

made by the court below this court is not called upon to disturb and should remain.

*Appeal allowed.*

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FOULAH v. KOLIFA ROWALA CHIEFDOM TRIBAL AUTHORITY

SUPREME COURT (Luke, Ag.J.): December 13th, 1951  
(Civil Case No. 32/51)

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[1] **Evidence—burden of proof—false imprisonment—burden on plaintiff to show imprisonment without lawful excuse:** In an action for false imprisonment, the onus is on the plaintiff to show that he was imprisoned without lawful excuse (page 146, lines 2-3).

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[2] **Jurisprudence—justice—rules of natural justice—judge in own cause contrary to natural justice:** It is a breach of one of the principles of the administration of justice for a person to sit as a judge in his own cause (page 145, lines 4-6).

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[3] **Tort—false imprisonment—burden of proof—burden on plaintiff to show imprisonment without lawful excuse:** See [1] above.

[4] **Tort—false imprisonment—definition—complete deprivation of liberty without lawful excuse:** False imprisonment is complete deprivation of a person's liberty for any length of time without lawful excuse (page 145, lines 40-41).

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The plaintiff brought an action against the defendants to recover damages for false imprisonment.

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A dispute arose between the plaintiff and the Paramount Chief of the defendant tribal authority over a matter within a native court's jurisdiction. The plaintiff was asked by a messenger to attend the native court of the area to answer complaints brought by the Paramount Chief. The plaintiff was taken to the court, asked what defence he had to the complaints, and then fined. As he was unable to pay the fine immediately, he was imprisoned until it was paid. When he was released, he instituted the present proceedings against the defendants for damages for false imprisonment.

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The plaintiff contended that he was not properly summoned to appear before the native court, was fined without a trial, and was then imprisoned without lawful excuse.

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The defendants maintained that the plaintiff was orally summoned before the native court in compliance with s.28 of the Native

Courts Ordinance (*cap.* 149), and that the form of the trial and the imprisonment of the plaintiff pending payment of his fine followed the correct procedure. They further contended that the plaintiff should be non-suited as the action had been brought against the tribal authority instead of those who had actually sat and adjudicated on the case. 5

**Legislation construed:**

Courts Ordinance (Laws of Sierra Leone, 1946, *cap.* 50), s.40: 10

“No Judge, Magistrate, or other person acting judicially shall be liable to be sued in any civil court for any act done by him within the territorial limits of his jurisdiction in the discharge of his judicial duty, or for any order made by him in the discharge of such duty, whether or not within the limits of his jurisdiction . . . provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of . . . .” 15

Native Courts Ordinance (Laws of Sierra Leone, 1946, *cap.* 149), s.7:

“The Native Courts shall consist of the Native Courts as now existing according to native law and custom . . . and such Courts shall have jurisdiction according to native law and custom— 20

...  
(2) to hear and determine—

(a) all civil cases triable by native law arising exclusively between natives . . .

Provided that such Courts shall in no case inflict . . . a fine exceeding ten pounds in amount or value.” 25

s.28: “The ordinary process in all cases in the Native Courts . . . shall be an oral summons conveyed to the defendant or witness required to attend by a recognised messenger of the Chief presiding over the Court.”

Tribal Authorities Ordinance (Laws of Sierra Leone, 1946, *cap.* 245), s.7(1): 30

The relevant terms of this section are set out at page 146, lines 12–17.

s.19(2): “No suit shall be commenced against a Tribal Authority until three months at least after written notice of intention to commence the same shall have been served upon the Tribal Authority by the intending plaintiff or his agent . . . .” 35

s.20: “The notice referred to in the last preceding section . . . shall be served by delivering the same to . . . the Paramount Chief of the area of such Tribal Authority . . . .”

*Taylor-Kamara* for the plaintiff; 40  
*Benka-Coker, Crown Counsel*, for the defendants.

LUKE, Ag.J.:

5 The defendants are the Tribal Authority of the Kolifa Rowala Chiefdom and the plaintiff is a trader living at Magburaka in the Kolifa Rowala Chiefdom. There was a dispute between the plaintiff and Paramount Chief Masakama over a gutter, adjacent to their respective properties, through which water runs.

10 The cause of the action arose over the plaintiff having been summoned to a sitting of the native court on May 22nd, 1950 to answer a complaint which was brought to the court by the Paramount Chief on several charges, *viz*: (i) refusing to allow them to dig a gutter, (ii) taking off his clothes to fight the Paramount Chief, and (iii) insulting conduct to him.

15 The plaintiff in his statement of claim alleged that he was not summoned but was simply brought to a sitting of the native court, and that he was asked what defence he had to the several complaints mentioned by the Paramount Chief, and without any trial he was fined. In his evidence before the court he deposed "that one morning four days after the dispute between myself and the Paramount Chief a native administration messenger by name of Sorie came to me and said I was wanted in court."

20 Section 28 of the Native Courts Ordinance (*cap.* 149) provides that the usual process in these courts will be an oral summons. In this case it was the procedure adopted, and the plaintiff himself under cross-examination admitted that the complaints enumerated in para. 2 of this judgment were the charges he had to meet. The plaintiff has also stated that after the Paramount Chief had stated the complaints, he was asked what he had to say and he gave his own story. Then witnesses were called, and after they had given their own stories the court retired to consider their verdict. On their return they informed him that they had found him guilty and fined him £10 for insulting conduct to the Chief.

30 The plaintiff's complaint is against what happened subsequent to this judgment, when he was not allowed to go but was ordered by the court to be kept in the lock-up till he could pay the fine of £10. It is common ground that the usual sanction for failing to perform the judgment of a native court is the imprisonment of the judgment debtor.

40 The court's record was put in evidence but I must say that the court clerk, Kinkoma Kalawa, was not very helpful in that the record states that the constitution of the court on that day was Paramount Chief Masakama, Kapri Masam, Kapre Fenti, Ibrahim Fofana, Se Moi

and Kapre Soya, and in answer to a question by learned Crown Counsel, when the record was tendered in evidence, he said that Paramount Chief Masakama was one of the members.

If, as the witness said, P.C. Masakama did sit as a judge in his own cause a flagrant breach of one of the principles of the administration of justice was committed. 5

But is it so? It seems to me that the plaintiff's case, on whom the burden of proof in a case such as this lies, does not bear that out. The plaintiff in answer to a question under cross-examination said the following: 10

"Kapre Fenti, Kapri Masam, Kapre Soya, Ibrahim Fofana and another person whom I do not know if he is Se Moi, the Chief showed my case to all of them; but Kapri Masam was the Chief Headman who sat on my case that day."

In the record the names of Pa. Roka and Pa. Sheka Seisay were not entered, and instead of those names Paramount Chief Masakama was entered. According to the plaintiff's second witness, Pa. Sheka Seisay was the man in whose hand Abu Konneh placed the £3 and £7 respectively which made the £10. Another fact which has convinced me that the clerk's record and evidence as to the constitution of the court was not correct is a letter put in evidence by the plaintiff's solicitor. This was the letter previously addressed to the tribal authority, c/o Mr. Kapri Masam, as required by s.19(2) of the Tribal Authorities Ordinance (*cap.* 245). Surely, if P.C. Masakama was one of the judges, and as a matter of fact the president, as the record wants it to be believed, on that day's sitting, the plaintiff would have informed his lawyer and the letter would have been addressed to him as required by s.20 of the Tribal Authorities Ordinance. 15 20 25

If the minutes in native courts are to be of any assistance to the superior court, the clerks must see that the entries therein are correct, that any important decisions as ordered, such as imprisonment, time within which payments are to be made and any order for contempt of court, are recorded. 30

There is evidence that a court was held as prescribed by s.7 of the Native Courts Ordinance (*cap.* 149) and the disputes between the parties gone into and decided. The court imposed a fine on the plaintiff which he was unable to satisfy at the time, and so he was ordered to be put in a lock-up, the common procedure in a native court for failure to comply with a judgment of the court. 35

False imprisonment is complete deprivation of liberty for any time, however short, without lawful excuse. The question for the 40

court to consider is whether the plaintiff was detained in the lock-up for any time after the fine of £10 was paid and received. The onus of proof on this point is on the plaintiff; and reading through the notes of evidence I must say there is nothing to show that shortly after this amount was paid the plaintiff was not released.

In the course of the proceedings, learned Crown Counsel argued at some length that this case should be non-suited as the action had been brought against the wrong party, in that the complaint should be against those who sat and adjudicated on the case whereas this action is against the tribal authority. Section 7(1) of the Tribal Authorities Ordinance (*cap.* 245) states:

“It shall be the duty of every native when so directed by a tribal authority having jurisdiction over him or by any member of such tribal authority to attend before such tribal authority or before a District Commissioner, or any other Government Officer, or before a Native Court having jurisdiction over such person.”

Section 7 of the Native Courts Ordinance (*cap.* 149) gives the constitution of Native Courts and what matters they can deal with. The complaint of the Paramount Chief was one of those matters which they can deal with.

The only real point against the description of the defendants is that the action, being in tort and against joint tortfeasors, should have named those persons who committed the tort. The description, which barely states the defendants are the Tribal Authority of the Kolifa Rowala Chiefdom, is rather ambiguous.

The native court is a court of record and its judges or members are protected for acts done whilst discharging their judicial duty. Section 40 of the Courts Ordinance (*cap.* 50) gives that protection. There is abundant evidence that a court was held on this day when the dispute between the plaintiff and P.C. Masakama was decided.

The plaintiff has been unable to satisfy the court that he was detained after the payment of the fine imposed. It has not been disputed that the case, when reviewed by the District Commissioner Mabonto, sitting as an appellate court, was quashed; but that is no ground for instituting an action for damages for acts which the court at the time in good faith believed itself to have jurisdiction to do.

For these reasons the plaintiff's case is therefore dismissed with taxed costs.

*Suit dismissed.*