carried on flourishing business in baking, mineral waters manufacturing, trading and actually lived there—he and his family. Now that those premises have been reduced to a forlorn condition by himself he only uses portions as stores and portions as shop. The landlord had long detected this unsatisfactory state and had called attention, he had wanted the tenant to quit so that he could put the premises into good condition again."

With the utmost respect, not only were the comments in this passage uncalled for and irrelevant but most of the facts as stated, if not all, had no supporting evidence. I find, therefore, that the Committee failed to apply the correct principle as laid down in section 7 (*c*) as their guide but rather applied wrong principles or no principle at all.

Grounds 3 and 4 in my opinion necessarily flow as a result of my finding on ground 1. They contain nothing new and can be disposed of by stating that I agree that the decision of the Committee amounted to a penalty rather than a finding on the evidence and that having regard to the evidence the decision was unreasonable.

It follows that the appeal is allowed. I therefore quash the order of the Committee and remit the matter back to them for reconsideration directing them to be guided by the provision laid down in section 7 (*c*) of Cap. 52. The appellant is to have the taxed costs of this appeal.

[SUPREME COURT]

Freetown
May 4,
1962
Bankole Jones
Ag.C.J.

JAMES W. RUSSELL . . . . . *Plaintiff*

v.

JOHN KOMBE . . . . . *Defendant*

[C.C. 369/60]

Tort—False imprisonment—Plaintiff arrested for contempt of Native Court—Whether arrest lawful—Whether plaintiff imprisoned—Defendant protected in discharge of judicial duty—Native Courts Act (*Cap. 8, Laws of Sierra Leone,* 1960), *s.* 28 (2)—*Courts Act* (*Cap. 7, Laws of Sierra Leone,* 1960), *s.* 39.

Practice—Indorsement of claim—Writ specially indorsed—Supreme Court Rules (*Vol. VI, Laws of Sierra Leone,* 1960), *Ord.* III, *r.* 6.

Plaintiff was, on two occasions, orally summoned to attend the Taiama Native Court in a civil case, but he refused to attend the hearing on each occasion. He was arrested on a warrant signed by defendant, who was Vice-President of the court, and was taken to Taiama, where he remained five days. When he was brought before the court, the President told him that his name was not on the list of accused persons, and he was, accordingly, discharged. He then brought suit against defendant for false imprisonment.

Plaintiff's writ of summons was specially indorsed contrary to the provisions of Order III, r. 6 of the Supreme Court Rules. When plaintiff discovered his mistake, he proceeded to file and deliver a statement of claim in the same terms as his special indorsement. At the trial, defendant submitted that the writ was null and void because of the violation of rule 6.

Held, for the defendant, (1) the special indorsement of the writ was a mere technical mistake which the plaintiff himself corrected by filing a statement of claim.

(2) Plaintiff's arrest for failing to obey the summons of the Native Court was in accordance with section 28 (2) of the Native Courts Act and was, therefore, lawful.

(3) Plaintiff was not falsely imprisoned during his five-day stay in Taiama, since he was not prevented from leaving.

(4) In signing the warrant for plaintiff's arrest, defendant was acting judicially and, therefore, was protected from suit by section 39 of the Courts Act.

Case referred to: *Hunt* v. *Worsfold* [1896] 2 Ch. 224.

Kenneth O. During for the plaintiff.
John H. Smythe (Solicitor-General) for the defendant.

BANKOLE JONES AG.C.J. The plaintiff's claim is for damages for the arrest and false imprisonment by the defendant of him (the plaintiff).

At the close of the case for the defence, the learned Solicitor-General submitted, among other things, that the writ was null and void in that it was specially indorsed in violation of Order 3, r. 6. This order specifically provides that actions for false imprisonment should not be specially indorsed. It is true that the plaintiff specially indorsed his writ which he had no right to do. The defendant thereupon entered a conditional appearance which he filed on October 24, 1960, but took no step for a month to set aside the writ. When obviously the plaintiff discovered his mistake, he proceeded to file and deliver a statement of claim on November 24, 1960, in the same terms as his special indorsement. The defendant filed a defence on December 6, 1960, and the plaintiff a reply on February 27, 1961. The case was entered for trial on March 10, 1961.

Learned Solicitor-General contended that in spite of his taking a fresh step, with full knowledge of the defection of the writ, yet the writ is incurably bad and void, and consequently all proceedings under it. With respect, I do not agree with this proposition of the law unsupported by any authority except, as it is said, by the case of *Hunt* v. *Worsfold* [1896] 2 Ch. 224, which was a case where the plaintiff joined in one action two claims each of which would have been perfectly good if it stood alone. This case is certainly not germane to the present one. All the authorities are at one in proclaiming that it merely sets up a technical defence if a writ is not properly indorsed. Such a mistake can be corrected by the court, if it thinks fit, forthwith to amend the indorsement by striking out any claim which could not properly be indorsed. The court has a discretionary power to prevent technical objections from defeating a plaintiff's claim where a bona fide mistake has been made, as I opine, in this case. That mistake, however, was cured by the plaintiff himself filing a statement of claim, and, therefore, for all purposes of the writ, the special indorsement therein ought to be regarded as if it was never there from the beginning. Learned solicitor's submission, therefore, fails.

Now, to the substance of the action. The plaintiff who is a farmer and one-time trader resides in Largo, Banta Chiefdom, in the Moyamba District. His case is that sometime in August 1960 the defendant, who was the Vice-President of the Native Court at Taiama, caused a warrant of arrest to be executed on him at Gondama on a charge of contempt of court. He was taken

to Taiama where he was falsely imprisoned for five days before he appeared in court only to discover that no such charge was on the list. He was told so by the President of the court and was accordingly released. After his release he was served with a summons to appear in the same court on September 26, 1960, to answer to another charge; he says that prior to his arrest he was never summoned either orally or otherwise to appear in the Taiama Native Court.

The defence is that the defendant did not cause the plaintiff to be arrested at Gondama but that if he was so arrested and detained it was by process of the Native Court of Taiama and that he was never falsely imprisoned.

Quite a lot of evidence was led as to what took place at Largo, Gondama and at Taiama in August 1960. Some of the evidence on either side was contradictory in nature. I, however, find proved the following facts:

(1) That the plaintiff was on two occasions orally summoned to attend the Taiama Native Court in a case where one, Abdullai Jalloh, was the plaintiff, and that he refused to attend the hearing on each occasion.

(2) That he was arrested for refusing to obey the summons to attend.

(3) That at Taiama Native Court the President of the court told him that he did not find his name on the list of accused persons and he was, accordingly, discharged.

(4) That the defendant signed the warrant for his arrest for contempt of court as Vice-President of the court on the alleged instruction of the President, but that the plaintiff was never tried for contempt of court.

These findings raise some interesting questions of law. In the first place the defendant in his statement of defence at paragraph 4 states: "The plaintiff was subpoenaed to attend the said court but refused to obey the said subpoena." The evidence, on the other hand, is to the effect that he was summoned to attend the court but disobeyed the summons. A subpoena is technically different from a summons. This is not an unsurmountable difficulty, even though, on the evidence (that of Bona), I have found that he was civilly summoned, because a disobedience of either a subpoena or a summons could result in an arrest; see section 28 (2) of Cap. 8. It seems to me, therefore, that the arrest of the plaintiff was lawful and he cannot complain about it.

In the second place, if the arrest was lawful, why was not the charge of contempt of court preferred against the plaintiff as it should have been? He was told by the President that his name was not on the list of accused persons before the court. The defence did not produce the court record to show what really happened, although there was evidence that a record was kept of the proceedings. Above all, it was only after the plaintiff had been discharged that he was served with a written summons—Exh. "A"—to appear in court the following month in a case where Abdullai Jalloh was the plaintiff.

Counsel for the plaintiff stated that the incidents relied upon as constituting false imprisonment were: (1) The arrest in Gondoma including the period of the journey to Taiama, and (ii) the five days' stay in Taiama.

As to (i) if I have found that the arrest was lawful then what flowed from it, for example, the period of the journey to Taiama, cannot in law constitute false imprisonment. As to (ii) one has to look at the evidence. In the first place I do not believe that when the plaintiff arrived at Taiama the defendant told him that if he left the town he would deal with him. All he told him was that he should wait until the President of the court arrived for his case to be tried. I find that the plaintiff was not prevented from leaving Taiama had he wanted to. In fact, he refused an offer to be lodged by the Paramount Chief

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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."