

CIV.APP 5/2014

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IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

THE NATIONAL ELECTORAL
COMMISSION, -APPELLANT
TOWER HILL

AND

THE PROVINCIAL SECRETARY -1ST RESPONDENT
NORTHERN REGION

THE DISTRICT OFFICER -2ND RESPONDENT
TONKOLILI DISTRICT

PA. KAPRI SANKAH -PETITIONER/RESPONDENT
Chairman of Ceremonial Chiefs
For himself and on behalf of all
Ceremonial Chiefs in the Yoni Chiefdom

CORAM

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

COUNSEL:

Miss. B. E. T. Cummings for the Appellant
L. M. Farmer Esq. O. Kanu Esq. Miss A. Suw# and P. Ade
Williams Esq. for the Respondents.
A. Y. Brewah Esq. for the Petitioner/Respondent

JUDGMENT DELIVERED THE 11 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

- b) (sic) 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.
- c) 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 Chiefdom 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.*"
- d) 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.
- e) That there was no credible evidence before the High Court that the Revision exercise at Yoni Chiefdom was irregularly done.
- f) 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.

- g) 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 Petitioner/Respondent herein as Chairman of the Ceremonial Chiefs of Yoni Chiefdom, Tonkolili District in the Northern Province of the Republic of Sierra Leone filed a Petition dated 15th November 2013. The Petition was against the conducting of the Paramount Chieftaincy election in the Yoni Chiefdom scheduled for the 8th December, 2013.

The Petitioner alleged in his Petition that pursuant to the said elections a revision of Councillors was undertaken by the Provincial Secretary, Northern Province, the District Officer, Tonkolili District and the National Electoral Commission. He further alleged that the said revision of Councillors was improperly done as Councillors in at least three Sections of the Yoni Chiefdom did not take part in the said revision process.

It was also alleged that clerks and police were used to affix their thumb print against the names of those Councillors who did not participate in the said revision process. Further that in other sections of the chiefdom, the section chiefs and other Councillors also did not take part in the said process and that the wrong publication of the Sierra Leone Gazette was used by the Provincial Secretary, all of which anomalies resulted in the said revision process being irregularly done.

The Petitioner therefore prayed the court to grant an interim injunction pending the hearing and determination of the Petition; an interlocutory injunction against the holding of the said Paramount Chieftaincy elections in the said Yoni Chiefdom on the scheduled date of 8th December 2013 and any other relief that the Court considers necessary to the Petition.

By Notice of Motion dated 14th November 2013, the said Petitioner again applied to the High Court for an interim injunction pending the hearing of the said application; an interlocutory injunction against the said Paramount Chieftaincy election in the said Yoni Chiefdom and any other relief as the Court may consider necessary. The application was supported by the affidavit of the said Petitioner, wherein he deposed to the several allegations already contained in his Petition.

Two affidavits in opposition were filed opposing the application. One was sworn to by **STEVEN S. KABBA** on behalf of the National Electoral Commission, the Appellant herein.

The other was sworn to by Lahai M. Farmah Esq. Principal State Counsel on behalf of the Appellant and 1st and 2nd Respondents.

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 from 1st April 2014 to 30th April 2014 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 in relation to the Yoni Bana Chiefdom
2. That the list of the Chiefdom Councillors entitled to vote in the Paramount Chieftaincy election of Yoni Bana Chiefdom be displayed in all court barrays in the said chiefdom on 1st May 2014.
3. That all candidates who are qualified to stand in the Paramount Chieftaincy election of Yoni Bana Chiefdom carry on their respective campaigns in the said chiefdom after the 1st May 2014 when the chiefdom Councillors list would have been displayed.
4. That Saturday 31st May 2014 be set as the date of the election of the Paramount Chief of Yoni Bana 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 42-48 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. After setting out the various Orders in his Ruling the learned Judge added this note "The above orders having been made it is now immaterial to rule on the issue of injunction." Indeed on perusing the Orders no mention is made of the injunction prayed for. The 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 Char^MJ in the case **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 Yoni Chiefdom. He pointed out that the ground for challenging the election was that the revision of the Councillor's list was improperly done.

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He submitted that the revision exercise 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.

In response to these submissions Mr. A. Y. Brewah, counsel for the Petitioner submitted that at the hearing of the Notice of Motion for the injunction all the matters pertaining to the election were before the court as the pleadings contained in the Petition and the supporting affidavit as well as the notice of motion and the affidavits in support and in opposition thereto were all before the court. He contended that the learned Judge was therefore apprised of all the evidence pertaining to the matter.

Counsel therefore submitted that the learned Judge was correct in making the orders he did.

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 Petitioner’s petition that his complaint was about the revision of the Gazette List. 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?

Counsel for the Petitioner has 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.

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 Petitioner filed his Petition in the High Court he had no cause of action to bring to court. His 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 Yoni 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 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.

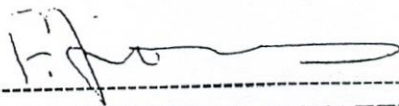
We shall also order that the elections for the Paramount Chief of Yoni Chiefdom be held within 60 days of the date of this judgment.

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.



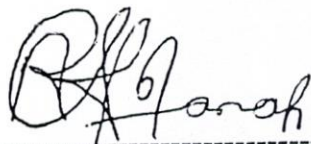
HON. MRS. JUSTICE A. SHOWERS, J. A.

I AGREE



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

I AGREE



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