



IN THE COURT OF APPEAL OF SIERRA LEONE

CIV. APP. 44/2016

BORBOR FEFEGULA-KAMBA

APPELLANT

AND

MARGARET G. BAIO-GBANIE

RESPONDENT

REPRESENTATION:

PATRICK JOHN-BULL ESQ.

COUNSEL FOR THE APPELLANT

CHARLES VANDY ESQ.

COUNSEL FOR THE RESPONDENT

CORAM:

HON. MR. JUSTICE SENGU M KOROMA

JSC (PRESIDING)

HON. MRS. JUSTICE MUSU D. KAMARA

JA

HON. MR. JUSTICE JOHN-BOSCO ALLIEU

JA

JUDGMENT DELIVERED ON THE 16TH OCTOBER, 2019.

1. This an appeal from the Judgment of Alusine Sesay – JA (as he then was) dated the 23rd day of May, 2016 on the following grounds:
 - (a) The Judgment is against the weight of evidence;
 - (b) The Learned Trial Judge erred in law in holding that in the absence of the Provincial Secretary no one else should preside over the election of the Paramount Chief; and
 - (c) The Appellant will seek leave to add further grounds of appeal.
2. The Appellant subsequently filed six additional grounds of appeal. I shall however only set out a summary of those that are germane to this Appeal.
 - i) That the Learned Trial Judge erred procedurally when he firstly proceeded to determine an application dated 8th April, 2016 for stay of any action pursuant to the result of the election of Paramount Chief in Valunia Chiefdom, Bo District on the 28th November, 2015 pending the determination of the petition; when there was before the Court an earlier jurisdictional objection application dated 21st December, 2015 on behalf of the Appellant herein to strike out the said Petition on the ground that it was filed outside the seven day period as provided by law.
 - ii) The Learned Trial Judge, assuming without conceding that the proceedings were procedurally correct was biased in his judgment in that it was one-sided in favour of the Petitioner by believing everything alleged in the Petitioner's Petition even though the allegations were not substantiated by oral evidence of any witness and there being an Answer filed which was not replied to.

BACKGROUND

3. The Petitioner, Respondent herein petitioned the High Court by petition dated 7th December, 2015 seeking the following relief:-
 - a) That the irregularities mentioned aforesaid are so fundamental and contrary to natural justice that it would be unsafe for the election of the first Respondent(Appellant herein) to stand as declared;
 - b) Should the Petition meet with the favour of this Honourable Court as prayed, that the Honourable Court proceed to nullify the said result and order a re-run of the elections with a Provincial Secretary assisted by different assessors;
 - c) Such further or other relief as may be made available to your petitioner to meet the justice of the case; and
 - d) Cost of these proceedings to be borne by the Petitioner herein.
4. On the 16th day of April, 2016, Alusine Sesay JSC (as he was later to become) on the application of the Petitioner dated 8th day of April, 2016 granted an interim stay of action pursuant to the result of a purported election for Paramount Chief of Valunia Chieftdom, Bo District on 28th November, 2015 pending the hearing and determination of the Petition dated 7th December, 2016. The relief prayed for in the said application was granted.
5. The Petition was heard and Judgment delivered on the 23rd May, 2016 against which the 1st Respondent has now appealed.

BRIEF FACTS

6. The brief facts of this case are that the Appellant and the Respondent both contested for the Paramount Chieftaincy of Valunia chieftdom in the Bo District. The election was held in two rounds. In the first round, neither of the candidates polled the required 55 percent: the Respondent polled 361 votes representing 44.5 percent of the votes while the Appellant

polled 193 votes representing 23.8 percent of the total votes cast. The election was conducted late into the night. The run-off election was held on the same night in which the Appellant polled 379 votes and was duly elected. The election was conducted by the Senior District Officer (SDO) assisted by two Assessors.

7. The Respondent after the election petitioned the High Court on grounds of several irregularities which were answered by the Appellant. The High Court having heard both sides nullified the said elections and ordered fresh polls with the Provincial Secretary presiding assisted by two different assessors.

THE APPEAL

8. I shall deal with the second ground of appeal as a preliminary issue, to wit: "The Learned Trial Judge erred in law in holding that in the absence of the Provincial Secretary no one else should preside over the election of a paramount Chief " because if the Court comes to the conclusion that the District Officer lacked authority to conduct and declare the winner of a Chieftaincy election then the result of the run-off elections would be null and void as having been conducted in breach of Section 10 of the Chieftaincy Act, 2009.
9. In his synopsis and oral argument on this point which was argued as Grounds 8, Patrick John Bull Esq. submitted that the said Section does not state that it is only the Provincial Secretary who shall conduct Chieftaincy elections. Another Public officer could be appointed to act in that capacity. He submitted that the substantive Provincial Secretary had conducted the "Declaration of Rights" meeting but was suspended from office prior to the elections and both the Appellant and Respondent were informed that the Senior District Officer had been appointed by the Ministry of Local Government to conduct the elections. In fact the Director of

Local Government was in attendance. Mr. John Bull mentioned Temedale, Yawbeko and Njiama-Bongo Chiefdoms as Chiefdoms where a District Officer had on different occasions conducted chieftaincy elections.

10. In his oral submission, Charles Vandy Esq. for the Respondent argued that the provision was quite clear. The Provincial Secretary was not the one who conducted the elections. That is contrary to Section 10 which is the governing provision. He referred to the cases of **DR SORIE KENNEDY CONTEH & ORS V. MINISTER OF LOCAL GOVERNMENT** delivered on the 10th November, 2006 (unreported). Mr. Vandy also referred to Section 30(1) of the Chieftaincy Act, 2000 to support his submission that whenever Parliament intended to make provision for another person to conduct elections, it would clearly state so.

11. Charles Vandy Esq. concluded on this point by citing the case of P.C. MOHAMED KAILONDO BANYA & ORS V. LAMIN VONJO NGOBEH CIV. APP. 5/2009 (Unreported).

12. In determination this issue, it would be useful to state the provision of Section 10 of the Chieftaincy Act, 2009 in extensio:

"FOR EVERY PARAMOUNT CHIEFTAINCY ELECTION, THE PROVINCIAL SECRETARY SHALL BE THE DECLARATION OFFICER"

13. The words of this provision are to me clear- the Provincial Secretary shall be the Declaration Officer". Does this mean that the Provincial Secretary shall have conduct of the elections and not only just a declarant? Is it necessary to refer to other Public Officials responsible for elections to determine whether "Declaring" include "Conducting"? I believe it is the National Electoral Commissioner, for example who declares the results of General Elections but the power to conduct Public Elections

is vested in the National Electoral Commission, of which he is part. Is there any provision in the 2009 Act giving power to the Provincial Secretary to conduct Chieftaincy Elections? I shall return to this point in due course.

14. The wording of Section 10 requires a determination of the legal effect of the word "shall" in a statute. I will consider the effect of this word against the background of the intention of parliament in enacting this provision.

15. The word "shall" in legal sense has been subject to considerable academic arguments. The Judiciary has also had its big bite. This linguistic infatuation permeates in almost all Common Law Jurisdictions.

16. In the United State of America, a Common Law jurisdiction, the word "shall" was described in the case of **PEOPLE V. ROURKE 124 CAL APP. 759** in the following words: -

"In Common or Ordinary Parlance, and in the ordinary signification, the term "shall" is a word of command and one which has always, or must have been given a compulsory meaning or denoting obligation. It has a peremptory meaning, and is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced... when addressed to Public Officials... unless the contrary intention appears, but the context ought to be strongly persuasive before it is softened into a mere permission...."

17. Black's Law Dictionary, 10th Edition defines 'shall' as "has a duty to; more broadly, is required to. This is the mandatory sense that drafters typically intend and the Court typically uphold". Here, there is no discretion. This is different from

where a negative word such as "not" or "no" precedes 'shall', then the word often means "May".

18. Using the foregoing definitions as a guide, what was the intention of parliament when it used the word "Shall" in Section 10 of the Chieftaincy Act, 2009? The clear intention of parliament, in my opinion is that the Provincial Secretary in any region must be the declarant of the result of all chieftaincy elections in Sierra Leone. In deed the Provincial Secretary plays a major role in the process of election of a Paramount Chief: Section 5 for example gives power to the Provincial Secretary to convene a declaration of rights meeting; Section 12- the Assessor Chiefs shall advice the declaration Officer (the Provincial Secretary) in the conduct of the elections; Section 16 - the Attestation document shall be endorsed by the appropriate Provincial Secretary and the Assessor Chiefs; Section 17- the recognition of the election of a Paramount Chief takes place after the government has, on the recommendation of the Minister, accepted the joint report of the Provincial Secretary and the Electoral Commission.
19. This Act specifically gives power to the Provincial Secretary to supervise the process from inception to the conclusion. Had parliament intended that a chieftaincy could be conducted by a Senior District Officer, it would have used qualifying words like... 'in the absence of the Provincial Secretary, the election shall be conducted by the Senior District Officer'. There is no such qualification in the Section 10. By restricting the powers to the Provincial Secretary, Parliament was excluding all other Officials. This is an application of the linguistic cannon of interpretation- *expressio unis est exclusio alterius* (to express one thing is by implication to exclude another).

20. The proper conclusion that could be drawn from these analyses is that the conduct of the elections and declaration of the winner by the Senior District do not meet the requirement of Section 10 and other enabling provisions of the Chieftaincy Act, 2009. The submission by Mr. Johnbull that the Ministry of Local Government appointed the senior district officer to conduct the elections has no support in law. The said Ministry is not responsible for the appointment of civil servants nor has it the power under the Local Government Act 2009 to appoint the Declaration Officer.
21. It follows therefore that the election and subsequent declaration of the result of the Chieftaincy Election in Valunia Chiefdom, Bo District in the Southern Province of the Republic of Sierra Leone on the 28th November, 2015 was a nullity.
22. The Appellant filed other grounds of appeal which I shall now summarise and consider.
- a) That there was a jurisdictional objection contained in an application dated 21st December, 2015 which the LTJ failed to determine before hearing an application for a stay of action pursuant to the election dated 28th November, 2015.
- The application of the Appellant was for the following:
- i) That the Petitioner filed the Petition out of time pursuant to Section 18(1) of the Chieftaincy Act, No 10 of 2009
 - ii) Petition was not filed in the District Registry of the High Court in Bo pursuant to Rule 5 of the Election Petition Rules, 2007.
23. I note, with disappointment that Counsel for the Appellant did not argue this point with vigour as he did in the court below; where he cited the case of JOHN OPONJO BENJAMIN, JULIUS MAADA BIO AND DR. KADIE SESAY V NATIONAL ELECTORAL COMMISSION. VICTOR BOCKARIE FOH AND THE ALL PEOPLES CONGRESS- S/C NO. 4/2012.(unreported) on strict compliance with the Rules.

24. In reply to the Appellant's submission, Mr. Charles Vandy for the Respondent cited several authorities including Section 18 (1) of the Act which provides that:

“ The validity of the election of any person as Paramount Chief may be challenged by any candidate or councilor of the Chieftom Council within seven (7) days after the declaration of the result of the election by Petition addressed to the High Court on the ground that-...”.

25. On the computation of time, Mr. Vandy referred to Section 39 of the Interpretation Act No 18 of 1971 and Order 3 Rule 2(5) of the High Court Rules, 2007.

26. In his oral submission, Charles Vandy Esq. Counsel for the Respondent explained that the election was held on the 28th day of November, 2015 which said date fell on a Saturday and the Petition was filed on the 7th December, 2015 which was on a Monday. The date of the said elections being a Saturday and the succeeding day being a Sunday are excluded so in effect, the 7 days mentioned in the Act should commence from Monday 30th November, 2015 running through to Friday 4th December, 2015 which is clearly the first five days. And then excluding the 5th and 6th December, 2015 being Saturday and Sunday respectively. The Petition having been filed on 7th December, 2015 is the 6th day, and therefore, clearly within the 7 days prescribed by law and the Rules.

27. In order to resolve this issue, I shall start by stating the relevant provisions cited herein:

SECTION 39 (1) OF THE INTERPRETATION ACT, NO 18 OF 1971 states that:

“ In computing time for the purpose of any Act a period resolved by days from the happening of an event or doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done”

Section 39(1) (b) of the said Act provides that:

" If the last day of any period is a Sunday or public holiday (which days are in this section exclusive days), the period shall include the next following day, not been an excluded day"

ORDER 3 RULE 2(5) OF THE HIGH COURT RULES, 2007 provides that:

" Where, apart from this sub rule, the period in question, being a period of 7 days or less would include Saturday, Sunday or Public holiday, that day should be excluded".

28. These provisions aforesaid are quite clear on the issue of time. In his Ruling dated 29th April, 2016, Alusine Sesay JA refused the application and upheld the submissions of the Respondent on time limits and concluded that the Petition was filed within the 7 day period.
29. I agree with the LTJ that there was no legal basis for the application. Section 39 of the Interpretation Act, 1971 and the High Court Rules, Order 3 Rule 2(5) applies.
30. On the second prayer regarding filing of the Petition in the District Registry of Bo, Learned Counsel for the Appellant relied on Rule 5 (2) of the Election Petition Rules, 2007 to the effect that Petitions relating to elections relating to the Northern, Southern and Eastern Provinces shall be filed in the District Registry of Makeni, Bo and Kenema.
31. In his reply, Counsel for the Respondent submitted that the said provision specifically apply to elections to parliament.
32. The LTJ disagreed with the Appellant on this point and he was right to do so for the reason that the Rule 1(a) and (b) of the Election Petition Rules, states that 'These Rules shall have effect in relation to all proceedings brought in the High Court to hear and determine whether:-
 - a) Any person had been validly elected as a member of parliament; and
 - b) The seat of a member of parliament has been vacated.

33. Rule 5 (2) relied on by the Appellant fall under this Provision which is only applicable to election of members of parliament and not Paramount Chiefs.
34. I hold that the Chieftaincy Act, 2009 is the specific Act dealing with the election of Paramount Chiefs to the exclusion of all others.
35. For completeness, I would say that contrary to the allegation of the Appellant, the LTJ heard the application dated the 21st December, 2015 filed by the Appellant and ruled against him. The contention that the jurisdictional challenge was not heard before the application for a stay of the action pursuant to the election results is of no moment. The application for a stay was to forestall any action to be taken by the Appellant prior to the hearing of the Petition which would have rendered any Order granted in favour of the Respondent nugatory. In any event, both the LTJ and this court find the said application dated 21st December, 2015 without merit.
36. The other grounds of Appeal filed by the Appellant are generally procedural which would not affect the substratum of this Judgment. Issues such as order of address and at what stage pleadings are closed etc are not matters for the Court of Appeal. These should have been raised in the Court below.
37. One of the grounds of Appeal- the sixth accuses the LTJ of bias. An allegation of bias against a Judge is a serious matter and Counsel should make it when there is a very strong reason to do so. In the said ground, Counsel stated that ' the Trial Judge ... was bias in that the Judgment on the Petition was one sided in favour of the Petitioner by believing everything alleged in the Petitioner's Petition even though the allegations were not substantiated by oral evidence of any witness and there been an answer filed which was not replied to". With the greatest respect to Learned Counsel, this statement does not prove bias. The bias rule is a principle of procedural fairness requiring a decision-maker not to be personally bias and do not appear to a reasonable, informed, detached observer to be prejudiced in

any way in legal proceedings or in dealing with such matter in the course of making a decision. A decision-maker's bias may arise from pecuniary or proprietary interest, from prior or existing associations, from extraneous information, from conduct or some other circumstance. More specifically, judicial bias is a Judge's bias toward one or more persons to a case over which the Judge presides- BLACK'S LAW DICTIONARY-10TH EDITION PP 192-193. Let us review the conclusion of the LTJ.

38. The LTJ after analysing the evidence of both parties had this to say:

" Having carefully examined the Petition and Answer to the Petition and having listened to all the submissions of Counsel, I am satisfied that the grounds for the Petition are serious and fundamental irregularities have been established by the Petitioner..."

39. This passage shows that the LTJ considered the submissions of both parties and arrived at a just conclusion based on the evidence before him. I therefore see no evidence, even remotely of bias based on the test laid down by Black's Dictionary and admonish Learned Counsel not to make frivolous allegations regarding such serious matters in future. I do not understand where Learned Counsel for the Appellant got the idea that the LTJ should have considered oral evidence in arriving at his decision- in a Petition matter.

40. In the light of the foregoing analyses, I hold that the other grounds of Appeal lack merit and should be dismissed and are hereby dismissed

41. Having held that the election of the 28th November, 2015 was a nullity (which alone could have determined the Appeal) and the fact that the other grounds of Appeal lack merit, I uphold the decision of Alusine S Sesay JA (as he then was)

dated 23rd day of May, 2016. Costs to the Respondent to be taxed if not agreed.

42. I take Judicial Notice of the fact that pursuant to the decision of the Honourable Justice Alusine Sesay, a re-run election was conducted on the 17th December, 2016 by the Provincial Secretary as provided by law at which the Respondent herein, MADAM MARGARET G. BAIO-GBANIE emerged victorious.

43. For the avoidance of doubt, the result of the election aforesaid dated the 17th December, 2016 remains valid as been conducted in compliance with the Orders of Alusine Sesay JSC (as he was later to become) dated 23rd May, 2016


Hon. Mr. Justice Sengu M Koroma JSC.

Hon. Justice Musu D Kamara.



Hon. Justice John-Bosco
Allieu.....

