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(6) 1963

IN THE PRIVY COUNCIL

No.2 of 1962

ON APPEAL

FROM THE COURT OF APPEAL FOR SIERRA LEONE

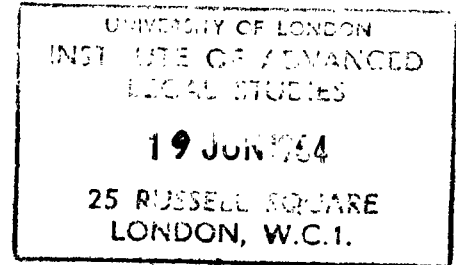
B E T W E E N:

SULAY SEISAY

Defendant/Appellant

and

1. PA SHEKA KANU
2. ALUSINE BORBOR CONTEH
3. KAMARA SESAY
4. FENTI SESAY
5. BAI SESAY
6. KAPR LAWYER KANU
7. BOBOR KANU
8. KAPR THONTEH
9. SANTIGIE KANU
10. FENTI SESAY
11. MOMOH KANU
12. SORIE KANU
13. MOSERAY KANU



74079

Plaintiffs/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,  
90, Fenchurch Street,  
London, E.C.3.  
Solicitors for the Appellant

ON APPEAL

FROM THE COURT OF APPEAL FOR SIERRA LEONE

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF</u> <u>SIERRA LEONE</u>		
1	Writ of Summons	16th February 1959	1
2	Statement of Claim	9th May 1959	3
3	Amended Statement of Claim	11th May 1959	4
4	Statement of Defence	20th May 1959	5
5	Amended Statement of Defence	30th January 1960	7
6	Court Notes on Preliminary Objection	January 1960	9

No.	Description of Document	Date	Page
7	Court Notes	30th January 1960	12
8	Judges Ruling	1st February 1960	14
9	Plaintiffs application for leave to Appeal against Judges Ruling	1st February 1960	15
	<u>PLAINTIFFS EVIDENCE</u>		
10	Kumrai Seisay	14th July 1960	16
11	Kapri Gbogboso Kano	14th July 1960	19
	<u>DEFENDANTS EVIDENCE</u>		
12	Sulaiman Seisay	14th July 1960	19
13	Alhaji Alimami Souri	14th July 1960	22
14	Farouk Falla	14th July 1960	23
15	Rogue Malike	15th July 1960	24
16	Sulaiman Seisay (recalled)	15th July 1960	25
17	Counsels Addresses	15th July 1960	26
	Smythe for Defendant	ditto	26
	Mahoney for Plaintiffs	ditto	26
18	Judgment	21st July 1960	27
	<u>IN THE COURT OF APPEAL FOR SIERRA LEONE</u>		
19	Notice and Grounds of Appeal	18th October 1960	32
20	Court Notes of argument	-	35
21	Judgment of Cecil Geraint Ames, P. Acting Judge	21st July 1961	38
22	Judgment of Richard Bright Marke J.	21st July 1961	42
23	Judgment of Emile Fashole Luke Acting Judge	21st July 1961	50
24	Order giving final leave to Appeal to Her Majesty in Council	3rd November 1961	51

iii.

LIST OF DOCUMENTS TRANSMITTED TO THE  
PRIVY COUNCIL and NOT REPRODUCED

Order giving Conditional leave to Appeal 9th September  
1961

IN THE PRIVY COUNCIL

No.2 of 1962

ON APPEAL

FROM THE COURT OF APPEAL FOR SIERRE LEONE

B E T W E E N:

SULAY SEISAY

Defendant/Appellant

1. PA SHEKA KANU
2. ALUSINE BORBOR CONTEH
3. KAMARA SESAY
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10. FENTI SESAY
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12. SORIE KANU
13. MOSERAY KANU

Plaintiffs/Respondents

RECORD OF PROCEEDINGS

No.1

WRIT OF SUMMONS

In the Supreme  
Court

Colony of  
Sierra Leone  
(To Wit)

C.C. 65/59 1959 K. No.5

No. 1

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

1. Pa Sheka Kanu; 2. Alusine Borbor Conteh;  
3. Kombra Sesay; 4. Fenti Sesay; 5. Bai Sesay;  
6. Kapr Lawyer Kanu; 7. Borbor Kanu; 8. Kapr  
Thonteh; 9. Santigie Kanu; 10. Fenti Kanu;  
11. Momoh Kanu; 12. Sorie Kanu; 13. Moseray Kanu  
All of Yele in the Bonkolenken Chiefdom in  
the Protectorate of Sierra Leone -

Plaintiffs

and

Sullay Seisay, Trader, Magburaka Defendant

Writ of  
Summons  
16th February  
1959

In the Supreme  
Court

---

No. 1

Writ of  
Summons  
16th February  
1959  
continued

Elizabeth the Second by the  
Grace of God of the United  
Kingdom of Great Britain and  
Northern Ireland and of her  
other realms and territories,  
Queen, Head of the Common-  
wealth, Defender of the Faith

To Sullay Seisay, Trader, Magburaka

We command you that within 21 days after the Service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of Sierra Leone in an Action at the Suit of PA SHEKA KANU AND OTHERS and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Honourable Vahe Robert Bairamian Chief Justice of Sierra Leone at Freetown, the 16th day of February in the year of our Lord 1959.

(Sgd) F.H.S. Bridge

Master and Registrar.

The Plaintiff's Claim for a declaration that the election on the 6th day of February 1959 at Yele in the Bonkolenken Chiefdom in the Tonkolili District in the Protectorate of Sierra Leone of Sullay Seisay as Paramount Chief of the said Chiefdom is invalid in Law and for an injunction restraining him from acting in the said office of Paramount Chief.

(Sgd) J. Eman Mahoney  
Solicitor.

This Writ was issued by J. Eman Mahoney whose address for service is 18 Oxford Street Freetown in the Colony of Sierra Leone, Solicitor for the Plaintiffs herein who reside at Yele in the Tonkolili District in the Protectorate of Sierra Leone.

(Sgd) J. Eman Mahoney  
Solicitor.

---

No. 2

In the Supreme Court

STATEMENT OF CLAIM

C.C. 65/59.

1959 K. No.5

No. 2

IN THE SUPREME COURT OF SIERRA LEONE

Statement of Claim  
9th May 1959

(Heading as No.1)

STATEMENT OF CLAIM

10

1. The Plaintiffs are and were at all times material to this action severally entitled to succession to the Chieftaincy of the Bonkolenken Chiefdom.

2. On the 6th day of February, 1959 certain members of the Tribal Authority of the said Chiefdom purported to elect the defendant as Paramount Chief thereof.

20

3. The defendant was and is not a descendant in the male line nor the full brother of any Paramount Chief who has previously been recognised as a Paramount Chief of the Bonkolenken Yele, Masakong, Mayopo and Poli Chiefdoms which were by an act of union dated the 15th day of December, 1956 amalgamated to form the present Bonkolenken Chiefdom and therefore does not descend from a ruling house within the Chiefdom.

4. By Native Law and Custom and by tradition no person can be elected Paramount Chief of a Chiefdom who does not belong to a ruling house therein excepting where permission is granted by the Governor in Council to depart from this rule.

30

5. The Plaintiffs at the said purported election objected to the qualifications of the Defendant but the Administrative Officer present conducting the election failed to adjudicate upon their objection.

The Plaintiff therefore Claims :-

(1) A declaration that the election of the Defendant as Paramount Chief of the Bonkolenken

In the Supreme Court

Chiefdom is invalid he not being descended from a ruling house within the said Chiefdom.

No. 2

(ii) An injunction restraining him from acting as such Paramount Chief.

Statement of Claim  
9th May 1959  
continued

(Sgd) J.E.Mahoney  
COUNSEL.

Filed and delivered this 9th day of May, 1959 by James Emmanuel Mahoney of 18, Oxford Street, Freetown, Sierra Leone Solicitor for the Plaintiffs herein pursuant to Rules of the Supreme Court.

10

No.3

No. 3

Amended Statement of Claim  
11th May 1959

AMENDED STATEMENT OF CLAIM

C.C. 65/59

1959 K. No.5

IN THE SUPREME COURT OF SIERRA LEONE

(Heading as No.1)

AMENDED STATEMENT OF CLAIM

1. The Plaintiffs are and were at all times material to this action severally entitled to succession to the Chieftaincy of the Bonkolenken Chiefdom.

20

2. On the 6th day of February, 1959 certain members of the Tribal Authority of the said Chiefdom purported to elect the Defendant as Paramount Chief thereof.

3. The Defendant was and is not a descendant in the male line nor the full brother of any Paramount Chief who has previously been recognised as a Paramount Chief of the Bonkolenken Chiefdom or of one or other of the Bonkolenken Yele, Masakong, Mayopo and Poli Chiefdom which were by an act of Union dated the 15th day of December 1956 amalgamated to form the present Bonkolenken Chiefdom and therefore does not

30



descend from a ruling house within the Chiefdom.

In the Supreme Court

4. By Native Law and Custom and by tradition no person can be elected Paramount Chief of a Chiefdom who does not belong to a ruling house therein excepting where permission is granted by the Governor in Council to depart from this rule.

No. 3

Amended Statement of Claim  
11th May 1959  
continued

10

5. The Plaintiffs at the said purported election objected to the qualifications of the Defendant but the Administrative Officer present conducting the election failed to adjudicate upon their objection.

The Plaintiffs therefore Claim :-

(i) A declaration that the election of the Defendant as Paramount Chief of the Bonkolenken Chiefdom is invalid he not being descended from a ruling house within the said Chiefdom.

(ii) An injunction restraining him from acting as such Paramount Chief.

20

(Sgd) J. Eman. Mahoney  
COUNSEL.

Amended and Redelivered this 11th day of May, 1959 by James Emmanuel Mahoney of 18, Oxford Street, Freetown, Sierra Leone Solicitor for the Plaintiffs herein pursuant to Rules of the Supreme Court.

No. 4

No. 4

STATEMENT OF DEFENCE

Statement of Defence  
20th May 1959

C.C. 65/59

1959 K. No.5

30

IN THE SUPREME COURT OF SIERRA LEONE

(Heading as No.1)

STATEMENT OF DEFENCE

1. The Defendant is Paramount Chief of the

In the Supreme  
Court

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No. 4

Statement of  
Defence  
20th May 1959  
continued

Bonkolenken Chiefdom of the Protectorate of Sierra Leone and recognised as such by His Excellency the Governor.

2. The Plaintiffs were at the time material to this action rival contestants to the Chieftaincy of the said Bonkolenken Chiefdom.

3. The Defendant admits paragraphs 1 and 4 of the Plaintiffs' Statement of Claim and contends, as regard paragraph 3 of the Statement of Claim, that he is a descendant in the male line of Bai Komp Orthenup (deceased) who was recognised as Paramount Chief of the Bonkolenken Yele Chiefdom, which was by an action of Union dated 15th day of December, 1956, amalgamated as set out in the said paragraph 3 of the Statement of Claim with the other Chiefdoms as set out therein, and therefore does descend from a ruling house within the Chiefdom.

10

4. The Defendant will contend that the Tribal Authority is the only body authorised to decide who could contest for a Chieftaincy and to elect a Paramount Chief.

20

5. The Tribal Authority of the Bonkolenken Chiefdom was published under Government Notice No.948 in the Sierra Leone Royal Gazette No.78 dated the 16th day of October, 1958.

6. On the 2nd day of February, 1959, the Tribal Authority was summoned for the purpose of electing a Paramount Chief for the Bonkolenken Chiefdom and for the arrangements incidental thereto.

30

7. Paramount Chiefs Bai Farima and Bai Seboru Kamal II were appointed as Assessor Chiefs.

8. The contestants included the Plaintiffs and the Defendant.

9. On the 2nd day of February, 1959 three of the Plaintiffs protested against the candidature of the Defendant as it was alleged that he was not a member of any of the ruling houses within the Chiefdom. The protest was handed to the Acting Commissioner of the Northern Province.

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In the Supreme  
Court

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No. 5

Amended State-  
ment of Defence  
30th January  
1960  
continued

3. The Defendant admits paragraphs 1 and 4 of the Plaintiffs' Statement of Claim and contends as regards paragraph 3 of the Statement of Claim that he is a descendant in the male line of Bai Komp Othernip (deceased) who was recognised as Paramount Chief of the Bonkolenken Yele Chiefdom, which was by an act of Union dated the 15th day of December, 1956, amalgamated as set out in the said paragraph 3 of the Statement of Claim with the other Chiefdoms as set out therein, and therefore does descend from a ruling house within the Chiefdom. 10

4. The Defendant will contend that the Tribal Authority is the only body authorised to decide who could contest for a Chieftaincy and to elect a Paramount Chief.

5. The Tribal Authority of the Bonkolenken Chiefdom was published under Government Notice No.948 in the Sierra Leone Royal Gazette No.78 dated the 16th day of October, 1958. 20

6. On the 2nd day of February, 1959, the Tribal Authority was summoned for the purpose of electing a Paramount Chief for the Bonkolenken Chiefdom and for the arrangements incidental thereto.

7. Paramount Chief Bai Farima and Bai Seboru Kamal II were appointed as Assessor Chiefs.

8. The contestants included the Plaintiffs and the Defendant.

9. On the 2nd day of February, 1959 three of the Plaintiffs protested against the candidature of the Defendant as it was alleged that he was not a member of any of the ruling houses within the Chiefdom. The protest was handed to the Acting Commissioner of the Northern Province. 30

10. The Acting Commissioner referred the matter to the Tribal Authority.

11. The protest was then considered by the Tribal Authority who decided the matter by a majority vote in favour of the Defendant. 40

12. The Tribal Authority was at all material

times properly constituted and elected the Defendant a Paramount Chief of the Bonkolenken Chiefdom.

In the Supreme Court

13. The Defendant will contend that the Court has no jurisdiction in the matter.

No.5

14. The Defendant denies each of the paragraphs in the Plaintiffs' Statement of Claim unless where they are specially admitted.

Amended Statement of Defence  
30th January 1960  
continued

10

(Sgd) L.C.McCormack  
COUNSEL.

Amended and re-delivered by Liam C. McCormack, Solicitor for the Defendant, Crown Law Office, the 30th day of January, 1960, pursuant to order of the Honourable Mr. Justice Watkin-Williams, dated the 29th day of January, 1960.

No. 6

No.6

COURT NOTES ON PRELIMINARY OBJECTION

Court Notes on Preliminary Objection  
January 1960

IN THE SUPREME COURT OF SIERRA LEONE

20

C.C. 65/59

1959 K. No. 5

BETWEEN:

PA SHEKA KANU & 12 ORS - PLAINTIFFS

and

SULLAY SESAY - DEFENDANT

Mr. Mahoney )  
Mr. Warne ) for the Plaintiffs  
Mr. Doherty )

McCormack for the Defendant

30

McCormack: Preliminary objection - the Tribal Authority should have been joined with the

In the Supreme Court

No. 6

Court Notes on Preliminary Objection January 1960 continued

Defendant. The Tribal Authority is mentioned both in the S/C and Defence. S/C relief claimed declaration that election invalid. Para. 2 S/C. Certain members of Tribal Authority. They should be sued in the same manner as a club.

Cap.245 S.18.

Mahoney: The Tribal Authority is not affected by a declaration. Action almost in personae. Page 3. of judgment. Order 16 R.11. Court can grant any declaratory Judgment. We have sued the person principally affected. Conduct of Tribal Authority not in issue, question of disqualification. We do not impugn the election. We say he was not qualified. It does not affect the Tribal Authority.

10

McCormack: Ord.16 R.11 Injunction follows from declaration. The rights and interests of Tribal Authority are affected by a declaration.

By Court

Court: The issue is not whether the election was properly carried out but whether the Defendant was eligible for election. That is a matter between the Defendant alone and he also questions his eligibility. This tantamount to proceedings of quo warranto against an M.P. The electorate are not concerned. The objection fails.

20

(Sgd) P. Watkin Williams

Mahoney asks for judgment for Plaintiff on the pleading and the relief claimed.

30

S/C paras. 3 and 4.

Defence. Para. 1.

Para.3 of Defence admits 1 & 4 of S/C.

Ord.19 R.13-17 (Ord.16 R.9-13).

I submit no defence in this case. Plaintiffs are not to be called upon to offer any evidence. I ask for judgment on the pleadings.

McCormack: Ord.16 R.9 - By necessary implication it is denied.

Mahoney: replies essential. - Harris v. Gamble 1878 7 Ch.D. p.877 - no question of necessary implication.

In the Supreme Court

McCormack: I apply to amend defence.

No. 6

By Court

Court: I ask if amended defence prepared.

Court Notes on Preliminary Objection January 1960 continued

McCormack: No.

Court: Adjourned to 3 p.m. to enable Counsel to prepare amended defence.

3 p.m. Counsel as before.

10 McCormack: I apply to file amended S/defence. I hand in proposed amended defence. I now transfer para.3. I base it on Ord.28 R.1. Annual Practice - Ord.28 R.1 note.

Mahoney opposes - Important case. Submits no vital issue. This application is made male fide.

20 Writ issued in Feb.1959. - S/C 9 May - Amended S/C 11 May - Defence 20 May - entered 20 May - 28 Jan 1960. Court of Appeal judgment. This is an application to avoid Court's ruling. He only applied when the ruling was about to be given. There was no defence.

Ord. 28 R.1. I consider I have reached the point at which I am entitled to judgment in any event.

McCormack: Paras. 2 & 5 in S/C 'purported' to elect. Prayer that election invalid. Plaintiffs cannot say taken by surprise. No injustice to Plaintiffs.

30 Order: This is an eleventh hour application. The case was before the Supreme Court when the question of jurisdiction was argued and the Court held it had no jurisdiction. On the same matter of jurisdiction there was an appeal to W.A.C.A. who reversed the Supreme Court decision and who sent the case back to the Supreme Court to determine on the evidence whether or not the Appellants (the Plaintiffs

In the Supreme Court

in the action) have established a claim to the relief asked for.

No. 6

Court Notes on Preliminary Objection January 1960 continued

In fact the real issue in the case namely whether the reigning Chief is or is not qualified for election was never placed in issue by the Defendant. This was negligent. It nevertheless appears to me that it was always intended to contest that issue at any rate as from the date of the decision of the Court of Appeal. This application is therefore made in good faith. I do not think the granting of it will do any injury to the Plaintiffs. I think it is in the public interest and in the interest of all parties that the real issue be fought out and a decision given on that issue rather than that judgment should be given on a defect of pleading. I therefore allow the amendment.

10

Mahoney: I apply for costs of today's hearing.

McCormack: No objection.

Order: Costs of the day to be awarded to Plaintiffs in any event.

20

Case adjourned to 9 a.m. 30 Jan. '60.

(Sgd) P.Watkir Williams.

No.7

Court Notes 30th January 1960

No. 7

COURT NOTES

30 January 1960

Counsel as before

Mahoney: In view of the fact that no ruling has been given on my original application for judgment on the pleadings I ask you to give your decision.

30

Court: Counsel for the Defendant made an application which I took in pursuant to a decision on the application for judgment. I allowed Mr. McCormack's application as a result of which the Plaintiffs are not now entitled to judgment and I so hold.



Mahoney: No amended defence has been filed. I have not been served with an amended defence pursuant to the order. I have been served with an application. Attached to the application is a specimen amended defence. I received it before an order was made. The order granting leave has not been filed. It must be filed. Amended defence has not been filed. No pleading is filed until the fee. The document does not comply with the rules. I refer to Ord.24 R.8. No indorsement on it.

In the Supreme  
Court

\_\_\_\_\_  
No. 7

Court Notes  
30th January  
1960  
continued

10

McCormack: I cannot file an amended defence until the order has been drawn up.

Mahoney: Ord.39 R.12. Order embodying special terms. Order as to costs special terms. Should have drawn up the Order. Leave to Solicitor to file amended defence and order costs.

McCormack: Fees not payable. Ord. LXVI R.2 I concede that defence not properly filed.

20

Court: So be it. Amended defence not filed.

Mahoney: No defence filed. I do not intend to go into evidence. The person who purported to file the defence is not qualified to file it. Mr. Cole entered appearance as Solicitor General. Solicitor for the defence. Smythe does not sign pleading as Crown Counsel. He signs the indorsement as Solicitor for the Defendant. No notice of change of Solicitor. The law is that notice of change of Solicitor must be filed. If they undertake Civil Cases ex gratia they are bound by the R.S.C. J.H.Smythe signed defence - not competent.

30

McCormack not competent to file any pleading. Not Solicitor on record. We have only S/C and I submit we are entitled to judgment.

McCormack: Crown Law Office are group. My friend has acted on the pleadings.

Mahoney: In W.B. Ord. 7 R.2 - I can raise the point at any time.

40

Adjourned to 10 a.m. 1st Feb.

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In the Supreme  
Court

No. 8

JUDGES RULING

No. 8

Judges Ruling  
1st February  
1960

Ruling: Counsel for the Plaintiffs argues that the person who purported to file the defence, Mr. J.Smythe, is not competent to file it. He argued that as appearance was entered by the Solicitor General, Mr. Cole and as no notice of change of Solicitor was filed, Mr.Cole remains the Solicitor and the only person competent to exercise the duties of Solicitor to the Defendant. He argues also that Mr.McCormack, Crown Counsel, is no more competent than Mr.Smythe to act as the Defendant's Solicitor. He argues further that if the Crown Law Office undertakes a defence which it is not in duty bound to undertake it must be bound by the Rules of the Supreme Court in the same way as other Solicitors are bound. This is not an action brought by or against the Crown and I agree that the Crown Law Office was not bound to take it up. They must be taken to have done so ex gratia. Nevertheless it cannot be gainsaid that it was not Mr.Cole who entered appearance but the Solicitor General in the person of Mr.Cole who did so. Mr.Smythe signed the pleading simply as Counsel and filed it as Solicitor, for the Defendant. Nevertheless Mr.Smythe is a Crown Counsel and is not entitled to practice on his own account. Hence he must, I think, be taken to have acted in his capacity as a Crown Counsel. The same consideration apply to Mr.McCormack. It would, I think, be unrealistic to hold that there has been any change of Solicitor in this case. If, however, I am wrong in the conclusion I do not think that where a party changes his Solicitor and fails to give notice of change either to the Court or to the other side the 'new' Solicitor can perform no valid function - Order VII R.II R.S.C. in England appears to have no counterpart in our R.S.C. and hence under our Ord. LII R.3. Ord.VII R.II is to be applied. This rule says that a party suing or defending by a Solicitor shall be at liberty to change his Solicitor in any cause or matter without an order for that purpose and it goes on to say that unless and until notice of change of Solicitor has been filed and copies served the former Solicitor shall be considered the

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Solicitor of the party till the final conclusion of the cause or matter. Order VII R.3 enables the opposite party to procure an order that a particular Solicitor has ceased to act for the other side and Ord.VII R.4 enables the Solicitor himself to apply for a similar order. Of course if a Solicitor remains on the record he remains liable to be served with documents and his responsibilities continue but I have not been able to find anywhere a decision that so long as he remains on the record nobody else can act, though if anyone else does act he will not be able to recover his costs from the other side. Finally I refer to Order L. of our R.S.C. If I am wrong and there has been non-compliance with the practice for the time being in force I do not consider that such non-compliance is of such a serious nature as to encourage me to direct that the proceedings be void. The irregularity (if any) was harmless in its effect on the Plaintiffs and nothing has been made of it till this, the second hearing in the Supreme Court. The submission fails.

In the Supreme Court

No. 8

Judges Ruling  
1st February  
1960  
continued

10

20

The submission fails.

(Sgd) P. Watkin Williams  
Judge.

1 February 1960

Counsel present - Ruling read.

No. 9

No. 9

30

PLAINTIFFS APPLICATION FOR LEAVE TO  
APPEAL AGAINST JUDGES RULING

Plaintiffs  
Application for  
leave to Appeal  
against Judges  
Ruling  
1st February  
1960

Mahoney: I wish to appeal and I ask that the hearing be adjourned to enable the appeal to be heard first. To do otherwise might lead to great embarrassment.

McCormack: I agree.

Mahoney asks for leave to appeal from my

In the Supreme Court

No. 9

Plaintiffs  
Application for  
leave to Appeal  
against Judges  
Ruling  
1st February  
1960  
continued

decision to the Court of Appeal as follows:-

1. Wrongful exercise of discretion permitting leave to defend.
2. Original pleading of defence never properly filed and no cognizance should have been taken of it.

Leave granted accordingly.

Court: If I had not felt it was proper to exercise my discretion in favour of the Defendant I should have held that there was no defence on the pleadings and I should have entered judgment in favour of the Plaintiffs.

By Court  
10

(Sgd) P. Watkin Williams

Costs except as already ordered to abide the issue.

(Sgd) P. Watkin Williams  
Judge.

Case adjourned sine die pending decision of the Appeal Court.

Leave to the Defendant to cross-appeal on any ruling made by me in the course of the hearing.

20

(Sgd) P. Watkin Williams  
Judge.

Plaintiffs  
Evidence

No. 10

KUMRAI SEISAY

No.10

Kumrai Seisay  
14th July 1960

14th July 1960

Mahoney for Plaintiffs

Smythe Ag.S.G. McCormack with him for defence.

Mahoney opens - Refers to para.3 of Amended S/C - That contains the only issue. Para.4 admitted.

30

We do not complain of any irregularity in the election except as to eligibility.

In the Supreme  
Court

Issue found in para.3 of S/C and para.3 of defence. Defendant asserts eligibility in a certain way. Plaintiffs assert only one male descendant surviving. He will be called. Another witness also.

Plaintiffs  
Evidence

No.10

10 Calls 1 P.W.Kumrai Seisay S/S (native custom)  
I live at Yele - farmer. My father was Bai  
Kompa Orthenip. My father was a Chief. Chief  
of Yele - of Bonkoleken Chiefdom now. I am  
the only surviving son. Those who died are  
Bainsira, Momoh Kaseh, Sheka Seisay. They  
were my brothers. They had no sons. Bai Komp  
Orthenip had three brothers Kapri Bana, Paboth  
Pa Bainsira, Kapri Bana had 2 sons Seisira, Pa  
Limami. Paboth one son Yamba NGeru. Bain-  
sira had no children, I know Defendant. I  
20 first knew him when he came to Yele from Baoma.  
He came to Yele about 15 years ago. He came  
as a Trader. He bought a house from a Syrian.  
Before the Syrian occupied the house Borbor  
Senessie occupied it. I was there when it was  
erected. Borbor Senessie built it. I knew A.  
B.Conteh in Freetown. (2nd Plaintiff). He is  
the son of Borbor Senessie. I was a candidate  
for the election. I was there before the an-  
30 nouncement of the election in Yele. At that  
time Defendant stood in the house of Bai Komp  
Ngbale. The descendants of Orthernip are not  
related to the descendants of Bair Komp Ngbant.  
Defendant is not related to me by blood. I  
did not know him before he came to Yele. I do  
not regard any others except those stated as  
descendants from Orthernip.

Kumrai Seisay  
14th July 1960  
continued

Examination

40 Cross-examined: I was born in Yele but I live  
at Petifu. I went to Yele after the Mamba.  
(Counsel accepts Petifu 14 miles from Yele).  
People in Yele go around on business. Baoma  
is mendi country. The Defendant is a Temne.  
He went to Baoma to trade there. Orthernip  
was my actual father. I am not the son of Kap-  
ribana. I came when Orthernip died but I can't  
place it by date. I do not know Nana Seisay.  
Orthernip did not born a son called Nana Seisay.  
He was not the eldest son. He was not killed  
in a tribal war. I do not know a man called

Cross-  
examination

In the Supreme  
Court

Plaintiffs  
Evidence

No.10

Kumrai Seisay  
14th July 1960  
Cross-  
examination  
continued

Kampri Kebi. I know this man. He is Kaprikebi or Mataump. He is the big man of Matamp in the Bokoleke Chiefdom. I do not know Kabasi Seisay. I knew more of that name in Yele. I knew A.B. Conteh. Our house is normally called Seisay. It is our family name. I know defendant is called Sulaiman Seisay. I have not known him by any other name. I stood for the election. The question of Defendant's eligibility was raised. The Commissioner was present. I objected. I knew Plaintiff No.1 Sheka Kanu. He is a member of our house. Pa Fenti Seisay is my brother. (Plaintiff No.4). Sheka has been to a ruling house. Pa Fenti Seisay has his own house. They are both of our house. There are four houses of the Seisays. Their father left the Crown to my father. Their father and my father were of the same family. I do not know how Defendant is related. I do not know that he is son of Kaba Seisay. I do not know that Kaba Seisay is son of Nana Seisay. I do know that Nana Seisay is not the eldest son of Orthernip. Before the election there was a sacrifice - cow killed. We all took part. We offered sacrifice. We offered a sacrifice in our house. Defendant offered a sacrifice in his house. I was present. Sheku Kanu was taking part. I do not know if Ansumana's cow was slaughtered.

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(Mahoney objects to this evidence - overruled - relevant).

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I left Yele as a young man. When Orthernip died I was in Yele. I do not know about the 1898 war. Nana Seisay was not killed in a fight.

Re-examination

Re-examined: Not all Seisays are my relatives. I was in the Bokoleken Chiefdom all the time after I left Yele. Petifu is not in Bokoleken Chiefdom. Different owners produced the cows. Sheku Kanu produced one and Defendant produced the other. Pa Sheka produced the cow for the house of Orthernip. The defendant produced the cow for the house of Mabeleh.

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No.11

KAPRI GBAGBOSO KANOIn the Supreme  
CourtPlaintiffs  
Evidence

No.11

Kapri Gbogboso  
Kano  
14th July 1960  
Examination

10 2nd P.W.Kapri Gbogboso Kano S/S (Native medicine). I live at Yele, Farmer, I knew P.C. Othernip. He is my Uncle. I am called Kapri Gbogboso as an officer in the Chieftaincy - Head Attendant to the Chief. I knew the Chief's wives. I knew his children. I knew Kòmra Seisay. His father Othernip was my Uncle. I see the Defendant. He came from Baoma to Yele. He entered the house of Borbor Senessie. Borbor built it. Defendant has no other house in Yele. The Defendant is not a grandchild of Othernip.

20 Cross-examined: Gbogboso is not a I do not know Nana Seisay. I recall the war of 1898. People from Yele were killed. None of the Chief's Othernip son were killed. I was long to answer because I am getting old. The Chief had 3 sons. The elder son was not Nana Seisay. I do not know him. My father was Mbolo. Othernip's sons were Paboth Yele Bana, Bainserie. No they were Kumrai, Kaprebana, Pa Both. Kumrai is one. I cannot remember the others. Pa Both, Kaprebana Bainserie. I don't remember. Othernip died after the war. Kumrai Seisay is the son of Othernip.

Cross-  
examination

30 Re-examined: Othernip had 3 sons. Othernip had three brothers. The first appointed Paramount Chief after the European war was one Bai Komp Othernip.

Re-examination

Close of the Plaintiffs' case.

No.12

SULAIMAN SEISAYDefence

1 D.W. Sulaiman Seisay S/S I am Bai Othernip II

Defendants  
Evidence

No.12

Sulaiman Seisay  
14th July 1960  
Examination

In the Supreme  
Court

Defendant's  
Evidence

No.12

Sulaiman Seisay  
14th July 1960  
Examination  
continued

of Bonkolenken Chiefdom. I knew Kumrai Seisay who gave evidence. Kumrai Seisay is the son of Kaprebana. Kaprebana is the brother of Othernip. My father is Kaba Seisay son of Nana Sesay, son of Othernip I. Kaba Seisay my father is dead. I went to Baoma to trade. I was born in Yele. I have a house and property there. I have two houses there. I have two farms at Makoma and one at Makump. Baikump the last reigning chief died when I was at Magburaka trading. I was sent for to contest the Chieftaincy. Fenti Seisay, Salfu Seisay went to call me. Fenti Seisay is one of the Plaintiffs. He told me to go back to Yele as the Chieftaincy is now with our house. I told them to come with me to Alhadji to tell him. Alimamy Alhaji, Paramount Chief at Mokali (Mahoney objects - objection overruled - relevant). He was referring to Othernip's house. We met to Alhaji - all three of us. Fenti explained to the Chief he had come to call his brother. The Chieftaincy has come to our house. Alhaji said don't tell me. I am a Government man. We three went to Yele. I put up for election in the house of Othernip. I put up for no other house. Rukfella was the man who has to put me to the house to be crowned. That is the ceremony of Mamba. I was elected. A sacrifice was made for me. Two sacrifices in the house. Fenti Seisay took part, also Ansumana Kanu. Pa Sheka Kanu was there. Ansumana Kanu killed a cow. Sheka Kanu killed the second cow. It was for me. Nobody suggested then I was not of the line. I say I am of the house of Othernip.

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Cross-  
examination

Cross-examined: The last Chief was Bai Kump Kamassa. Before that was Bai Kump Tumbala, same man as Bai Kump Moseray. Fenti Seisay was not standing under the house of Moseray. I have never lived at Mabeli in Port Loko District. I have not lived at Rokel. I have stayed there one or two days at a time. I sometimes traded there. I have heard of Pakimasabong in Bombai District. The man in Rokel is my uncle. He does not come from Bonkolenken Chiefdom. He is my mother's brother. His name Kamane Kamara. When his father died he was on the way to hospital at Makump. My father lived at Makump. My father was many years in Makump. When my father went to Makump I had not been born. I went to Sasekele, Koindadugu when I left Makump,

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thence to Baoma. In 1943 I went to Yele for the first time. Nana Seisay died during the tribal war. There was no legally constituted chief till after the tribal wars. All P.Cs establish compounds of their family - family seat. I bought a house from a Syrian. I made no compound. There is no Chief's compound now in Yele. There is another house - pan house. My brother lives there. I have two houses in Magburaka - good houses. Makump is 29 miles from Magburaka, Yele to Makump is 2½ miles. Borbor Conteh is not related to me. I bought from the Syrian. Sulaiman and Borbor Senessie built the house. Borbor Senessie is Conteh's father. Conteh is one of the Plaintiffs. I transferred my business to Yele in 1943. I did business there till 1959 when the Chief died. I went to Magburaka to build a house and I was there when I was called. In 1957 I had then completed houses in Magburaka. I was building a trade house. I ceased business in Yele in 1957 and went to Magburaka. I did not go to the Diamond area. I did not go to Kenema or Baoma when I was at Yele. In 1956 I did not suffer a theft in my Yele shop. I was born at Makump near Yele. I have known Komra Seisay many years. He was at Petifu. My father told me of my grandfather's death in the war. I was over fifteen years old at the time. I knew Bai Kump Forsenay when he was elected. I was a child. When Kabassi was elected I was 25 years old. I was too young to stand. Kumrai Seisay is my relative. He has to get the Chief. I have heard of Bai Kump Mbale. I did not claim to be descended from him. I belong to the Bonkolenken section of the Chiefdom. I knew Sheku Kanu - we are not related. The Kanus have no power to determine rights of Chieftaincy. The Kanu had nothing to do with Orthernip's election.

In the Supreme  
Court

Defendant's  
Evidence

No.12

Sulaiman Seisay  
14th July 1960  
Cross-  
examination  
continued

No Re-examination

1 p.m. adjd. 2.30 p.m.

In the Supreme  
Court

2.30 p.m. - Parties and Counsel as before.

No.13

ALHAJI ALIMAMI SOURI

Defendant's  
Evidence

2.30 p.m. - Parties and Counsel as before.

No.13

Alhaji Alimami  
Souri  
14th July 1960  
Examination

2 D.W. - Alhaji Alimami Souri S/S - P.C.Makale.

I was crowned in 1930. I knew the Defendant. I knew his father Kaba Seisay. I knew him as a child. I know his mother. I did not know of their marriage. The father of Kaba Seisay was Nana Seisay. I do not know him. My house is not related to the Seisays. I was on friendly term with Kaba Seisay. He told me that his father was Nana Seisay and that he had died in the war. He told me Nana's father was Bai Kump, Orthernip. I knew Pa Fenti Seisay. We live in the same Chiefdom. He came to me with the Defendant and another man. Pa Fenti Seisay said that he had come to take his brother referring to the Defendant. He said the Chiefdom had reached the house of Orthernip. He brought me 10/- to take him. I told him he had committed a crime. The Government should come to take him to the election. They left and I returned the 10/-. I knew Kumra Seisay. I knew him well. I knew his father. His father is Kaprebana.

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Cross-  
examination

Cross-examined: I asked him how he came to fetch the Chief when he himself came from Kabassi. He was fighting for the Chiefdomship of that house. The election took place after the fight for his chieftainship had started. This was last year. I think that they came to me. It was a long time before Defendant was crowned. Kaba told me about his father before I was a chief. We were doing business at Mayepo. I then knew the Defendant. After they had come to me I used to meet the Defendant. Defendant's elder brother fought the Chieftainship with my uncle. Defendant is my son-in-law. I knew that Fenti Seisay stood as a candidate. Fenti Seisay came with Defendant. Defendant was then my son-in-law. I brought Fenti Seisay up. I could not have stood for election at Bonkolenken. My uncle and Defendant's elder brother contested Yele chieftaincy. My uncle was Bai Kumpa Kabassi. He was last chief before the Defendant.

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Re-examined: They fought for Yele chieftaincy sometime before the war.

In the Supreme Court

By Court

By Court: Sometimes a man encourages his brother to stand and then at the last moment replaces him.

Defendant's Evidence

No.13

Alhaji Alimami Souri  
14th July 1960  
Re-examination

No.14

No.14

FAROUK FALLA

Farouk Falla

Examination

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3 D.W. Farouk Falla S/S (native custom) - I am ex Regent Chief Bonkolenken. Regent Chief till Defendant crowned. I know Defendant well. I do not know his father. I knew his name. When the Chief died he tells me the Barogue the house where the chieftaincy shall descend. He told me. He told me Bai Kump I. When he did, each claimant comes to me the Barogue. I take him to the N.A. Court. The Defendant stated he wanted to stand for the house of Orthernip. He did not indicate any other house. I have to know of the families in the Chiefdom. The late P.C. Kamassie told me that his father was Kaba Seisay and that his father was Nana Seisay. His father was Bai Kump I. Nobody complained against Defendant as a candidate for election. There were sacrifices in his honour. I knew Pa Sheka Kanu. He took part. Ansumana took part. Fenti Sesay took part. I knew Kumrai Seisay at the election.

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Cross-examined: Kamassie told me about the Defendant in connection with his duty. He told me the house in which the chief was to be elected. He is bound to tell the genealogy. He told me of the house to take the crown and he also told me of the Defendant's lineage when he was about to die. He died in 1959 October. He told me in October 1958. He told me about the house and about this man's

Cross-examination

In the Supreme Court

Defendant's Evidence

No.14

Farouk Falla  
14th July 1960  
Cross-examination continued

people - the whole family. He did not mention any other family. Family means house. Defendant is the only man I knew in the Othernip house. Kumrai Seisay said he belonged to Othernip house. The Chief when dying first announced who the Othernip house would take and he then traced the line of Defendant to the father, grand father and great grandfather. It was in the parlour. He died two hours later. I did not say that he told me in early October. There were at least 13 candidates. I did not check the candidates' lineage other than Defendant. The Commissioner checked the lineage of the candidates. The Defendant revealed his line to me. I had known him before. He said he came for the chieftaincy and he is grandson of Bai Kump Othernip I. He said it in the barri. He told me. Bai Kump Kamassie did say this. Kamassie did not point on Defendant as Chief. He is not allowed to appoint a successor. I knew Defendant and Kumrai Seisay - no others. The Paramount Chief was dying at Magburaka. I did not know where Kumrai was when the Chief was dying. I am of the house of Bai Kump Kamssaie.

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By Court

By Court: He told me about the Defendant's line, - not Kumrais. I knew already who the line were. There were only two people eligible Defendant and Kumrai.

4 p.m. adjd. to 15 July 9 a.m.

No.15

No.15

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Rogue Malike  
15th July 1960  
Examination

ROGUE MALIKE

15 July 1960

9 a.m. Parties Counsel as before.

4 D.W. Rogue Malike S/S (native custom) - I come from Matakoko, Yele, farmer. I am son of the late Chief Bai Kump Opanle - Chief of Yele. He succeeded Bai Kump Othernip. He died before he had assumed full powers. Parte Balla came next. I knew Bai Kump Othernip. I helped to build his compound. His sons were Bansie, Nana. I knew them. He had children in a number of compounds.

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I knew Pa Gbogboso and I knew the Paramount Chief. The "Chief's" father was Kaba Seisay. The Chief was born at Makump. I was born there. The father of Kaba Seisay was Pa Nana the son of Othernip. He died in the war when I was a young man.

In the Supreme Court

Defendant's Evidence

No.15

Rogue Malike  
15th July 1960  
Examination continued

Cross-examined: I was too young to go to war. Othernip became Chief after the war. I was a child when Othernip's compound was built. I knew Nana before he went to the war. I saw Nana when he went to war. All the men assembled to say good bye. Kaba had then gone to Rokel, Maepe. I knew Allie Seisay, Defendant's elder brother at Rokel. He is now in Mendi. He did business at Rokel. Defendant was also doing business at Rokel. Defendant was then in existence. He was not then grown up. He was a small child. The ceremony took place at Yele. I did not see the Defendant at the good bye ceremony. Defendant then lived at Makump. I do not know whose house he lived in. My name is a Poro title, big men. The Chiefdom is predominantly Poro rather than muslim. Our rites are Poro. All men join the Poro. I was one who initiated the Defendant to the Poro. That time before he was elected Paramount Chief he was initiated. I am the head of the Poro. Defendant is in the house.

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No Re-examination.

No.16

SULAIMAN SEISAY (RECALLED)

No.16

Sulaiman Seisay (Recalled)

1 D.W. Sulaiman Seisay recalled still on oath.

By Court

By Court: All candidates assemble. The name of the ruling house chosen is announced at the marogue and the election proceeds between those qualified. In my case between myself and Kumrai - Fenti stood for the Othernip's house. The D.C. brought a box. The Government required payment of £1 to stand for the chiefdomship. Every person standing had to do so - Everyone could stand, whatever house he was and in defiance of the old Chief's declaration. Everyone

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In the Supreme Court

Defendant's Evidence

No.16  
Sulaiman Seisay  
(Recalled)

who paid were before the D.C. and the Assessors and the Tribal Authority. Qualifications are then considered. All persons are accepted as being members of a ruling or rejected. Only Othernip's candidate had hope of election.

Close of the Defendant's case.

No.17  
Counsels  
Addresses  
15th July 1960.

No.17  
COUNSELS ADDRESSES

Smythe  
(for  
Defendant)

Smythe - Fact

- 1. Defendant's story stress credibility. 10
- 2. 2 P.W's memory.
- 3. Cross-examination of Alhaji. 1930 elder brother of the Defendant. Contested Yele Chieftainship against uncle.
- 4. Pa Fente invited Defendant to stand for 'own house'. Alhaji's evidence thereon.
- 5. Demeanour of witnesses. Kumrai's father.

Mahoney  
(for  
Plaintiffs)

Mahoney replies:

Burden of establishing title on the Defendant.

- 1. 1st Parogue. bedside interview. reinforcement of evidence. 20
- 2. 2nd Parogue. Defendant initiated after election.
- 3. No family compound - absence from home - with houses in Magburaka.
- 4. The old man. 2 p.w.
- 5. Kaba not at Yele at time of war. Yet Defendant living there. Defendant says father took him away.

Conflict:

- 6. Alhaji - Defendant his son-in-law - prejudiced. 30
- 7. Has burden been discharged.
- 8. Defendant not to be relied on as against Plaintiff.

Adjourned to 21st July at 9.30 a.m. for judgment.

(Sgd) P. Watkin Williams  
Judge.

No.18

In the Supreme  
CourtJ U D G M E N T

No.18

Judgment

21st July 1960

In this case the Plaintiffs claim a declaration that the election of the Defendant as Paramount Chief of the Bonkolenken Chiefdom is invalid on the grounds that he is not descended from a ruling house within the Chiefdom and also for an injunction restraining him from acting as Paramount Chief.

10           The conflict with which at this stage I have to deal is to be found expressed in paragraph 3 of the Amended Statement of Claim and in paragraph 3 of the Amended Defence.

Paragraph 3 of the Amended Statement of Claim read as follows :-

20           "    The Defendant was and is not a descendant in the male line nor the full brother of any Paramount Chief who has previously been recognised as a Paramount Chief of the Bonkolenken Chiefdom or of one or other of the Bonkolenken, Yele, Masakong, Mayopo and Poli Chiefdom which were by an act of Union dated the 15th day of December 1956 amalgamated to form the present Bonkolenken Chiefdom and therefore does not descend from a ruling house within the Chiefdom."

30           Paragraph 3 of the Amended Defence reads as follows :-

40           "    The Defendant admits paragraphs 1 and 4 of the Plaintiffs' Statement of Claim and contends, as regards paragraph 3 of the Statement of Claim, that he is a descendant in the male line of Bai Komp Othernip (deceased) who was recognised as Paramount Chief of the Bonkolenken Yele Chiefdom, which was by an act of Union dated the 15th day of December, 1956, amalgamated as set out in the said paragraph 3 of the Statement of Claim with the other Chiefdoms

In the Supreme  
Court

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No.18

Judgment

21st July 1960  
continued

as set out therein, and therefore does descend from a ruling house within the Chiefdom."

It will be seen that the Defendant claims to derive his eligibility from Paramount Chief Bai Komp Othernip and it is common ground that descent in the male line from that personage carries eligibility.

In the final state of the pleadings the Defendant had assumed the burden of proving his descent from Bai Komp Othernip but the right of the Defendant to begin was not asserted and I heard the Plaintiff's evidence first. It is nevertheless convenient for the purposes of this judgment to reverse the order and to consider the positive evidence of the Defendant before turning to the evidence called by the Plaintiffs with the object of displacing it. 10

According to the Defendant, who was by far the most lucid and forthcoming of the witnesses called in the case, Bai Komp Othernip had a son called Nana Seisay. This man was killed in the tribal war of 1898. His son was called Kaba Seisay and the Defendant is the son of Kaba Seisay. He was supported by Alhaji Alimami Souri, an old gentleman of impressive bearing who said that he personally knew Kaba Seisay from the time when he was a child and they were on friendly terms. He did not actually know Nana Seisay but he had been told that he was Kaba's father and that he had been killed in the war. He had also been told that Nana's father was Bai Komp Othernip. It is to be noted that Kaba, according to Alhaji resided at Mayepo which is only a short distance from Yele and should therefore have been known to other residents in the area. This witness also says that he brought up Fenti Seisay who is one of the Plaintiffs in this action. That being the case it is difficult to imagine that Fenti Seisay did not know or at least knew of Kaba. 20 30 40

The Rogue Malima also gave evidence to the effect that he had known Bai Komp Othernip when he, the Rogue, was a child, and had helped to build his compound. He also said that he knew Nana, his son who had died in the war and he



knew that Kaba was his son and that the Defendant was the son of Kaba.

In the Supreme  
Court

The Rogue Farana Fella also gave evidence to the effect that the Paramount Chief Kanasie, who preceded the Defendant as Chief, named Othernip's family as the family he would like to succeed and also traced the Defendant's lineage to Othernip. This evidence was not satisfactory. The Defendant was only one of a number of men of the family who was eligible and it is difficult to understand why the Chief, who was dying at the time, should refer to the Defendant's lineage only, as the Rogue says he did, and ignore the others. It was furthermore superfluous information as the Rogue stated that he already knew the Defendant's lineage. This evidence was highly suspect both as to its contents and also as to the manner of its telling and I exclude it from consideration. We are none the less left with a considerable body of evidence that Nana was the son of Othernip, that Kaba was the son of Nana and that Defendant was the son of Kaba.

No.18

Judgment

21st July 1960  
continued

Now the defence is somewhat startling. If the matter had resolved into a contest as to whether Nana was in fact the son of Othernip the decision might be more difficult. But the Defence is that so far as the Plaintiffs' are aware there was no Nana, no Kaba and the Defendant simply came from some other area and made a completely spurious claim to eligibility for the Chieftainship. Now if that were true one would expect the claim to meet with immediate and strong protest. One would also feel some astonishment at the naive and optimism of such a man and amazement that he managed to secure election. Kumrai Seisay, the only one of the Plaintiffs to be called related that part of his family tree relevant to this matter. He said that he was the son of Bai Komp Othernip and that his brothers were Bainsira, Momoh Kaneh and Sheka Seisay all of whom are dead. He also said that Bai Komp Othernip had three brothers Kaprebana, Pabooth and Pa Bainsira. In this tree the names Nana and Kaba found no place. He said that he first knew the Defendant when he came to Yele

In the Supreme  
Court

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No.18

Judgment  
21st July 1960  
continued

from Baoma some fifteen years ago and that at that time he purchased a house from a Syrian. He says, moreover, that Defendant did not stand for election as a member of the house of Othernip but as a member of a different house altogether, the house of Magbele.

This witness was supported to some extent by a very old man called Kapre Gbogbosso Kano. He gave his evidence in chief in a concise, almost military manner and he appeared to look back clearly and effortlessly into the past. He said that Orthernip was his uncle and that the Defendant is not a grandchild of Othernip.

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When he was cross examined the witness's self assurance left him and so apparently did his memory. After some evasion he said that Orthernip's sons were Pa Both, Yamba Bana and Bainsira. Then he altered this list to Kumrai Kaprebana and Pa Both. Finally he said that Kumrai was the only son whose name he could remember. When he was asked if any of Othernip's sons were killed in the war his reply came after a long uncomfortable silence which he attributed to his old age. The object of calling this witness was to strengthen the evidence that Nana was not a son of Othernip. That object was not achieved.

20

As I have said an interloper into this election could expect immediate opposition. In this respect the evidence of Alhaji Alimami Souri is of much significance. He says that Fenti Seisay, one of the Plaintiffs, live in the same compound with him and that Fenti Seisay came to him with the Defendant and told him that the chieftainship had come to Othernip. He invited Alhaji to sponsor the Defendant's candidature. Now that evidence is in direct conflict with the evidence of Kumrai Seisay who said that the Defendant stood for another house. It shows Fenti Seisay as a supporter of the Defendant's candidature as a member of the house of Othernip before the election which contrasts strangely with Fenti's position as a Plaintiff against the Defendant claiming that he is not a member of the house of Othernip at all and that his election as such is invalid. I did not hear Fenti.

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Perhaps if the Defendant had stated I should have done so. But as I have indicated I was much impressed with this witness. Moreover Alhaji revealed that Kumrai Seisay is not the son of Bai Komp Othernip but of Kaprebana.

In the Supreme  
Court

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No.18

Under cross examination Alhaji stated that his uncle was Kainassie, who preceded the Defendant as Chief, and that Defendant's elder brother was a candidate, at his election. That seems to establish that Defendant's elder brother, and similarly too Defendant himself, was eligible for election as a male descendant of a ruling house, though not necessarily of the house of Othernip.

Judgment  
21st July 1960  
continued

Counsel for the Plaintiffs devoted much of his cross examination of the Defendant to showing that the Defendant has spent much of his life, and has acquired valuable property, in places other than Yele. The Defendant made no attempt to deny it. To argue that because a man has been absent a long time it is likely that his claim to have emanated from a particular place is false is not a suggestion that appeals to me very much. It was also argued that if the Defendant was really a member of a ruling family he should have a compound in Yele and should not have to buy one. The Defendant was never asked to explain that but I have no doubt that if he had been asked he would have done so with the same ease with which he faced other questions put to him.

Plaintiffs' Counsel called my attention to minor inconsistencies in the Defendant's case. I have considered them but they seem to me to be the sort of inconsistencies which I should expect to meet in a case of this nature. He has also asked me to beware of Alhaji's evidence because he is related by marriage to the Defendant. I have approached this case in the expectation that every witness called would tend to be prejudiced in favour of the side calling him and I have come to the conclusion that the Defendant and Alhaji are truthful witnesses. They gave their evidence in a manner which seemed to display that they had nothing to conceal. The Plaintiffs' witnesses on

In the Supreme  
Court

No.18

Judgment  
21st July 1960  
continued

the other hand appeared to be evasive. I am left in no doubt that the Defendant is descended from the house of Othernip. The fact that he has spent much of his life away from Yele may have disposed persons to regard him as something of an alien but this action is nothing but a plot to establish false grounds for his removal.

I therefore refuse to grant to the Plaintiffs the relief which they claim and I shall enter judgment for the Defendant with costs.

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(Sgd) P.Watkin Williams  
Judge.

21st July.

Parties present.

Mahoney Plaintiff: McCormack Crown.

Judgment read.

Mahoney on Costs.

There is nothing to tax - I submit to an order that costs to the Defendant to be taxed.

Court: I so order.

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(Sgd). P.Watkin Williams.

In the Court  
of Appeal for  
Sierra Leone

No.19

Notice and  
Grounds of  
Appeal  
18th October  
1960

No.19

NOTICE AND GROUNDS OF APPEAL

IN THE SIERRA LEONE AND THE GAMBIA COURT OF APPEAL

NOTICE OF APPEAL  
(RULE 12.)

BETWEEN:-

- |                  |                                |
|------------------|--------------------------------|
| 1. PA SHEKA KANU | 2. ALUSINE BORBOR CONTEH       |
| 3. KOMBRA SEASAY | 4. FENTI SESAY                 |
| 5. BAI SESAY     | 6. KAPR LAWYERR KANU           |
| 7. BORBOR KANU   | 8. KAPR THONTEH                |
| 9. SANTIGIE KANU | 10. FENTI KANU                 |
| 11. MOMO KANU    | 12. SORI KANU AND              |
| 13. MOSERAY KANU | - <u>PLAINTIFFS/APPELLANTS</u> |

30

AND  
SULLAY SESAY - DEFENDANT/RESPONDENT

TAKE NOTICE that the Plaintiffs being dissatisfied with the whole of the decision of the

Supreme Court contained in the Judgment of His Lordship Mr. Justice Peter Watkin Williams dated the 21st day of July 1960 do hereby appeal to the Sierra Leone and Gambia Court of Appeal on the grounds set out in paragraph 3 and will at the hearing of the said appeal seek the relief set out in paragraph 4.

In the Court  
of Appeal for  
Sierra Leone

No.19

Notice and  
Grounds of  
Appeal  
18th October  
1960  
continued

10 And the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision of the lower Court is appealed against.

3. GROUNDS OF APPEAL :-

20 I. That the learned trial judge misdirected himself in holding that the Defendant's claim to the chieftaincy of the Bonkolenken Chiefdom was not met with immediate and strong protest.

II. That the learned trial judge wrongly admitted in evidence the evidence of the 2nd defence witness, Alhaji Souri in so far as it purported to prove that the Defendant was the direct grandson of Bai Komp Othernip.

30 III. That the learned trial judge applied wrong principles in relation to the burden of proof.

IV. That the learned trial judge gave insufficient consideration to the Plaintiffs' case.

V. That the judgment is against the weight of the evidence.

40 4. That the decision of the learned trial judge be reversed and that judgment be entered for the Plaintiffs in the terms of the relief sought in the Statement of Claim or in the alternative that the matter be remitted to the Supreme Court with a direction that judgment be so entered.

In the Court  
of Appeal for  
Sierra Leone

No.19

Notice and  
Grounds of  
Appeal  
18th October  
1960  
continued

PERSONS DIRECTLY AFFECTED BY THE APPEAL :-

1. Pa Sheka Kanu
2. Alusine Borbor Conteh
3. Kombra Sesay
4. Fenti Sesay
5. Bai Sesay
6. Kapr Lawyerr Kanu
7. Borbor Kanu
8. Kapr Thonteh
9. Santegie Kanu
10. Fenti Kanu
11. Sori Kanu
12. Moseray Kanu
13. Momo Kanu
14. Sulay Sesay.

10

ALL of YELE in the Bonkolenken Chiefdom  
in the Tonkolili District in the Protectorate  
of Sierra Leone.

DATED THIS 18TH DAY OF OCTOBER, 1960.

Pa Sheka Kanu	(Sgd) S. Kanu	
Alusine Bobor Conteh	(Sgd) A.B. Conteh	20
Kombra Sesay	His X mark	
Fenti Sesay	His X Mark	
Bai Sesay	His X Mark	
Kapr Lawyerr Kanu	His X Mark	
Borbor Kanu	His X Mark	
Kapr Thonteh	His X Mark	
Santegie Kanu	His X Mark	
Fenti Kanu	His X Mark	
Sori Kanu	His X Mark	
Moseray Kanu	His X Mark	30
Momo Kanu	His X Mark	

SIGNED BY THE ABOVE NAMED Appellants the same  
having been read over and explained to them in  
the Temne language and in broken English and  
each of them appearing perfectly to understand  
the same before signing or affixing his mark  
or thumb print to the same.

(Sgd) J.E.F. Mansaray

WITNESSES.

No.20

COURT NOTES OF ARGUMENT

In the Court  
of Appeal for  
Sierra Leone

IN THE COURT OF APPEAL FOR SIERRA LEONE

No.20

Civ.4/61 (formerly 43/60 of the  
S.L. & G. Ct. of App.)

Court Notes of  
Argument

BETWEEN: PA SHEKA KANU & ORS. APPELLANTS

and

SULAY SEISAY RESPONDENT

Mahoney for Appellants

10 Smythe Sol.Gen. for Respondent.

Mahoney: 5 grounds of appeal, on p.33.

Will argue all generally except 2, which is the substantial ground.

Grounds 1, 3, 4 & 5.

20 Gd.(1). J. said if Appellant an impostor, his claim should have met with immediate and strong protest, which is to say that it was not. In view of evidence and admission in pleadings this was a misdirection, as to the facts. (P.29 l.32-34 & P.30 l.27-28).

Writ 16th Feb. 1959

S/C 9th May Para 5 read.

Repeated in amended S/C Para. 5

S/Defence 20th May Para. 9

Pendency of the action is also evidence of opposition.

Gd.(3). J. felt rightly that burden of proof was on Respondent. But did not begin. Pltff/ Applt. began in usual way.

In the Court  
of Appeal for  
Sierra Leone

                      
No.20

Court Notes of  
Argument  
continued

Judgment as a whole indicates that, onus having been on Respondent, standard of "proof" which J. appeared to require for establishment of Pltff's case was much higher than one would expect in a civil case.

P.31 l.39

Gd.(4) & (5). Asks Court to consider then when Court considers the whole of the judgment.

Ground 2.

Marke, J:- Did you object to the admission of the evidence? 10

Mahoney:- It is not on the record. There were many objections.

Even in pedigree case, the evidence was inadmissible hearsay.

Evidence being attacked is at p.22 l.4 (Reads it). "...He told me.....He told me....."

Judgment P.28 l.25-33.

P.22 l.10. Witness said "...not related to the Seisays." 20

P.29 l.3

(Reads evidence of 4 D.W. p.24-25 which J ruled out of consideration).

Principle reg. Alhaji's evidence not admissible: it was evidence of a declaration of a deceased person which was not supported aluinde or dehors or by some independent evidence, showing connection between the deceased declarant and the family in respect of which the party sought to establish lineage or pedigree. 30

Phipson. 9th Ed. p.322

J accepted from Alhaji the evidence of a declarant by Kabba Seisay as to pedigree whose relation to the family was not shown aluinde.

Berkeley Peerage Case 4 Campbell 401.

Monckton vs. Att.General 19 R & M. Vol.39 English Rep. 350 (at 354).



Smythe:-

Gd.(1). No evidence as to protest against Deft. One of Pltffs went and invited deft to come and stand for the house. P.20 1.18, & 1.28 1st Pltff killed the cow.

In the Court  
of Appeal for  
Sierra Leone

No.20

Protest at election was when D.C. was holding the election. Para.9 refers to meeting of Tribal Authority for purpose of election.

Court Notes of  
Argument  
continued

Judge referred to "immediate protest".

10 Gd.(2).

The declarant was Kaba Seisay.

D.W.1. declares "my father etc. (P.20 1.4

In XX not disputed that they went to call deft, and took part in sacrifice.

Then consider Alhaji A. S's evidence. Of probative value, although not high value. (Reads it). He A.A.S. was told.

20 9th Phipson p.323. "Competent knowledge". (Reads it). Not derived from strangers. Kaba Seisay not a stranger. Confirmed by 1st and 4th.

Refers to D.W.4. D.W.3

Quite clear from evidence given for defence that deft. was of Orthernip house.

No objection taken when evidence given.

Mahoney:

Ref ground 2.

Suliman Seisay's evidence cannot be accepted as confirmation aluende.

30 Pleadings do form part of the evidence. There was admission of protest at election.

Was there any evidence before J which he could look upon? ---

Alhaji A is not an independent witness as to what Kabba Seisay says.

C.A.V.

(SGD) C.G.AMES

CERTIFIED TRUE COPY

(SGD) MUSAK COLE

for ACTING REGISTRAR.

In the Court  
of Appeal for  
Sierra Leone

No.21

JUDGMENT OF CECIL GERAIN T AMES, P.ACTING J.

No.21

IN THE SIERRA LEONE COURT OF APPEAL

Judgment of  
C.G.Ames,P.Ag.J.  
21st July 1961.

General Sittings holden at Freetown  
in Sierra Leone on the 21st day of  
July, 1961.

Cor: Cecil Geraint Ames, P., (Ag.)  
Richard Bright Marke, J., Sierra  
Leone  
Emile Fashole Luke, Ag.J., Sierra  
Leone.

10

PA SHEKA KANU & 12 Others - Appellants

vs.

SULLAY SEISAY

For the Appellants, J. Eman Mahoney.

For the Respondent, J.H. Smythe, S-G.

J U D G M E N T

Ames, Ag.P. I regret that I differ from the  
opinions of my two brethren, as to this appeal.

This is the third occasion on which this  
suit has come before a court of appeal. The  
writ, which was issued in February of 1959,  
sought a declaration that the election of the  
Defendant/Respondent to a certain chieftaincy  
was invalid in law and an injunction restrain-  
ing him from functioning as chief. The Supreme  
Court held it had no jurisdiction and the Plain-  
tiffs/Appellants appealed to the West African  
Court of Appeal, which held that there was jur-  
isdiction and remitted the suit for hearing and  
determination.

20

30

At that hearing, the Plaintiffs asked for  
judgment on the state of the pleadings. The  
trial judge allowed the Defendant to make an  
eleventh hour amendment to the Defence.

The Plaintiffs then appealed against that interlocutory decision to the short-lived Court of Appeal for Sierra Leone and the Gambia, which was the successor to the West African Court of Appeal. The appeal failed, and the suit was once more sent back to the Supreme Court for hearing and determination. This has now been done, and judgment given for the Defendant with costs.

In the Court  
of Appeal for  
Sierra Leone

-----  
No.21

Judgment of  
C.G.Ames, P.  
Ag. J.  
21st July 1961  
continued

10           There are five grounds of appeal, namely:-

"I. That the learned trial judge mis-  
"directed himself in holding that the  
"Defendant's claim to the chieftaincy  
"of the Bonkolenken Chiefdom was not  
"met with immediate and strong protest.

20           "II. That the learned trial Judge  
"wrongly admitted in evidence the evi-  
"dence of the 2nd defence witness, Alhaji  
"Souri in so far as it purported to  
"prove that the Defendant was the direct  
"grandson of Bai Komp Othernip.

"III. That the learned trial Judge  
"applied wrong principles in relation  
"to the burden of proof.

"IV. That the learned trial judge gave  
"insufficient consideration to the  
"Plaintiffs' case.

"V. That the judgment is against the  
"weight of the evidence".

30           As to ground 1, the learned trial Judge's  
judgment does not mean that there was no pro-  
test against the Defendant/Appellant; there  
was and there still is, as these successive  
appeals show. What the learned Judge meant  
was that there was no strong and immediate pro-  
test, when the Defendant/Respondent first put  
himself forward as a candidate. There is evi-  
40           dence that there was no such protest at that  
time and there is also evidence that two of the  
Plaintiffs/Appellants themselves at that time  
went to call him to stand as a candidate.  
Furthermore, there is evidence that they had  
taken part in the sacrifice made by the Defend-  
ant/Respondent, (this was denied by the Appell-  
ants' witnesses).

In the Court  
of Appeal for  
Sierra Leone

No.21

Judgment of  
C.G.Ames, P.  
Ag. J.  
21st July 1961  
continued

The main argument before us was in reference to the second ground of appeal. The Defendant/Respondent had to prove his descent from the house of Orthernip. One of his witnesses, Alhaji Alimami Surie, gave evidence that he had been a friend of Kabba Seisay, the Defendant/Respondent's father and that this same Kabba Seisay had told him that his father was Nana Seisay, who had died in the war of 1898, and that Nana Seisay's father was Bai Komp Orthernip.

10

It was argued before us that there must be evidence aliunde to connect Kabba Seisay's family with the Orthernip house. The Berkeley Peerage case (4 Camp. 401) was cited as the authority for this proposition. This case is usually cited in text books in connection with the admission in evidence of declarations as to pedigree; for example Phipson, 9th Edition at page 322 states:-

"The declarant's relationship must be  
"shown aliunde and cannot be estab-  
"lished by his own evidence".

20

Actually, however, the point was not in issue in that case. It was apparently assumed to be so, and it was one of the premises of the first question propounded for the opinion of the judges. Lord Mansfield's opinion included a dictum to that effect and Lord Eldon recalled the opinion of the judges in the Banbury case. The Berkeley case was concerned with the admissibility of depositions and declarations made post litem motam (and with entries in family bibles).

30

Now what is it that the evidence aliunde had to show in the instant case? That the declarant Kabba Seisay was in the male line of Bai Komp Orthernip? I think not. If it were, it would be proof aliunde of the declarant's declaration. In my opinion, all that was required was proof aliunde of the relationship of the declarant to the Plaintiff.

I find evidence as to that in the evidence of Alhaji Souri to whom the declaration was made, and in that of the witness Rogue Malime, who said that when he was a boy, he knew Bai Komp Orthernip; that he had helped to build his compound, that he knew Nana Seisay as one of his sons; that

40

Orthernip had children" in a number of compounds"; that the Defendant/Respondent's father was Kabba Seisay; that he was born at Makump where the witness was also born; that the father of Kabba Seisay was Pa Nana the son of Orthernip; that Pa Nana died in the war; that he (the witness) was then a young man, too young to go to war.

In the Court  
of Appeal for  
Sierra Leone

No.21

Judgment of  
C.G.Ames, P.  
Ag. J.  
21st July 1961  
continued

10 As to ground 3, it is clear that, on the pleadings, the defence should have started. Counsel for both sides overlooked this and the Plaintiff started but the Judge dealt with the question of burden of proof on the basis that the onus was on the Defendant. I see nothing wrong in that.

20 As to the other two grounds of appeal, it is sufficient to say that in my opinion, the learned trial Judge did give sufficient consideration to the Plaintiffs' case and that the judgment was not against the weight of evidence.

30 My brother Marke considers the question of legitimacy. Did the Respondent prove his legitimacy? With respect, I do not think that the question arose. Reading the pleadings and the evidence it seems to me that all references to relationship are references to legitimate relationship. It is true, as my brother has pointed out that the witness Alhaji Alimami Souri said: ".....I knew the Defendant. I knew his father Kabba Seisay. I knew him as a child. I know his mother. I did not know of their marriage ....."

40 I do not know what this meant exactly. It could mean that they were married before he knew them: he knew them by repute as the parents of the Defendant. It could be a hint that Defendant was illegitimate: but if it was meant for the latter, I should have expected it to be pounced upon by the other side in cross examination to make this meaning clear. But it was not mentioned in cross-examination.

I would dismiss this appeal with costs.

(Sgd) C.G.AMES  
Ag.P.

Freetown;  
July, 1961.

/CAT.

In the Court  
of Appeal for  
Sierra Leone

No.22

JUDGMENT OF RICHARD BRIGHT MARKE J.

No.22

S.L.(Civ.) App.43/60

Judgment of  
R.B.Marke, J.  
21st July 1961

IN THE SIERRA LEONE COURT OF APPEAL

General Sittings holden at Freetown  
in Sierra Leone on 21st July, 1961

Cor: Cecil Geraint Ames, P.,  
Richard Bright Marke, J., Sierra Leone  
Emile Fashole Luke, Ag. J. Sierra Leone

Pa Sheka Kanu & 12 Ors. - Appellants 10

Sulay Seisay - Respondent

For the Appellants, J. Eman.Mahoney

For the Respondent John H. Smythe, S-G.

J U D G M E N T

Marke, J. This is an appeal from a Judgment dismissing the Plaintiffs/Appellants' claim that the election of the Defendant/Respondent as Paramount Chief of the Bonkolenken Chiefdom be declared invalid as he was not descended from a ruling house of that chiefdom, and for an injunction restraining the Defendant/Respondent from so acting as Paramount Chief of the Bonkolenken Chiefdom. 20

The main issue in this case is to be found in paragraph 3 of the Amended Statement of Claim, and in paragraph 3 of the Amended Statement of Defence. According to the Plaintiffs/Appellants the Defendant/Respondent "was not and is not a Descendant in the male line nor the full brother of any Paramount Chief who has (sic) previously been recognised as a Paramount Chief of the Bonkolenken Chiefdom or of one or other of the Bonkolenken Yele, Masakong, Mayo-pe, and Polo Chiefdoms which was in 1956 amalgamated to form the present Bonkolenken Chiefdom" 30

The Defendant/Respondent in his defence asserted that he was a descendant in the male line of Bai Komp Orthernip deceased who was recognised as Paramount Chief of the Bonkolenken Yele Chiefdom.

In the Court  
of Appeal for  
Sierra Leone

—————  
No.22

This was the issue before the Court and though the onus was on the Defendant/Respondent his Counsel, however, allowed the Plaintiffs/Appellants to begin.

Judgment of  
R.B.Marke, J.  
21st July 1961  
continued

10 I propose, however, as did the trial Judge to begin with the Defendant/Respondent's case before considering that of the Plaintiffs/Appellants'.

20 The first witness for the Defence was Defendant/Respondent himself who gave a geneo-logical tree of the Orthernip family. According to him - and this was common ground - Orthernip I was followed by Nana Sesay, who in turn was followed by Kaba Seisay as Paramount Chief of Bonkolenken Chiefdom. The Defendant/Respondent deposed that Kaba Sesay was his father and that his father was dead. I may at once say in passing that the probative value of this evidence to prove whether this witness was a son of Kaba cannot be very high.

This witness went on to say that Fenti Seisay, one of the 13 Plaintiffs/Appellants and another man went to call him:

30 "to go back to Yele and the Chief-  
"taincy is now with our house"

He went to Yele with the three men and was put up for election as a member of Orthernip family and afterwards elected. He also referred to a sacrifice of two cows made on his behalf. As to the sacrifices he said:

40 "A sacrifice was made for me. Two  
"sacrifices in the house. Fenti  
"Sesay took part, also Ansumana  
"Kanu Pa, Sheka Kanu was there, An-  
"sumana killed a cow. Sheka Kanu  
"killed the second cow. It was  
"for me".

In the Court  
of Appeal for  
Sierra Leone

No.22

Judgment of  
R.B.Marke, J.  
21st July 1961  
continued

Of these four names mentioned, only the names of Pa Sheka Kanu and Fenti Sesay appear among the names of Appellants in this Appeal. The Plaintiffs/Appellants as to this sacrifice, said;

"Before the election there was a sacrifice - Cow killed. "We all took part. "We offered sacrifice". We offered "a sacrifice in our house, Defendant "offered a sacrifice in his house. "I was present, Sheka Kanu was taking "part. I do not know if Ansumana's "cow was slaughtered".

10

The next witness for the Defence was Alhaji Alimami Souri. He deposed.

"I know Defendant. I know his father "Kaba Sesay. I knew him as a child. "I knew his mother. I did not know "of their marriage, The father of Kaba "Sesay was Nana Sesay. I do not know "him..... "He told me that his father was Nana "Sesay and that he had died in the war. "He told me Nana's father was Bai "Kump Orthernip..... "Defendant is my son-in-law."

20

The next witness was Farouk Falla, whose evidence was not satisfactory and highly suspect.

The fourth defence witness Rogue Malim gave evidence that his name was Poro title, and that he was head of the Poro of which Defendant was a member. He said that the Chief (that is Defendant/Respondent's) father was Kaba Sesay. That he knew Nana Sesay and knew when Nana Sesay was going to war.

30

The Plaintiffs/Appellants answer to this was a total denial of the claims of Suliman Sesay (Defendant/Respondent), or to use the words of the learned trial judge in his final judgment (p.32)

"but the defence is that so far as the "Plaintiffs are aware there was no Nana, "no Kaba and the Defendant simply came

40



"from some other area and made a  
 "completely spurious claim to eligi-  
 "bility for the chieftainship."

In the Court  
 of Appeal for  
 Sierra Leone

No.22

The learned judge in his judgment found Suli-  
 man Sesay, the Defendant/respondent 'by far  
 the most lucid and forthcoming of the witness-  
 es called in the case "whom he said".

Judgment of  
 R.B.Marke, J.  
 21st July 1961  
 continued

"was supported by Alhaji Alimami Souri  
 "an old gentleman of impressive bear-  
 "ing".

10

It is clear that the learned trial Judge based  
 his findings on the evidence of those two wit-  
 nesses before deciding against the Plaintiffs/  
 Appellants.

Against that decision the Plaintiffs/  
 Appellants have appealed on the following  
 grounds, that is to say,

1. That the learned trial Judge misdirected  
 himself in holding that the Defend-  
 ant's claim to the chieftaincy of the  
 Bonklenken Chiefdom was not met with  
 any strong protest.
2. That the learned trial judge wrongly  
 admitted in evidence the evidence of  
 the 2nd Defence Witness, Alhaji Souri  
 in so far as it purported to prove  
 that the Defendant was the direct grand-  
 son of Bai Orthernip.
3. That the learned trial judge applied  
 wrong principles in relation to the  
 burden of proof.
4. That the learned trial Judge gave in-  
 sufficient consideration to the Plain-  
 tiff's case.
5. That the judgment is against the weight  
 of evidence

20

30

As regards the first ground of appeal, the  
 Plaintiffs/Appellants in their Statement of  
 Claim pleaded that they objected to the

In the Court  
of Appeal for  
Sierra Leone

\_\_\_\_\_  
No.22

Judgment of  
R.B.Marke, J.  
21st July 1961  
continued

Administrative Officer present conducting the election as to the qualification of the Defendant but that that officer failed to adjudicate upon their objection. The Defendant in his statement of defence pleaded that three of the Plaintiffs protested against his eligibility to stand for election. The Protest, it was pleaded was handed to the Acting Commissioner, Northern Province who in turn passed the matter to the Tribal Authority. The Tribal Authority decided in favour of the Defendant. But all these were allegations in pleadings which in no case amounted to an admission. These allegations in the pleadings not having been admitted, I am of the opinion that evidence should have been led on them if they were considered of such importance to have been made a ground of appeal. But no evidence having been given of this protest; I feel that the learned trial Judge was right in saying that there was no such protest.

10

20

As regards the second ground of appeal the Plaintiffs/Appellants' complaint is that the learned trial judge was wrong in giving probative value to the evidence of Alhaji Alimami Souri and even making it one of the grounds for arriving at his decision in view of the fact that:

- (1) Alhaji Alimami Souri was deposing so far as his evidence went as to the ancestry of Suliman Seisay, what he said he had been told by Kaba: and
- (2) That apart from Kaba's own statement as to his descent there is no evidence establishing his relationship aliunde

30

As to the first ground of complaint the evidence of Alhaji Alimami Souri is that Kaba told him that his father was Nana who had died in a war. From the decision in Berkeley Peerage case, before Alhaji Alimami Souri's evidence can be accepted as evidence of the lineage of Kaba, there must be evidence of Kaba's lineage apart from his own statement.

40

This brings us to the second ground of complaint. On a review of the evidence Suliman Seisay the claimant gives a geneology of the

Orthernip house in which he mentioned Kaba's name. That evidence coming as it does from the claimant himself who, as must be presumed, was speaking after making enquiries in a matter he was primarily concerned, cannot be of much probative value.

In the Court  
of Appeal for  
Sierra Leone

\_\_\_\_\_  
No.22

Judgment of  
R.B.Marke, J.  
21st July 1961  
continued

10 Suliman Sesay stated that two of the Plaintiffs went to call him to stand for the chieftaincy. In the absence of any evidence that those two Plaintiffs were the agents of the other eleven Plaintiffs, their action in going to induce the Defendant to stand for the chieftaincy, can bind only themselves.

Then there were the sacrifices - the killing of cows. Both sides, from the evidence, killed cows and offered sacrifices apparently on the same day and most probably on the same spot as each side knew what the other side was doing.

20 There was the evidence of Farouk Falla whose evidence the learned trial Judge who saw the witness and observed his demeanour described as not satisfactory and highly suspect both as to its contents and as to the manner of telling.

30 This leaves us with the evidence of Rogue Malim. He said that the Chief's Father was Kaba Seisay. That Kaba Seisay's father was Nana who died in the war when this witness was a young man. But in cross-examination he admitted that he was too young to have gone to the war. This witness went on to say that he was head of the Poro Society and that Suliman Seisay was a member of his house. The learned trial Judge did not make any specific reference in his judgment on the evidence of this witness.

40 But this witness nevertheless fails the test set up in the Berkeley Peerage case: that is

"You must by evidence dehors the  
"declarations connect the person  
"making them with the family."

In the Court  
of Appeal for  
Sierra Leone

---

No.22

Judgment of  
R.B.Marke, J.  
21st July 1961  
continued

That connection has not been proved here and on the authority of the Berkeley Peerage case, I am unable to say that Suliman Sesay has successfully proved his descent from Orthernip.

Before leaving this ground of appeal, there is a further matter that ought not to be overlooked. Alhaji Alimami Souri deposed:

"I know the Defendant. I knew his  
"father Kaba Sesay. I knew him as a  
"child. I know his mother. I did  
"not know of their marriage".

10

The Plaintiffs in paragraph 3 of the Amended Statement of Claim pleaded:

"The Defendant was and is not a de-  
"scendant in the male line nor the  
"full brother of any Paramount Chief  
"etc."

I underline the words "nor the full brother of any Paramount Chief".

The only witness who makes the barest reference to this is Alhaji Alimami Souri but he qualifies his evidence by saying "I do not know of their marriage". The question then arises - Is there any evidence that Suliman Seisay was the issue of the marriage of his parents? I have been unable to find any such evidence on the record. If he was the issue of a marriage, one would have expected in view of the pleadings, such evidence to have been led on behalf of Suliman Sesay, or some explanation given why such evidence was not forthcoming. Although this was not a specific ground of appeal, and was not argued before us, as the Court is seised of the whole case the Court is therefore entitled to express an opinion on it.

20

30

It seems to me that the learned trial Judge



In the Court  
of Appeal for  
Sierra Leone

No.23

JUDGMENT OF EMILE FASHOLE LUKE, ACTING J.

S.L.(Civ.) APP.43/60

No.23

IN THE SIERRA LEONE COURT OF APPEAL

Judgment of  
E.F. Luke Ag.J.  
21st July 1961

General Sittings holden at Freetown  
in Sierra Leone on the 21st day of  
July, 1961.

Cor: Cecil Geraint Ames, P.,		
Richard Bright Marke, J..	Sierra Leone	
Emile Fashole Luke, J.	Sierra Leone (Ag).	10
PA SHEKA KANU & 12 ORS.	-	Appellants
	vs.	
SULAY SEISAY	-	Respondent

For the Appellant, J.Eman.Mahoney,  
For the Respondent, John H.Smythe, S-G.

J U D G M E N T

Luke, Ag.J. I concur with my brother Marke J.  
In agreeing these are my reasons. I feel the  
main ground in this appeal which needs consider-  
ation is ground 2. The Defendant upon whom as  
the learned trial judge rightly found in his  
judgment the burden of proof rested did not dis-  
charge it. He had to prove that he was a  
direct descendant in the Orthernip I line. To  
prove it he called as his witness Alhaji Alimami  
Souri who declared what he had been told. 20

In order that it should have the probative  
value proof aliunde should be given. This, al-  
though not so mentioned by the Court below,  
could have been said to be supplied by Rogue  
Malime. But it fell short of what is required  
in the Berkeley Peerage case by the decision of  
Eldon L.C. when he said that the witness should  
also prove he is a relation of the family. 30

For these reasons I say the appeal should  
be allowed with costs.

(Sgd) EMILE F. LUKE  
Ag. J., Sierra Leone.

Freetown;  
July, 1961.

/CAT.

No.24

ORDER GIVING FINAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL.

In the Court  
of Appeal for  
Sierra Leone

No.24

IN THE COURT OF APPEAL FOR SIERRA LEONE

(Civil Appeal No. 46/61)

SULAY SEISAY

APPELLANT

Vs.

PA SHEKA KANU & 12 ORS.

RESPONDENTS

Order giving  
Final Leave  
to Appeal to  
Her Majesty  
in Council  
3rd November  
1961

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Before: Justice C.G.Ames - Ag. President  
" S.A.Benka-Coker Chief Justice,  
Sierra Leone.  
" J.A.L.Wiseham Chief Justice,  
Gambia.

The 3rd day of November, 1961.

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UPON READING the Affidavit of JOHN HENRY SMYTHE, Solicitor-General, filed herein and UPON HEARING what was alleged by the said JOHN HENRY SMYTHE of Counsel for the Appellant and JAMES EMAN MAHONEY of Counsel for the Respondents IT IS THIS DAY ORDERED that final leave to appeal to the Privy Council be granted. Costs of the application to be costs in the cause.

By the Court,

(SGD) PERCY R. DAVIES

ACTING REGISTRAR,  
SIERRA LEONE COURT OF APPEAL.

CERTIFIED TRUE COPY.

(SGD) MUSAK COLE

for ACTING REGISTRAR.

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ON APPEAL

FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N:

SULAY SEISAY

Defendant/Appellant

and

1. PA SHEKA KANU
2. ALUSINE BORBOR CONTEH
3. KAMARA SESAY
4. FENTI SESAY
5. BAI SESAY
6. KAPR LAWYER KANU
7. BOFOR KANU
8. KAPR THONTEH
9. SANTIGIE KANU
10. FENTI SESAY
11. MOMOH KANU
12. SORIE KANU
13. MOSERAY KANU

Plaintiffs/Respondents

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RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,  
90, Fenchurch Street,  
London, E.C.3.  
Solicitors for the Appellant