

Civ. App. 16/2010

IN THE COURT OF APPEAL OF SIERRA LEONE
IN THE MATTER OF THE CHIEFTAINCY ACT NO. 10 OF 2009

BETWEEN:

MOHAMED BAI SAMA KAMARA - PETITIONER/APPELLANT
AND

MOHAMED BAI MARU KAMARA - 1ST RESPONDENT
AND

THE NATIONAL ELECTORAL COMMISSION - 2ND RESPONDENT

ADVOCATES:

Y.H. WILLIAMS & ASSOCIATES FOR THE APPELLANT

JENKINS-JOHNSTON & CO. FOR THE RESPONDENT

JUDGMENT DELIVERED THIS 25th DAY OF JANUARY, 2011

ROBERTS J.A.

BACKGROUND

Mohamed Bai Sama Kamara the appellant herein was a candidate of the Luninaya Ruling House, Lokosama Chiefdom Port Loko District at the Chieftaincy election which was conducted on the 5th December 2009. The Respondent Mohamed Bai Maru Kamara was also a candidate in the said Chieftaincy election for the Lokosama chiefdom. The Appellant, the Respondent and about five other candidates all contested the election. At the first round of the election the appellant was in the lead, followed by the 1st Respondent who came second but as no candidate polled 55% of the votes as required by section 15(2) of the Chieftaincy Act 2009, there had to be a run off. The Appellant and the 1st Respondent as the two candidates with the highest votes contested the run off.

After the run off the 1st Respondent was declared winner and duly elected as Paramount Chief of the Lokomasama Chiefdom Port Loko District. The Appellant being dissatisfied with the conduct of the said election filed a petition in the High Court complaining of several irregularities and malpractices. The several irregularities and malpractice as contain in the

petition (Dated 10th December 2009 and subsequently amended on 2nd February 2010) are summarised as follows:-

The Appellant complained that before the first ballot the Declaring Officer announced to the Chieftdom councillors that there will be no second ballot and this prompted some of the Appellant's (Petitioner's) supporters to leave for their villages immediately they casted the ballots in the first round. They were thus deprived of the opportunity to vote in the run-off. That it was only about 20:30 hours on the same day of the elections that the Declaring Officer announced that there will be a run-off between the Appellant and the 1st Respondent that same day and they were given an hour to campaign. That before the hour allocated had elapsed voting commenced in the absence of the Appellant. The Appellant on his return protested frantically but was ignored. Also the Appellant alleged that the 1st Respondent and his supporters lured and held hostage 15 Chieftdom Councillors and recognised supporters of his, keeping and detaining them in the residence of P.C. Bai Sama Lamina Sam I. That the said Councillors were lured into the said residence by Hon. Kombor Kamara, Hon. Binneh Bangura and one Alhaji Wurie also known as "Wurie Palava" who were recognised supporters of the 1st Respondent, and were held hostage till about 23.45 hours when they were released. That a report of the said false imprisonment of the Appellants' supporters was made to the Declaring Officer, P.C. Koblo Queen and the Police. When the Police went to investigate they were chased out of the said residence. Further the Appellant complained that the registered number of voters in polling station No. 3 was 127 but when the votes were counted on the 2nd ballot the total number of votes cast at that Station was 129. Also that during the second ballot a good number of people who voted for the 1st Respondent were not chieftdom councillors and therefore not entitled to vote. Also that the second ballot was marred by widespread intimidation and violence perpetuated by the 1st Respondent and his supporters. The Appellant alleged therefore that the conduct of the said election was improper and irregular and that he was thereby deprived of victory at the run-off election. The 1st Respondent filed a Response and a Cross-Petition which in effect prayed that the election results be declared valid.

The 2nd Respondent also filed a Response and Cross-Petition.

At the end of the trial, judgment was given against the Appellant and his petition was dismissed with costs. Being dissatisfied with the judgment of the trial Judge delivered on the 26th April 2010 the Appellant has appealed to this court.

THE APPEAL

The Appellant filed a Notice of Appeal dated 30th April 2010 which contained the following grounds:

- “1. That the Learned Trial Judge was wrong in fact and in law and therefore misdirected himself in arriving at his decision when he held that the paramount chieftaincy election held at Lokomasama were not improper.

PARTICULARS

- i. Having held at paragraph 46 of his judgment that the fact “that there were discrepancies is beyond dispute” the Learned Trial Judge was wrong to have held that such discrepancies were not sufficient to destroy the credibility of the election held at Lokomasama on 5th December 2009.
2. That having correctly stated the law in regard nullifying the results of elections to wit: “The principle to be deduced from the cases cited, is whether the transgressions or omissions would affect the result” I have no reason to believe that they (the omissions/transgressions) would have done so”[Parenthesis added]. The Learned Trial Judge thus failed to consider and/or properly apply the law to the evidence led before him.
3. That the Learned Trial Judge in arriving at this decision took into consideration matters that were never before the court.

PARTICULARS

- I. The Learned Trial Judge was wrong to have held that PW3, Dauda Kamara was a Chiefdom Councillor when the witness at all times material before the court maintained that he was not a Chiefdom Councillor.

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4. That the learned Trial Judge was wrong in law and fact to have held at paragraph 44 of his judgment that to his mind "... the question arises, if the Petitioner was fully aware of the allegations of hostage taking and attempted bribery of voters, why did he sign page 5 of exhibit C? His signature is clear evidence that he agreed on 5 December, 2009 that the election was conducted properly and fairly."

PARTICULARS

- i. There is no basis under the Chieftaincy Act No. 10 of 2009 or any other law for the conclusion reached by the learned Trial Judge.
 - ii. That the conclusion goes contrary to the evidence of DW6, the Provincial Secretary at page 50 of the record of proceedings to wit: "No Chiefdom councillor signed in Exh. C page 51. There is nothing in it about the chiefdom Councillors obeying the lawful order of their newly elected P.C. 1 cannot say whether the document I drew up has a legal basis."
 - iii. That Exh. C is quite clearly not the document envisaged by section 16 of the Chieftaincy Act No.10 of 2009.
5. In holding in his conclusion that "Even if PW4,5,6,8 & 9 had voted for the petitioner, he would still have come second in the second round" the learned trial judge failed to consider and/or properly consider inter alia the uncontroverted evidence of PW 6, Kadiatu Kamara, at page 20 of the record of proceedings to wit: "We were invited to the house of late Bai Sama, Alhaji Wurie Jalloh took the tax receipt from me. Momoh Lungi, Mohamed Kargbo and Sullay Kamara were all at the house to which I was invited. Alhaji Wurie Palaver collected their tax receipts. He told us the reason. He took out some money and told us to give him the receipts" thereby arriving at a wrong determination.
6. That the Learned Trial Judge in arriving at his judgment completely disregard and/or failed to avert his mind to the Amended Petition

which was filed on the 3rd day of February 2010 pursuant to leave granted by the Court.

7. That the judgment was given per incuriam.
8. That the decision of the learned Trial Judge is against the weight of the evidence.
 - i. The learned Trial Judge's ruling failed to consider the evidence before the court that over 15 Chiefdom Councillors eligible to vote in the second ballot in the paramount chieftaincy elections held at Lokomasama on the 5th day of December 2009 were deprived of their right to vote by the 1st Respondent and his agents.
 - ii. That the Learned Trial Judge in arriving at his judgment failed to avert his mind to the fact that according to DW8, Mr. Quiwa, that 17 chiefdom Councillors who voted in the 1st ballot did not vote in the second ballot.
 - iii. That the Learned Trial Judge was wrong in fact when he concluded at paragraph 39 of the judgment that none of the "Petitioner's witnesses have given evidence that (DW4) actually took out money to give to anybody."
 - iv. That there was no factual basis, the elections having been a secret ballot, for the Learned Trial Judge to assume that "all of those who voted for him (Bai Sama Shebora) in the first round, swung over to the 1st Respondent in the second round, it was easy to see how 1st Respondent triumphed over the Petitioner."

The Appellant and the 1st Respondent filed written submissions respectively. It must be cited however that the 2nd Respondent did not file written submissions and never attended hearings of the appeal.

I intend to deal with the grounds of Appeal in the manner in which they were canvassed in the respective written submissions.

I shall therefore deal with grounds I and II of the appeal together. The Appellant complains that the Learned Trial Judge (LTJ) having correctly stating the law regarding nullifying the results of elections to wit "The principles to be deduced from the cases cited is whether the transgressions or omissions would affect the result" the Learned Trial Judge went on to hold that he had no reason to believe that the transgressors or omission would have done so, when according to the Appellant there was clear and uncontroverted evidence that they did. According to the Appellant's the transgressions referred to in grounds 1 and 2 were categorised into a) the unlawful detention of Chieftom councillors who were known supporters of his and thereby preventing them from voting in the run-off and b) the allegation that person ineligible to vote voted in the said elections. I have reminded myself that the Appellant alleged that the Learned Trial Judge "was wrong in fact and in law and therefore misdirected himself" in arriving at the decision that the elections were not improper. Rule 9(1) of the Court of Appeal rules 1985 provides that appeals "shall be by way of rehearing" which in my view empowers this court to review the decision of the lower court based on the materials before that court in order to discover whether there are material errors of law and fact which vitiate the judgment of that lower court. The burden of showing that a trial judge was wrong in his decision as to the facts lies on the appellant and if the Court of Appeal is not satisfied that the Trial judge was wrong the appeal will be dismissed. In the case of *COGHLAN V. CUMBERLAND* (1898) 1 CH 704 Lindley MR has this to say:

"Even where, as in this case, the appeal turns on a question of fact, the court of appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of

Appeal always is , and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the Court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen."

Of course it must be borne in mind that in situations where the facts are not necessarily in controversy it may perhaps be a question of whether the judge drew the correct or inevitable inference that may lead the Appellate court to uphold or dismiss the appeal accordingly.

With all of the above in mind (as well as the provisions of Rules 31 & 32 of the Court of Appeal Rules) I shall very briefly examine the evidence before the Learned Trial Judge and perhaps see whether he drew the correct or inevitable inference from the evidence adduced before him.

As regards the issue of the unlawful detention of about 15 Chiefdom Councillors who were supporters of the Appellant; the Appellant himself gave evidence, testifying that a supporter of his informed him of their alleged detention. He said he reported to the Permanent Secretary, to the head of NEC staff Mr. Quiwa and then to P.C. Koblo Queen one of the assessor chiefs who informed the police. The Appellant added that he accompanied the police to the residence of P.C. Bai Sama Lamina Sam I. At the residence the police were assaulted and prevented from entering the house and they were therefore unable to secure the release of the Chiefdom Councillors who were detained. The evidence of PW2 Mohamed Kamara , PW3 Dauda Kamara, PW4 Osman Bangura PW5 Morlai Kamara, PW6 Kadiatu Kamara and PW 7 P.C. Bai Koblo Queen II, PW 8 Adama Kamara and PW 9 Abu Bakarr Sillah all testified in support of the Appellant's case corroborating his account in various respects. PW 10 ASP Elijah Moses and PW11 Inspector Abdul Rahman Sillah were the Policemen who went to investigate the alleged detention of the Chiefdom Councillors and were assaulted and prevented from doing their work by young men who were stationed outside the said residence.

All these allegations of detention of Chiefdom Councillors and assault on policemen who went to investigate were denied by the Defence witnesses. I do not think that it can be seriously denied that a number of Chiefdom Councillors were detained and thereby

prevented from voting in the second round or run-off. I say this because there was ample evidence before the Learned Trial Judge both from "partisan" and "non partisan" witnesses that this was the case. Firstly there were witnesses who were originally in the house where the alleged detention took place but later came out and voted in the second rounds. See the evidence of PW2 and PW3 at page 204 -206 of the Records. PW2 stated that he reported the detention to the appellant. Secondly there were other witnesses who testified that they were detained and never released until after the second ballot. See testimony of PW 4 (page 206 of Records) PW5 (page 206 of Records) PW6 (page 207) PW 7 (page 208 of Records) PW 8 (Page 209 of Records).

Thirdly the evidence of P.C. Koblo Queen which is at 208A of the Records confirms that the appellant reported the alleged detention to him and he informed the LUC Mr. Max Kanu to investigate the allegation. He was indeed considered by the Learned Trial Judge as an independent witness.

Fourthly there is the evidence of police officers who were detailed by the LUC to go and investigate the report of alleged detention of Chiefdom councillors. See the evidence of PW10 and 11 who were again considered by the learned trial judge as independent witnesses. Indeed their evidence confirms assault on them and that they were prevented from entering the said residence to carry out a lawful investigation. There is therefore ample evidence that several Chiefdom Councillors were detained. But were they detained by the 1st Respondent and his supporters and agents?

Again practically all the witnesses for the Appellant mentioned the name of Alhaji Wurie Jalloh AKA Wurie Palava as one of the supporters of the 1st Respondent who detained the Chiefdom Councillors.

The learned trial judge observed interestingly that the evidence of Alhaji Wurie Jalloh "shows he is a dodgy character."

Again PW2 at page 204 of the Records stated that

"I do not see Alhaji Wurie Jalloh in court. I voted in the 2nd round. After 1st ballot I saw Alhaji Wurie Jalloh. He spoke with me. He called me into a certain place. It was his house. He was outside, near the court barray. He said he wanted to see me in the house, were there were other people. I went there. I met Hon. Binneh, Hon Komboh. Alhaji Jalloh

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entered also. Pa Wurie said these Honourables were supporting "MB" i.e. the other candidate. He showed me money. He said if we supported him he would give us the money. Some accepted; others did not. Some of them produced their voting papers. I left the house. I forced my way out. I tried to pull another man out. He was Pa Abdul."

PW2 also stated in his witness statement that:

"This was late in the evening. There were celebrations in the township. During the course of the celebrations I was approached by Alhaji Wurie Jalloh also known as "Wurie palava" and he informed me that I should proceed to the residence of the deceased Paramount Chief Bai Sama Lamina Sam I, father of Bai Sama the recently deceased paramount chief of Lokomasama Chiefdom.

I proceeded to the said residence as instructed. When I arrived at the said residence I saw Wurie Palava, Honourable Binneh Bangura, Honourable Kombor Kamara and other persons who I did not recognise and some Chiefdom councillors who had been with me earlier in the day during the course of voting Wurie Palava introduced Honourable Kombor Kamara and Honourable Binneh Bangura to myself and my fellow chiefdom councillors and stated that the men he has introduced are the main supporters of 'MB' (Mohamed Bai Maru Kamara). Myself and my fellow chiefdom councillors were then offered food by Wurie palava. At the same time Wurie Palava produced a bag containing money and said 'this is Le20,000,000.00 it is yours, all you have to do is to vote for 'MB' in the second ballot'. Some chiefdom Councillors agreed some refused the offer, Wurie Palava requested that he looks at our local council tax receipts."

This evidence confirms a sufficient connection and agency between the 1st Respondent and Alhaji Wurie Jalloh, Hon Binneh Bangura and Hon. Kombor Kamara.

Furthermore PW3 also confirmed that the said Alhaji Wurie Jalloh, Hon. Binneh Bangura and Hon. Kombor Kamara were all in the house where the detention took place. Also PW4 under cross examination stated that the 1st Respondent was in the house where the Chiefdom Councillors were allegedly detained.

Even the testimony of Pw8 Adama Kamara who "remained unshaken under cross examination" (See page 376 of Records i.e judgment of learned trial judge) confirmed that they were detained by agents of the 1st respondent.

From the above it is clear and I hold that there was ample evidence that

- a) There were indeed "transgressions" in the form of prevention of eligible councillors from voting in the 2nd round or run-off.
- b) That the "transgressions" were committed by the 1st respondent and or his agents and supporters.

Indeed the learned trial judge himself admitted in his judgment that there were transgressions.

The next question was whether the said transgressions or discrepancies were sufficient to destroy the credibility of the elections held on 5th December 2009.

To answer this question I wish to start by examining the evidence of what number of chiefdom councillors that were prevented from voting as a result of their detention as alleged by the Appellant.

The witnesses for the plaintiff claim that about 15 Chiefdom Councillors were detained and did not vote in the 2nd round or run-off. Also according to PW6 about 3 Chiefdom Councillors who were detained had their tax receipts taken away from them. The Appellant contends that there is evidence that the NEC results showed that 17 Chiefdom Councillors who voted in the first round did not vote in the second round. This indeed could be gleaned from the testimony of DW8 especially in cross examination see page 221 of the Records. In this respect there is evidence that the number of eligible candidates who were either detained and prevented from voting or had their tax receipts taken and had others voting for them, is about or over 15. I have therefore juxtaposed this range of about 15 votes alongside the final results of the 2nd round in which the Appellant polled 172 votes and the 1st Respondent 183 a difference of only 11 votes. The above in my mind indicates that the discrepancies and transgression would most likely and could have affected and influenced the outcome of the election. This must be the correct inference to be drawn having regard to the evidence available to the trial judge. In the case of *GAMANGA V. KAMANDA* 1962ALR SL Bankole Jones Ag CJ has this to say:

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"On the evidence this Paramount Chief appears 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.....

The yardstick, after all, is not whether the corrupt practices did in fact influence the result, but whether they may have influenced it. As I see it, the policy and theory of the law is that every man upon whom the election franchise is conferred should judge for himself who is the best and preferable candidate and give his vote accordingly. In this case, I find that this was not so but that the will of the paramount chief may have affected the result of the election.....

It is obvious that I have come to the conclusion that corrupt practices extensively prevailed. But they prevailed only in one place, namely, the Gorama Mende Chiefdom – the largest and decisive chiefdom in the constituency. The result in this chiefdom was as follows: Bavoray Gamanga 1,877 votes, the A.P.C. candidate 4,119 votes and the Respondent 7,412 votes. The Respondent scored the highest votes in the whole constituency in this chiefdom. How is it possible to say under these circumstances with certainty that the result was not affected by the corrupt practices of the paramount chief even though the result of the entire election produced a narrow majority of only 229 votes in the Respondent's favour? Such a state of things having been proved, I find myself bound to say that the election is avoided on account of the corrupt practices of the paramount chief, A.K. Kanja. I accordingly declare that the Respondent J.M. Kamanda was not duly returned or elected and that the election held on May 25, 1962, is void."

The above case illustrates the guiding principles that is applicable in the instant case. Firstly the conduct and actions of Alhaji Wurie Jalloh, Hon Binneh Bangura and Hon. Kombor Kamara which were committed for the purpose of procuring the election of the 1st respondent must be supposed to have affected the result of the election. Secondly the yard stick is not necessarily whether the corrupt practice or transgressions did in fact influence the election result but whether they may have influenced it. Thirdly the number of the detained Chiefdom Councillors is in my view large enough to change the outcome of the election.

As regards the learned trial judge's opinion to wit that the alleged transgressions did not take place at the Barray where the election was conducted, it is my view that it does not necessarily matter where the transgressions took place and they do not always have to be at the location where the elections are held. See SHERIFF -V- LANSANA 1968-69 ALR SL 14. Indeed intimidations and detention of supporters are not always done or perpetrated at a polling station for all to see and observe.

Again I agree with counsel for Appellant that the number of witnesses who testified as to the detention of Chiefdom Councillors need not correspond with the number of councillors allegedly detained. Assuming for one moment that the allegation was that 200 people were detained I am sure it cannot be suggested that all 200 people should testify to that fact. What is important is the credibility, reliability and consistency of the ones that testify. See also the GAMANGA case above.

In the light of the above considerations I hold that grounds 1 and 2 succeed.

As regards ground 3 of the appeal I would state that even if the learned trial judge held that PW3 Dauda ^{Kamara} ~~Kam~~ was a Chiefdom Councillor when the evidence shows that he was not, I do not see how this takes the Appeal any further and I do not think I would have overturned the decision of the learned trial judge only on this ground.

In Ground IV the Appellant complained that counsel for the 1st Respondent indeed has made heavy weather of the fact that the appellant signed Exhibit C so cannot now complain of irregularities in the conduct of the said elections. I have indeed perused Exhibit C and as well as the Chieftaincy Act No. 10 of 2009 including Section 16 (1) & (2) thereof. There is nothing in the Exhibit C that suggests that that document would or ought to prevent appellant from complaining about the conduct of the election or exercising his right to file a petition in accordance with the said Chieftaincy Act 2009. As was pointed out by counsel for the Appellant not all of the persons required signed Exhibit C. The Permanent Secretary DW 6 in his testimony at page 220 of the Records stated that:

"There is provision in the Act for an Attestation document to be prepared. The document 1 prepared was done in compliance with S. 16 of the Act. No Chiefdom Councillor signed in Ex. C page 51. There is nothing ⁱⁿ it about the Chiefdom

Councillors obeying the lawful order of the newly elected P.C. I cannot say whether the document I drew up has a legal basis.”

It would be useful and relevant to reproduce here section 18(1) of the Chieftaincy Act which provides as follows:

18(1) The validity of the election of any person as a Paramount Chief may be challenged by any candidate or Councillor of the Chiefdom Council within seven days after the declaration of the result of the election by a petition addressed to the High Court on the ground that:-

- (a) the person so elected –
 - (i) is not qualified under section 8;
 - (ii) is disqualified under section 9;
 - (iii) was elected on the basis of any claim of a materially false nature under subsection (2) of section 14; or
- (b) the election was otherwise improper.”

This section enables and empowers a candidate or chiefdom councillor to challenge the validity of an election, and nowhere in the said provision is it stated or suggested that the right to challenge such election would be lost or undermined by the challenger signing the attestation such as Exhibit C. Again as admitted by DW8 Exhibit C could not be described as an Attestation Document as the requirements in section 16 I and II were not fully complied with. It is my view that the learned trial judge erred in coming to the conclusion that he did as regards exhibit C and this ground must also succeed.

As regards Ground 5 I shall only state that for the reasons contained in my consideration of grounds 1 and 2 above this ground also succeeds.

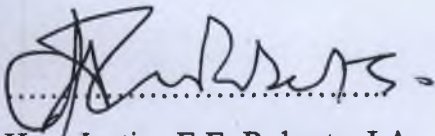
Ground 6 complained that the learned trial judge completely disregarded and failed to avert his mind to the Amended Petition filed on 3rd February 2009. This ground was clearly not robustly canvassed by counsel for the appellant in their written submission and even though the learned trial judge might have failed to avert his mind to the Amended Petition filed or failed to refer to it in his judgment, I do ^{not} think this had any material effect on the judgment nor do I think I would have overturned his decision based on this ground alone.

I have not bothered to consider ground 7 as no particulars were given nor was this ground seriously canvassed in the written submission or in oral arguments.

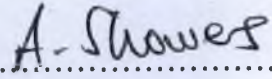
As regards ground 8 this ground must succeed for the reasons given in my consideration of grounds 1 and 2 above.

In the result the appeal is allowed and I make the following Orders:

1. The judgment of the High court dated 26th April 2010 is hereby set aside.
2. The Paramount Chieftaincy Election at Lokomasama Chiefdom, Port Loko District held and conducted on the 5th December 2009 is hereby declared void.
3. There shall be fresh elections to be held and conducted in accordance with the Chieftaincy Act No.10 of 2009 within 4 months of this judgment.
4. The Appellant shall have the cost of this appeal and the cost below. Such cost to be taxed.


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Hon. Justice E.E. Roberts, J.A.

I agree..... 

Hon. Justice A. Showers, J.A.

I agree..... 

Hon. Justice V.M. Solomon, J.A.