

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:- THE COMMISSIONER
THE NATIONAL ELECTORAL
COMMISSION,
NORTHERN REGION

AND
THE NATIONAL ELECTORAL
COMMISSION
TOWER HILL
FREETOWN

-APPELLANTS

AND
THE MINISTER OF LOCAL GOVERNMENT
AND RURAL DEVELOPMENT -1ST RESPONDENT

THE PROVINCIAL SECRETARY -2ND RESPONDENT
NORTHERN REGION

ABU THULLAH -3RD RESPONDENT
AND

HASSAN THULLA
BA-BAI LESLIE BAYROH
EDWARD THULLAH
ABDUL RAHMAN THULLAH -PETITIONERS/RESPONDENTS
ARUNA THULLAH
ABDUL P. THULLAH
WILLIAM THULLAH
MOMODU S. KAMARA
HAMID KANU
ALL OF MALAL MARA CHIEFDOM

CORAM

HON. MRS. JUSTICE N. F. MATTURI-JONES, J. A.
HON. MRS. JUSTICE A. SHOWERS J.A.
HON. MR. JUSTICE A. S. FOFANAH, J

COUNSEL:

Miss. B. E. T. Cummings for the Appellant
L. M. Farmer Esq. O. Kanu Esq. Miss A. Suwu and P. Ade
Williams Esq. for the Respondents.
No representation on behalf of the Petitioners/Respondents

JUDGMENT DELIVERED THE 12th DAY OF July 2014

The National Electoral Commission (NEC), the Appellants herein have filed a Notice of Appeal dated 11th February 2014 against the decision of the High Court (Mr. Justice J. B. Allieu) contained in his Ruling dated 30th January 2014.

The grounds of appeal are as follows

- a) That the Learned Judge erred in law and in fact when he ruled on the issues of Revision of the Gazette List and the Declaration of Rights when the application before him was for the grant of an Injunction. The issues of the Revision of the Gazette List and the Declaration of Rights cannot be properly determined on affidavit evidence.
- b) That the Learned Judge erred in law and in fact when he failed to hear the 3rd and 4th Respondent on the issues of Gazetting the List of Chieftom Councillors and the Declaration of Rights (by the calling of witnesses to testify in court) before making such an Order on the issues, thus totally ignoring the rules of natural justice, "*audi alteram partem.*"
- c) That the Learned Judge erred in law when he failed to give due importance to s. 4 (3) of the Chieftaincy Act 2009, Act No. 10 of 2009.

- d) That there was no credible evidence before the High Court that the names of Councillors that were born and bred of Malal Mara were included in the List of Chiefdom Councillors.
- e) That the Learned Judge erred in law when he failed to consider that the Appellant is a Commission established under s. 33 of the Constitution of Sierra Leone 1991 and that it has the power to make regulations and procedures for the conduct of elections and cannot be bound by a specific date to do so.
- f) That the Appellant be granted leave to file additional grounds of appeal.

The Relief sought from the court was that the Order of the Court below dated 30th January 2014 and all subsequent proceedings be set aside and that the Appellant be given a reasonable period within which they should conduct elections taking into consideration that certain internal procedures, mechanisms and logistics have to be put in place before the conduct of the said elections.

The background to the appeal is that the Petitioners are Chiefdom Tribal Authorities of Malal Mara Chiefdom Tonkolili District in the Northern Province of the Republic of Sierra Leone. They are all Aspirants to the Paramount Chieftaincy Elections at Malal Mara Chiefdom which was scheduled to take place on the 6th December, 2013.

The Petitioner alleged that on the 8th November 2013 at Roehen Malal Mara Chiefdom, the Provincial Secretary, Northern Province summoned all Aspirants for the said Paramount Chieftaincy Elections of Malal Mara Chiefdom for a Declaration of Rights at the N. A. Court Barray. That prior to this Declaration, nine Aspirants, the Petitioners/Respondent herein through one of the said Aspirants, **HAMID KANU** had sent a letter of petition dated 24th September 2013 addressed to the District Officer with a copy to the Provincial Secretary, Northern Region. That they also addressed a follow up letter dated 29th October 2013 signed by all the nine Aspirants and sent to the District Officer.

The contents of the said letter include the following complaints.

- "a) That the Chiefdom Councillors list brought by the Provincial Secretary was increased from three hundred and seventy three to five hundred and thirty nine Councillors without the consent of the headman and section chief that have the mandate to do so and that some of the Councillors included were not born and bred in Malal Mara Chiefdom but imported from the nearby Chiefdoms, to name a few **DANIEL A. BANGURA, PA KAPRI KANU** Etc.
- b) That as a result of this increase and the inclusion of new members, former Councillors who are presently active in the Chiefdom affairs were omitted from the list.
- c) That these names were included in the list unknowingly to be Section Chief, Town Chief and Headmen"

A further complaint made by the Petitioners in their Petition was that during the Declaration of Rights held on the 8th November 2013 **MAMOUD S. KAMARA**, a candidate of Nsolia Ruling House and signatory to the follow up letter sent to the District Officer reminded the Provincial Secretary in the presence of other Government officers, Assessor Chiefs and the Regent Chief of Malal Mara Chiefdom about the earlier petition and also informed him that the Gazette was only published once.

They alleged that the District Officer went ahead with the Declaration process and did say in public that "no court will overturn his decision."

The Petitioner alleged that the said District Officer told them that he has sent two Gazettes published on the 30th October and 7th November 2013 to be displayed in the chiefdom court Barray, which information the Petitioner alleged was untrue as these Gazettes contain the same names of tribal authorities despite their petition against the first Gazette publication in September 2013.

They lastly alleged that in addition to the failure of the Provincial Secretary to address the issue of the Petition at the said Declaration of Rights, two of the Petitioners, **MOMODU S. KAMARA** and **HAMID KANU** who were fully qualified to contest the elections were disqualified based on the interpretation of the Chieftaincy Act 2009 of the issue regarding the amalgamation of chiefdoms.

The Petitioners therefore prayed the court to grant an injunction restraining the 1st – 5th Respondent whether by themselves, their servants or agents from taking part in any process or conducting/proceeding with the Paramount Chieftaincy Elections of Malal Mara Chiefdom, Tonkolili District or doing anything in furtherance thereof on the 6th December 2013 or any other subsequent date pending the hearing and determination of the Petition.

They also prayed for grant of an interlocutory injunction along the same lines as prayed for in the interim injunction. Further that **ABU THULLAH** the 5th Respondent therein, his supporters, family members, servants and or agents be restrained from canvassing in the Chiefdom pending the hearing and determination of the Petition.

The Petitioner also prayed the court to nullify the Declaration of Rights conducted by the Provincial Secretary and to order a fresh Declaration of Rights to be conducted following the true process of a Chieftaincy election such as making all necessary corrections to the names of those qualified for publication in the Gazette.

That a date be fixed for the Petition filed to be heard.

By Notice of Motion dated 2nd December 2013 the said Petitioner again applied to the High Court for the same reliefs set out in the said Petition. The application was supported by the affidavit of **ABDUL RAHMAN THULLAH** where he disposed to all the several allegations already contained in his Petition.

Three affidavits in opposition were filed opposing the application. One was sworn to by Lahai M. Farmer Esq. Principal State Counsel on behalf of the 1st and 2nd Respondents. Another was sworn to by **ABU THULLAH** the 3rd Respondent herein and the third by **STEVEN S. KABBA** on behalf of the Appellants.

After hearing arguments from counsel for the parties the learned Judge held that the Plaintiff (the Petitioner/Respondent herein) was right to challenge the Chiefdom Councillors list at the material time and he made the following Orders:

- “1 That the office of the Provincial Secretary North in collaboration with the National Electoral Commission comply with strict adherence to the provisions of Sections 4(i) (a) to (vi), (b), 4 (2) and the whole of Section 5 of the Chieftaincy Act 2009 on or before the 28th February 2014 in relation to the Malal Mara Chiefdom
2. That the list of the Chiefdom Councillors entitled to vote in the Paramount Chieftaincy election of Malal Mara Chiefdom be displayed in all court barrays in the said chiefdom on 3rd March 2014.
3. That all candidates who are qualified to stand in the Paramount Chieftaincy election of Malal Mara Chiefdom carry on their respective campaigns in the said chiefdom after the 3rd March 2014 when the chiefdom Councillors list would have been displayed.

4. That Saturday 29th March 2014 be set as the date of the election of the Paramount Chief of Malal Mara Chiefdom, Tonkolili District.
5. No Order is made as to costs”

It is against these Orders of the High Court that the Appellant has appealed.

Miss B. E. T. Cummings, counsel for the Appellant in arguing her several grounds of appeal submitted that the application before the Learned Judge was for the grant of an injunction but that the said learned Judge went on to consider issues relating to the declaration of rights and the revision of the councillors lists when those issues were not before the court.

Counsel for the Appellant stressed that the submissions made to the court by counsel related to the granting or refusal of the injunction sought and she referred the court to the records of proceedings in the said High Court set out on pages 41-55 of the records of appeal.

We shall at this stage deal with this ground of appeal. The orders made by the Judge have been set out in extenso supra. The judge in his Ruling stated as follows - See page 55 of the Records

“The Petitioners have reiterated that they are dissatisfied with the process in which the Chiefdom Councillors list was revised. The Paramount Chief has not been elected, I think that this is the proper time to apply for orders touching and concerning the chiefdom Councillors list and not after the Paramount Chief would have been elected as this will be an exercise in futility.

This court notes that the office of a Paramount Chief has unlimited tenure. It is therefore imperative that all processes leading to the election of a Paramount Chief be strictly adhered to.”

The Learned Judge thereupon pronounced the Orders made in the said Ruling. No mention is made of the injunction prayed for. That relief was neither granted nor refused.

Counsel for the Appellant has therefore made a clear case that this ground of appeal is well founded and is allowed.

We shall next deal with the other salient ground of appeal.

Counsel for the Appellant referred the court to s. 4 (3) of the Chieftaincy Act 2009 which provides that the election of a Paramount Chief shall not be invalidated by any irregularity in the revision of the Councillors list. She further submitted that the provisions of s. 18 of the said Act cured any mischief caused by the provisions of s. 4(3) of the said Act.

She submitted that even if there were irregularities in the revision process, they should not lead to invalidating the said election. She contended that the Act provides for petitioning post elections and that the Petitioner ought to have waited until after the elections before petitioning. Counsel relied on the decision of Charm J in the case Misc. App 10/13 (E) **Alhaji Mohamed Wattu Gbateka and National Electoral Commission and Others**.

For these principal reasons counsel urged the court to set aside the several Orders already set out supra.

Mr. Farmah, counsel for the 1st and 2nd Respondents endorsed and adopted the submissions of counsel for the Appellant and added that further or in the alternative that at the material time the Petitioner had no cause of action which could be brought to court. He submitted that the Petitioner filed a Petition dated 2nd December 2013 in which he tried to restrain the conduct of the elections of Paramount Chief for the Malal Mara Chiefdom. He pointed out that the ground for challenging the election was that there were a number of irregularities in the Councillors list as well as in the Declaration of Rights.

He submitted that the revision exercise and other anomalies could not be challenged at that material time and referred to the provisions of s. 4 (3) of the Chieftaincy Act 2009 and contended that the Petitioner had no cause of action to bring to the court as he purported to do. Counsel argued that according to the said Act the option open to him at that material time was a criminal action.

Counsel further referred the court to the provisions of s. 18 (i) of the said Act and submitted that it prohibited filing a Petition until after the conduct of the said election and maintained that the conduct of the Paramount Chieftaincy election was guided by the provisions of the said Chieftaincy Act 2009.

He urged that at the date of the Petition in December 2013 the election was still in process as voting had not yet taken place. In his view therefore the petition was premature and the court lacked jurisdiction to hear the application.

This issue in our view is the gravamen of this appeal. Was the learned Judge clothed with jurisdiction to make the Orders he did? Did the Petitioner have a cause of action at the date of the Petition?

Both counsel for the Appellant and for the 1st and 2nd Respondents submitted that the learned Judge erred.

The determination of these questions lies in our view in the consideration and interpretation of the provisions of s. 4 (3) and s. 18(i) of the Chieftaincy Act 2009.

Section 4(3) of the said Act provides as follows

“Subject to paragraph (b) of subsection (i) of Section 18, the election of a Paramount Chief shall not be invalidated by any irregularity in the revision of the Gazette List used for the election, but it is an offence for any person compiling that list to knowingly take into account an inflated number of taxpayers.”

Section 18(i) of the said Act provides that

“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”

It is clear from the Petitioners petition that one of their complaints was about the revision of the Gazette List. They also complained about irregularities in the Declaration of Rights. Can he therefore having regard to the provision of s. 4(3) challenge the conduct of the election on the ground of irregularity in the revision of the Gazette List and the Declaration of Rights?

Counsel for the Petitioner at the hearing in the High Court argued that the Petitioner cannot wait till after the conduct of the elections to complain about a process by which that election can be conducted. Indeed the learned Judge in his Ruling expressed the same view.

It is our view that that problem has been prevented by virtue of the provisions of s. 18 (i) of the said Act. In particular we refer to s. 18 (i)(b) thereof which makes provision for the said election to be challenged if a Petitioner considers the election was, apart from the grounds stated in paragraphs (a) (i) – (iii), otherwise improper.

The provisions of s. 18 (i) of the said Act clearly state the time when a person can challenge the validity of an election which is within seven days after the declaration of the result of the election.

By filing the Petition before the election was even conducted was a clear violation of the provisions of the Act.

We therefore agree with counsel for the 1st and 2nd Respondents that at the material time the Petitioners filed their Petition in the High Court they had no cause of action to bring to court. Their Petition was clearly premature, the election of the Paramount Chief not having been conducted and the result of such election declared.

The Learned Judge therefore erred in making Orders on issues which were extraneous to the application before him.

Now the Appellant has prayed the court to give a reasonable period within which the Commission should conduct the elections in the Malal Mara Chiefdom. As counsel for the Appellant has pointed out under the provisions of s. 33 of the Constitution of Sierra Leone 1991, the Electoral Commission is responsible for the conduct and supervision of all public elections in the country. We shall take the precedent set in the case of Civ. App. 16/2010 Mohamed Bai Sama Kamara vs. Mohamed Bai Maru Kamara and National Electoral Commission 2011 where the Court of Appeal did not give a specific date but ordered fresh elections to be held and conducted in accordance with the Chieftaincy Act No. 10 of 2009 within 4 months of the date of the judgment.

We shall in this case order that the elections for the Paramount Chief of Malal Mara Chiefdom be held within 60 days of the date of this judgment.

In the light of the foregoing the appeal is allowed. The Orders of the High Court dated 30th January 2014 are hereby set aside. No order as to costs.

A. Showers

HON. MRS. JUSTICE A. SHOWERS, J. A.

I AGREE

N. F. Matturi-Jones

HON. MRS. JUSTICE N. F. MATTURI-JONES J.A.

I AGREE

A. S. Fofanah

HON. MR. JUSTICE A. S. FOFANAH J.