BANGURA *v.* TEJAN KABBA and ALIKALI KARGBO

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 19th, 1964
(Civil App. No. 18/63)

[1] Constitutional Law—judiciary—dismissal—local courts—dismissal cannot be ante-dated: In the absence of any specific statutory provision to the contrary, notice of the termination of the appointment of a judicial officer cannot be ante-dated and takes effect either on the date on which it is given or afterwards (page 19, lines 8–40).

[2] Courts—native courts—president—termination of appointment—termination cannot be ante-dated: See [1] above.

[3] Employment — termination — on notice—judicial officer—notice cannot be ante-dated: See [1] above.

The appellant brought an action against the respondents in the Supreme Court claiming (a) a declaration that his purported dismissal from office by the first respondent and the purported appointment of the second respondent in his place were *ultra vires;* (b) that he was still in office; and (c) an injunction to prevent the second respondent from functioning in that office.

The appellant was president of a native court until July 9th, 1962, when the first respondent, then acting district officer, after investigating complaints against him held a ballot to find the most acceptable president and the second respondent was chosen by this method. The appellant had declined the invitation to participate in this ballot and, as from July 9th, ceased to sit as president. The first respondent reported the situation to the provincial secretary and the appellant's appointment was terminated "with effect from July 9th, 1962" in a document signed by the resident minister.

The appellant brought the present proceedings in the Supreme Court. The judge found that the appellant had not been formally dismissed and that the second respondent had not been formally appointed in his place. Nevertheless, he refused to grant the declaration and the injunction, and dismissed the appellant's claim.

On appeal, the appellant contended that the person who dismissed him was not empowered to do so, that the dismissal could not be antedated in the absence of a specific statutory provision, and that, for these reasons, he should be granted a declaratory judgment and injunction.

Statutes and Order construed:

Interpretation Act (No. 46 of 1961), s.14(d):

"[A]ll orders having legislative effect and all rules and bye-laws shall be published in the *Gazette* and shall have the force of law upon such publication or from the date named therein."

s.34: "Where a power to make any appointment is conferred by any enactment, then, unless the contrary intention appears, the authority having power to make such appointment shall also have power to remove, suspend, dismiss, re-appoint or re-instate any person appointed by it in exercise of the power."

Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act (Laws of Sierra Leone, 1960, *cap.* 53), s.3(1):

"Where by any Act a Minister is empowered to exercise any powers or perform any duties, he may by a delegation notified in the *Gazette* depute . . . officers . . . to exercise those powers subject to such conditions . . . as the Minister may prescribe. . . ."

Ministers' Statutory Powers and Duties (Transfer of Functions) (No. 2) Order, 1962 (Public Notice No. 86 of 1962), s.2:

"[T]here shall be substituted for the expression 'Provincial Commissioner' wherever it occurs in any Act the expression 'Resident Minister'."

Luke for the appellant;
Fewry for the respondent.

AMES, Ag. P.:

The appellant, by his writ dated August 21st, 1962, claimed (a) a declaration that his purported dismissal by the first respondent from his office as president of the native court of the Tonko Limba chiefdom in the Northern Province and the purported appointment of the second respondent to that office were *ultra vires* and of no effect; (b) a declaration that he, the appellant, was still the president, and (c) an injunction to prevent the second respondent from functioning as president. The claim was dismissed, and this appeal is made from that dismissal.

The learned judge found the fact to be that the appellant had not been formally dismissed and the second respondent had not been formally appointed in his place. There are several grounds of appeal but they amount to this, that the learned judge was wrong not to grant the declaration that the appellant was still president and the injunction against the second respondent.

In July 1962 the first respondent was the acting district officer

of the division in which this chiefdom is situated. He had received complaints against the appellant *qua* president of the native court. So he went there to investigate the matter and found that there was no confidence in the appellant. He was of the opinion that there ought to be a change of president, and he held a ballot to find the most acceptable person. The appellant was invited to be a candidate amongst others, but he declined. The second respondent was elected, and the first respondent announced the result there and then. All this happened on July 9th, 1962, and so far from there being anything wrong with this procedure, it seems to me that the district officer was doing his plain duty.

The first respondent then returned to his headquarters to make his report and recommendation to the provincial secretary. The appellant did not sit on the court after July 9th, and alleged that the reason was that the district officer had purported to dismiss him. There was no satisfactory evidence that he had. I think that it was more likely to have been because it would obviously have been most embarrassing for him to have done so, after the announcement of the result of the poll, and the departure of the district officer to take steps to give effect to it.

The evidence given in the court below shows that there was at that time a misconception as to who should be the proper person to terminate the appointment of the president. It was thought to be the provincial secretary. This misconception continued up to and during the trial of the action.

Formerly, the provincial commissioner appointed the president. This was provided by the now repealed Native Courts Act (*cap.* 8), s.8. Section 34 of the Interpretation Act, 1961, applies to s.8 of the Native Courts Act, and so formerly the provincial commissioner was also the proper person to terminate the appointment.

Later on, the power to appoint, and consequently also to terminate, was transferred to the resident minister, by the order published as the Ministers' Statutory Powers and Duties (Transfer of Functions) (No. 2) Order, 1962. This order was made on August 1st, 1962, but took effect as from May 3rd, 1962, the date named therein, because of the provisions of s.14(d) of the Interpretation Act, 1961.

By a delegation dated August 13th, 1962, and published as Public Notice No. 89 of 1962, under the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act (*cap.* 53), the resident minister delegated his powers under s.8 of the Native Courts Act to the Provincial Secretary. This delegation was notified in the Gazette on

September 6th, 1962, and so became effective on this latter date, according to the provisions of s.3(1) of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act (*cap.* 53).

The Native Courts Act (*cap.* 8) was repealed by the Local Courts Act, 1963, with effect from March 12th, 1963. On July 9th, 1962, however, and at the time of the trial in the court below, the only person who could terminate the appointment of the appellant was the resident minister. There is the document, Exhibit A, signed by the resident minister, terminating the appellant's appointment and doing so "with effect from July 9th, 1962."

It remains to consider the effect of this document. It is not dated. Obviously it could not have been signed on July 9th, when the first respondent was making his investigation and had made no report. There was no evidence as to the exact date on which it was signed by the resident minister. It was before "about the end of last August," meaning of 1962, because that is when the provincial secretary forwarded it to the district officer. The appellant first became aware of it on September 18th, 1962, when he saw a copy of it posted up on the court notice board. He also said that on that date he received the notice. It is not clear whether this means by seeing it on the notice board or whether a copy was given to him.

Could it have taken effect from July 9th? In other words, could it be ante-dated in the same way that legislation can? I cannot find any specific statutory provision enabling it to take such effect. It would be most inconvenient if the termination of the appointment of a judicial officer could be ante-dated. What would be the effect on warrants of arrest issued by him, and decisions made, sentences imposed and carried out and such like after the ante-date? So inconvenient would it be, that if it could be ante-dated, I would expect to find some provision of the law to meet these inconveniences, and I can find none.

To terminate an appointment requires a positive decision inside the mind. That decision is made on a certain date in time, and requires some act to give effect to it. That act may be contemporaneous with or after the date in time. I do not see how it can be before. To ante-date it is to say that the act existed when it did not. In my opinion, the document, Exhibit A, took effect on the date it was made, and the nearest one can get to that on the evidence is "about the end of August," and not before, and that was a few days, perhaps 10, after the date of the writ.

What then should have been done? The grant of a declaratory

judgment is at the discretion of the court. The trial judge gave judgment on September 10th, 1963, more than a year after the termination became effective. He declined to make a declaration and dismissed the appellant's action. With respect, I think that that was the proper decision, although I do so for different reasons. I would dismiss the appeal.

BANKOLE JONES, C.J. and DOVE-EDWIN, J.A. concurred.

Appeal dismissed.

MINJOU JALLOH and SALIFU JALLOH *v.* REGINAM

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 19th, 1964
(Cr. App. No. 7/64 and 8/64)

[1] **Evidence—competency and compellability—competency—subsequent finding that witness not competent—trial not vitiated if evidence corroborated:** Where it is subsequently proved that a witness at a trial was not competent, the whole trial is not vitiated if there was other evidence to corroborate the incompetent witness (page 23, lines 26–29).

[2] **Evidence — competency and compellability — competency — witness competent although charged with another offence arising from the same incident:** A witness is not incompetent merely because he himself is charged with another offence arising from the same facts and even though his case has not been heard or concluded (page 23, lines 10–27).

[3] **Evidence—corroboration—accomplices—persons who are not accomplices—coercion—not present at crime:** Where a principal to a crime coerces another into his service in committing the crime, but without compelling their presence at the crime, the person so coerced is not an accomplice to the crime (page 22, lines 25–31).

The appellants were charged in the Supreme Court with murder.

The appellants made an armed raid on a village during which they committed several thefts and wounded three people. They brought the stolen goods to two other men who were waiting unarmed at the edge of the village. Two of the wounded people later died and the four men were arrested and charged with the murder of one of them. Before the trial, the names of the two men who had been