Privy Council Appeal No. 54 *of* 1959

The Attorney-General of the Gambia – – – – – *Appellant*

v.

Pierre Sarr N'Jie – – – – – – – – *Respondent*

from the West African Court of Appeal

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD MAY, 1961

Present at the Hearing

LORD RADCLIFFE
LORD DENNING
LORD GUEST

[*Delivered by* LORD DENNING]

Mr. Pierre Sarr N'Jie is a member of the English Bar who was admitted a few years ago to practise as a barrister and solicitor of the Supreme Court of the Gambia. On 22nd September, 1958, the Deputy Judge (Abbott, J.) made an order striking his name off the Roll of that Court and directing that it be reported to the Masters of the Bench of his Inn. On 5th June, 1959, the West African Court of Appeal (Bairamian, Actg. P., Hurley, Actg. J.A. and Ames, Actg. J.A.) set aside the order on the ground that the Deputy Judge had no jurisdiction in the matter. The Attorney-General of the Gambia sought leave to appeal to Her Majesty in Council but on 6th July, 1959, the West African Court of Appeal (Bairamian, Actg. P., Benka-Coker, J., Marke, J.) refused him leave to appeal on the ground that notice had not been given in due time to Mr. Pierre Sarr N'Jie. Thereupon the Attorney-General made a petition to Her Majesty for special leave to appeal from the judgments of the West African Court of Appeal, both of 5th June, 1959, and 6th July, 1959. This petition was granted but liberty was expressly reserved to Mr. Pierre Sarr N'Jie to raise the preliminary point that no appeal lies at the instance of the Attorney-General. Their Lordships rejected this preliminary point and their reasons will appear later in this judgment.

The history starts with a civil suit tried in 1958 in the Supreme Court of the Gambia before the Chief Justice of the Gambia (Wiseham, C. J.). On 27th June, 1958, in the course of giving judgment, Wiseham, C. J. criticised severely certain conduct of Mr. Pierre Sarr N'Jie which had come to his notice during the trial, and he sent a copy of his judgment to the Attorney-General of the Gambia. On 16th July, 1958, the Attorney-General served a notice of motion on Mr. Pierre Sarr N'Jie asking for an enquiry to be made by the Chief Justice into allegations of professional misconduct against Mr. Pierre Sarr N'Jie and for his name to be struck off the Roll of Court. The allegations were set out in an affidavit and were to the effect that he had received several sums of money on behalf of others, to wit, £350, £150, £50, £203 9*s.* 0*d.*, £1,360, and £200, and had utilised them for his own purposes; and further that he had, with intent to deceive, been guilty of false representation and concealment.

On 19th July, 1958, the motion came on for hearing before Wiseham, C. J. Mr. Pierre Sarr N'Jie was then represented by his brother Mr. S. A. N'Jie. He consented to an inquiry being held but asked that it should be held by someone other than Wiseham, C. J. The Chief Justice said that, in view of his findings in the civil suit, this was reasonable. He said that he would recommend that someone other than himself should be appointed as a

deputy judge to hold the inquiry and to exercise all the powers vested in the Chief Justice. Mr. S. A. N'Jie asked for time until November but this the Chief Justice refused to grant. A day or two later Mr. Pierre Sarr N'Jie left the Gambia for England and on 25th July, 1958, he wrote from London to the Attorney-General of the Gambia asking the date of the inquiry. He said: " I should like it held as early as possible, say, first week of September next.".

Steps were duly taken to appoint a deputy judge to hold the inquiry instead of the Chief Justice. The Governor appointed Abbott, J. (at that time a Justice of the Federal Supreme Court of Nigeria) to be a deputy judge of the Gambia. The hearing was fixed for 15th September, 1958, at Bathurst in the Gambia. Notice was given to Mr. Pierre Sarr N'Jie, who wrote on 17th August, 1958: " I have noted that the hearing of the matter before the Court will take place (at Bathurst) on 15th September, 1958, and I shall be present, God being willing.".

Notwithstanding this apparent concurrence in the date of 15th September, 1958, Mr. Pierre Sarr N'Jie afterwards sought by various means to get the hearing adjourned. At one time he objected to a hearing during the vacation. At another time he said it was impossible for him to attend. Eventually he said he was ill and that a medical certificate was available, but none ever came. All his objections were overruled: and Abbott, J. held the inquiry on 15th, 16th, 17th and 18th September, 1958. The Attorney-General appeared but Mr. Pierre Sarr N'Jie did not appear nor was he represented, save for a fleeting moment when his brother Mr. E. D. N'Jie asked for an adjournment and, on its being refused, withdrew. Their Lordships see no reason to suppose that Abbott, J. was wrong in refusing to grant an adjournment. It was a matter for his discretion, and there is no ground for saying that he exercised his discretion improperly. If Mr. Pierre Sarr N'Jie had any defence on the merits, he ought to have returned to the Gambia to put it forward: and no good reason was shown for his not doing so.

On 22nd September, 1958, Abbott, J. gave his decision. He found that eight out of the nine allegations against Mr. Pierre Sarr N'Jie had been established. He summarised his conclusions in these words:

> " Of the respondent's behaviour as disclosed by the documentary and oral evidence before me, I find it difficult to speak with anything approaching moderation. He is undoubtedly guilty of the most disgraceful professional misconduct that I have come across in 35 years legal experience. He is totally unfitted, in my view, to be entrusted with the interests and affairs of any member of the public, still less with any money belonging to anyone else, and he is a disgrace to the profession to which he belongs."

Abbott, J. ordered that his name be struck off the Roll of Barristers and Solicitors of the Supreme Court of the Gambia and directed that the making of the order be reported by the Attorney-General to the Master of the Bench of the Inn of Court by which he was called to the Bar.

On the 5th June, 1959, the West African Court of Appeal set aside this order on the ground that a deputy judge has only jurisdiction to represent the Chief Justice " in the exercise of his judicial powers ": and they held that the power to strike a legal practitioner off the Roll is not a judicial power.

In order to consider the validity of this decision, their Lordships must draw attention to the fact that there is only one Judge of the Supreme Court of the Gambia: for by section 4 of the Supreme Court Ordinance it is provided that: " The Supreme Court shall consist of and shall be held by and before a Judge to be appointed by the Governor.". This single Judge is the Chief Justice. There is provision for an Acting Judge to be appointed to act if the Chief Justice is ill or absent from duty, but that was not the case here. There is also provision for a deputy judge to be appointed, and that

is what was done. Abbott, J. was appointed a deputy judge under section 7 of the Supreme Court Ordinance which provides that:

> " 7 (1). Notwithstanding anything in this Ordinance contained, it shall be lawful for the Governor to appoint a Deputy Judge to represent the Judge of the Supreme Court of the Colony of the Gambia *in the exercise of his judicial powers*, although he be present in the Colony or the Protectorate.
>
> (2) Such Deputy Judge *shall exercise all the judicial powers* of the Judge of the Supreme Court and all acts done by such Deputy Judge, in the execution of his powers, shall be as valid and effectual, to all intents and purposes, as if they had been done by the Judge of the Supreme Court, and all judgments orders or decrees made by such Deputy Judge shall be subject to the same right of appeal in all respects as if they had been made by the Judge of the Supreme Court.
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> (3) The Judge of the Supreme Court may direct at what time and place such Deputy Judge shall sit and what causes shall be heard before him, and generally make such arrangements as to him shall seem proper for the division and despatch of the business of the Supreme Court."

It is quite apparent from that section that the Deputy Judge can only represent the Chief Justice in the exercise of his judicial powers. He cannot represent the Chief Justice in the exercise of his administrative powers. Some of the powers of the Chief Justice are clearly judicial powers, as when he sits in Court to decide civil or criminal cases. Others are equally clearly administrative powers, as when he directs the times at which the offices of the Courts shall be open, or appoints notaries public, or makes rules of court. Into which of these categories are we to place the power of the Chief Justice to suspend legal practitioners or to strike them off the Roll of Court? Is this a judicial power? or an administrative power? This necessitates an analysis of the nature of the power.

By the Common Law of England the judges have the right to determine who shall be admitted to practise as barristers and solicitors: and, as incidental thereto, the judges have the right to suspend or prohibit from practice. In England this power has for a very long time been delegated, so far as barristers are concerned, to the Inns of Court: and, for a much shorter time, so far as solicitors are concerned, to the Law Society. In the Colonies the judges have retained the power in their own hands, at any rate, in those Colonies where the profession is " fused ". The principle upon which this rests was well stated by Lord Wynford in 1830 in *In Re The Justices of the Court of Common Pleas at Antigua* (1 Knapp 267 at p. 268): " In the colonies there are no Inns of Court, but it is essential for the due administration of justice that some persons should have authority to determine who are fit persons to practise as advocates and attornies there. Now advocates and attornies have always been admitted in the Colonial Courts by the Judges, and the Judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practise, as is the case in England with regard to attornies. In Antigua the characters of advocates and attornies are given to one person; the Court therefore that confers both characters may for just cause take both away." In the Gambia these powers of the Judges have been embodied in Rules of the Supreme Court, 1928. Order IX Rule 2 says that the Judge may, in his discretion, approve, admit and enrol to practise as a barrister and solicitor of the Court (inter alios) any person who is entitled to practise as a barrister in England and who produces testimonials of good character. Order IX Rule 7 says that " the Judge shall have power, for reasonable cause, to suspend any barrister or solicitor from practising within the jurisdiction of the Court for any specified period or order his name to be struck off the Roll of Court ". Their Lordships notice that a majority of the West African Court of Appeal (Bairamian, Actg. P. and Ames, Actg. J.A. with Hurley, Actg. J.A. dissenting) thought that Order IX Rule 7 was ultra vires. But it seems to their Lordships that it is simply a restatement of the inherent power of the Judge at Common Law and is intra vires. And this was conceded by Mr. Gratiaen before their Lordships.

When the Judges exercise this power to suspend or expel, they do not decide a suit between parties. There is no prosecutor as in a criminal case, nor any plaintiff as in a civil suit. The Judges usually act on their own initiative, *ex mero motu*, on information which has come to their notice, or to the notice of one or other of them in the course of their duties; as in *R.* v. *Southerton* (1805) 6 East at p. 143 and *Har Prasad Singh* v. *Judges of Allahabad High Court* (1931) L.R. 58 Ind. App. 152, 154. But sometimes they have acted on the complaint of the Attorney-General of the Colony, as in the *Petition from Antigua* (1830) 1 Knapp 267 and *W. A. Macauley* v. *Judges of the Supreme Court of Sierra Leone* [1928] A.C. 344 (see the printed book). Or even on the complaint of a third person, as in *Anandalvan* v. *Judges of the High Court at Madras* (1930) L.R. 58 Ind. App. 156 *in notis* (see the printed Record of the Proceedings pages 1 and 284). Whoever makes the complaint, the Judges are, of course, under a duty to act judicially, see *Har Prasad Singh* v. *Judges of Allahabad High Court* (*supra*) at p. 156.

When a legal practitioner is suspended or struck off by the Judges of a Colony, he has always been at liberty to petition Her Majesty in Council to restore him. But he should give notice of his application to the Judges so as to enable them to justify their order, see *Magnus Smith* v. *Justices of Sierra Leone* (1848) 7 Moore at p. 175 by Lord Brougham: and in all the cases since 1848 the Judges themselves have been made respondents to the appeal, see for instance, *Har Prasad Singh* v. *Judges of the High Court of Allahabad* (*supra*): though in one of the cases the Attorney-General was also made a respondent, *Macauley's* case [1928] A.C. 344.

This fact—that the Judges are themselves always made respondents to the petition to Her Majesty—is an implicit recognition that, when exercising this jurisdiction, they do not sit as a Court of Law but as a disciplinary authority. And it has been expressly decided in West Africa that the Judges in this regard do not sit as a Court. In *Macauley's* case [1928] A.C. 344 the Chief Justice of Sierra Leone struck Mr. Macauley off the Roll of Court. Mr. Macauley sought to appeal to the Full Court under a provision which gave an appeal from a decision of the " Supreme Court " to the Full Court. It was held by Petrides and Sawrey-Cookson, JJ., with Aitkin, J. dissenting, that no appeal lay to the Full Court because the order of the Chief Justice striking him off was not a decision of the " Supreme Court ", and that Mr. Macauley's only remedy was to go to the Privy Council for special leave. (The judgment is contained in the printed Record in *Macauley's Case* pages 30 to 33 and 44 to 49). The Legislature seems to have had its attention drawn to this decision, for it soon afterwards made special provision for an appeal. When setting up the West African Court of Appeal, it made provision for appeals to it from the decisions of the " Supreme Court " in civil and criminal cases, and then went on by a special Section 14 to provide that " An appeal shall lie to the Court of Appeal from any order of the Judge suspending a barrister or solicitor of the Supreme Court from practice or striking his name off the Roll and for the purposes of any such appeal any such order shall be deemed to be an order of the Supreme Court ". That section is still in force. It was the very section under which Mr. Pierre Sarr N'Jie appealed to the Court of Appeal. And it shows clearly enough that the Legislature did not regard the decision of the Judge in such a case as a decision of the Supreme Court but as a decision of the Judge as a disciplinary authority.

It was on this account—that the Judge, when exercising disciplinary powers, does not sit as a Court—that the West African Court of Appeal concluded that it was not part of his " judicial powers " within Section 7 of the Supreme Court Ordinance, and it was therefore not within the competence of a deputy Judge. Bairamian, Actg. P. said: " A deputy Judge cannot in my opinion deal with any matter which is not a proceeding in the Court ": and Ames, Actg. J.A. said: " By ' judicial powers ' is meant powers which he exercises when constituting the Supreme Court under Section 4, to the exclusion of any other of his powers.". Their Lordships recognise that in some contexts the words " judicial powers " do signify the powers of a Court which sits to decide controversies between parties: as, for instance, in the phrase " The judicial powers of the

Commonwealth ", see *Shell Co. of Australia* v. *Federal Commissioner of Taxation* [1931] A.C. at p. 295. But in this Ordinance the phrase is " The judicial powers of the Judge ". And it appears to their Lordships that in this context a Judge exercises judicial powers, not only when he is deciding suits between parties, but also when he exercises disciplinary powers which are properly appurtenant to the office of a Judge. Suppose, for instance, that a Judge, finding that a legal practitioner had been guilty of professional misconduct in the course of a case, orders him to pay the costs, as he has undoubtedly power to do (see *Myers* v. *Elman* [1940] A.C. at p. 318 by Lord Wright). That would be an exercise of the judicial powers of the Judge just as much as if he committed him for contempt of court. Yet there is no difference in quality between the power to order him to pay costs and the power to suspend him or strike him off. And suppose that the Judges of a Colony do suspend a practitioner or strike him off. It is undoubtedly open to the practitioner to appeal to Her Majesty in Council: and this necessarily imports that it is the exercise by the Judges of a judicial power. For there is no right of appeal to their Lordships' Board from the exercise of an administrative power.

Their Lordships are therefore of opinion that the power of a Judge to suspend or strike off a legal practitioner is a judicial power of the Judge which it is competent for a deputy Judge to exercise.

Their Lordships will now revert to the preliminary point: for the foregoing discussion is pertinent to it. The preliminary objection raised by Mr. Gratiaen was simply this: The Attorney-General has no *locus standi* to petition for special leave to appeal, because he is not a " person aggrieved ". Section 31 of the West African (Appeal to Privy Council) Order in Council, 1949 (under which the Attorney-General made his petition) says that: " Nothing in this Order contained shall be deemed to interfere with the right of His Majesty upon the humble petition of *any person aggrieved* by any judgment of the Court to admit his appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose.".

In support of this preliminary objection Mr. Gratiaen referred to the judgment of James, L.J. in *Ex parte Sidebotham* (1880) 14 Ch.D. at p. 465 where he said: " a ' person aggrieved ' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.". If this definition were to be regarded as exhaustive, it would mean that the only person who could be aggrieved would be a person who was a party to a *lis*, a controversy *inter partes*, and had had a decision given against him. The Attorney-General does not come within this definition, because, as their Lordships have already pointed out, in these disciplinary proceedings there is no suit between parties, but only action taken by the Judge, *ex mero motu* or at the instance of the Attorney-General or someone else, against a delinquent practitioner.

But the definition of James, L.J. is not to be regarded as exhaustive. Lord Esher, M.R. pointed that out in *Ex parte Official Receiver. In re Reed Bowen & Co.* (1887) 19 Q.B.D. at p. 178. The words " person aggrieved " are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose? Their Lordships think that he has. The Attorney-General in a Colony represents the Crown as the guardian of the public interest. It is his duty to bring before the Judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action. True it is that if the Judge acquits the practitioner of misconduct, no appeal is open to the Attorney-General. He has done his duty and is not aggrieved. But if the Judge finds the practitioner guilty of professional misconduct, and a Court of Appeal reverses the decision on a ground which goes to the jurisdiction of the Judge or is otherwise a point in which the public interest is concerned, the Attorney-General is a " person aggrieved " by the decision

and can properly petition Her Majesty for special leave to appeal. It was for these reasons that their Lordships rejected the preliminary objection and held that the Attorney-General was a " person aggrieved " by the decision of the West African Court of Appeal.

There is one last point to consider. It relates to the order made on 6th July, 1959 by the West African Court of Appeal when they refused the Attorney-General leave to appeal to Her Majesty in Council. The point arises on Section 5 of the West African (Appeal to Privy Council) Order in Council, 1949 which says that: " Applications to the Court for leave to appeal shall be made by motion or petition within 21 days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.". In the present case the decision of the West African Court of Appeal (by which they set aside the order of the Deputy Judge) was given on 5th June, 1959. The Attorney-General sought leave from that Court to appeal to Her Majesty in Council. He lodged his notice of motion within 21 days, namely, on 23rd June, 1959, but he did not serve it on Mr. Pierre Sarr N'Jie within 21 days, because Mr. N'Jie was not in the Gambia but in England. On 6th July, 1959, the West African Court of Appeal refused the Attorney-General's application. They said: " We cannot in face of Section 5 of the Order in Council entertain an application for leave to appeal unless the notice to the opposite party of the intended application is given before the 21 days have expired.". This ruling is of no practical significance in the present case because their Lordships afterwards gave special leave to appeal: but as the ruling is said to affect many colonies with similar Orders in Council, their Lordships gave special leave to appeal from it.

Their Lordships think that, if Section 5 is construed literally, it does seem to lead to the result reached by the West African Court of Appeal: for an application remains an " intended application " until it is heard in Court. But this would mean that the application itself would have to be heard within 21 days. That cannot have been intended. No Court could bind itself to give a date for the hearing within that time. All that was intended was that notice should be lodged with the Court within 21 days: and a copy served on the opposite party as soon as possible and in any case a reasonable time before the date of the hearing. This result is reached by reading the section in this way: " Applications for leave to appeal shall be made by motion or petition (notice of which shall be lodged with the Court within 21 days from the date of the judgment to be appealed from), and the applicant shall give the opposite party notice of his intended application ". Their Lordships think the section should be so read.

Their Lordships will humbly advise Her Majesty that the appeals should be allowed and the order of the Deputy Judge of the Gambia restored. They make no order as to costs.

(82571) Wt. 8233/71 125 5/61 Hw.

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DELIVERED BY LORD DENNING

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