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and found a private lodging of his own choice to live in. This certainly would not constitute false imprisonment on the part of the defendant.

It is admitted that the defendant signed the warrant for the arrest of the plaintiff. He did so as Vice-President of the Native Court on what he then believed came as an order from the President of the court. In doing so, I find on the evidence that he acted bona fide and the fact as it turned out that the plaintiff was discharged because there was no charge against him for contempt of court would not make the defendant liable in an action for false imprisonment because he acted judicially and is protected by section 39 of Cap. 7 the Courts Ordinance.

In the circumstances, the consideration of the question of damages does not arise, and the plaintiff's action is dismissed with costs.

Freetown
May 5,
1962
Bankole Jones Ag.C.J.

[SUPREME COURT]

MAX SAIDU KANU . . . . . *Plaintiff*

v.

THE ATTORNEY-GENERAL . . . . . *Defendant*

[C.C. 133/62]

Elections—Declaratory judgment—Claim for declaration that plaintiff not disqualified from standing for election— Whether plaintiff " was employed under provisions of (Electoral Provisions Act, 1962), *or the Franchise and Electoral Registration Act,* 1961, *in the performance of duties connected with any election . . . or with the registration of electors . . ."—Whether court should grant declaration—Electoral Provisions Act,* 1962 (*No.* 14 *of* 1962), *s.* 16—*Franchise and Electoral Registration Act,* 1961 (*No.* 44 *of* 1961), *s.* 17 (1)—*Supreme Court Rules* (*Vol.* VI, *Laws of Sierra Leone,* 1960), *Ord.* XXI, *r.* 5.

Between October 1961 and February 1962, at the request of the District Commission, the plaintiff travelled around the Bombali District talking to paramount chiefs and preparing the way for the Registration Officers who registered voters for the May 1962 General Election. For doing this, he was paid a monthly salary, which came out of public funds under the Election Vote.

Plaintiff, who intended to be a candidate in the General Election, brought an action in the Supreme Court claiming a declaration either (a) that he was entitled to be nominated under the Electoral Provisions Act, 1962, or (b) that, in acting in the manner he did, he had not acted within section 16 (2) of the Electoral Provisions Act, 1962, so as to be disqualified from standing for election.

Section 16 (2) (*d*) of the Electoral Provisions Act, 1962, provides that the Returning Officer is entitled to hold a candidate's nomination paper invalid if the candidate " is a person who, within the twelve months preceding the day appointed for the delivery of nomination papers, was employed under the provisions of this Act, or the Franchise and Electoral Registration Act, 1961, in the performance of duties connected with any election in which he is standing as a candidate or with the registration of electors in any electoral area."

Held, for the plaintiff, (1) plaintiff's activities in connection with the election were not such as to bring him within the scope of section 16 (2) (*d*) of the Electoral Provisions Act, 1962.

(2) This was a proper case, for the granting of a declaratory judgment.

Cases referred to: *Bull* v. *Attorney-General for New South Wales* [1916] 2 A.C. 564; *Cooper v. Wilson and others* [1937] 2 K.B. 309; *Llandudno Urban District Council* v. *Woods* [1899] 2 Ch. 705; *Hanson* v. *Radcliffe Urban District Council* [1922] 2 Ch. 490.

Cyrus Rogers-Wright for the plaintiff.

Victor B. Grant, Q.C. (Attorney-General) and *John H. Smythe* (Solicitor-General) for the defendant.

BANKOLE JONES AG.C.J. The plaintiff's claim is one for a declaration. The claim is in the alternative, namely, a declaration *either* (a) that he is entitled to be validly nominated under the Electoral Provisions Act, 1962, and a further declaration that the Returning Officer of the Bombali District South shall not be entitled to declare his nomination invalid by reasons of the operation of section 16 (2) (*d*) of the Electoral Provisions Act, 1962, *or* (b) that, in acting in the manner he did, the said plaintiff was not acting within section 16 (2) (*d*) of the Electoral Provisions Act, 1962, in that, at the request of the District Commissioner for Bombali and because the plaintiff was one of the few persons qualified to assist in election preparations, he assisted in election preparations and was not employed by the Electoral Commission so as to be disqualified.

The plaintiff is a member of the District Council and a registered voter in the Bombali District, South, and intends to stand as a candidate for election at the forthcoming General Election fixed for May 25, 1962. According to him, sometime in September 1961, Mr. Flower, the then District Commissioner, asked him if he would go out and meet all paramount chiefs in the district and tell them that people need not be afraid to be registered as voters, because at that time, women especially, were expressing their fears of getting themselves registered, as they thought that they would be called upon to pay tax. The plaintiff agreed to undertake this task. The Bombali District is divided into North, South, East and West wards respectively, and comprises 13 chiefdoms. Sometime in October, just before the Registration Officers were sent out to the different chiefdoms to register voters, Mr. Flower asked the plaintiff to precede them and carry out his task. This the plaintiff did and between October 1961 and February 1962 he employed himself to this task. He was paid a monthly salary of £23 15s. 0d. and all his travelling expenses as well.

The defence is that although the nomenclature of the plaintiff was that of "Field Supervisor," an office not specifically created by the Franchise and Electoral Registration Act (No. 44 of 1961) and an amendment to this Act (No. 13 of 1962), yet the duties which he performed were duties that fell to a Field Registrar, an office created by section 17 (1) of the Franchise and Electoral Registration Act, 1961, and that, therefore, he was a person caught under section 16 (2) (*d*) of the Electoral Provisions Act (No. 14 of 1962). The duty which they say the plaintiff performed up to March 1962 and not up to February 1962 was the general supervision of Field Registrars, which involved the checking of all entries made by Field Registrars to see that these entries were correct. A Field Registrar was to write down the names of all persons eligible to vote in a note book and submit them to the plaintiff. The plaintiff,

in turn, after checking, submitted these entries to the Assistant Registrar who assists the Registrar in compiling the register of voters. It is said that in the course of his duties, the plaintiff had the power on appeal from any voter or likely voter who should have been registered, and whose name was omitted from the list, to include such a name in the list. Although normally the plaintiff would not have any contact with the voters, yet he would if an appeal was made to him. They say that in this way the plaintiff's duties were clearly connected with the compilation of the voters list for the forthcoming election. To support this contention, it is said that plaintiff's salary and his travelling expenses were paid from the Elections Vote—see Exhs. D, E and F—vouchers for payments made to the plaintiff.

Let us now examine the evidence to find out whether in fact the plaintiff did perform the duties which the defence says he performed. I am ready to concede that if he did perform these duties, it does not matter by whatever name his office was designated, he would clearly fall under the provision of section 16 (2) (*d*) of the Electoral Provisions Act (No. 14 of 1962).

The witness, Kallon, who is the Returning Officer for the Bombali District, said he took over from one, Mr. Flower, the then District Commissioner, on March 20, 1962, at a time when registrations were complete and provisional lists published in all the wards of the district. Under cross-examination he confessed that when he swore in examination-in-chief that the plaintiff performed the duties he said he performed, he was merely describing the duties appertaining to his office as Field Supervisor. He said, and I quote: "I did not mean that to my knowledge he actually did what I said he did." The witness went further to state that at no time did he discuss with the plaintiff the kind of work he was doing.

But it was argued that Exhs. D, E and F clearly show that the plaintiff was paid out of public funds under the Election Vote and, therefore, it must be presumed or inferred that he performed duties in connection with the forthcoming election. I am afraid this presumption or inference is not conclusive. It becomes all the more equivocal when one considers the plaintiff's own story, a story which is not unrealistic and which I accept. It is to the effect that he was employed by the District Commissioner to make smooth and easy the path of Registration Officers before they went into the several chiefdoms for the purpose of registering voters. For this, the District Commissioner thought that he was entitled to be paid and the District Commissioner was not going to pay him out of his own pocket. If he paid him from the Election Vote, the plaintiff was clearly not put to inquiry as to where his salary and expenses came from.

I have, therefore, come to the conclusion that there is no satisfactory or conclusive evidence that the plaintiff was ever employed at any time whatever to perform duties under the Electoral Provisions Act, 1962, or the Franchise and Electoral Act, 1961, in connection with the forthcoming election, in which he intends to stand as a candidate, or duties pertaining to the registration of electors in his electoral area or any other electoral area.

The learned Attorney-General made several legal submissions to the general effect that this court should not grant either of the declarations sought. The submission on which he strongly relies is to the effect that this action is premature because it amounted to this, namely, that if the court granted the declaration or either of them it would be usurping the function of a Returning Officer and the Electoral Commission as laid down in section 16 (3), (4) and (5)

of the Electoral Provisions Act, 1962. Only when an elector, he says, takes an objection as provided under section 16 (1) and (2) of the same Act and a decision is taken can the plaintiff pursue his remedy in any manner in which he may be advised to do. He said that it would be unwise for this court to make any declaration whatever before an objection is taken on nomination day, because the court would be fettering the discretion given to the Returning Officer and the Electoral Commission. He cited the case of *Bull* v. *Attorney-General for New South Wales* [1916] 2 A.C. 564. At first reading, this case seems to support his contention, but a close study of it shows that the question in that case was whether certain leases granted to the appellants under the Crown Lands Act of 1895 could be treated as voidable or wholly void. The Attorney-General asked for a declaration that they were void. It was held that as these leases were made voidable under section 44, the procedure enacted by that same section for determining whether they should be avoided or affirmed should be followed. As it was not followed, the declaration sought was refused. In the present case the right of the plaintiff to be nominated is at stake and there is no clear remedy provided under the Electoral Provisions Act, 1960, whereby he could preserve that right after nomination day. The case cited, therefore, with respect, does not apply here.

Apart from our Order 21, r. 5, which reads as follows:

> "No action or proceeding shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not,"

there is a string of cases which proclaim from the housetop the principle that the court has very wide discretion in making declaratory judgments or orders although in some cases it must do so with caution (such cases do not fall here for discussion).

The case of *Cooper* v. *Wilson and others* [1937] 2 K.B. 309 is one of such string of cases. In this case the appellant had a statutory right to appeal to the Secretary of State. He did not so appeal but went straight to the court for a declaration to be made against the respondents and the Court of Appeal held that he was entitled to the declaration claimed. In the case of *Llandudno Urban District Council* v. *Woods* [1899] 2 Ch. 705, the court granted a declaration to preserve future rights. See also the case of *Hanson* v. *Radcliffe Urban District Council* [1922] 2 Ch. 490. In this case the Master of the Rolls, Lord Sterndale, expressed his views regarding the extent and effect of Order 25, r. 5 (English Rules) which is ipsissima verba our Order 21, r. 5. At page 507, he said, inter alia:

> "I adhere to my judgment in *Guaranty Trust Co. of New York* v. *Hannay & Co.* [1915] 2 K.B. 536, in which, although I had the misfortune to disagree with Lord Wrenbury, I said that a number of declarations had been made, and, in my opinion, rightly made, as to the rights of parties under contracts, without waiting for some event to happen, as, for instance, for a ship to arrive at its destination, in order to determine the result of the contracts and what the exact causes of action might be. In my opinion, under Order 25, r. 5, the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should, of

course, be exercised judicially, but it seems to me that the discretion is very wide."

On an examination of all the authorities cited before me and on the evidence, I think that this is a fit and proper case where this court will not err in exercising its discretion by granting the plaintiff one or other of the reliefs sought. I prefer to grant him the relief sought in the alternative and I do so grant him. There will be no order as to costs.

Freetown
May 10,
1962
Cole J.

[SUPREME COURT]

SULEMAN LASAWARRACK . . . . . *Plaintiff*

v.

RAFFA BROTHERS AND THE NORTHERN ASSURANCE CO. LTD. . . . . *Defendants*

[C.C. 321/60]

Tort—Negligence—Motor vehicle accident—Damages.

Plaintiff was injured in a motor vehicle accident caused by the negligent driving of Raffa Brothers' servant. Plaintiff brought an action against Raffa Brothers, who obtained leave to institute proceedings against the Northern Assurance Company Limited, which held itself bound to indemnify the defendants if negligence was proved.

The accident took place on August 18, 1959, and, as a result, plaintiff spent 183 days in a hospital. There was no evidence regarding his age. The medical report of the surgeon who examined him, dated April 7, stated, inter alia, that plaintiff had a permanent deformity of the left hip with a 2½ inch shortening of the left lower limb resulting in a limp. Nine ribs were fractured, which caused a deformity of his right chest. The surgeon recommended complete rest for a period of six months, and stated that plaintiff would be unfit to carry on any work for at least a year. At the hearing on April 4, 1962, plaintiff's father-in-law testified that plaintiff was still not well and was still not working and that he had had to send him to another hospital three months previously.

Held, for the plaintiff, plaintiff was entitled to damages of £13,108 4s. 2d. made up as follows: medical expenses, £485 12s. 6d.; loss of earnings, £1,622 11s. 8d.; general damages, £11,000 0s. 0d.

Zinenool L. Khan for the plaintiff.
No appearance for defendants.

Note: On November 1962, the Sierra Leone Court of Appeal reduced the general damages awarded in this case from £11,000 to £3,000 (Civil Appeal 17/62).

COLE J. This is an action in which the plaintiff claims against the defendants damages for personal injury and loss sustained by him due to the breach committed by the defendants of a contract of carriage and/or breach of a duty to carry the plaintiff safely.

On June 9, 1961, on the application of the defendants, the Northern Assurance Company Limited was made third party to these proceedings. On October 24, 1961, the defendants moved the court for third party directions. It was then ordered, inter alia, " that the third party, having admitted liability to indemnify the defendants against the plaintiff's claim, be at liberty to defend