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 KANAGBO
 AND OTHERS
 v.
 KAMANDA
 BONGAY
 Bankole Jones
 J.

"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

[SUPREME COURT]

July 23,
 1962
 Marcus-Jones
 J.

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

*Returning Officer—Extension of time for nomination by Electoral Commission—
Extra-judicial action by Electoral Commission.*

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Electoral Provisions Act, 1962 (No. 14 of 1962), ss. 12, 15, 16, 57, 61, 88, 89.

On or before May 7, 1962, which was the last day for receiving nomination papers, the respondent, who was a candidate for election to the House of Representatives from the Kambia West Constituency, delivered his nomination paper (Exh. 6) to the Returning Officer. On May 7, the petitioner, who was also a candidate from the same constituency, took an objection to respondent's nomination paper on the ground that one of his nominators was not an elector from the Kambia West Constituency as required by section 12 (1) of the Electoral Provisions Act, 1962. The Returning Officer did not make a decision on the objection, but instead referred it to the Electoral Commission, which, after hearing respondent, gave him an extension of time until May 14 to deliver a new nomination paper. Respondent did deliver a new nomination paper, and, in the election on May 25, he received the greatest number of votes, while petitioner ran second. Petitioner then brought an election petition asking for a declaration that respondent's election was invalid and that petitioner should be declared the winner.

Section 16 of the Electoral Provisions Act, 1962, provides:

"(1) Any elector of the electoral area in which a candidate is standing for election may . . . object to the nomination of that candidate . . . and the Returning Officer shall decide on the validity of the objection.

"(2) The Returning Officer shall be entitled to hold a nomination paper invalid only on one or more of the following grounds, that is to say—

(a) that the particulars of the candidate or his nominators are not as required by law. . . .

"(3) The Returning Officer shall give his decision on any objection to a nomination paper as soon as practicable after it is made. . . .

"(4) . . . Any candidate aggrieved by the decision of the Returning Officer as to the validity or otherwise of a nomination paper may appeal to the Electoral Commission, who may uphold the decision of the Returning Officer or reverse the same."

Held, for the petitioner, (1) respondent's nomination paper (Exh. 6) was invalid.

(2) Section 16 (3) of the Electoral Provisions Act, 1962, imposes an imperative duty on the Returning Officer to give a decision on any objection to a nomination paper as soon as practicable after it is made.

(3) Section 16 (4) of the Electoral Provisions Act, 1962, imposes a judicial duty on the Electoral Commission to hear appeals from decisions by Returning Officers on objections to nomination papers. The section does not invest the Commission with power to hear and determine a reference from a Returning Officer without there first having been a decision by him.

(4) In reaching their decision on respondent's nomination without having heard petitioner, the Electoral Commission violated the principles of natural justice.

(5) The Electoral Provisions Act, 1962, does not confer power on the Supreme Court, after a declaration that the election of a particular candidate was invalid, to declare the candidate with the next highest number of votes the winner of the seat.

Berthan Macaulay for the petitioner.

John E. R. Candappa for the respondent.

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MARCUS-JONES J. This is an election petition brought by Samuel Charles Claudius Pyne-Bailey, an unsuccessful candidate at the last General Election for the parliamentary seat for the Kambia West Constituency, held on May 25, 1962.

There were three candidates at this parliamentary election and the votes cast were as follows: A. B. S. Janneh, 3,924; S. C. C. Pyne-Bailey, 3,747; M. F. Fofana, 1,898, and the said A. B. S. Janneh was declared duly elected.

The principal ground on which the petitioner seeks to nullify the election of the respondent is the alleged invalidity of respondent's nomination which petitioner said rendered the respondent ineligible to be a candidate in law for the said election; he prays that it might be determined that the said A. B. S. Janneh was not duly elected and that he (the petitioner) was duly elected and ought to have been returned.

The question whether the petitioner was duly elected and ought to have been returned can be decided only after the first question touching the validity of respondent's nomination has been determined in petitioner's favour.

According to the evidence, the last day for receiving nomination papers for the said constituency was May 7, 1962. At this point I consider it appropriate to set out in extenso sections 15 and 16 of the Electoral Provisions Act (No. 14 of 1962), dealing with nominations and objections to nominations respectively.

"15.—(1) On the last day for delivery of nomination papers and at the place notified under section 11 for the receipt of nominations, the Returning Officer (or Assistant Returning Officer) shall attend between the hours of eight o'clock in the forenoon and four o'clock in the afternoon to receive the nominations of any duly qualified candidate for election.

"(2) On the delivery of the nomination paper of a candidate, together with the deposit or receipt referred to in subsection (1) of section 13 where such deposit or receipt is required, the Returning Officer shall forthwith inform the candidate in writing of the symbol allotted to him.

"(3) When the requirements concerning the completion and delivery of nomination papers have been duly completed the Returning Officer shall forthwith publish by placarding in a conspicuous manner at the place of receipt of the nomination, a notice containing the name of the candidate and the names of the electors nominating him, and the symbol which has been allotted him."

"16.—(1) Any elector of the electoral area in which a candidate is standing for election may at any time up to five o'clock in the afternoon of the last day appointed for the receipt of nominations object to the nomination of that candidate but only on one or more of the grounds set out in subsection (2), and the Returning Officer shall decide on the validity of the objection.

"(2) The Returning Officer shall be entitled to hold a nomination paper invalid only on one or more of the following grounds, that is to say:—

- (a) that the particulars of the candidate or his nominators are not as required by law;
- (b) that the paper is not subscribed as so required;
- (c) that any one of the nominators is not an elector;
- (d) that 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.

“(3) The Returning Officer shall give his decision on any objection to a nomination paper as soon as practicable after it is made, but in any event before six o'clock in the afternoon of the last day appointed for the receipt of nominations.

“(4) Where a Returning Officer decides that a nomination paper is invalid, he shall indorse and sign on the paper the fact and the reasons for his decision. Any candidate aggrieved by the decision of the Returning Officer as to the validity or otherwise of a nomination paper may appeal to the Electoral Commission, who may uphold the decision of the Returning Officer or reverse the same.

“(5) The decision of the Returning Officer or, in the case of an appeal, the Electoral Commission, that a nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever.

“(6) Subject to subsection (5) of this section nothing in this section shall prevent the validity of a nomination being questioned on an election petition.”

I now proceed to consider the facts as disclosed by the evidence. According to the petitioner, he took an objection to the nomination paper of the respondent before the Returning Officer, Mr. Tejan Kabbah, on nomination day, on the ground that respondent's third nominator, Funthe Conteh, was not an elector in the Kambia West Constituency. The said nomination paper is Exhibit 6 in these proceedings. It is admitted by both sides that this third nominator, Funthe Conteh, is not an elector in the Kambia West constituency. It is also admitted by the Returning Officer, Mr. Tejan Kabbah, that objection was in fact taken by the petitioner, Pyne-Bailey, to the nomination paper. But instead of the Returning Officer coming to a decision on the objection as he was in law bound to do, he adopted an unauthorised procedure and referred the matter to the Electoral Commission in Freetown on the pretext that the respondent had misunderstood his advice to get a third nominator from the electoral area to mean an elector from the electoral district.

Section 16 (3) imposes an imperative duty on the Returning Officer of giving a decision on any objection to a nomination paper as soon as practicable after it is made but in any event before six o'clock in the afternoon of the last day appointed for the receipt of nominations.

In his evidence, the Returning Officer stated, *inter alia*: “I was satisfied that Funthe Conteh was not in the electoral area. I did not take any decision. I decided to refer the matter to the Electoral Commission. I wrote a letter to the Electoral Commission on May 10, 1962 (Exhibit 5).”

With full knowledge of the faulty nomination paper the Returning Officer caused a notice of candidates (including the respondent) and their nominators to be placarded in his office and thereafter to be published in the “Sierra Leone Gazette” of May 21, 1962 (Exhibit 1 of these proceedings), thereby publishing to the electors of the Kambia West Constituency and to the world that the said A. B. S. Janneh had fulfilled the requisite conditions of a valid nomination and was a fit and proper candidate to be voted for at the impending General

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Election on May 25, 1962. A judicial duty was imposed by law on the Returning Officer regarding objections to nomination and from this he could not depart. The nomination paper was invalid and the respondent could not proceed to election on that nomination.

The respondent in his evidence has made certain grave allegations against the Returning Officer, which, if true, would amount to an obvious denial of respondent's civic rights.

Respondent has tendered in evidence a nomination paper (Exhibit 8) which to all intents and purposes appears to be a valid nomination paper. According to respondent, at 10.30 a.m. on May 7, he lodged with the Returning Officer nomination paper Exhibit 8 duly signed by three electors in the constituency, to wit, Kasim Fahad of Mapotolon, K. M. Hajallie of Kassere and Allie Yassin of Kassere, but the Returning Officer rejected it on the ground that the nominators had not signed in his presence. If this is true, then the act of the Returning Officer was manifestly calculated to injure the respondent. Although Sheku Yella Bangura has supported the respondent in this allegation, I have to consider the circumstances attending it, the requirements of law and the evidence of the Returning Officer.

Section 12 lays down the procedure to be followed upon nomination. It requires every candidate to be nominated in writing by three electors of the electoral area for which he is a candidate. The writing shall be subscribed by the candidate and the persons nominating him. The nominators and the candidate must all sign in the presence of two witnesses who must be of full age and who must sign on the place indicated in the nomination form. And each candidate or one of the persons nominating him shall then deliver the nomination paper, subscribed as provided by law, at the office of the Returning Officer before four o'clock on the afternoon of the last day for the delivery of nomination papers. According to section 12 (3) at the request of an elector and in the presence of the candidate and all his nominators the Returning Officer is empowered to complete any such nomination paper on such elector's behalf. In a community where illiteracy abounds the reason for this provision is not far to seek.

If in truth and in fact this nomination paper had been presented to the Returning Officer at 10.30 a.m. as alleged and is a valid nomination, I am at a loss to understand why the respondent so meekly accepted its rejection.

According to law, a nomination paper is delivered together with the candidate's deposit or a valid receipt for the said deposit whereupon the Returning Officer shall forthwith inform the candidate in writing of the symbol allotted him. Neither a deposit nor a receipt for the deposit was tendered to the Returning Officer at the time of the alleged delivery of Exhibit 8, and having carefully considered the evidence of the respondent and his witness and also having carefully examined the nomination paper I do not accept the respondent's story. I find as a fact that Exhibit 8 was not delivered to the Returning Officer and rejected by him, as alleged.

I now turn to the Returning Officer's reference to the Electoral Commission and their consequential determination and enlargement of time which enabled the respondent to prepare and submit yet another nomination paper (Exh. 4) on May 14, 1962, seven days after the date limited for delivering nomination papers. Mr. J. S. Fenton, Chairman of the Electoral Commission, produced to this court the letter of the Returning Officer relating to this nomination paper, the relevant portion of which reads as follows:

"Mr. S. C. Pyne-Bailey, S.L.P.P., Kambia West, also objected to the nomination of Mr. A. B. S. Janneh, A.P.C., on the grounds that Mr. Janneh was not nominated by an elector of the constituency for which he is seeking election. Mr. Janneh told me at 3.15 p.m. on nomination day that he had difficulties about his nominators. I advised him to get anyone from the electoral area to nominate him. As you know, within Act 14 of 1962 electoral area means district ward or constituency, whichever is appropriate. Mr. Janneh got someone from Kambia Central to nominate him instead of Kambia West where he seeks election. In this case since I had advised Mr. Janneh and he misunderstood my advice, I thought it would be a good idea for the matter to be referred to the Commission for decision. It would seem that Mr. Janneh's nomination is not valid according to the Act."

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Under cross-examination, Mr. Fenton said: "The Commission extended the time under subsection (2) of section 88. We felt we had to extend the time in common fairness to the man who had been misled by the Returning Officer, and the Returning Officer had not given a decision."

However benign and praiseworthy the conduct of the Electoral Commission in endeavouring to see that justice was done, yet, with respect, they erred in law in adjudicating on a matter which had not been properly brought before them.

Section 16 (4) imposes a judicial duty on the Electoral Commission to hear an appeal in regard to a decision by the Returning Officer upon an objection to a nomination. The section is quite explicit as to the circumstances in which they can hear an appeal from the Returning Officer. It does not invest them with power to hear and determine a reference without there first being a decision by the Returning Officer.

Further, when the Commission sit in their appellate jurisdiction they are required to act judicially and not extra-judicially.

When the Electoral Commission met on May 12 to consider the reference of the Returning Officer, the respondent appeared before them. The petitioner who had objected to the nomination was not heard, and, in arriving at their decision under such circumstances, they violated the principles of natural justice.

So far, nothing in this matter appears to have been done right, either by the Returning Officer or the Electoral Commission. It is true that the Electoral Commission is empowered by section 88 of the Act to enlarge the time prescribed in the Act for the giving of any notice or for the doing of any act or thing, but this could only be sustained if the antecedent matters in dispute had been validly done.

I find that the nomination paper of May 7, 1962, was bad in that the third nominator was not an elector in the Kambia West Constituency and also that the nomination paper, dated May 14, and filed after enlargement of time by the Electoral Commission was also bad. I, therefore, hold that the election of Mr. A. B. S. Janneh as member for the parliamentary seat for the Kambia West Constituency was undue and that the said election was void.

The petitioner has prayed that this court should declare him duly elected and returned upon a finding that the election of the respondent was void.

In support of petitioner's claim to the seat Mr. Berthan Macaulay referred me to section 57 of the Act and stated that because there was an undue return of the respondent the petitioner was the candidate with the next highest number of votes and that he should be duly returned.

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Section 57 empowers the court to determine all questions which may arise as to the right of any person to be or remain an elected member of the House of Representatives and these questions will only relate to a person who is at present elected.

Section 61 (3) confers jurisdiction on the court to determine whether the person whose return or election is complained of was duly returned or elected or whether the election was void. It does not, in my opinion, confer jurisdiction, after a finding of undue return, to declare the candidate with the next highest number of votes winner of the seat.

The provisions of section 57 (3) of the House of Representatives (Elections) Regulations, 1957, to be found at page 58 of Volume VI of the Laws of Sierra Leone, were omitted from section 61 of Act No. 14 of 1962, and section 89 (3) thereof repealed the said regulation. By this repeal the right of the court to find, on the trial of an election petition, for the candidate with a majority of lawful votes, other than the candidate whose return is complained of, has been taken away by statute. In the circumstances the petitioner is not entitled to claim the seat and be declared duly returned.

The election for the parliamentary seat for the Kambia West constituency holden on May 25, 1962, is hereby declared void.

Freetown
August 3,
1962

Bankole Jones
J.

[SUPREME COURT]

AARON COLE *Petitioner*
v.
SAMURA SESSAY *Respondent*

[E.P. 2/62]

Election Petition—Validity of nomination—Candidate's nominator not elector of electoral area for which he was candidate—Residence of nominator—Electoral Provisions Act, 1962 (No. 14 of 1962), ss. 12 (1), 16 (2) (a)—Sierra Leone Constitution (P.N. 78 of 1961), s. 38 (1)—Franchise and Electoral Registration Act, 1961 (No. 44 of 1961), ss. 3 (2), 4.

At the General Election for the House of Representatives held in Freetown on May 25, 1962, the respondent ran first in the West 1 Electoral Constituency, and petitioner ran second. Petitioner then brought an election petition challenging respondent's election. The ground of the petition was that respondent had violated section 12 (1) of the Electoral Provisions Act, 1962, in that one of his nominators was not an elector of the electoral area for which he was a candidate, i.e., the West 1 Electoral Constituency.

Section 12 (1) of the Electoral Provisions Act, 1962, provides: "Every candidate shall be nominated in writing by three electors of the electoral area for which he is a candidate. . . ."

One of respondent's nominators was not a resident of the West 1 Electoral Constituency.

Held, for the petitioner, the fact that one of the respondent's nominators was not an elector of his constituency invalidated his nomination.

Cases referred to: *The Borough of Oldham Case* (1869) 1 O'M. & H. 151; *The Pembroke Boroughs Case* (1901) 5 O'M. & H. 135.