Freetown
Nov. 14
1962

Ames Ag.P.,
Dove-Edwin
J.A.,
Marke P.J.

[COURT OF APPEAL]

JOSEPH M. KAMANDA . . . . . *Respondent (Appellant)*

v.

MOHAMMED K. GAMANGA . . . . *Petitioner (Respondent)*

[Civil Appeal 27/62]

Elections—House of Representatives—Validity of election—Petition alleging corrupt and illegal practices and non-compliance with the Electoral Provisions Act, 1962—Whether corrupt practices may have affected outcome of election.
Electoral Provisions Act, 1962 (*No.* 14 *of* 1962), *ss.* 64, 85, 89.

At the election for the House of Representatives on May 25, 1962, appellant defeated the S.L.P.P. candidate, Bavoray Gamanga, in the Kenema North constituency by 229 votes. Respondent brought an election petition alleging that sections 25 and 74 of the Electoral Provisions Act, 1962 (the Act), had not been complied with and that appellant and his agents, in particular the paramount chief of Gorama Mende Chiefdom, A. K. Kanja, had been guilty of corrupt and illegal practices.

The Supreme Court (Bankole Jones Ag.C.J.) held that the election was conducted in accordance with the principles laid down in the Act and that such non-compliance with the Act as there may have been did not affect the result of the election. But the court also held that the corrupt and illegal practices committed by A. K. Kanja for the purpose of procuring the election of appellant prevailed so extensively that they could be reasonably supposed to have affected the result of the election.

One of the "corrupt" practices relied on by the court was the alleged interference by A. K. Kanja with a public meeting convened on May 11 by the S.L.P.P. for its candidate. The court said: "On the whole of the evidence regarding this allegation I find that although the paramount chief cunningly yet openly canvassed for the respondent, he did not 'interfere' with the meeting in the sense in which he could be penalised under sections 85 and 87 of the Act. Although this by itself . . . would not constitute good ground for avoiding the election, yet viewed from his previous and future activities, it appears to supply proof of an organised modus operandi on his part."

Held, allowing the appeal, that, having found that A. K. Kanja did not "interfere" with the meeting on May 11 within the meaning of section 85 of the Act, the court erred in taking this incident into account in deciding that Kanja's corrupt and illegal practices might have affected the outcome of the election.

Cyrus Rogers-Wright for the appellant.
Berthan Macaulay for the respondent.

DOVE-EDWIN J.A. This is an appeal arising out of the elections held in Sierra Leone on May 25, 1962, which resulted in the respondent, J. M. Kamanda, being declared duly elected.

There were three candidates in the Kenema North constituency, namely, J. M. Kamanda, B. Gamanga and M. A. Conteh. It was a very keenly contested election, resulting in Kamanda having 9,829 votes, Gamanga 9,600 votes and Conteh 8,381 votes.

Against this result the petitioner, M. K. Gamanga, issued an election petition challenging the result of the election as provided for in the Electoral Provisions Act, 1962, No. 14 of 1962.

In his petition he complained of two major acts which he submitted should avoid the result of the election. They were these:

(1) Non-compliance with section 64 of the Electoral Provisions Act, No. 14 of 1962, and

(2) the corrupt and illegal practice committed by the respondent, Kamanda, and his agents, in particular the paramount chief of the Gorama Mende Chiefdom.

The petitioner relied on paragraphs 3 (1) (*a*), (*b*) and (*c*) of his petition to support his first complaint of non-compliance with section 64 of the Electoral Provisions Act. The learned trial judge carefully considered this ground in detail and found that B. Gamanga in fact polled 455 votes to the respondent's 45 votes in the area in which petitioner complained that the irregularities occurred, and decided against petitioner on this ground. A decision with which I respectfully agree.

As to the other ground, namely, that the respondent and his agents, and in particular Paramount Chief A. K. Kanja, were guilty of corrupt and illegal practices, the learned trial judge found that there was no evidence of this, but, on the principle that it is not necessary to prove agency as between a person who is proved to have committed election offences and a candidate, a point conceded by counsel for respondent, the learned trial judge proceeded to examine the grounds relied upon by petitioner to avoid the election.

It appears that the main complaint here was the allegation made against Paramount Chief A. K. Kanja.

Counsel for petitioner relied upon four incidents described, as the learned trial judge says, in paragraphs 3 (iii) (*a*), (*b*) and (*c*) of the petitioner's petition. These incidents were alleged to have occurred on May 8, 1962, and May 25, 1962.

As to May 8, 1962, and May 23, 1962, the learned trial judge accepted the evidence as to each incident and found each incident proved.

After reaching the above decisions the learned trial judge went on to consider whether the corrupt practices laid at the "doorstep" of Paramount Chief A. K. Kanja, even though on the evidence not proved to be an agent for the respondent, but clearly committed for the promoting or procuring of the election of the respondent, so extensively prevailed that they may reasonably be supposed to have affected the result of the election.

In considering this the learned trial judge said that on the evidence the chief appeared to have embarked on a campaign of corrupt practices for the sole purpose of influencing the free will of the electors of his chiefdom, albeit the largest chiefdom of the constituency. He then cites the incidents of May 8, 1962, May 11, 1962 (although he had found that on this date the chief had not interfered with the election so as to bring his action within sections 85 and 87 of the Act), and also May 25.

In my view, there was no evidence to support the statement of the learned trial judge that Chief Kanja cunningly yet openly canvassed for the respondent. Such evidence as there was was that the chief canvassed for the respondent quite legitimately and openly, and I think the learned trial judge went too far when he said, dealing with the incidents of May 11:

" Although this by itself, as was conceded by Mr. Macaulay, would not constitute good ground for avoiding the election, yet viewed from his previous and future activities, it appears to supply *proof* of an organised modus operandi on his part."

The learned judge then went on to say this:

" On the evidence the paramount chief appeared to have embarked on a campaign of corrupt practices for the sole purpose of influencing the free will of the electors of his chiefdom, albeit the largest chiefdom of the constituency."

He then cites incidents of not only May 8 and 23, but also May 11 as if what happened on May 11 was improper.

In this state of mind the learned judge went on to consider whether the activities of the chief so " extensively prevailed " that they may reasonably be supposed to have affected the result of the election.

Here, I think, with respect, the learned trial judge allowed himself to be swayed by a matter that was totally irrelevant to the point he was considering since he himself had exonerated the action of May 11, 1962.

It is with this in mind that the learned trial judge found that the will of the paramount chief " may have affected " the result of the election.

In my opinion, without disturbing the learned judge's finding on the facts in respect of the two incidents of May 8 and May 23, I think he put too much emphasis on the happening of May 11 and allowed this to influence his finding as to the majority which the respondent got.

This, in my view, goes into the heart of the matter and I would allow the appeal.

Freetown
Nov. 15,
1962

Ames Ag.P.,
Dove-Edwin
J.A.,
R. B. Marke
P.J.

[COURT OF APPEAL]

MOHAMED KALLON *v.* REGINA

[Criminal Appeal 24/62]

Criminal Law—Larceny—Receiving stolen property—Whether accused knew property had been stolen.

Appellant was convicted of larceny of a radio valued at £30 10s. 0d. The theft was alleged to have occurred on April 3, 1962. Appellant said it was impossible for him to have stolen the radio as he had been in prison when the theft took place. The Acting Attorney-General confirmed appellant's alibi before the hearing of the appeal, but said that he would attempt to uphold a conviction for receiving stolen property. Appellant had sold the radio to another man for £20.

Held, allowing the appeal, (1) that the evidence could not support a conviction for receiving stolen property; and

(2) That the price of £20 for a second-hand radio costing £30 10s. 0d. was not such a low figure as to warrant the inference that the vendor knew it had been stolen or unlawfully obtained.

The appellant appeared for himself.

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