For the reasons given, therefore, I have come to the conclusion that the respondent-applicant must succeed and I order that the service of the petition and the petition itself be struck out by reason of the fact that rules 15 and 16 of the Election Petition Rules have not been complied with. The petitioner-respondent is ordered to pay the costs of this motion.

Freetown
July 4, 1962
Bankole Jones J.

[SUPREME COURT]

H. M. KANAGBO, W. L. SHERMAN, A. B. FOFANA AND H. M. MORIBA . . . . . *Petitioners*

v.

M. J. KAMANDA BONGAY . . . . . *Respondent*

[E.P. 27/62]

Election Petition—Affidavit of time and manner of service of notice of presentation of petition—Rule 19 *of House of Representatives Election Petition Rules (Vol. VI, Laws of Sierra Leone,* 1960, *p.* 412)*—Whether rule* 19 *directory or mandatory—Meaning of "immediately" in rule* 19*—Electoral Provisions Act,* 1962 (*No.* 14 *of* 1962), *s.* 62 (2).

On June 16, 1962, petitioners filed an election petition praying, inter alia, that respondent's election be declared invalid. A copy of the petition was served on the respondent on June 18, but the affidavit of the time and manner of service of the notice of presentation of the petition was not filed until July 2.

Rule 19 of the House of Representatives Election Petition Rules provides:

"The petitioner or his agent shall, immediately after notice of the presentation of a petition shall have been served, file with the master an affidavit of the time and manner of service thereof."

Respondent applied for the dismissal of the petition on the ground that rule 19 had not been complied with.

Held, dismissing the petition, (1) that rule 19 is mandatory and not merely directory.

(2) That the words "immediately after" in rule 19 mean "with reasonable promptness having regard to all the circumstances of the particular case"; and

(3) That petitioners did not file the affidavit with reasonable promptness.

Cases referred to: *Mather* v. *Brown* (1876) 1 C.P. 596; 45 L.J.C.P. 547; *Fox* v. *Wallis* (1876) 2 C.P. 45; *Aspinall* v. *Sutton* [1894] 2 Q.B. 349; *Neild and others* v. *Batty* (1874) L.R. 9 C.P. 104.

Berthan Macaulay for the petitioners.
Cyrus Rogers-Wright for the respondent.

Note: This judgment was affirmed by the Court of Appeal on July 27, 1962 (Civil Appeal 14/62). The Court of Appeal, however, held that the petition should have been struck out instead of being dismissed.

BANKOLE JONES J. The respondent-applicant in his summons applies for the dismissal of the petition in this case, on the ground that it is not properly before the court, because the provisions of rule 19 of the House of Representatives Election Petition Rules, P.N. No. 97 of 1951, made applicable to these proceedings by section 62 (2) of Act No. 14 of 1962, have not been complied with. Rule 19 reads as follows: "The petitioner or his agent shall, *immediately after* the notice of the presentation of a petition shall have been served, file with the master an affidavit of the time and manner of service thereof" (emphasis supplied).

The pith of contention in this matter is whether this rule should be given an imperative and a mandatory construction or merely a directory one. Mr. Rogers-Wright argues in favour of the former and Mr. Berthan Macaulay in favour of the latter.

The facts are that the petition was presented on June 16, 1962, and on June 18 the respondent was served with a copy of the said petition together with a notice of presentation of the petition and a notice of motion to fix security. The respondent entered appearance the next day, that is, on June 19. The complaint of the respondent-applicant is that up to the issue of the summons in this matter on June 27, neither the petitioner nor his agent had filed with the master the affidavit required to be filed under rule 19. Such an affidavit was only filed on July 2, that is, the day fixed for the hearing of the summons.

Mr. Berthan Macaulay argued, and I think rightly, that when a statute or rules made applicable to a statute require that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequences of non-compliance, then one has to consider what intention is to be attributed by inference to the legislature. In this case, he submitted that on a proper construction of the preceding rules, namely, rules 15, 16, 17 and 18, the intention of the legislature to be inferred from rule 19 is to provide evidence to satisfy the master that a petition was served within a prescribed time, namely, within 10 days. He said that the affidavit of Mr. Cyrus Wright to the effect, among other things, that he entered an appearance the day after he had been served with a copy of the petition, etc., provides just the evidence required by the master. In these circumstances rule 19 must be construed as a directory enactment and not an imperative one, and, therefore, his late compliance with its provision cannot be fatal because no inconvenience or injustice has been caused to the other side.

On the other hand, my attention was directed to the following passage in Maxwell on Interpretation of Statutes (10th ed.), p. 376. It reads:

> "Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is, therefore, probable that such was the intention of the legislature."

Section 59 (1) of the Act appears to confer a right on the petitioner to bring his petition to this court and it seems to me that the rules regulating the procedure to be followed ought to be strictly complied with. A string of cases appears to support this view. See *Mather* v. *Brown* (1876) 1 C.P. 596; 45 L.J.C.P. 547, where Lord Coleridge C.J. had this to say (1 C.P. 601–2):

"It must be remembered that, in dealing with cases under these Acts, we are sitting as a final tribunal of appeal . . . and, therefore, are more especially bound to keep ourselves strictly within the letter of the Acts, and to abstain from any attempt to strain the law."

And Lindley J. said, inter alia, at p. 602: "It is not for us to cure what we conceive defects in them (the Acts)."

The Acts referred to were the Municipal Corporations Act (6 & 7 Will. 4, c. 76) and the Municipal Elections Act, 1875 (38 & 39 Vict. c. 40). See also *Fox* v. *Wallis* (1876) 2 C.P. 45; *Aspinall* v. *Sutton* [1894] 2 Q.B. 349, and *Neild and others* v. *Batty* (1874) L.R. 9 C.P. 104.

But I must confess that there are some authorities which appear to support Mr. Berthan Macaulay's contention. I, however, lean to the view that where enactments are made to regulate the procedure in courts, then such enactments are to be construed as imperative and not merely directory. I hold, therefore, that rule 19 is in mandatory language and must be complied with *to the letter*. This rule makes it obligatory on the petitioner or his agent to file with the master an affidavit of the time and manner of the service of the petition *immediately* after notice of the presentation of a petition shall have been served on the respondent. No such affidavit was filed until about 14 days had passed and on the very day of the hearing of this summons. If such an affidavit was not filed as required by the rule, then the mere fact that the respondent entered an appearance would not absolve the petitioner or his agent from the performance of what in law he ought to do and must in fact do. I concede that the expression "immediately after" in rule 19 ought not to be construed in its strictest sense "on the instant" but it must mean, if it means anything at all, with reasonable promptness having regard to all the circumstances of the particular case. Even putting the widest construction to this expression, the filing of the required affidavit at the time when the petitioners' agent did so cannot by any stretch of imagination or logic be regarded as having been done with reasonable promptness. If my view regarding the construction of rule 19 is correct, then it follows that the petitioner-respondent failed to comply with its mandatory provision and his disobedience puts him out of court. I rule, therefore, that the application of the respondent-applicant must succeed and I order that the petitioners-respondents' petition be dismissed with costs.

Freetown
July 23, 1962
Marcus-Jones J.

[SUPREME COURT]

SAMUEL C. C. PYNE-BAILEY . . . . . *Petitioner*

v.

A. B. S. JANNEH . . . . . *Respondent*

[E.P. 21/62]

Election Petition—Validity of nomination—Residence of nominator—Candidate's nominator not elector of electoral area for which he was candidate.

Election Petition—Objection to Returning Officer—Necessity for decision by