took him to the Returning Officer and frightened him into making the statement he did make to the Returning Officer. Mr. Lamin Keister's statement, however, is in the D.O.'s handwriting and signed by Mr. Keister. . . .

"The withdrawal of Mr. Keister's nomination, therefore, left Mr. Amadu Hassan with two nominators only."

It seems to me that, although the Electoral Commission was not obliged to hear evidence or take statements, yet it must comply with the elementary and essential principles of fairness. The Electoral Commission was not bound to treat the matter as a trial. They could have obtained information in any way they thought best, and it was open to them, if they thought fit, to question witnesses, but a fair opportunity should have been given to the petitioner to correct or contradict any relevant statement to his prejudice and the statement of Lamin Keister was to his prejudice: see *Ceylon University* v. *Fernando* [1960] 1 W.L.R. 223. I find that in the instant matter the Electoral Commission, with respect, went wrong because they failed to comply with the requirements of natural justice. They offended the audi alteram partem rule, a rule which has an impressive ancestry, one even enshrined in the Scriptures: see St. John, vii, 51: "Doth our law judge any man before it hear him, and know what he doeth?" In these circumstances I am bound to declare the decision of the Commission null and void.

One last matter. It has been submitted that this court has no jurisdiction to inquire into the truth or falsity of Lamin Keister's allegation, because this is a matter which should have been decided by the Electoral Commission, if at all. The defence led evidence in this court on this issue, and although I agree that this court lacks jurisdiction, yet if it had, it could have come to no other conclusion on the balance of probabilities than that the petitioner's story is true, namely, that when Lamin Keister signed the nomination paper he did so freely and with full knowledge of the fact that he was nominating the petitioner and that he signed in the presence of the two witnesses whose names appear on the nomination paper.

It follows, therefore, that, for the reasons given on each and all of the petitioner's grounds, this court has no option but to uphold the petition in its entirety. I accordingly declare that the respondent, the said Dr. John Karefa-Smart, was not duly returned or elected and that the election holden on May 7, 1962, was void. The respondent is ordered to pay the costs of these proceedings.

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[SUPREME COURT]

Freetown
*July* 2, 1962
Bankole Jones J.

MANFRED ONIKE COLE . . . . . *Petitioner*

*v.*

MARCUS CHAMBERLAIN GRANT . . . . . *Respondent*

[E.P. 5/62]

*Election Petition—Motion to strike out petition—Service of notice of presentation of petition—Whether objection to service is "formal objection"—Service on employee in respondent's place of business—House of Representatives Election Petition Rules* (*Vol. VI, Laws of Sierra Leone*, 1960, *p.* 405), *rr.* 15, 16, 17, 59.

Petitioner's election petition was presented on June 6, 1962. On June 12, a notice of the presentation of the petition was served on respondent's office clerk. Respondent moved for an order that the petition be struck out for failure to comply with rules 15 and 16 of the House of Representatives Election Petition Rules.

Rule 15 of the House of Representatives Election Petition Rules provides: "Notice of the presentation of a petition . . . shall be served by the petitioner on the respondent within ten days after such presentation. . . ."

Rule 16 provides: "Where the respondent has named an agent or given an address, the service of an election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given. . . . In other cases the service must be personal on the respondent, unless a judge . . . shall be satisfied that all reasonable effort has been made to effect personal service . . . in which case the judge may order that what has been done shall be considered sufficient service. . . ."

Petitioner argued, first, that respondent's motion was based on a mere "formal objection" within the meaning of rule 59 of the House of Representatives Election Petition Rules, which provides: "No proceedings under the House of Representatives (Elections) Regulations, 1957, shall be defeated by any formal objection." Petitioner also argued that service on an employee in respondent's place of business must be regarded as service on respondent himself.

*Held*, granting the motion, (1) that an objection to an election petition on the ground of non-compliance with the House of Representatives Election Petition Rules pertaining to service of the notice of presentation of such petition is not a "formal objection" within the meaning of rule 59; and

(2) That service of a notice of presentation of an election petition on an employee in respondent's place of business is not equivalent to service on respondent himself.

*John E. R. Candappa* for the petitioner.
*Zinenool L. Khan* for the respondent.

BANKOLE JONES J. This is a motion brought by Mr. Khan on behalf of the respondent-applicant for an order to strike out the service of the petition in this matter and/or the petition itself. He founds his application on two grounds, namely:

(1) That rules 15 and 16 of the House of Representatives Election Petition Rules, P.N. 97 of 1951, made applicable by section 62 (2) of the Electoral Provisions Act, No. 14 of 1962, were not complied with.

(2) That Order 39, r. 14, of the Rules of the Supreme Court (Cap. 7 of the Subsidiary Legislation of Sierra Leone) was also not complied with.

Mr. Khan did not argue the second ground. As to the first ground, he relies on the affidavits of the respondent dated respectively June 22 and 28, and those also of Claris Heals, dated June 22, and Alusaine Adams Sheriff, assistant bailiff, dated June 12. He submitted that rule 15 makes it mandatory that notice of the presentation of the petition and of the nature of the proposed security accompanied by a copy of the petition should be served on the respondent within 10 days after such presentation exclusive of the day of presentation. The petition was presented on June 6, 1962, and there is nothing in the file to

show that rule 15 has been complied with. The affidavit of Alusaine Adams Sheriff shows that the petition was served on June 12, not on the respondent personally but on his office clerk, Claris Heals, at No. 4, Pultney Street, Freetown. Rule 16 makes it permissible for service of the petition to be effected on the agent of the respondent where the respondent has named an agent, or, if he has given an address, service may be effected by posting the petition in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

> "In other cases," states the rule, "the service must be personal on the respondent, unless a judge, on an application made to him not later than 14 days after the petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable."

In this case, it seems that service of the petition on the respondent's office clerk cannot be regarded as personal service and there is no evidence that any application was made before any judge for the court to make the order contemplated in the rule just mentioned. However, Mr. Candappa submitted, in the first place, that rule 59 cures the omission of personal service and, in the second place, that service on an employee in the respondent's place of business must be regarded as service on the respondent himself.

These are attractive arguments but, to my mind, not convincing. Rule 59 reads as follows: "No proceedings under the House of Representatives (Elections) Regulations, 1957, shall be defeated by any formal objection." Counsel said that the question of service is a matter of form and not of substance. I respectfully disagree with this proposition, because I think that there must be proper and effective service of a petition before any proceedings can commence before the courts. If the service is irregular and contrary to the provisions of the rules and not condoned by the other side then there cannot be said to be any "proceedings" before the court. The proper service itself is the fountain from which all proceedings spring. If, therefore, the rules relating to service are not complied with, how can it be said that rule 59 applies? It does not, in my opinion. Also, I do not, with respect, agree that service on an employee in the respondent's place of business is service on the respondent. Rule 16, in clear and unequivocal terms, states that service must be personal, that is, that service must be made by delivering the petition to the respondent himself. This was not done.

If, as may appear in this case after listening to the cross-examination of the respondent and Claris Heals, the facts appear to show that there may have been an evasion of service, then the petitioner failed to invoke rule 17.

In my opinion, after hearing counsel and the witnesses, it seems to me that the petitioner or his counsel cannot take refuge under the fact that the master or his office was to blame for not effecting personal service, because the rules place no obligation on the master or his staff to do what was clearly the duty of the petitioner or his counsel. By this I do not mean to say that the petitioner's counsel has laid the blame on the master. All I mean to say is that the rules must be scrupulously adhered to.

For the reasons given, therefore, I have come to the conclusion that the respondent-applicant must succeed and I order that the service of the petition and the petition itself be struck out by reason of the fact that rules 15 and 16 of the Election Petition Rules have not been complied with. The petitioner-respondent is ordered to pay the costs of this motion.

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Freetown
*July* 4, 1962
Bankole Jones J.

[SUPREME COURT]

H. M. KANAGBO, W. L. SHERMAN, A. B. FOFANA AND H. M. MORIBA . . . . . *Petitioners*

*v.*

M. J. KAMANDA BONGAY . . . . . *Respondent*

[E.P. 27/62]

*Election Petition—Affidavit of time and manner of service of notice of presentation of petition—Rule* 19 *of House of Representatives Election Petition Rules (Vol. VI, Laws of Sierra Leone,* 1960, *p.* 412)*—Whether rule* 19 *directory or mandatory—Meaning of "immediately" in rule* 19*—Electoral Provisions Act,* 1962 (*No.* 14 *of* 1962), *s.* 62 (2).

On June 16, 1962, petitioners filed an election petition praying, inter alia, that respondent's election be declared invalid. A copy of the petition was served on the respondent on June 18, but the affidavit of the time and manner of service of the notice of presentation of the petition was not filed until July 2.

Rule 19 of the House of Representatives Election Petition Rules 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 applied for the dismissal of the petition on the ground that rule 19 had not been complied with.

*Held,* dismissing the petition, (1) that rule 19 is mandatory and not merely directory.

(2) That the words "immediately after" in rule 19 mean "with reasonable promptness having regard to all the circumstances of the particular case"; and

(3) That petitioners did not file the affidavit with reasonable promptness.

Cases referred to: *Mather* v. *Brown* (1876) 1 C.P. 596; 45 L.J.C.P. 547; *Fox* v. *Wallis* (1876) 2 C.P. 45; *Aspinall* v. *Sutton* [1894] 2 Q.B. 349; *Neild and others* v. *Batty* (1874) L.R. 9 C.P. 104.

*Berthan Macaulay* for the petitioners.
*Cyrus Rogers-Wright* for the respondent.

*Note*: This judgment was affirmed by the Court of Appeal on July 27, 1962 (Civil Appeal 14/62). The Court of Appeal, however, held that the petition should have been struck out instead of being dismissed.