CIV. APP 5/2009

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

P.C. MOHAMED KAILONDO BANYA
KAILAHUN LUAWA CHIEFDOM - APPELLANTS
KAILAHUN DISTRICT

AND

NATIONAL ELECTORAL COMMISSION

AND

PROVINCIAL SECRETARY EASTERN RPOVICNE

AND

MINISTRY OF LOCAL GOVERNEMNT AND
COMMUNITY DEVELOPMENT

AND

ATTORNEY GENERAL AND MINISTER OF JUSTICE

AND

LAMIN VONJO NGOBEH - RESPONDENT

CORAM:
HON JUSTICE P.O. HAMILTON - J.S.C.
HON. JUSTICE N. C. BROWNE-MARKE - J.A.
HON. JUSTICE S.A. ADEMOSU - J.A.

SOLICITORS
OSMAN I. KANU ESQ., STATE COUNSEL FOR APPELLANTS
C.F. MARGAI ESQ & R.B. KOWA E ESQ., FOR RESPONDENT

JUDGEMENT DELIVERED THE 5th DAY OF March 2010
HAMILTON - J.S.C. –

This Appeal is from the Judgment of the High Court delivered on 13th January, 2009 by Hon. Mrs. Justice Adeliza Showers J. in relation to a Paramount Chieftaincy Election held in Kailahun District, Eastern Province of the Republic of Sierra Leone on the 17th January, 2003.

The brief fact of the case is as follows: - The Plaintiff (hereinafter referred to as the Respondent) was a Candidate at a Paramount Chieftaincy Election conducted on a Friday 17th January 2003 at Kailahun for the purpose of electing a Paramount Chief for Luawa Chiefdom, Kailahun District in the Eastern Province of the Republic of Sierra Leone.

The 1st Defendant (hereinafter referred to as the 1st Appellant) was also a candidate at the aforesaid Paramount Chieftaincy election at which said election the 1st Appellant was duly elected and declared as the Paramount Chief of Luawa Chiefdom and subsequently recognized as such Paramount Chief at Kenema, Eastern Province of the Republic of Sierra Leone by His Excellency the President of the Republic on or about 27th January 2003.

By a Writ of Summons dated 6th June, 2003 the Respondent herein then sought a Declaration that the said Paramount Chieftaincy election conducted on 17th March 2003 at Kailahun in which the 1st Appellant was duly elected as Paramount Chief for Luawa Chiefdom, Kailahun District in the Eastern province of the Republic of Sierra Leone and subsequently recognized by His Excellency the President of the Republic of Sierra Leone was fatally irregular

defective, fraudulent and vitiated and was therefore invalid, null and void and of no legal effect. That the Honourable Court cancels and nullifies it and that an injunction be granted restraining the 1st Appellant from holding himself out as or acting in anyway as Paramount Chief of Luawa Chiefdom, Kailahun district.

It was against this background that Judgement was given in favour of the Respondent herein by the learned Trial Judge on 13th January 2009 by declaring the said election of 17th January 2003 irregular and therefore null and void and the recognition by His Excellency the President of the 1st Appellant herein cancelled and nullified and then granted an injunction.

It is against this judgement dated 13th January 2009 that the Appellants herein especially the 1st Appellant has now appealed against on the following grounds: -

1. The Learned Trial Judge erred in Law when she held in her judgement that the Defendant did not rebut the claim by the Plaintiff that people of lower ages voted at the election nor did she take cognisance of the fact that the Plaintiff failed to prove that the election was fraught with fraud and multiple voting. In her judgement at page 29, the Learned Trial Judge had this to say ".....The Plaintiff and his witness $P.W_2$ gave an instance of a Chiefdom Councilor whom they knew and who was their relation who had his name called and a 14 year old boy answered and voted for him. This evidence has not been controverted by the defence." In fact the Appellant did not only deny the

allegation in his pleadings but also led (DW_4) evidence to rebut the allegation as indicated at page 19 – 20 of the judgement----------. He (DW_4) stated that it would not have been possible for any impersonation of the Chiefdom Councilors as the town chiefs, and the section chiefs of the chiefdom were present and they all knew these people. He said all the candidates were present and they saw the persons called out as chiefdom councilors and none of them raised an objection to any of them.

2. The Learned Trial Judge erred in Law when she held for the Petitioner that there was high level of unauhorised proxy, multiple voting and rampant impersonations of individual votes without any or any sufficient evidence substantiating these allegations and without the Petitioner proving the said allegations in accordance with the required standard of proof.

3. The Learned Trial Judge erred in Law when she relied on the Government guidelines as the basis of her judgement after she had previously held that the said Government guidelines do not have the force of law in the case intituled CC: 800/2006 S. NO. 80 **NGANDI TAMBA AMADU SOKOYAMA VS. P.C. SHEKU AMADU TEJAN FASULUKU SONSIAMA** III unreported.

4. The judgement is against the weight of the Plaintiffs' evidence.

Counsel for the Appellants Osman I Kanu Esq. did raise four (4) grounds of Appeal. In my considered opinion grounds 1,2 and 4 are basically identical and I shall deal with these three grounds as one in this Appeal.

The basic issue for determination of these grounds of Appeal could be put in these, two questions: -

i. Was the Paramount Chieftaincy election of 17th January, 2003 fraught with fraud and multiple voting with a high level of unauthorized proxy and impersonation of voters? This question amounts to an importation of criminality into the whole electoral process.

ii. Did the Respondent lead enough evidence to prove the allegations of fraud in a civil matter in accordance with the required standard of proof which is "proof beyond reasonable doubt"?

When this appeal came up for arguments on the 7th July, 2009 Counsel for the Appellant Osman I. Kanu Esq. whilst relying on his synopsis of arguments submitted on point of law that the rule of law relating to evidence in Civil matter where an allegation of fraud by way of impersonation which is criminal requires a higher standard of proof the Respondent herein did not meet relying on the Nigerian case of **Ofodile Vs. Chiwuba (1993) 1 N.W.C.R 151**. Counsel further submitted that the 14 year old boy was never called in evidence to show that the irregularity complained of substantially affected the election result in a material way citing **Adelola Vs. Owoade (1999) 9 N.W.L.R 30** wherein the Court of Appeal in Nigeria concluded that an irregularity affecting a

minority of lawful voters would not upset the election of a candidate who scored the majority of lawful voters.

As regards this submission it will be seen later in this judgement that there were other factors which did affect the genuiness of the entire electoral process. The other factor will be revealed in the evidence as is shown in this Judgment.

Counsel for the Respondent R.B. Kowa Esq., while relying on his synopsis submitted that the Plaintiff/Respondent called a witness to testify on the seriousness of the allegations together with the exhibits tendered at the trial coupled with the testimonies of PW_1, PW_2 and DW_1, the Respondent did discharge the onus of proving his case as required by law.

What evidence was led by the Respondent in proof of his allegations? This can be briefly looked into by considering some salient evidence led by PW_1, PW_2 and DW_1 (Lamin Vonjo Ngobeh, Lamin Bunumbu Ngobeh and Dr. Kai Moses Kpakiwa the Provincial Secretary, Eastern Province).

$P.W_1$ the Plaintiff/Respondent said inter alia at pages 56-63 of the Records: "----------Prior to the election it is the responsibility of the Minister to compile a list of Councillors to be gazetted; thereafter the councilors and the candidates would check if their names are in the list in the gazette. This is to be the record of voters to take part in the Paramount Chieftaincy election---------- It serves as a guide to

the candidates, Councillors and citizens of Luawa Chiefdom. There was no such gazette before the Declaration of rights and during the election itself. The list of Councillors used on the election was on A4 paper instead of the gazette---------- There must be three publications of the said gazette before the election. I complained to both the Provincial Secretary, the D.O. and the Electoral Commission about the law and they said they would use the list as this was what the government gave them to use. They said if I have any objection I could do so later but that they were going on with the election. I saw the gazette dated the 21st January 2003 after the election of 17th January, 2003. That was the first publication of the gazette which is dated 21st January 2003. ------- This means that the election was conducted without an official chiefdom Councilors---------- I see exhibit A which is the A_4 paper titled list of councilors revised chiefdom councilors list – 2002---- It is true the election was conducted in accordance with exhibit A. I did complain to the Provincial Secretary----------"

PW_2 Lamin Bunumbu Ngobeh in his testimony said inter alia at pages 66 – 69 of the records: -

> "---------- I see exhibit A. It is the revised councilors list, Luawa Chiefdom, Kailahun District. It was the documents used for voting at the Paramount Chief election. It was from this document chiefdom councillor names who were entitled to vote were called to vote---------- on the day of the election I recognized the chiefdom councilors whose names were being called. The names corresponded with the people who were being called except in some instances that some names where the persons who came

out were not the persons carrying those names for example one Lamin Tejan Ngobeh who is my brother who was living in Freetown, when his name was called someone else responded to the name and voted. I knew him before that day and I do not now remember his name. I informed the Petitioner accordingly. He protested to the Provincial Secretary. The Provincial Secretary recall that he could petition after the election------- I told the court that children who were not tribal authorities were allowed to vote. The children answered to the names of recognized tribal authorities names. The petitioner complained to the Provincial Secretary---------- I see exhibit B government Gazette dated 21/1/03. It was not used as the basis for the election----------"

DW_1 Dr. Kai Moses Kpakiwa the Provincial Secretary, Eastern Province who is an important Government Official that conducted the election said inter alia at pages 78 under cross examination: -

> "-------The names of chiefdom councilors should be gazetted three times. The names of the chiefdom councilors were not gazetted. I have no idea that it was subsequently gazetted. I see exhibit A. I have seen it before. I saw it before the election. Yes I had in my possession exhibit A when I was conducting the election. I now say I did not have exhibit A with me when conducting the election. I see exhibit B with me when conducting the election. The document is dated Tuesday 21st January 2003. Yes the election was conducted

on 17th January 2003. The election took place before the gazette was published. The purpose of compiling the list of chiefdom councilors is to enable the candidate to know who the chiefdom councilors are----------"

It is worthy to note that DW_2 Lamin Bongay Ngobeh who was a candidate and now the Chiefdom Speaker and the 1st Appellant (DW_4) Mohamed Kailondo Banya did corroborate these pieces of evidence at pages 80 and 82 of the records.

The above are the salient pieces of evidence led by the Plaintiff/Respondent upon which he has predicated his claim for relief since the entire election was based on fraud, impersonation and criminality. Does the above salient piece of evidence satisfy the required legal standard of proof? The law is sacrosanct that if the commission of crime by a party to a civil case is directly in issue, the party must prove it beyond reasonable doubt and such crime must be set down specifically in his pleadings. The standard required in law has been met by the Plaintiff/Respondent through the evidence led. The piece of evidence reproduced above is the quality required by law and did lend credence to his case.

In my humble opinion the allegations raised here by the Respondent is not one in which corroboration is even needed and it is for the Respondent to bring in evidence on which he relies and where the evidence is uncontroverted and unchallenged the Court is bound to act on it where it is credible.

I wish to purse here and to state that there was even corroboration in this case. Similarly I wish to state that it is firmly settled law that a Court can and is entitled to act on the evidence of one single witness, if that witness is believed given all the circumstances, and a single credible witness, can establish a case beyond reasonable doubt unless where the law requires corroboration and this present case of fraud is not one of such cases.

In Buhari v. Obasanjo (2005) 13 NWLR (PT941) S.C. 1 at 294 Belgore J.S.C. (as he then was sitting in the Supreme Court of Nigeria) dealing with the election petition against the President of Nigeria in his dissenting Judgment had this to say on the burden of proof in election petition case:

> **"The burden of proof in election matters ought to be reversed so that the burden of proving that the elected winner at an election was duly elected should be on the winner not on the petitioner or the looser. The basic reason being that the burden of proof in cases of fraud and impersonation compiled with multiple voting is the norm of our society as such proof beyond reasonable doubt is not conducive in relation to civil actions such as election petitions. Electoral misconduct such as forgery, fraud, impersonation bribery and thuggery are a Common feature in electoral process".**
>
> **In my humble opinion this remarks of Belgore JSC (as he then was) makes a lot of sense to me and I do endorse it. I shall therefore resolve grounds 1,2 and 4 in favour of the respondent.**

I now go on to consider ground 3 in detail: -

The Learned Trial Judge erred in Law when she relied on the Government guidelines as the basis of her judgment after she had previously held that the said Government guidelines do not have the force of Law in the case intituled CC: 800/2006 S. No. 80 NGANDI TAMBA AMADU SOKOYAMA VS. P.C. SHEKU AMADU TEJAN FASULUKU SONSIAMA III unreported.

I shall reproduce in detail what is contained at pages 166 and 172 of the records which are in the Judgment of the Learned Trial Judge: -

At page 166 it is therein stated:

"Counsel (i.e. Counsel for the Defendants/Appellants) further submitted that with regard the issue of exhibit "A" the conduct of the elections, administrative guidelines such as the "Code of practice for the election of Paramount Chiefs" is not Laws and therefore not legally binding in their own right. Counsel relied on the case of Ngandi Tamba Amadu Sokoyama Vs. P.C. Amadu Tejan Fasuluku Sonsiana II where it was held that these guidelines are not Law and therefore cannot offend the constitution. He also submitted that where Parliament has never made provisions pertaining to matter connected with Paramount Chiefs as provided for by Section 72(5) of the Constitution then in the absence of such legislation, it is the general principle that one should fall on existing laws and the relevant statute which governs the election of paramount

Chiefs in Sierra Leone is the Provinces Act, Cap 60 of the Laws of Sierra Leone and not the guidelines or Code of practice".

At page 172 this is what the Learned Trial Judge said: -

"Now, Counsel for the Defendants has contended that the Code of practice and the Guidelines are not Laws and are therefore not legally binding in their own right and cited authority to that effect. That may well be. The position is that Parliament has yet to make the necessary Laws pertaining to matter connected with Chieftaincy. The Government in its wisdom had formulated these Codes of Practices and Guidelines for the conduct of elections of Paramount Chiefs to standardize the procedure. It is the event these codes and Guidelines are not complied with rendering the elections suspicious and unreliable; surely it would not be against public policy for the Court to disregard the breaches."

I shall at this point reproduce section 72 (5) of the Constitution (Act No. 6 of 1991):

"Subject to the provisions of this Constitution and in furtherance of the section, Parliament shall make Laws for the qualification, election, removal and other matter connected with chieftaincy."

Since the enactment of the Constitution no Law has been enacted by Parliament as is provided for in section 72 (5) of the Constitution except recently – The Chieftancy Act 2009 (Act No. 10). With the greatest respect to Counsel for the Appellants all what the Learned Trial Judge did was to comment with the provision of the Constitution at the back of

her mind that Parliament has not made any enactment relating to Chieftaincy.

With due respect to Counsel for the Appellant the Learned Trial Judge did not rely on the Government Guidelines as the basis of her judgment. The basis of her judgment is summed up this way when she said at page 72 of the records: -

> "However, in my view the use of unauthorized list of Chiefdom Councilors exhibit "A" in the conduct of the elections was a serious flaw in the conduct of the election. I believe the evidence of the Plaintiff that there was multiple voting and impersonation of voters during the election. **This was caused principally by the use of unauthorized list of Chiefdom Councilors exhibit "A" as a result of which use there has been caused an irreparable flaw in the conduct of the election. The elections are therefore declared null and void."** (Emphasis mine)

In my humble opinion, the remarks of the Learned Trial Judge on the "Code of Practice and Guidelines for the conduct of elections for Paramount Chiefs" were merely obiter dicta. It is settled Law that a ground of appeal should be based on an issue in controversy and must arise from the decision on appeal. It should constitute a challenge to the ratio of the decision. An appeal is not normally against an obiter dictum nor should an Appellant appeal on a finding made by a Court which has no bearing on the final order made by that Court. The Law is therefore settled that is not everything that is uttered by the Learned Trial Judge in the Course of arriving at a decision that is binding. His or herreasoning

while in motion may gather many imports some of which merely helped him or her in his or her decision-making process and others which are of no essence. It is only the quintessence of the reasons for his or her decision that is best described as the ratio decidendi. A ground of appeal must therefore not only relate to the decision but should further be a challenged to its ratio decidendi.

There is, therefore, always the need to ascertain the ratio decidendi and thus simultaneously satisfies the need to determine what binds the parties in a particular decision. When the quintessence of the reason for the decision has been sifted what is usually left are mere obiter dicta, and an appellant's criticism cannot be founded upon an obiter dictum, as an obiter dictum does not form the foundation for a ground of appeal.

As already stated in this judgment the statement of the Learned Trial Judge was an obiter as it was an observation by the Trial Judge which was misconceived as being of binding effect on the parties. I see no merit in this ground of appeal and it is accordingly dismissed.

In the final analysis therefore this appeal in my humble opinion is unmeritorious and is hereby dismissed with cost, such cost to be taxed. The decision of the High Court dated 13th January, 2009 is hereby affirmed.

In my opinion I will order that a caretaker Paramount Chief or Regent Chief be appointed to oversee the administration of the said Luawa Chiefdom, Kailahun District immediately until proper elections are held.

HON. JUSTICE P.O. HAMILTON J.S.C