

S.C.  
1963

KAMARA  
v.  
MANSARAY  
AND  
WATKINS

Cole Ag.C.J.

evidence before me that, apart from the amendment sought, the issue as to publication in the "Gazette" of the list in question has never been raised before. As I have already stated, I find the amendment sought under paragraph 3 (1) (a) of the notice a substantial and new matter. There is no evidence before me that the failure to raise this new issue in due time has been bona fide.

Furthermore, to grant this particular amendment would result in hardship and embarrassment to the first respondent, the principal witness in respect of the new issue, Mr. Brian Watkins, having left Sierra Leone for good.

For the reasons already given I refuse that part of the application which relates to paragraph 3 (i) (a). The others appear to be and are, in my view, clarification of the original grounds of the petition. I am disposed to grant those and hereby do so. The costs of the application will be paid by the petitioner to the first respondent in any event.

Freetown  
Nov. 25,  
1963.

Cole Ag.C.J.

[SUPREME COURT]

THE COMMISSIONER OF POLICE . . . . . Appellant  
v.  
QUINCI BATTITSTA . . . . . Respondent

[Magistrate Appeal 45/63]

*Criminal Law—Failure to comply with conditions of fishing licence—Whether condition ultra vires Fisheries Act (Cap. 195, Laws of Sierra Leone, 1960)—Fisheries Act, ss. 2, 3 (1), 6 (2), 10 (1) (a), 10 (1) (c), 13.*

On April 25, 1963, respondent appeared before the Senior Police Magistrate charged with navigating a fishing vessel in Yawri Bay east of the western tip of Banana Island, thereby violating the conditions in his licence, contrary to section 10 (1) (a) of the Fisheries Act.

Section 6 (2) of the Fisheries Act provides: "A licence shall be in the prescribed form and may be issued subject to such conditions as the licensing officer may think fit to impose by indorsement thereon."

The Senior Police Magistrate dismissed the charge and acquitted the respondent, holding that section 6 (2) did not give the licensing officer the power to restrict respondent's right of navigation. The acting Attorney-General appealed.

*Held*, allowing the appeal, that section 6 (2) of the Fisheries Act does give the licensing officer the power to restrict a licensee's right of navigation.

*Kanja A. Daramy* (Ag. Senior Crown Counsel) for the appellant.  
*Edward J. McCormack* for the respondent.

COLE AG.C.J. On April 25, 1963, the respondent appeared before the Senior Police Magistrate charged as follows:

"That he, on or about April 21, 1963, at Yawri Bay in the Western Area of Sierra Leone, being the director of the Union Fishing Company, who was on board the motor fishing vessel F.N. 21, was found navigating in Yawri Bay, to wit, east of the westernmost tip of Banana Island, thereby violating or failing to comply with the conditions in his licence.



“ Contrary to section 10 (1) (a) of Cap. 195.”

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At the adjourned hearing on May 8, 1963, Mr. McCormack for the respondent took the preliminary objection to the charge that as laid the charge disclosed no offence under section 10 (1) (a) of Cap. 195. Alternatively, the condition alleged in the charge to have been violated or not complied with was ultra vires the Fisheries Act, Cap. 195. The learned magistrate upheld the objection, dismissed the charge and acquitted and discharged the respondent. The learned Acting Attorney-General has appealed against this decision on this ground, namely:

“That the trial magistrate was wrong in law in holding that the discretionary power conferred under section 6 (2) of Cap. 195 on the licensing officer only relates to the granting of a licence and not to restricting the rights of navigation.”

In dismissing the charge, the learned magistrate said, inter alia:

“Section 13 of the Act (Fisheries Act) prescribes the conditions which are to be indorsed on the licence for the purpose of section 10 (1) (a). With respect to Mr. Smythe, the powers conferred on the licensing officer under section 6 (2) are not to be construed very widely in view of their penal nature. I accordingly hold that the discretionary power conferred under section 6 (2) of the Act on the licensing officer only relates to the granting of the licence and not to restrict the rights of navigation which is a right conferred only on the legislature or to the authority to which such power had been specifically delegated.”

It should be mentioned at once that the Fisheries Act, Cap. 195, under which the respondent was charged, was amended by the Fisheries (Amendment) Act (No. 14 of 1963). This amending Act came into force on May 23, 1963. It, therefore, does not affect this case.

By section 3 (1) of the Fisheries Act, Cap. 195, which I shall hereafter call “the Act,” no motor fishing vessel should be operated or navigated within Sierra Leone without a licence. According to section 2 of the Act, licence means a licence issued under the provisions of section 6 of the Act. One of the provisions of section 6—subsection (2)—empowers a licensing officer to impose such conditions as he may think fit indorsed on the licence at the time of issue. It is my considered view that sections 3 (1) and 6 (2) of the Act should be read together. By these sections the legislature empowers a licensing officer at the time of the issue of a licence to impose such conditions as he may consider necessary relating either to the operation or to the navigation of the motor fishing vessel so licensed. The conditions may be restrictive; but so long as the conditions relate either to the operation or to the navigation of the vessel concerned they will be intra vires the Act and any violation or non-compliance thereof will constitute an offence punishable under section 10 of the Act. It is true that section 13 of the Act makes provisions for regulations furthering the best interest of the fishing industry of Sierra Leone to be made and in fact regulations have been made in pursuance of that section. They are the Fisheries Regulations and are to be found at page 1682 of Volume VII of our laws. I have examined these regulations and I find them to be of general application whether indorsed on a licence or not. In my view, those regulations are additional to, and not in diminution of, the discretionary power conferred on the licensing officer by section 6 (2) of the Act. It is of relevance

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to note that the legislature by section 10 (1) (c) of the Act makes contravention of or failure to comply with any of the provisions of section 6 of the Act an offence.

I, therefore, hold that the learned magistrate was wrong in law in holding "that the discretionary power conferred under section 6 (2) of the Act on the licensing officer only relates to the granting of the licence and not to restrict the rights of navigation." This appeal is allowed. The order of acquittal and discharge of the respondent is hereby set aside. I order that the respondent be rearrested and brought before another magistrate to stand his trial on the charge preferred.

Freetown  
Jan. 12,  
1963.

[COURT OF APPEAL]

Ames Ag.P.  
Dove-Edwin  
J.A.  
Marke J.

JAMES THOMAS REFFELL . . . . . Appellant  
v.  
REGINA . . . . . Respondent

[Criminal Appeal 27/62]

*Criminal Law—Perjury—Declaration by candidate for nomination in Form C of Electoral Provisions Act (No. 14 of 1962)—Necessity for prima facie proof of falsity of declaration—Perjury Act, 1911 (Vol. I, Laws of Sierra Leone, 1960, p. 195), ss. 5, 13.*

*Evidence—Submission of no case—Duty of judge when no evidence in support of charge.*

*Nationality—Passport—Different effect of passport in international and municipal law—Probative value of passport in municipal law.*

By the Perjury Act, 1911, s. 5: "If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made . . . (b) in a . . . declaration . . . which he is . . . required to make . . . by any public general Act of Parliament for the time being in force: . . . he shall be guilty of a misdemeanour." By section 13: "A person shall not be liable to be convicted of any offence against this Act . . . upon the evidence of one witness as to the falsity of any statement alleged to be made."

To support a conviction against the Perjury Act, 1911, the declaration alleged to have been made must be proved to be prima facie false. In the absence of such essential proof there is no question of the requisite proof of a guilty mind.

The appellant, James Thomas Reffell, was convicted by Dobbs J. in the Supreme Court of Sierra Leone under section 5 (b) of the Perjury Act, 1911. At the trial the prosecution produced a declaration made by the appellant when seeking nomination at the local municipal elections held in Freetown. The declaration was made by the appellant pursuant to statutory requirements. In addition the prosecution produced and relied on three other documents which were alleged to be inconsistent with the declaration. No further evidence concerning the declaration was tendered. At the close of the case for the prosecution counsel for the defence submitted there was no case to answer. The learned trial judge ruled that there was, saying that there was prima facie evidence that the appellant was an alien. The defence called no evidence and the appellant was convicted and sentenced.