Privy Council Appeal No. 2 of 1962

Sulay Seisay – – – – – – – – – *Appellant*

v.

Pa Sheka Kanu and others – – – – – – – – *Respondents*

FROM

THE COURT OF APPEAL FOR SIERRA LEONE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST APRIL, 1963

Present at the Hearing:

LORD EVERSHED.

LORD JENKINS.

LORD GUEST.

[*Delivered by* LORD JENKINS]

This is an appeal from a judgment of the Court of Appeal for Sierra Leone dated the 21st July, 1961, allowing by a majority of two to one the appeal of the plaintiffs-respondents against a judgment of the Supreme Court of Sierra Leone dated the 21st July, 1960, which dismissed their claim for a declaration that the election of the defendant-appellant as Paramount Chief of the Bonkolenken Chiefdom was invalid, he not being descended from a ruling house within the said Chiefdom and for an injunction restraining him from acting as such Paramount Chief. The defendant-appellant is hereinafter referred to as the defendant and the plaintiffs-respondents are hereinafter referred to as the plaintiffs.

Under section 5 of the Protectorate Ordinance (Chapter 60 of the Laws of Sierra Leone 1960) it is the duty of the Tribal Authority to elect a Chief to be in charge of a chiefdom. In this case it was common ground between the parties that the present Bonkolenken Chiefdom had been formed out of an amalgamation of the former Bonkolenken, Yele, Masakong, Mayopo and Poli Chiefdoms, that the Paramount Chief was required to be a descendant in the male line of or the full brother of a former Chief of one or other of these Chiefdoms, that each of the plaintiffs possessed the required qualification, and that on or about the 6th February, 1959 the Tribal Authority elected the defendant as Paramount Chief of the Bonkolenken Chiefdom. The sole issue in the case was therefore whether the defendant was proved to be qualified as the duly elected Paramount Chief.

The present suit was begun by a Writ of Summons dated the 16th February, 1959. The respective contentions of the parties appear from paragraph 3 of the Amended Statement of Claim and paragraph 3 of the Amended Defence. Paragraph 3 of the Amended Statement of Claim is as follows:—

> " 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 descend from a ruling house within the Chiefdom."

Paragraph 3 of the Amended Statement of Defence is as follows:—

> " 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."

The case was heard on the 14th and 15th July, 1960, and judgment was delivered on the 21st of the same month.

The learned Judge clearly considered the matter with great care and in great detail and at the end of his judgment he expressed his conclusions thus:—

> " 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 " (one of the defendant's principal witnesses) " are truthful witnesses. They gave their evidence in a manner which seemed to display that they had nothing to conceal. The plaintiffs' witnesses on 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 . . . 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."

From this judgment (albeit dealing with matters eminently within the province of the trial judge) the plaintiffs appealed to the Court of Appeal for Sierra Leone. They raised in the first instance five grounds of appeal of which in the end one only became effective. That ground was stated in these terms:—

> " II. That the learned trial judge wrongly admitted in evidence the evidence of the second defence witness Alhaji Souri in so far as it purported to prove that the defendant was the direct grandson of Bai Komp Othernip."

On this part of the case their Lordships prefer the views contained in the dissenting judgment of Ames P.Ag.J. to those adopted in the judgments of the majority of the Court (Marke J. and Luke J.), which give (as it seems to their Lordships) an unduly restrictive effect to the *Berkeley Peerage Case* (1811) 4 Campbell 402, on which they are based—see also *Monckton v. A.G.* 2 R. & M. p.147 at p.156 which was held open to criticism on similar grounds.

It is, however, to be observed that the plaintiffs (now respondents) have not thought fit to appear or be represented in the present appeal, and although Mr. Dean presented the respondents' side of the argument as fairly as possible their Lordships cannot regard this *ex parte* hearing as an appropriate occasion for saying more than is strictly necessary for the purpose of disposing of the actual case now in hand. As to that, it seems to their Lordships to be plain on the facts that there was amply sufficient evidence (including, be it observed, the oral evidence of the defendant and other witnesses who were alive and present at the trial) to make good the appellant's case, whether the *Berkeley Peerage Case* is or is not applicable to native titles.

For these reasons their Lordships are of opinion that this appeal should be allowed and the judgment of the trial judge should be restored, and would humbly advise Her Majesty accordingly. The respondents must pay the costs of this appeal and of the appeal to the Court of Appeal for Sierra Leone.

(87500) Wt. 8004/82 80 4/63 Hw.

In the Privy Council

SULAY SEISAY

v.

PA SHEKA KANU AND OTHERS

DELIVERED BY
LORD JENKINS

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