S. C.

1961

WILLIAMS v. SIERRA LEONE DEVELOPMENT CO.

Marke J.

The plaintiff having admitted the counterclaim there will be judgment for the defendant for £72 3s. 11d.

The order of the court is:

(1) The plaintiff succeeds on his claim.

(2) The defendant to pay the plaintiff one month salary for April 1958 and in addition three months' salary in lieu of notice at the rate of £450 per annum.

(3) The defendants to pay the costs of this action less such costs as may have been occasioned by the counterclaim. Cost to be taxed.

(4) The defendants succeed on their counterclaim.

(5) The plaintiff to pay the defendants £72 3s. 11d.

(6) The plaintiff to pay the defendant the costs on the counterclaim.

(7) Costs to be taxed.

The costs in this action to be on Supreme Court Scale.

Freetown
June 20,
1961

Benka-Coker C.J.

[SUPREME COURT]

REGINA . . . . . *Appellant*

v.

SIAKA STEVENS AND C. A. KAMARA-TAYLOR . . . *Respondents*

[Misc. App. 28/61]

Criminal Law—Trial—Whether defendants could be tried by judge alone—Whether fair trial could be had with judge and jury or judge and assessors—Relevance of affidavit of police inspector—Whether accused were charged with criminal offence at sessions of Supreme Court in Colony—Jurors and Assessors Act (Cap. 38, Laws of Sierra Leone, 1960) s. 41 (a).

Defendants were charged with libel and conspiracy before the Supreme Court. The Attorney-General, pursuant to section 3 of the Jurors and Assessors (Amendment) Ordinance, 1961 (No. 1 of 1961), applied by summons for an order that defendants be tried by a judge alone on the ground that a fair and impartial trial could not be had either with a judge and jury or judge and assessors. The application was supported by the affidavit of a police inspector in which he deposed that the charges of libel and conspiracy arose out of a document issued by the All People's Congress (a political party) and signed by one of the defendants, in which serious allegations were made against two Government Ministers, and that these allegations had caused widespread concern among the general public.

At the hearing, counsel for defendants raised two preliminary objections to the application: (1) that the statements in the police inspector's affidavit were irrelevant and (2) that it did not appear from the summons that defendants were "charged with a criminal offence at any sessions of the Supreme Court held in the Colony," as required by the Ordinance.

Held, granting the application, (1) that the Police Inspector's affidavit was relevant to the question whether a fair trial could be had with a judge and jury or judge and assessors;

(2) that it was "clear . . . that the (defendants) are charged with a criminal offence at a sessions of the Supreme Court in Freetown"; and

(3) that where, in a criminal trial, the complainants and defendants are leading and influential members of strongly opposed political parties, each with a large following, and where the issues involved are of vital interest to the public, there is good reason to believe that a fair and impartial trial cannot be had either with a judge and jury or with a judge and assessors.

Case referred to: *Regina* v. *Mohamed Bash Taqui*, Supreme Court, 1961.

John H. Smythe (Solicitor-General) for the Queen.
Berthan Macaulay for the defendants.

BENKA-COKER C.J. This is an application by summons by the Attorney-General for an Order that the above-named respondents (the accused in the case *Regina* v. *Siaka Stevens and C. A. Kamara-Taylor*) be tried by a judge alone on the ground that a fair and impartial trial cannot be had either with a judge and jury or with a judge and assessors. The application is made under Ordinance No. 1 of 1961 amending the Jurors and Assessors Ordinance (Cap. 38 of the Laws of Sierra Leone) and it is supported by the affidavit of one Alfred Koroma, an Inspector of the Sierra Leone Police, sworn to and filed herein on May 27, 1961. There is no affidavit in opposition. At the hearing of the summons counsel for the respondents took the following preliminary objections: that (i) paragraphs 10 to 14 of the affidavit of Inspector Koroma are irrelevant in that they relate to a document which is the material evidence relied on by the Attorney-General in a prosecution for libel and that they would therefore be prejudicial to the issue, (ii) that the application is irregularly supported and ought to be struck out. Counsel contended that the summons must show that the accused are charged with a criminal offence at the Sessions of the Supreme Court to be held in the Colony; that this is not shown anywhere in the summons. Counsel referred me to section 41 (*a*) of the Jurors and Assessors Ordinance, Cap. 114 (i.e., section 3 (1) of No. 1 of 1961 amending Cap. 114) which reads: " In any case where any person is charged with a criminal offence at any Sessions of the Supreme Court held in the Colony."

As to Objection 1: It is convenient here to quote fully paragraphs 10–14 of the affidavit of Koroma, which counsel contends are irrelevant.

Paragraph 10: That the said four counts relate to a document from the said All People's Congress allegedly signed by the accused C. A. Karara-Taylor on behalf of the said Working Committee which document contains the allegations complained of, and a true copy of which is now produced and shown to me and marked A.K.1.

Paragraph 11: That the two persons Dr. M. A. S. Margai and Mr. M. S. Mustapha named and mentioned in the said counts as the victims of the said libel and conspiracy counts, are the Prime Minister/Minister of Internal Affairs, and the Deputy Prime Minister/Minister of Finance respectively, being members of the United Front, a political party.

Paragraph 12: That the allegations complained of in the said counts are and have in fact been described in the said document by the All People's Congress Working Committee itself as of a most serious nature affecting personalities of high standing in the existing Sierra Leone Government.

Paragraph 13: That rice being the staple food in Sierra Leone, the allegations of corruption relating to its importation and sale in Sierra Leone have according to my knowledge and belief necessarily caused widespread concern among the general public in Sierra Leone.

Paragraph 14: That the said All People's Congress, through its Working Committee, in the said document states that there is much disquiet among the public on the issue involved.

Counsel referred me particularly to paragraph 12. The document itself which forms the subject-matter of the charges against the accused is exhibited and attached to the affidavit of the deponent Koroma and marked A.K.1.

After hearing counsel for respondent and the Solicitor-General in reply, I reserved my ruling and ordered the Solicitor-General to proceed with his application. I have carefully considered the objections made by counsel for respondents and also the affidavit of Koroma and its exhibit and the summons herein—I do not agree with counsel that paragraphs 10 to 14 of Koroma's affidavit are irrelevant to the application which the Attorney-General makes herein or that they are in any way prejudicial to the main issue or any issue at all in the case. The issues in the case being (a) Is the document or any part of it defamatory? (b) If so, did the accused publish the document? (c) Was the document false to the knowledge of the accused?

For the Chief Justice to make an Order herein, he must be satisfied from some evidence that there is good reason to believe that fair and impartial trial cannot be had either with a judge and jury or with a judge and assessors.

Reading Exh. A.K.1 and the whole affidavit of Koroma, particularly paragraphs 10–14 thereof, it seems to me very clear that what the Attorney-General alleges in this application is this: the subject-matter of the issues of the case concern, and are of direct vital interest to, the public—that the complainants who are admittedly the victims of the complaints made in Exh. A.K.1 are public officers; that the complaints made in the document Exh. A.K.1, which form the subject-matter of the charges against the respondent, relate to the said complainants as touching the discharge of their duties as public officers.

The Attorney-General therefore says that there is good reason to believe that a trial of this case by judge with jury or by judge with assessors would not be fair and impartial because any jury or set of assessors would have to be empanelled or selected from the public who are already directly and most vitally interested in the subject of the complaints in the document.

Furthermore the affidavit of Koroma alleges that these very complaints in Exh. A.K.1, in respect of which the accused now stand charged, are complaints by the All People's Congress, a political party of which the accused are alleged to be two principal leading officers.

In short, the Attorney-General says (1) that the complaints made in Exh. A.K.1, irrespective of whether accused made them, concern matters of vital interest to the public and so there is a very strong likelihood that a jury or assessors chosen from the already vitally interested public would not be impartial; (2) that as the accused are leading officials of an influential party having a large following amongst a public vitally interested in the complaints in respect of which the accused are now charged and as the complaints pertain to the discharge of public duties by the complainants in their capacity as public officers and as the complainants also are leading officials of another political party strongly opposed to the party of the accused, there is strong likelihood that a jury or set of assessors would not be impartial if the accused were tried by jury or assessors drawn from the public.

I am of the opinion that those paragraphs 10–14 of the affidavit of Koroma are most relevant as showing precisely and clearly why this trial should not be by judge with jury or judge with assessors.

Paragraph 10 directed to show that the documents purported to be issued by the All People's Congress and signed by one Kamara-Taylor for the Working Committee that the four charges relate to the document

Paragraph 11 that the complainants, against whom the complaints in the document are made, are mentioned by name in the document and that these complainants are members of another political party.

Paragraph 12 that the subject-matter of the complaints in the matter have been described in the document as most serious, affecting personalities of high standing in the existing Sierra Leone Government.

Paragraph 13 that the allegations of corruption relating to the importation and sale of rice—the staple food in Sierra Leone—the subject-matter of the complaints in the document—have necessarily caused widespread concern among the general public in Sierra Leone.

Paragraph 14 that the document itself states that there is much disquiet among the public on the issues involved. These paragraphs tend to show that the very document itself states in clear terms that the public are vitally interested and are disquiet.

In these peculiar circumstances, I consider that these paragraphs are quite relevant to this application and are not prejudicial to the issue or issues in the case and I so hold and overrule objection 1.

As to objection 2, reading the summons and the affidavit of Koroma, it should be abundantly clear to anyone that the accused (respondents) are charged with a criminal offence at a sessions of the Supreme Court in Freetown.

(1) The Summons was issued on May 27, 1961—after Independence Day.

(2) The summons is headed
   (a) In the Supreme Court of Sierra Leone;
   (b) *Regina* v. *Siaka Stevens and C. A. Kamara-Taylor* (libel and conspiracy);
   (c) In the Matter of the Jurors and Assessors Ordinance, Cap. 114 of the Laws of Sierra Leone, section 41 (*a*) as amended by Ordinance No. 1 of 1961.

(3) Paragraphs 9, 10, 11 and 12 of affidavit of Koroma refer to four counts of libel and conspiracy.

(4) Paragraph 16 of the said affidavit reads:

> "That in all the circumstances hereinbefore mentioned, I verily and truly believe that the said accused persons will not thereby have a fair and impartial trial of the above case now due to be heard before the Supreme Court."

I lay stress on the words "now due to be heard before the Supreme Court."

(5) Applications for trial by judge alone is only made in respect of criminal cases to be tried in the Colony—where the verdict of a jury or the unanimous opinions of a set of assessors constitute the verdict of the court.

This objection in my opinion therefore fails.

I shall now consider the application. The Solicitor-General continued his application and referred me to paragraphs 3, 5, 6, 7, 9, 10, 12 and 14 of the affidavit of Koroma—he submitted that this matter clearly involves a political issue apart from it being a matter of great concern and of direct, vital and special interest to the public. He also submitted that it has not been denied

(nor can it be controverted) that the complainants and accused (respondents) are respectively influential leading members of strongly opposed political parties, having large followings from the public and that the minds of persons must be swayed one way or another according to their political loyalties or beliefs. The Solicitor-General, therefore, submits that there is every good reason to believe that a fair and impartial trial could not be had, if the trial of the accused (respondents) were by judge and jury or judge with assessors.

Counsel for the respondents in reply submitted that the onus is on the applicant to show that a fair and impartial trial could not be had otherwise. Counsel referred me to my ruling as Chief Justice in the case of *Regina* v. *Taqui* where such an order was recently made. (He contended that the ratio decidendi is " where matter to be decided is one in which there is a cleavage of opinion and the cleavage is of a political nature then the order sought should be granted.") He submits that my ruling in this case was that where the issues to be decided were necessarily political issues, then the order should issue but not otherwise—e.g., simply where the parties concerned were political figures.

Counsel for the respondents undoubtedly has not correctly stated my ruling in the case of *Regina* v. *Taqui*. The ratio decidendi stated by me in that case was, where it is clearly shown and the Chief Justice is satisfied that there is a very strong likelihood that a jury or set of assessors would be biased one way or another, it is sufficient to hold that a fair and impartial trial cannot be had if trial is by judge and jury or judge with assessors and so the order for trial by judge alone could issue. I held in the case of *Regina* v. *Taqui* that where it is shown that an accused person is a leading political figure of one party and the issue in the trial is a political matter or of a political nature, that is a sufficiently good reason to justify a belief that a fair and impartial trial could not be had by judge and jury or judge with assessors. My ruling was not that it is only in such cases that it should be considered a fair and impartial trial could not be had with judge and jury or judge with assessors. In that case I made the order sought. It is important and in the interest of justice that a jury or set of assessors in a trial should be quite free from bias, and, where it is shown clearly that any jury or set of assessors are likely to be biased on account of direct personal and vital interest in the subject-matter in issue, in my opinion, it is clearly the duty of the judge in the interest of justice to exclude such a jury or set of assessors from taking part in the trial.

I am of the opinion—I am satisfied that this is a clear case in which it has been shown that there is good reason to believe that a fair and impartial trial cannot be obtained either with a judge and jury or with a judge and assessors.

The complainants and respondents are respectively leading and influential members of strongly opposed political parties each with a large following.

The issues concern, and are directly of vital interest to, the public. The allegations complained of in the case are and have in fact been described in the document Exh. A.K.1, purporting to issue from the All People's Congress (of which the respondents are leading officials), as of a most serious nature affecting personalities of high standing in the Sierra Leone Government.

The said document, Exh. A.K.1, alleges that " there is much disquiet among the public on the issues involved." Clearly the allegations in the document A.K.1 are made against Dr. Margai and Mr. Mustapha as to corruption in their official capacity in dealing with a commodity which is the staple food of the public. The document also alleges—I quote " This Company, i.e., Mustapha Bros. together with Milhem and Sons . . . during the last three

years has bought up to three-quarters of the quantity of rice imported by the Government and this buying has been done at a special discount to the detriment of Sierra Leone Revenue." Further it says, "What local rice has been produced and bought by Government for the benefit of the People has been allowed to rot away in stores at Kissy, Mambolo, and elsewhere and later destroyed so that individuals and companies may benefit from the importation of rice."

Rice being the most important factor in the assessment of the cost of living, it could easily be seen that the public has some justification in worrying about such an important part of their material welfare being left to be played about with by individuals for their own enrichments. In my opinion, any evidence which tends to show that there is strong likelihood of bias or direct interest of jury or assessors in the trial is most relevant and admissible in deciding whether a trial should be by judge alone or by judge with jury or judge with assessors in an application under Ordinance No. 1 of 1961.

Rice being the staple food of the public and the complainants being public officers, any alleged corrupt dealing by its public officers to such magnitude as is alleged in the document, must be of great concern and of direct vital interest to the public or community such as is in Freetown. As I said in *Regina* v. *Taqui*, fair and impartial trial also implies that the tribunal must be free from bias or sympathy one way or the other; otherwise the administration of justice becomes a mere farce. After reading the summons, the affidavit of Koroma, the document Exh. A.K.1 and after hearing counsel on both sides, I can see or envisage no clearer or more fitting case in which such an application as made here can be justified than this. I am satisfied that there is good reason to believe that a fair and impartial trial cannot be had either with a judge and jury or with a judge and assessors—I therefore order that the accused (respondents) be tried in this matter by judge alone instead of by judge and jury or judge with assessors.

[SUPREME COURT]

Freetown
July 8,
1961
Cole J.

MORAY KABBA . . . . . *Plaintiff*

v.

HASSAN D. FAWAZ . . . . . *Defendant*

[C. C. 51/61]

Tort—Malicious prosecution—Whether reasonable cause for prosecution.

Defendant entrusted the sum of £7,750 to plaintiff for safe-keeping. Plaintiff gave him a receipt. When defendant later asked plaintiff for the money, plaintiff gave him £1,000 but failed to pay the balance. The matter was reported to a magistrate, who issued a warrant of arrest. An information was filed charging plaintiff with the offence of fraudulent conversion of £6,750. After a trial before the Supreme Court, plaintiff was acquitted and discharged. Plaintiff thereupon brought suit against defendant claiming damages for malicious prosecution and false imprisonment. The claim for false imprisonment was not pursued.

Held, for the defendant. Defendant honestly believed that the charge preferred against plaintiff was true and had reasonable cause for prosecuting.