

CIV. APP. 24/2013.

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

DR. MOMODU YILLA

APPELLANT

AND

AUGUSTINE A. LUSENI FAMILY

RESPONDENTS

CORAM:-

HON. MR JUSTICE VALESIUS V. THOMAS, JSC

HON. MR JUSTICE E. E. ROBERTS, JA

HON. MRS JUSTICE N.F. MATTURI-JONES, JA

COUNSEL:-

A. Y. BREWAH ESQ. for the Appellant

S. O. TAYLOR ESQ. for the Respondents.

JUDGMENT DELIVERED ON THE 24th DAY OF April 2014.

Thomas JSC.

This is an appeal from the judgment of the High Court (Local Appeals Division) in Bo dated 17th May 2013, allowing the appeal and setting aside the judgment of the District Appeal Court, Bo delivered on the 24th February 2012. Further to that judgment a Notice of Appeal dated the 22nd May 2012 was filed in this Court disclosing six grounds of appeal and additional grounds of appeal were filed by Solicitors for the Appellant.

In view of the first ground of appeal in the additional grounds of appeal, it is unnecessary to deal with the other grounds of appeal as the first additional ground of appeal is adequate to dispose of the appeal. The said additional ground of appeal is in the following terms:

“That the learned judge in the Local Appeals division of the High Court sat in the said court without the aid of two assessors as required by s.41(1) and s.41(4) of the Local Courts Act 2011, as the case involved questions of customary law.”

The Judgment of the High Court (Local Appeals Division) is found on page 160 to 176 of the Records and there is absolutely no evidence therefrom that when the Court heard the appeal, two assessors sat with the Judge. The Judge's notes at the hearing of the appeal are found on page 123 to 127 of the

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Records and these too do not indicate that assessors were present in court with the Judge. The action was initiated by a civil summons issued on behalf of the Respondents herein at the Tikonko Local Court against the Appellant herein who claimed ownership of Respondents land situated in Towama in the Tikonko Chiefdom in the Southern Province of Sierra Leone.

Section 41 (1), (2) and (4) of the Local Courts Act, 2011 provides as follows:

“41. (1) There is hereby constituted a Local Appeals Division of the High Court which shall consist of a Judge of the High court sitting with two Assessors selected by him from a list of experts in customary law drawn up by the Provincial Secretary.

(2) An appeal shall lie from decisions of the District Appeal Court to the Local Appeals Division of the High Court in the following cases:-

(a) all cases governed by the general law, if the case has been heard by a Magistrate at first instance;

(b) in cases governed by customary law-

(i) in criminal cases-

(aa) as of right on any ground of appeal which involves a question of law alone;

(bb) with the leave of the District Appeal Court on any ground of appeal which involves a question of fact or mixed law and fact;

(ii) in all civil cases.

(3).....

(4) The Assessors shall advise the Judge on questions of customary law but the decision shall be vested exclusively in the Judge, who shall record the reasons for his decision.”

It is crystal clear from the above statutory provisions that a properly constituted Local Appeals Division of the High Court consists of “a Judge of the High Court sitting with two Assessors selected by him”. A court consisting of a High Court Judge sitting alone without two assessors selected by him is not competent to deal with any appeal from a District Appeal Court. Section 41(1) deals with the composition of the Court, Section 41(2) deals with the jurisdiction of the Court and Section 41(4) deals with the functions of the assessors in the Court and states the person in the Court who is responsible for the decision of the Court. The case before the High Court (Local Appeals Division) was concerned with both the general law and customary law and consequently the Court had jurisdiction to hear the appeal from the District Appeal Court. But in order to exercise such jurisdiction lawfully, the Court must be validly constituted. The land which is the subject-matter of the dispute is provincial land governed by customary law and one of the issues in dispute is whether the persons who are supposed to convey the property were the ones who actually signed the

Conveyance in favour of the Appellant. The relevant law to determine that issue is customary law. The Appellant's Conveyance is dated the 28th March 2004 and registered in the Office of the Registrar-General, Freetown. That Conveyance is a feature of the general law.

In my judgment the High Court (Local Appeals Division) which heard this appeal was not validly constituted in accordance with the provisions of the Local Courts Act 2011 as submitted by Counsel for the Appellant and conceded by Counsel for the Respondents in this Court on the 27th February 2014. Where a court is unlawfully constituted, it lacks jurisdiction to exercise its judicial power and any decision reached by such a court is a nullity: see Timitimi & ors v Amabebe & anor 14 W.A.C.A 374. It was held by the West African Court of Appeal that the decision of an irregularly constituted court was void as it had no power to adjudicate and its judgment was a nullity. The same applies to this case and I hold that the judgment of the High Court (Local Appeals Division) which delivered its judgment on the 17th May 2013 is a nullity. With respect to the learned judge, he had no authority to sit alone to hear the appeal from the District Appeal Court. He acted without jurisdiction: A leading unreported Supreme Court decision which is relevant on the issue of lack of jurisdiction of courts dealing with provincial land is Daniel Caulker v Komba Kangama Civ. App. 2/74 (judgment delivered on the 18th June 1975). After referring to the Privy Council case of Chief Kwame Asante v Chief Kwame Tawai (1949) which dealt with orders of the Court made without jurisdiction, Chief Justice C. O. E Cole said:


"I shall not confine this legal doctrine to orders only, but would extend it to cover judgments or other decisions of any court. This ought to be the case for, in my considered view, jurisdiction is not only the legal authority but it is also the extent of the power of a court or judge to entertain an action, petition or other proceeding. Due consideration ought to be given to it at any stage – particularly so where that jurisdiction is conferred or taken away by statute".

This is the case here where statute (the Local Courts Act 2011) has specifically provided for the composition of the High Court (Local Appeals Division) in hearing appeals from the District Appeal Court, Bo.

In the premises, the appeal is allowed and I make the following orders pursuant to Section 43(1) of the Local Courts Act 2012:

1. The judgment of the High Court (Local Appeals Division) dated 17th May 2013 is set aside on the ground that the Court was not validly constituted at the time of hearing the appeal.
2. The case is remitted to the said High Court (Local Appeals Division) for a rehearing before a properly constituted High Court with two assessors.

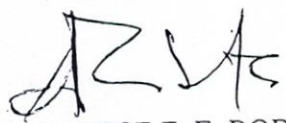
3. The costs of the appeal in the High Court (Local Appeals Division) and in this Court to be taxed and paid by the Respondents to the Appellant, if not agreed.



4. Liberty to apply.

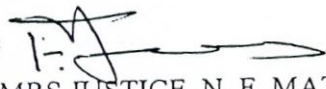
HON. MR. JUSTICE V. V. THOMAS, JSC

I agree



HON. MR. JUSTICE E. E. ROBERTS, JA.

I agree



HON. MRS JUSTICE. N. F. MATTURI-JONES, JA