CONTEH *v.* KAMARA

SUPREME COURT (Forster, Ag. J.): February 15th, 1967
(Mag. App. No. 21/66)

[1] **Courts—local courts—appeals—parol evidence received to prove contents of public document—appeal court to inquire for document and affirm if not found:** Where a local court has received secondary evidence of a district commissioner's decision upon an inquiry under s.28 of the Provinces Act (*cap.* 60) instead of requiring the transcription of the decision in the district decree book to be put in evidence, an appeal court should make inquiry whether the decree book can be found, and if it cannot be found will uphold the local court's reception of the secondary evidence (page 58, lines 23–34; page 59, lines 29–30).

[2] **Courts—local courts—evidence—decree book conclusive evidence of decision upon inquiry under Provinces Act (cap. 60), s.28:** In a land case in a local court, the transcription in the district decree book of a district commissioner's decision fixing a boundary upon an inquiry under the Provinces Act (*cap.* 60), s.28, is conclusive evidence of the decision (page 58, lines 21–23).

[3] **Courts—local courts—evidence—parol evidence received to prove contents of public document—affirmed if document not traced on appeal:** See [1] above.

[4] **Courts—local courts—evidence—witnesses proving boundary marked by official tribunal need not have participated in marking:** Where parol evidence is admissible in a land case in a local court to prove a boundary marked by an official tribunal, the witnesses need not be the persons who took part in marking the boundary (page 60, lines 5–14).

[5] **Evidence—best evidence rule—decree book recording decision in inquiry under Provinces Act (cap. 60), s.28 conclusive evidence in local court:** See [2] above.

[6] **Evidence — best evidence rule — secondary evidence — decision of official tribunal—witnesses in local court proving boundary marked by official tribunal need not have participated in marking:** See [4] above.

[7] **Evidence—best evidence rule—secondary evidence—local court receiving parol evidence of contents of public document—appeal court to inquire for document and affirm if not found:** See [1] above.

[8] **Land Law—boundaries—proof of boundary—boundary fixed upon inquiry by district commissioner—district decree book conclusive evidence:** See [2] above.

[9] **Land Law—boundaries—proof of boundary—boundary marked by official tribunal—secondary evidence of tribunal's decision—witnesses need not have participated in marking boundary:** See [4] above.

The respondent brought a land action against the appellant in a local court.

The respondent obtained judgment, and the appellant appealed to the group local appeal court on the ground that the land had been demarcated by a district commissioner and two paramount chiefs some years previously. No record of the district commissioner's decision was put in evidence in the group local appeal court, but the court heard witnesses who testified that a boundary had been marked by the district commissioner and the chiefs 20 years before. The group local appeal court allowed the appeal and gave judgment in favour of the appellant.

The respondent appealed to the district appeal court, which allowed the appeal and restored the decision of the local court, holding that the group local appeal court had erred in admitting evidence of the district commissioner's decision, which in the opinion of the district appeal court could only have been proved by the production of the district decree book or a certified copy.

The appellant appealed to the Supreme Court, which directed the district appeal court to make further inquiries about the existence of the district decree book. No district decree book for the district, and no record of the dispute or the appellant's title to the land in any decree book, could be found. The appellant contended that the district appeal court had misdirected itself in holding that his appeal to the group local appeal court had been grounded on a *res judicata*. The respondent referred to s.28(7) of the Provinces Act (*cap.* 60), and contended that the absence of any record of the commissioner's decision was fatal to the appellant's case, and if not, then the district commissioner's decision could only be proved by witnesses who had taken part in marking the boundary.

Case referred to:

(1) *Allie* v. *Katah* (1963), 3 S.L.L.R. 108; [1963] 1 W.L.R. 202.

Statutes construed:

Provinces Act (Laws of Sierra Leone, 1960, *cap.* 60), s.28(1):

> "A District Commissioner shall have power and authority to inquire into and decide as hereafter provided any matters within his district which have their origin in . . . land disputes . . . ."

s.28(5): "Any person aggrieved by any decision may within three months of the announcement thereof . . . complain to the Governor-General . . . ."

s.28(7): "A District Commissioner shall transcribe every decision, under a heading or note of the inquiry in the district decree book, and shall record similarly any subsequent proceedings affecting such decision."

Local Courts Act, 1963 (No. 20 of 1963), s.2:

"'general law' includes the common law, equity and all enactments in force in Sierra Leone except in so far as they are concerned with customary law;"

s.13(1): "The Local Courts shall have jurisdiction—

. . .

(b) to hear and determine—

(i) all civil cases governed by customary law . . .;

(ii) all civil cases governed by the general law where the claim . . . does not exceed two hundred pounds in value . . . ."

s.33(1): "On an appeal any Appeal Court may—

. . .

(f) make any such supplementary or consequential orders as the justice of the case may require."

Wyndham for the appellant;
McCormack for the respondent.

FORSTER, Ag. J.:

The appellant Sampha Conteh, dissatisfied with the judgment of the Tonkolili District Appeal Court delivered on February 26th, 1966, has appealed to this court to have that judgment set aside, and in place thereof prays that judgment be entered in his favour, and for such other relief as to this court may seem just.

This court had the assistance of two assessors drawn from the list of assessors provided by the District Officer of the Tonkolili District.

The appellant filed three grounds of appeal, namely:

(i) That the decision is premature having regard to the fact that the learned magistrate reached a decision without first satisfying himself as to the boundaries of the parties by visiting the *locus*.

(ii) That the decision is against the weight of the evidence.

(iii) That the learned magistrate misdirected himself in holding that ownership is rightly in the respondent.

The appellant's counsel applied for and obtained leave to amend ground (i), which now reads:

(i) That the learned magistrate misdirected himself in holding that the ground of appeal filed by the appellant in the group local appeal court was *res judicata*.

The learned magistrate who presided over the district appeal court

to which the respondent here appealed, said in the judgment of that court:

"This is an appeal against the decision of the group local appeal court sitting at Magburaka, in a certain bush dispute between the plaintiff-respondent-appellant, Alimamy Kamara, and the defendant-appellant-respondent, Sampha Conteh, decided in favour of the plaintiff; the defendant appealed against that decision to the group local appeal court on the ground that the disputed land had been demarcated some 15 years ago by two paramount chiefs and a district commissioner called Dunkerley. The group local appeal court, after proceeding to hear fresh evidence in the matter, made the following findings:

'Witnesses have proved that a district commissioner named Dunkerley sent his representatives to lay a boundary with Chief Folamasa Gbabere, and they made it about 20 years ago; no dispute has arisen since that time. A boundary made by a late chief must not be condemned by any other person.'

It thereupon proceeded to reverse the decision of the local court, and gave judgment in favour of the defendant. It was against this judgment that the plaintiff appealed to the district appeal court. Four grounds of appeal in all were lodged by Mr. McCormack for the appellant. The respondent was not legally represented."

That, in brief, gives a picture of the fortunes of this case so far. It is necessary, however, to examine the record of the hearing before the local court at Yonibana in 1964 which ended in judgment for the plaintiff Alimamy Kamara, the respondent here. At that hearing eight witnesses gave evidence for the plaintiff and seven for the defendant. The plaintiff and the defendant each made two separate statements in turn, and on each occasion only the defendant was questioned. I observe also that only the defendant's witnesses were subjected to cross-examination. The plaintiff stated that the disputed land was his, but it is obvious that he was claiming it for his family or traditional community. He himself says: "My ancestors are owners of the place . . . therefore we or I am the owner of the place." Later he says:

"When we went to Roruks, there the case was decided. . . . We came to Mano and the president signed to talk the case. He decided the case. When the case was decided, we were

given wrong in a zigzag way. Thereupon one of our children abused. The paramount chief. . . . went and reported us to the district commissioner."

The case the plaintiff is referring to seems to be that between his people (or ancestors) and one Bassie Koroma over the disputed land, which the plaintiff claims came to him through one Pa Kapri Gbla. At p. 4 of the same record, the plaintiff says further:

"Where they went now we never followed them up again. Because we were afraid. They never told the citizens to brush, because the places were just given to them. . . . They simply went on brushing. They were afraid. We are not satisfied with the decision. We therefore have to summon them."

At p. 5, the plaintiff continues:

"Those of Mabora, where and when they traced the boundary, we were not present. We went and reported to the district commissioner. In the presence of the district commissioner, Dunkerley, they agreed to swear, if we put medicines before them, for the forests they claim. The district commissioner left government representatives to come and see that the Mabora people swear for the area they claimed; there they said, well, they should complete where they owned. They started from our boundary between Mano and near where they owned. We came to the chief and told them we had got ready. They told the chief to excuse them when the devil was approaching the fence. He said he smelled *kafankay*, therefore he was returning, because we promised to bring medicines instead of a devil."

From all this, I find that the plaintiff Alimamy Kamara knew about the Dunkerley boundary commission, as I call it, and was an active party in it.

The appeal to the group local appeal court by Sampha Conteh was heard at Magburaka, and it was by way of a re-hearing presided over by paramount Chief Alimamy. Both parties here were present. The result was that the appeal was allowed and judgment entered there for the defendant-appellant Sampha Conteh. The group local appeal court decided that—"Witnesses have proved that a district commissioner named Dunkerley sent his representatives to lay a boundary with Chief Folamasa Gbabere, and they made it about 20 years ago; no dispute has arisen since that time." From this decision, Alimamy Kamara appealed to the district appeal court, which reversed the decision and restored the judgment of the local court

at Yoniba in favour of Alimamy Kamara, the respondent here. In allowing the appeal, the district appeal court ruled that the group local appeal court was wrong in admitting extrinsic evidence to sustain the present appellant's contention that a boundary had previously been laid in the disputed land by a district officer. The district appeal court said, *inter alia,* that the appellant—

> ". . . contends that as neither the decree book nor a certified copy of the decree or order was produced before the group local appeal court, it was wrong in law for that court to have upheld the respondent's allegations that a boundary had been laid by two paramount chiefs and District Commissioner Dunkerley. This was the only ground relied upon by the respondent when he appealed to the group local appeal court against the decision of the local court. What in effect the respondent was setting up was a plea of *res judicata.* Legal proof of this could only be given either by production of the decree book or by a certified copy of the decree."

The record of the hearing by the group local appeal court shows that that court did not merely accept Sampha Conteh's assertions, but took care to hear evidence of other witnesses on this important issue. Admittedly, the production of the decree book, duly inscribed with the decree or order resulting from the Dunkerley boundary commission, would have been conclusive of the fact, but the absence of that book does not vitiate the decision of the group local appeal court. That court was perfectly within its rights to hear the evidence. When the appeal came before this court, I ordered an adjournment for a more detailed enquiry to be made by the district appeal court about the existence or otherwise of the decree book which had been referred to in the case. Both parties with their respective counsel appeared duly before the district appeal court for the inquiry, which resulted in the finding of fact that no decree book of the appropriate district could be found, nor any record of the land dispute between the parties, or of the appellant's title to such land, in any decree book.

Reference was made to the Provinces Act (*cap.* 60), and in particular to s.28(7) thereof, by counsel for Alimamy Kamara, the respondent here. I do not see how the failure, if it be one, of the district commissioner to record the decree or order about the title of the disputed land in the district decree book, can be a ground for depriving the appellant of his title. It is established that the Dunkerley boundary commission was held about 20 years ago now,

and there is no record of any complaint against the boundary so fixed before the complaint in 1964 by the respondent here. Subsection (5) of s.28 provides that any such complaint is to be made within three months of the announcement of the boundary decision.

In giving the judgment of the district appeal court, the learned president said: "I therefore hold that the group local appeal court was wrong in admitting extrinsic evidence—which in many instances was quite unsatisfactory and unreliable—to sustain the respondent's contention that the boundary had been laid in the disputed land by a district commissioner." From this, the learned president went on to say: "It follows that the appeal is upheld and the decision of the group local appeal court is set aside and the judgment of the local court is restored. The boundary of the appellant's land is as described above." The boundary referred to in that judgment of the district appeal court was pointed out by the respondent here to the local court at Yonibana but was subsequently rejected by that court, which in compliance with the order of the district appeal court confirmed a boundary more in keeping with that traced by Sampha Conteh the appellant here, following that of the Dunkerley boundary commission, thus:

> "The boundary started from the middle of the road leading from Sumbuya to Makundu, passing through rocks and cane trees and a valley to the old road leading from Makundu to Mabora, passing through the swamp leading to a stream called Bath Yanka leading to Mabetti stream, running towards some plots of cane trees with some big trees towards a valley, and empties itself to a big plot of cane trees near the motor road leading from Makundu to Mano road."

I do not find, with respect to the learned president, that the group local appeal court wrongly admitted any extrinsic evidence.

The learned president further says that the wrongly-admitted extrinsic evidence was in many instances quite unsatisfactory and unreliable, without giving any examples from the record in support of this. In cases of this sort there is bound to be a certain amount of hearsay, but I find that even in the local court record the court members took note of this, as we find in the recorded decision: "Out of the 15 witnesses that gave evidence eight supported that plaintiff owns the disputed area, three never knew the case and the rest said they were only told that their people were the owners of the place."

In this court, counsel for appellant argued ground (i) and asked

leave to abandon grounds (ii) and (iii). Leave was granted. Counsel for the respondent referred the court to the Local Courts Act, 1963, s.13(1)(b), and to the definition of "general law" in s.2. He also referred to s.28(7) of the Provinces Act (*cap.* 60), to which I directed my attention earlier in this judgment. He cited the case of *Allie* v. *Katah* (1), and stressed the non-production of the decree book and the failure to call those who took part in the boundary-marking to give evidence before the group local appeal court although new witnesses were called at the hearing by the group local appeal court who had not been called to give evidence before the local court. Finally, he referred to s.33(1)(f) of the Local Courts Act, 1963. I have looked up all the references and carefully considered the various points raised by counsel. I find the judgment of the group local appeal court well-founded and correct and hold it should be restored. I consequently allow the appeal, set aside the judgment of the district appeal court and enter judgment for the appellant. I order that the description of the boundary of the disputed land, as confirmed by the local court at Yonibana on February 2nd, 1966, be inscribed in the district decree book together with this order. The respondent will pay the costs of this appeal and the costs in the district appeal court. The registrar of the district appeal court is to carry out this order. Costs are to be taxed.

Order accordingly.

KAMARA *v.* KABIA

SUPREME COURT (Beoku-Betts, J.): February 20th, 1967
(Civil Case No. 310/66)

[1] **Arbitration—agreement of reference—effect of agreement—ouster of jurisdiction of court—agreement of reference no bar to action:** A mere agreement to refer a matter in dispute between two parties to arbitration cannot bar legal proceedings in respect of the dispute (page 62, lines 20–23).

[2] **Building Contracts, Architects and Engineers—damages—measure of damages—labour costs not recoverable separately if award made for lost profits:** The measure of damages recoverable by a building contractor for his employer's breach of contract in preventing him completing work contracted for at a contract price intended to cover the builder's costs and profits is the profit the contractor would have earned on the completed contract, and it does not include labour