[SUPREME COURT]

Freetown
August 9, 1962

Bankole Jones P.J.

PARAMOUNT CHIEF R. B. S. KOKER . . . . . *Petitioner*

v.

PARAMOUNT CHIEF ABU BAIMBA III . . . *Respondent*

[E.P. 7/62]

Election petition—Service of notice of presentation of petition—Affidavit of time and manner of service—Rules 15 *and* 19 *of House of Representatives Election Petition Rules* (*P.N.* 97 *of* 1951) (*Vol. VI, Laws of Sierra Leone*, 1960, *p.* 407).

Petitioner's election petition was presented to the master on June 7, 1962, pursuant to rule 2 of the House of Representatives Election Petition Rules. On June 14, a copy of the petition was served on respondent's solicitor. At the bottom of the petition was indorsed the following: "This petition is presented by me, Cyrus Rogers-Wright, of 18, Bathurst Street, Freetown, solicitor and agent for the petitioner, Paramount Chief Raymound B. S. Koker." On June 18, an affidavit of service of the copy of the petition was sworn, and this affidavit was filed on June 19. A notice of the presentation of the petition was served on respondent or his solicitor on June 19. Rule 15 of the House of Representatives Election Petition Rules provides: "Notice of the presentation of a petition . . . accompanied by a copy of the petition shall be served by the petitioner on the respondent within 10 days after [the presentation of the petition to the Master]." Rule 19 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 moved that the petition be struck out on the ground that petitioner had not complied with rules 15 and 19.

Held, (1) that the service of the copy of the petition with the indorsement thereon on June 14 did not fulfil the requirements of rule 15.

(2) That the service of the notice of presentation of the petition on June 19 did not comply with rule 15, because it was not accompanied by a copy of the petition and it was served more than 10 days after the presentation of the petition to the master; and

(3) That the affidavit of service filed on June 19 did not comply with Rule 19 because it was sworn before the service of the notice of presentation of the petition.

The court also said, obiter, that even if the service of the copy of the petition on June 14 had been sufficient to satisfy rule 15, the affidavit filed on June 19 still would have been insufficient, because not filed "immediately after" such service, as required by rule 19.

Cases referred to: *Williams* v. *The Mayor of Tenby* (1879) 42 L.T. 187; *Kanagbo and others* v. *Kamanda Bongay* (July 27, 1962), Court of Appeal of Sierra Leone, Civil Appeal 14/62.

Cyrus Rogers-Wright for the petitioner.
Macaulay & Co. for the respondent.

BANKOLE JONES P.J. This is an application by the respondent, by way of motion, to strike out the petition in this matter on the ground that the petitioner has failed to comply with Rules 15 and 19 of the House of Representatives Election Petition Rules, P.N. 97 of 1951, made applicable to these proceedings by the Electoral Provisions Act, 1962. Rule 15 reads as follows: "Notice of the presentation of a petition . . . accompanied by a copy of the petition shall

be served by the petitioner on the respondent within 10 days after such presentation, exclusive of the day of presentation."

The petition in this case was presented to the master on June 7, 1962, in compliance with rule 2. At the bottom of the petition was indorsed the following: "This petition is presented by me, Cyrus Rogers-Wright, of 18, Bathurst Street, Freetown, solicitor and agent for the petitioner, Paramount Chief Raymound B. S. Koker."

Mr. Rogers-Wright submitted that this indorsement is sufficient to constitute the kind of notice envisaged in rule 15. It does not matter how the notice is given, he says, so long as it is brought to the knowledge of the respondent that a presentation of the petition has been made; and that this was exactly what the indorsement did, and, whether it was so intended or not, is of no moment. The fact that he filed what may be regarded as another notice of presentation of the petition on June 19 is, he says, a mere surplusage, because nowhere in the rules is the filing of such a document made obligatory. However, he not only filed it but *served* it on the other side on the same day.

If this argument is correct, then I must hold that Mr. Rogers-Wright has substantially complied with the rule in question.

However, ingenious as it sounds, this argument does not appear to have any merit. Rule 15, in my view, ought to be construed in its ordinary grammatical sense and in the context of all the other rules dealing with "notices." So construed, I think that the notice of presentation must be subsequent to the presentation of the petition to the master, that is, the filing or presentation of the petition must precede the notice of presentation.

The expression "accompanied by a copy of the petition" in rule 15 does not mean "indorsed on the petition." It means that the document containing the notice of presentation must be served together with the copy document of the petition filed. The law, therefore, in my view, envisages two documents and not one. When Mr. Rogers-Wright served the other notice of presentation of the petition on June 19, 1962, he complied with rule 15 in so far as service of this document is concerned. But rule 15 makes it mandatory for such a notice to be accompanied by a copy of the petition and for both to be served within 10 days after presentation of the original petition exclusive of the day of such presentation.

It is here, I think, that the petitioner went wrong. He not only failed to accompany his notice with a copy of the petition, but served it two days out of time. Rule 15 is not only mandatory in language but peremptory and obligatory as to its compliance: see *Williams* v. *The Mayor of Tenby* (1879) 42 L.T. 187. I find, therefore, that the petitioner's disobedience of this rule puts him out of court.

Although this finding of mine tolls the death knell of the petitioner's petition, yet, I feel myself constrained to examine the arguments of counsel as to whether or not rule 19 was complied with. This rule, now made famous or infamous, depending on what side of the fence one stands, reads as follows:

"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."

I find that the affidavit of service sworn by one Sorie Sesay, although filed on June 19, was so sworn on June 18 and speaks, among other things, of the service of the petition on the respondent's solicitor at 4 o'clock in the

afternoon of June 14, 1962. The notice of the presentation of the petition was also served on June 19. Mr. Berthan Macaulay argued that there has not been compliance with the rule because, in the first place, the affidavit was sworn on the day prior to the service of the notice of presentation and not after. In the second place, he submitted that the affidavit is not an affidavit of service of notice of the presentation of the petition. He buttressed his argument by referring me to Volume 8 of Lord Atkin's Encyclopaedia of Court Forms and Precedents, p. 582, Form 20, which conforms with the relevant English petition rule of which our rule 15 is in substance the same. This form speaks of the service on the respondent of a notice of the presentation of the petition and not of the service of the petition itself: see also Volume 14 of Halsbury's Laws of England (Simonds ed.) at p. 261, the last paragraph of paragraph 455.

Mr. Rogers-Wright submitted that the fact that his affidavit did not speak of the service of the notice of the presentation of the petition cannot be fatal because it can be cured by rule 59, which reads as follows: " No proceedings under the House of Representatives (Elections) Regulations, 1957, shall be defeated by any formal objection."

He said that Mr. Berthan Macaulay's objection was a formal one, and can be cured. With respect, I do not agree. If the affidavit in question is one which purports to inform the master of the time and manner of the service of the notice of presentation of the petition, then it was not only sworn *before* the service of the notice took place, but it only informs the master of the time and manner of the service of the petition itself. The two last words in rule 19, namely: " service thereof," must refer, in my opinion, to the whole expression " notice of the presentation of a petition " and not to the petition. How can it, therefore, be countered that Mr. Berthan Macaulay's objection is formal? The effect of his objection, as I see it, is to deprive the affidavit of life and limb, and rule 59 is accordingly impotent to effect any restoration.

Now, it was argued that if service of the notice of presentation of the petition as indorsed on the petition was effected on June 14, then the filing of the affidavit on June 19, that is, if this affidavit complies with rule 19, was done, to use the language of the rule, " immediately after " such service. I find myself in respectful disagreement with this submission: see *Kanagbo & ors.* v. *Kamanda Bongay*, decided in the Appeal Court last month, and with particular reference to the judgment of Dove-Edwin J.A.

I think where both solicitors, as agents for their respective clients, have their offices in Freetown, and not even two miles apart at that, to allow a period of five days to elapse before filing the required affidavit cannot be said to be an act done with all convenient speed or with reasonable promptness having regard to the circumstances.

I rule, therefore, that rules 15 and 19 have not been complied with by the petitioner and I accordingly order that his petition be struck out with costs to be taxed.