v. KPEHO AND ANOTHER.

[COURT OF APPEAL]

JAMAE SILLAH . . . . . *Plaintiff/respondent*

v.

JOHN MOIWO . . . . . *Defendant/appellant*

Freetown
Nov. 12, 1962

Ames P.
Bankole Jones Ag.C.J.
Dove-Edwin J.A.

[Civil Appeal 15/62]

Tort—Assault—False imprisonment—Quantum of damages—Alluvial Diamond Mining Act (*Cap.* 198, *Laws of Sierra Leone*, 1960), *s.* 22.

Appellant (a police officer) arrested respondent (a petty trader) at Bombohun near the Liberian border at about 9 a.m. The arrest was made pursuant to section 22 of the Alluvial Diamond Mining Act, subsection (2) of which provides that "Where any person is arrested . . . such person . . . shall, as soon as is practicable, be brought before the nearest magistrate."

Appellant, who had a search warrant, took respondent into a house and searched him, expecting to find some diamonds on him, but found none. Thinking that he must have swallowed the diamonds, appellant decided to take respondent to Bo Hospital in a motor vehicle. On the way to Bo they stopped for petrol at Pujehun, but appellant did not bring respondent before the magistrate there. At about 3.30–4.00 p.m., they reached Bo, where respondent was taken to the hospital and an enema was administered to him without his consent. After being taken to the police station, respondent was taken back to the hospital, where his stomach was X-rayed, and then back to the police station. No diamonds were discovered, and respondent was released.

Respondent brought an action against appellant for assault and false imprisonment. The Supreme Court (Cole J.) gave judgment for respondent, and awarded damages of £600. Appellant appealed on the ground that the damages were excessive.

Held, allowing the appeal, that the judge must have acted on some wrong principle in awarding damages.

The damages were reduced from £600 to £100.

John H. Smythe (Acting Attorney-General) for the appellant.
Samuel H. Harding for the respondent.

AMES AG.P. This appeal is only as to the quantum of damages awarded by the Supreme Court against the appellant for assault and false imprisonment of the respondent.

The matter arose in this way.

Section 22 of the Alluvial Diamond Mining Act, Cap. 198, is (as far as is relevant):

"(1) Any . . . member of the police force may arrest without a warrant any person whom he has reasonable cause for suspecting to have committed, or to be about to commit, any offence against this Act and may seize any

diamond . . . which he has reasonable grounds to suspect to be, or to be about to be, derived from, or employed in, the commission of the offence.

"(2) Where any person is arrested, or any diamond . . . is seized under the provisions of subsection (1) of this section, such person . . . shall, as soon as is practicable, be brought before the nearest magistrate."

The appellant, who is a police officer, arrested the respondent, a petty trader, under the provisions of subsection (1), at Bombohun, which is near the Sierra Leone/Liberian frontier, at about 9 a.m. one day last year. He took him into a house and searched him, expecting to find some diamonds on him, but found none. He had a search warrant. He did not release the respondent, thinking that he must have swallowed the diamonds which he (the appellant) had expected to find. So he took him in a motor to Bo Hospital. The nearest magistrate to Bomhohun is at Pujehun. So not only ought he to have taken him to that magistrate, but also it would have been very convenient to do so, because it is on the way to Bo, and a stop was made there to fill up the petrol tank. Up to this point the respondent was in lawful custody and the appellant not at fault.

What time they left Pujehun is not stated, but apparently they reached Bo at about 3.30–4.00 p.m. There the respondent was taken to the hospital and an enema was "forcibly administered" to him (by "forcibly" the learned judge means "against his consent" and not violently or against struggles); then he was taken to the police station; then back to the hospital, where this time his stomach was X-rayed, and then back to the police station. Neither the enema nor the X-ray had discovered any diamonds and the respondent was released at 9.40 p.m. on the very same day.

On these facts, that is to say, on what happened after leaving Pujehun, the learned judge awarded damages of £600, being £250 for assault (the enema and the X-ray) and £350 for false imprisonment (from leaving Pujehun until release at 9 p.m.).

Everyone must sympathise with respondent and agree with the learned judge that he "was put to a great deal of mental suffering, disgrace and humiliation." Even so, the figure of £600 is so much higher than what I should have expected as to suggest that the learned judge must have acted on some wrong principle.

He said in his judgment:

> "As regards damages I think a very serious view should be taken of this case. Although the attention of the defendant was called by a solicitor, Mr. Berthan Macaulay, to the illegality of his acts, the defendant persisted in the continuance of the acts complained of."

Mr. Macaulay handed to the police officer a copy of the Constitution of Sierra Leone and a copy of a judgment of Watkin-Williams J.

No doubt police officers have instructions as to carrying out their duties in connection with illegal trafficking in diamonds, and no doubt their instructions extend only to what is lawful, and if a police officer goes beyond that, he makes himself liable in tort, as happened here in this case. If the learned judge meant by this passage that a police officer, intending and attempting to carry out his duties, must, if a lawyer tells him that what he is doing is unlawful, immediately desist, or defer further action while he sits down and reads the Constitution of Sierra Leone and any judgment or judgments handed to him by the lawyer, then with all respect to the learned judge (and Mr. Macaulay) I disagree entirely.

Even allowing for this erroneous consideration in assessing the damages and reducing them on that account, I cannot think that the high figure can have been due to that only and think that there must also be some other error in principle.

I would allow the appeal and reduce the damages to £100, being £75 for assault and £25 for false imprisonment, which figures allow for the fact that the learned judge took a serious view of the incident.

[COURT OF APPEAL]

Freetown
Nov. 12,
1962

BABADI JALLOH . . . . . *Appellant*

v.

HENRY BECKLEY . . . . . *Respondent*
(Police Sergeant 225)

Ames Ag.P.,
Bankole Jones
Ag.C.J.,
Dove-Edwin
J.A.

[Civil Appeal 12/62]

Tort—Action against public officer—Public officer defended by Crown Law Officer—Fees of court—Whether fees "payable by Government"—Supreme Court Rules, Ord. 51, r. 2—Whether opposing party can raise issue of party's failure to pay fee.

In September, 1961, appellant (a diamond dealer) sued respondent (a police sergeant) for conversion of two diamonds. On October 9, respondent entered an appearance, and notice thereof was given to appellant. The memorandum and notice were signed: "D. M. A. Macaulay, Acting Senior Crown Counsel and Solicitor for Defendant." The defence was signed and filed by D. M. A. Macaulay, "Acting Senior Crown Counsel, Crown Law Office, Bo." No fees were paid for the entry of appearance or for filing the defence. On March 29, 1962, plaintiff's solicitors took out a summons for an order that "the appearance entered and the defence filed be set aside for irregularity and be taken off the file on the ground that no fees have been paid for filing the said documents in breach of Order 51, r. 1. . . ."

Order 51, r. 1 (1), of the Supreme Court Rules provides: "The fees . . . contained in Appendix B hereto are fixed and appointed to be and shall be taken in the court . . . and by any officer, paid wholly or partly out of the public moneys, who is attached to the court."

Rule 2 provides: "No fees . . . shall be taken in respect of any proceedings where such fee . . . would but for the provisions of this rule be payable by Government. . . ."

The Supreme Court (Cole J.) held that the fees were "payable by Government" and, therefore, came within the exemption provided by rule 2.

Held, dismissing the appeal, that the opposing party cannot challenge a proceeding on the ground that a party has not paid the correct court fee.

The court (Ames Ag.P.) said, obiter, that the fees in the instant case did not come within the exemption provided by rule 2.

Berthan Macaulay for the appellant.
John H. Smythe (Acting Solicitor-General) for the respondent.