

C.H.D.G.N

19, 1961

IN THE PRIVY COUNCIL

No. 54 of 1959

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL

B E T W E E N :

UNIVERSITY OF LONDON
1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

THE ATTORNEY GENERAL OF THE GAMBIA

Appellant

-- and --

PIERRE SARR N'JIE

Respondent

63681

CASE FOR THE RESPONDENT

Record

- 10 1. The Appellant, the Attorney-General of Gambia, appeals, by special leave, against (a) the Judgment of the West African Court of Appeal dated the 5th June 1959 which set aside the Judgment and Order of the Deputy Judge of Gambia directing the removal of the Respondent's name from the Roll of Barristers and Solicitors of the Supreme Court of Gambia and (b) the Judgment of the West African Court of Appeal dated the 6th July 1959 which refused the application for leave to appeal to Her Majesty in Council from the said Judgment and Order of the 5th June 1959. Her Majesty's Order in Council dated the 21st December 1959, by which special leave to appeal was granted, reserved to the Respondent the liberty to raise at the hearing of the Appeal the preliminary objection that no appeal lies at the instance of the Petitioner on the ground that he is not a party "aggrieved" by the Judgments of the West African Court of Appeal in favour of the Respondent. p.79
p.59
- 20 2. The proceedings from which this appeal arises may be briefly summarised: p.77
- 30 (a) On the 16th July, 1958, the Appellant gave notice of motion for an enquiry before the Chief Justice of Gambia into certain allegations of professional misconduct against the Respondent and for an order that the Respondent's name be struck off p.79

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the Roll of Court under Rule 7 Order IX of the First Schedule to the Rules of the Supreme Court 1928.

- p.15 (b) On the 19th July 1958, Counsel appearing for the Respondent asked for an enquiry before someone other than the Chief Justice on the ground that the Chief Justice had expressed an adverse view of the Respondent's conduct in a previous Civil suit. The learned Chief Justice agreed that the Respondent's apprehension that he may not get a fair and impartial enquiry was a reasonable one and decided to recommend the appointment of a Deputy Judge to hold the enquiry. 10
- p.16, 1.26.
- p.102, 1.31. (c) Abbot, J. was appointed Deputy Judge to hear and determine the matter and the enquiry was fixed for the 15th September 1958.
- p.103, 1.24. (d) The Respondent, who had left for England to retain English Counsel to appear for him, at first requested an early enquiry but after the enquiry date had been fixed for the 15th September 1958 he objected on the ground that it fell within the vacation. No postponement was allowed on this ground nor on the ground of illness pleaded by the Respondent after the enquiry started. 20
- p.105, 1.17.
- p.20, 1.10. (e) The Respondent being absent and unrepresented, the enquiry proceeded and the Deputy Judge gave judgment on the 22nd September 1958 holding that all the allegations except one were proved and ordered the Respondent's name be struck off the Roll of Barristers and Solicitors of the Supreme Court of Gambia and the order be reported to Inns of Court at which he had been called. 30
- p.24.
- p.41. (f) The Respondent appealed from the said order to the West African Court of Appeal upon grounds which included the following:-
- p.57, 1.4. (i) That the Deputy Judge had no jurisdiction to make the order made by him on the 22nd September 1958.
- p.58, 1.10. (ii) That Rule 7 Order IX of the First Schedule to the Rules of the Supreme Court, 1928 is ultra vires and that the order made thereunder is void. 40

(g) The West African Court of Appeal (Bairamian C.J. (Sierra Leone) Acting President, Hurley and Ames Acting Justices of Appeal) allowed the appeal by their judgments dated the 5th June 1955.

p.59. Record

10 3. The learned Acting President of the Court, in the principal judgment, held in favour of the present Respondent on both grounds of Appeal referred to in sub-paragraph 2(f). He held that a deputy Judge appointed under section 7(3) of the Supreme Court Ordinance (Chap. 5, Laws of Gambia 1955) had no power to deal with any matter which was not a proceeding in Court and that as the proceedings in which the order appealed from was made were admittedly proceedings before the deputy judge as distinct from the Supreme Court of Gambia, the deputy judge had acted therein without jurisdiction. The learned Acting President also took the view that the power to suspend a legal practitioner was conferred on the Supreme Court of Gambia by section 15 of the Supreme Court Ordinance which enacted that the Supreme Court shall "possess and exercise all the jurisdiction powers and authorities which are vested in or are capable of being exercised by Her Majesty's High Court in England"; and that section 72(b) of the said Ordinance which provides for the making of rules of Court "for regulating the qualification, admission and enrolment of barristers, advocates, solicitors and notaries" empowers the judge to lay down the procedure for the exercise of the power derived from section 15 of the Ordinance. Instead of providing for this procedure, Rule 7 Order 9 purported to confer on the Judge, as distinct from the Supreme Court, the power that the Ordinance itself conferred on the Supreme Court; and, in the opinion of the Acting President the rule was for that reason ultra vires. Ames, Acting J.A. agreed with the learned Acting President on both grounds.

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p.59.

p.72.

40 4. Hurley, Acting J.A., took the view that the appeal should be allowed on the first ground, namely, that the Deputy Judge was not functioning as the Supreme Court and was therefore acting without jurisdiction and disagreed with the Learned acting President on the invalidity of Rule 7 Order IX.

p.66.

5. It is submitted with respect that the learned Acting President and Ames J.A. were right on both points decided by them.

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6. It is further respectfully submitted that:

- (a) On the assumption that Rule 7 Order IX confers on the Court as such the power to strike off a barrister and solicitor, the order of the Deputy Judge is bad because the Deputy Judge expressly directed himself that he was not sitting as a Court.
- (b) On the same assumption as in sub-paragraph 6(a) above, the Court should have postponed the enquiry to a date after the vacation. 10
- (c) In any event the learned Deputy Judge should, in the circumstances, have allowed the postponement sought by the Respondent and the refusal of the postponement has deprived the Respondent of the opportunity of putting his case before the Deputy Judge. The Respondent has at all material times denied the allegations of fact upon which the charges of misconduct were based, and his version of the facts was set out in his affidavit which was filed at the hearing before the West African Court of Appeal with notice to the Counsel for the Appellant. 20

p.75.

7. On the 23rd June 1959 the Appellant made an application to the West African Court of Appeal for leave to appeal to Her Majesty in Council from the judgment and order of the 5th June 1959. No notice of the application was served on the Respondent within the period of 21 days prescribed by section 5 of the West African (Appeals to Privy Council) Order in Council and an application for substituted service made to Court after the lapse of the prescribed period was rightly refused and the Appellant's Application for leave dismissed by the West African Court of Appeal on the 6th July, 1959. 30

p.78, 1.22.

p.78, 1.35.

8. It is respectfully submitted that the judgment of the 6th July 1959 is right for the reasons given in the judgment of the learned Acting President and also because (a) the Appellant is not a person competent to appeal to Her Majesty in Council from the Judgment of the West African Court of Appeal dated the 5th June 1959 and (b) the said Judgment dated the 5th June 1959 was not a Judgment against which the Appellant was entitled to appeal as of right to Her Majesty in Council under the West African 40

(Appeals to Privy Council) Order in Council 1949.

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9. That the proceedings in which the Judgments appealed from were given are quasi-criminal in nature and the case is not of the kind in which their Lordships would advise interference with the Judgment of the West African Court of Appeal.

10. The Respondent respectfully submits that the appeals against the Judgments of the West African Court of Appeal dated the 5th June 1959 and the 6th July 1959 should be dismissed with costs throughout for the following among other

R E A S O N S

1. BECAUSE the Appellant does not have the status which qualifies him to appeal to Her Majesty in Council either from the Judgment of the West African Court of Appeal dated the 5th June 1959 or from the Judgment of the same Court dated the 6th July 1959.

20 2. BECAUSE the Appellant was not entitled under the West African (Appeals to Privy Council) Order in Council 1909 to appeal as of right to Her Majesty in Council against the said Judgment dated the 5th June 1959.

3. BECAUSE the Judgment dated the 6th July 1959 was right for the reasons given by Bairaman, Acting President.

30 4. BECAUSE the Judgment of the West African Court of Appeal dated the 5th June 1959 was right for the reasons given by Bairaman Acting President and Ames Acting J.A.

5. BECAUSE, in any event, the Deputy Judge expressly directed himself that he was not sitting as a Court.

6. BECAUSE the refusal of the Deputy Judge to grant a postponement of the enquiry was wrong.

7. BECAUSE, in any event, the proceedings on which the Judgment dated the 5th June 1959 was given were quasi-criminal in nature.

E.F.W. GRATIAEN.

WALTER JAYAWARDENA.

No. 54 of 1959

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B E T W E E N :

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Appellant

- and -

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CASE FOR THE RESPONDENT

Lodged the

5th

1960.

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