IN THE SUPREME COURT OF SIERRA LEONE

SC.CIV. APP 4/2010

BETWEEN:

LAMIN VONJO NGOBEH — Appellant

And

P.C. MOHAMED KAILONDO BANYA — Respondents
AND
KAILAHUN LUAWA CHIEFDOM
KAILAHUN DISTRICT
AND
PROVINCIAL SECRETARY, EASTERN PROVINCE
AND
MINISTER OF LOCAL GOVERNMENT &
COMMUNITY DEVELOPMENT
AND
ATTORNEY GENERAL AND MINISTER OF JUSTICE

CORAM:
Hon. Justice G. Thompson JSC - Presiding
Hon. Justice A. B. Halloway JSC
Hon. Justice A. S. Sesay JSC
Hon. Justice M.F. Deen-Tarawally JSC
Hon. Justice M. Sengu Koroma JSC

Mr. M.P Fofana for the Appellant
Mr. O I. Kanu for all the Respondents

Judgment
Delivered 15th day of June 2021
G. Thompson JSC:
Introduction

1. This appeal arises out of the chieftaincy elections held on the 17th January 2003 in Luawa Chiefdom, Kailahun District in the Eastern Province of Sierra Leone. The Appellant was a candidate in those elections which were eventually won by the 1st Respondent. The other candidates were Lamin Gbongay Ngobeh and Maada Fahbundeh. Being dissatisfied with the result, the Plaintiff sought orders from the High Court which can be summarised as follows:

1) A Declaration to the effect that the Paramount Chieftaincy election conducted on Friday 17th January 2003 at Kailahun for the purpose of electing a Paramount Chief for Luawa Chiefdom, Kailahun District, Eastern Province, at which said election and in consequence whereof Mr Mohamed Kailondo Banya was declared duly elected as Paramount Chief of Luawa Chiefdom aforesaid and subsequently recognised as such by His Excellency the President of the Republic of Sierra Leone, was fatally irregular, defective and vitiated, and accordingly was and is invalid, null and void of no lawful effect whatsoever for the aforesaid purpose or recognition.

2) A Declaration to the effect that the recognition by His Excellency the President of the Republic of Sierra Leone of Mr Mohamed Kailondo Banya as Paramount Chief of Luawa Chiefdom on Monday 27th January 2003 was and is however invalid, null and void of no lawful effect whatsoever.

3) An order that the aforesaid Paramount Chieftaincy election for the Luawa Chiefdom, conducted on Friday 17th January 2003 at Kailahun for the purpose of electing a Paramount Chief for Luawa Chiefdom, Kailahun District, Eastern Province, be hereby cancelled and nullified by the Court.

4) An order that the aforesaid recognition by His Excellency the President of the Republic of Sierra Leone of Mr Mohamed Kailondo Banya as Paramount Chief of Luawa Chiefdom be cancelled and nullified by this Honourable Court.

5) A permanent injunction restraining the 1st Defendant (the 1st Respondent herein) from holding himself or acting as a Paramount Chief, or as the Paramount Chief of Luawa Chiefdom, also from exercising or enjoying, or attempting or purporting to exercise or enjoy, any of the rights, duties, functions and privileges of any nature whatsoever, whether customary or otherwise, as are conferred upon, exercised or enjoyed by a Paramount Chief, or the Paramount Chief of Luawa Chiefdom, unless of course in consequence of a subsequent valid such election.

2. The High Court (Showers J, as she was then) on the 13th January 2013, declared the elections null and void and granted the Declarations sought. The Respondents herein appealed to the Court of Appeal (Hamilton JA, (as he was then) presiding with Browne-

Marke JA (as he was then) and Ademosu JA) by a majority decision (Hamilton JA dissenting), overturned the High Court ruling and reinstated the 1st Respondent.

3. The Grounds of Appeal are as follows:

1) That the Court of Appeal (Ademosu JA) was wrong in law when they stated that the non-observance of a public duty - ie the gazetting of list of chiefdom Councillors by Government Officials (such as the 2nd to 5th Respondents) imposed on them by law ought not to affect the 1st Respondent, even where such non-observance of such public duty had led to an irregularity in the conduct of the Paramount Chieftaincy elections in Luawa Chiefdom, Kailahun District on 17th January 2003.

2) That the Court of Appeal (Ademosu JA) was wrong in law to describe the Publication of the list of chiefdom councillors in the Government Gazette before the elections are held as "mere formalities" when in fact this was a prerequisite to the holding of Paramount Chief elections in the said Luawa Chiefdom, Kailahun District on 17th January 2003, and which had not been complied with by the 2nd to 5th Respondents.

3) That the Court of Appeal (Ademosu JA) was wrong in law to have concluded that the Learned Trial Judge merely "glossed over the defence case", and by substituting its own conclusion for those of the Learned Trial Judge and castigating her in the process, without regards for the fact that the Learned Trial Judge had seen and heard the witnesses and therefore had obvious advantages over the Court of Appeal who only had the printed record to go by.

4) That the Court of Appeal (Browne-Marke JA) was wrong in law to have described the "Guidelines for Elections for Paramount Chief and Sub-Chiefs" and "Code of Conduct for Chiefdom Administration" as being "inadmissible evidence," after both sides had repeatedly referred to them during the trial and witnesses had been cross-examined on them as well, but more so because the remarks of Learned Trial Judge on both documents were merely "obiter dicta," and did not form the basis of her judgement.

5) That the Court of Appeal (Browne-Marke JA) was wrong to castigate the Appellant herein by suggesting or concluding that there were serious errors in the Learned Trial Judge's findings of facts induced

by the "duplicity and legerdemain" displayed by the Respondent, when the Learned Trial Judge had all the facts, evidence (oral and documentary) before her and based her decision on them accordingly.

6) That the judgment of the Court of Appeal (Ademosu JA and Browne-Marke JA) is against the weight of the evidence led in the Lower Court and contained in the record of the court.

4. It is extremely regrettable that this matter which was filed on the 11th May 2011 was only heard at the tail end of 2020. It is rightly often said that justice delayed is justice denied. The election took place in 2003. Each of the Parties deserves to know the fate of their case so they can move on. It is manifestly unfair for a case to take almost 10 years before it is heard. For that part which the Judiciary played in this delay, this court offers its apology.

5. Despite the elaborate document filed as a Case for the Appellant, the essence of this appeal falls to be decided by a determination of the status to be attached to the "Guidelines for Elections for Paramount Chief and Sub-Chiefs" and "Code of Conduct for Chiefdom Administration." Both documents were apparently prepared by the Ministry of Local Government.

Grounds 1,2 and 4

6. These three grounds can be dealt with together as at the heart of them is the status of the documents mentioned above, the Guidelines and the Code. The complaint here is that the failure of the 3rd and 4th Respondents to publish the list of candidates in the Government Gazette as per the Guidelines for the Election of Paramount Chiefs and Sub-Chiefs and Code of Practice for Chiefdom Administrations, led to a flawed election process and that Ademosu JA was wrong to hold that this ought not to affect the election of the 1st Respondent.

7. This election was conducted prior to the coming into force of the Chieftaincy Act 2009 and under the previous legislation (the Provinces Act, Chapter 60 of the Laws of Sierra Leone and the amendments thereto). Under Cap 60, there was no requirement for the names to be published in the Government Gazette. The Appellant has relied on the provision in Paragraph 13 of the Code to support his proposition that *"publication thereof in the Sierra Leone Gazette three (3) times within not less than one (1) month before the chieftaincy election was a condition precedent to holding the election and that the failure to do so vitiated the whole election as held by the trial judge."* I have considered both the Guidelines and the Code. There is a good reason for that and that is because it is neither an Act of

Parliament nor is it a Statutory Instrument or even a Public Notice and the same applies to the Guidelines. (The distinction between these three was adequately dealt with in the judgment of Browne-Marke JSC in the Court of Appeal). Further, in my view, I see little merit in going into the distinctions between a mandatory and a discretionary requirement. Neither document has any legal status that is capable of giving rise to the sanctions for non-compliance that the Appellant prayed for. I am of the view that if the framers of that document had intended the consequence for non-compliance to be total invalidity of the election results they would not only have said so, or provided the proper context for doing so, they would have ensured that the document had the force of law behind it.

8. This brings us to the second issue whether these documents should even be taken into consideration. They can be found in pages 97 to 105 of the records. They are unsigned and undated. They were first referred to in the rather wordy particulars of claim filed in the High Court. It was first mentioned in court in the cross-examination of DW1, Dr Kai Moses Kpakiwa (the Provincial Secretary who conducted the elections) by Mr C.F. Margai, then Counsel for the Petitioner but was not shown to him nor were they shown or tendered in evidence through any other witness. In fact, until Counsel attached them as annexures to his Final Written Address, the court had not had sight of either. This is even more surprising because Counsel did make an application to re-open the Plaintiff's (Appellant herein) case to tender the consent of the Attorney General which was duly granted. Despite this the Learned Trial Judge, in her judgment did go on to consider the Code and the procedure laid down therein and the fact that the procedure was not followed. To do so was clearly an error. That said, this issue was properly dealt with by Browne-Marke JSC (then JA) at paragraphs 9-10 of his judgement in the Court of Appeal and I see no reason to repeat it here. It is clear that the Ministry developed the documents to create a level playing field and was designed to facilitate a free, fair and just election process, but they did not have the force of law pre-2009. I should though add this where a document is not tendered in evidence and is therefore not before the court, the court has no business considering that which is not properly before it.

9. On the basis of the above, I find that Grounds 1, 2, and 4 lack merit and must therefore fail.

Grounds 3 and 5

10. The complaint here is that the findings of the Learned Trial Judge should not have been disturbed, bearing in mind that she had the advantage of having seen and heard the witnesses. It is trite law that **an appellate court will not disturb the findings of fact by a Trial** Judge except in certain laid down circumstances. See *Watt (or*

Thomas) v Thomas [1947] SC (HL) 45; [1947] AC 484, Lord Thankerton said:

> "(1) *Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.".* See also Benmax v. Austin Motors Co. Ltd (1955) 1 ALL E.R. 326 per Lord Reid, Seymour Wilson v Musa Abbess SC/Civ Appeal 5/79 (unreported) per Livesey Luke CJ, relied on by the Appellant when he said
> *"There is no doubt that an appellate court has power to evaluate the evidence led in the court below, reach its own conclusions and in a suitable case to reverse the finding of fact of a trial judge. But those powers are exercisable on well-settled principles, and an appellate court will not disturb the findings of fact of a trial judge unless those principles are applicable. The principles have been frequently stated both locally and in other commonwealth jurisdictions."* See also El Nasr Export & Import Company Limited v Mohie El Deen Mansour (SC. CIV.APP No 3/73. 25 April 1974) judgment of Cole CJ when he said inter alia
> *".....at the same time it is settled law and good sense that it should be on the rarest occasion and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."* See also the unreported cases of Amadu Wurie v Edward Wilson Shomefun and Another (SC. CIV. APP. No. 8/81 29 December 1983), James Tamba v Momoh Kai (SC. CIV. APP. 3/84 19th February 1992), Okekey Agencies Ltd v Lahai and Lahai (CIV. APP 32/2005 1st November 2007) and *Bangura and Another v Kamara* (Civ. App. 44/05) [2009] CA 12. More recently in the case of in the matter of B (a Child) (FC) [2013] **UKSC 33 per Lord Neuberger said:**

"where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it."

Lord Reed in Henderson v Foxworth Investments Ltd. [2014] UKSC 41, similarly said: *"It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."*

11. I do not accept that this is one of those cases where the evidence is such that with the advantage the trial judge had, an appellate court can say that the conclusion the Learned Trial Judge arrived at is correct. For the reasons stated above as regards Grounds 1, 2 and 4, it is clear that that the Learned Trial Judge's conclusion was wrong. Those grounds of appeal dealt with the law. If the law is wrong, on those grounds, it follows that the Appellant must also fail on Grounds 3 and 5. The description by Ademosu JA of the duty to publish the list of chiefdom councillors in the Government Gazette before the elections are held as "mere formalities," adds nothing to the issues raised in Ground 3, and in any event it follows the logic that the document, on which that 'duty' such that it was, is based, had no legal effect. Similarly, in my judgement the description by Browne-Marke JSC that the serious errors in the Learned Trial Judge's findings of facts were induced by the "duplicity and legerdemain" displayed by the Respondent adds nothing more to Ground 5.

12. I cannot see any other basis for which the election can be set aside as irregular. This appeal is therefore dismissed.

13. Finally, the delay notwithstanding, this appeal is wholly without merit. The grounds raised had been more than adequately dealt with by the majority decision in the Court of Appeal. If there was any appeal which makes the case for rescinding the automatic right of appeal to the Supreme Court on any issue, we need look no further than this case. If the Appellant had had to seek leave to appeal, he would certainly not have been able to demonstrate that there is an arguable point of law that merits the attention of the Supreme Court.

It beggars belief that this court is being asked to decide a matter, at the heart of which is the legal status of unsigned and undated documents which were not even tendered in evidence. I thank both Counsel but particularly Mr Fofanah who came into this matter quite late, for not seeking an oral hearing of this appeal.

14. ~~Costs awarded to the Respondent in the sum of~~ No order as to Costs. Each party bears its own costs

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Hon. Justice G. Thompson JSC - Presiding

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Hon. Justice A. B. Halloway JSC

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Hon. Justice A. S. Sesay JSC

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Hon. Justice M.F. Deen-Tarawally JSC

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Hon. Justice M. Sengu Koroma JSC