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PYNE-
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v.

JANNEH

Marcus-Jones
J.

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Volume VI of the Laws of Sierra Leone, were omitted from section 61 of Act No. 14 of 1962, and section 89 (3) thereof repealed the said regulation.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.

Berthan Macaulay, Freddie A. Short and Hudson Harding for the petitioner.
John E. R. Candappa and Emile Thompson-Davies for the respondent.

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BANKOLE JONES J. At the General Election held in Freetown on May 25, 1962, four candidates presented themselves for election at the West 1 electoral constituency. The respondent, Samura Sessay, topped the poll with 1,161 votes and the petitioner, Aaron Cole, came second with 1,021 votes. The former was accordingly duly elected.

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These proceedings have been brought to question the right of the respondent to have stood election and, a fortiori, his entitlement to have been duly elected. The case for the petitioner is that the respondent violated the provision of section 12 (1) of the Electoral Provisions Act, No. 14 of 1962, in that one of his nominators was not an elector of the electoral area, that is, the West 1 electoral constituency, for which he was a candidate. Section 12 (1) reads as follows: "Every candidate shall be nominated in writing by three electors of the electoral area for which he is a candidate. . . ." When the respondent submitted his nomination paper to Mr. Dillsworth, between May 5 and 7, 1962, a then Assistant Returning Officer, one of his nominators, was one Amina H. Ture, housewife, of 2, Sanders Street, who described herself as an elector of the constituency for which the respondent was seeking election, that is, the West 1 electoral constituency. At this date there was in existence one comprehensive register of electors for the West Ward and this register did not indicate the names and addresses of the electors falling within the West 1 Constituency.

The compilation of a register of electors for each ward is statutory: see section 4 of the Franchise and Electoral Registration Act, No. 44 of 1961. The object of this Act is clearly set out in its headnote and reads:

"An Act to provide for the regulation of the franchise and the registration of electors for the election of members to the House of Representatives and to local authorities and for the *combination of registers of electors for the House of Representatives with registers of electors for local authorities*" (emphasis supplied).

I find that the division of the city of Freetown into wards is not the function of the Electoral Commission but it appears to be that of the Minister of Internal Affairs: see section 3 (2) of Act No. 44 of 1961. The function of the Electoral Commission, among other things, is to divide Sierra Leone into constituencies for the purpose of electing members to the House of Representatives: see section 38 (1) of the Constitution. In performing this function it may well be that some electors whose names and addresses are to be found in the register of one ward may find themselves in a different electoral *constituency* as opposed to an electoral *ward*. But the law prescribes that there should be one general register for each ward and I can find nowhere either in the Constitution or in any of the relevant Acts that there should be compiled a separate register of voters for the different constituencies. This may have been a desirable thing for the legislature to have done in order to set at rest any doubt a voter or candidate may have, especially as this was the first time that universal adult suffrage was introduced into this country.

In the present case, the Electoral Commission, I think, was right in using the comprehensive register of voters for the West ward and when Mr. Dillsworth found the nominator's name in this register, he obviously acted in good

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faith, especially so when there was no objection made on the nomination paper of the respondent. It, however, came out in evidence that the nominator, Amina H. Ture or A. H. Turay of 2, Sanders Street, was not an elector in the West 1 electoral constituency but one in the Central 2 electoral constituency.

Mr. Candappa submitted in the first place that the West Ward register (Exhibit "D") is conclusive and that if the name of the nominator was in it, then it must be accepted that she was an elector who falls within the meaning of section 12 (1) of Act 14 of 1962. He submitted further that it was the duty of the petitioner to have produced and tendered a register for the West 1 Constituency and that not having done so, Exhibit "D" is the only register to look at for the nominator's name. He cited the *Oldham* case, reported in (1869) 1 O'M. & H. at p. 51, and the *Pembroke Boroughs* case, reported in Volume 5 of the collection of cases by the same authors. The principles in these cases are familiar and well founded, but, with respect, have no application to the present case. In this case, the division of Sierra Leone into constituencies, so far as is relevant here, was published in the "Sierra Leone Gazette" of April 30, 1962, before nomination day. I concede that in the West 1 electoral constituency there is not even the mention of Sanders Street, but the petitioner deposed that candidates were told at the Electoral Office to go to the Surveys and Lands Department, where, obviously, they could see on a map the demarcation of each constituency showing streets, etc. This he did. Had the respondent himself done so he would have found, as depicted in Exhibit "E," the map produced in evidence, that Sanders Street fell into two constituencies, and with reasonable diligence on his part he would have discovered that No. 2, Sanders Street was not in his constituency. He cannot, therefore, now blame the Electoral Commission for his own lack of diligence. The question as to whether the petitioner should have produced a separate register of the West 1 electoral constituency is a matter which he could not have done, because, as I have pointed out, the compilation of such a register is not provided for by law.

Another submission of Mr. Candappa is that the failure of the petitioner to take an objection to the respondent's nomination paper when he knew of the defect is tantamount to a waiver, and that, therefore, these proceedings cannot be sustained. Whilst I agree that it would have been eminently desirable for the petitioner to have caused an objection to have been taken on the respondent's nomination *paper* under section 16 (2) (a) of Act No. 14 of 1962, yet these proceedings stand on a different footing. The petitioner is here questioning the validity of the respondent's *nomination* as opposed to the validity of his nomination *paper*. As I held in a ruling I gave quite early in this case, there was no "decision" given by either the Returning Officer or the Electoral Commission regarding the validity of the respondent's nomination paper, one which could not have been questioned in this court.

It seems to me, therefore, that the fact that one of the respondent's nominators, namely, Amina H. Ture, was not an elector of his constituency invalidates his nomination as a candidate and that he was not entitled to have been duly elected, and I accordingly declare that the respondent, the said Samura Sessay, was not so duly elected and that the election holden on May 25, 1962, was void. The respondent is ordered to pay the costs of these proceedings.