38/1962

IN THE PRIVY COUNCIL No. 22 of 1960

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL
SIERRA LEONE SESSION

IN THE MATTER of CYRIL BUNTING ROGERS-WRIGHT
a Legal Practitioner

- and -

IN THE MATTER of THE LEGAL PRACTITIONERS
(DISCIPLINARY COMMITTEE) ORDINANCE
CAP. 118 OF THE LAWS OF SIERRA LEONE

68292

B E T W E E N:

CYRIL BUNTING ROGERS-WRIGHT
Respondent-Appellant

- and -

ABDUL BAI KAMARA
Applicant-Respondent

CASE FOR THE APPELLANT

1. This is an Appeal from a judgment of the West African Court of Appeal (Barclay Nihill Ag. President, Hearne Ag. J.A. and Ames Ag. J.) dated the 20th day of October 1959 dismissing the Appeal of the Appellant from a judgment and order of the Supreme Court of Sierra Leone (Bairamian C.J. and Wiseham J.) dated the 19th day of February 1959 whereby the Supreme Court ordered that the Master of the said Court strike the name of the Appellant off the Roll of the said Court and thereupon inform the authorities of the Middle Temple. Final leave to appeal to the Privy Council was granted to the Appellant by the said Court of Appeal by Order dated the 1st day of February 1960.

2. The questions raised in this Appeal are:-

(i) whether, as the Court of Appeal held, the Supreme Court acted correctly in the following respects:-

(a) In deciding to hear the proceedings itself instead of referring the matter, as requested by the Appellant, for investigation by the Disciplinary Committee constituted by the Legal Practitioners (Disciplinary Committee) Ordinance Cap. 118 of the Laws of Sierra Leone and if so, whether the procedure followed in the Supreme Court was satisfactory and appropriate having regard to the nature of the proceedings.

(b) In refusing to admit certain evidence on behalf of the Appellant which was made upon affidavit.

(c) In refusing to admit certain evidence on behalf of the Appellant which consisted of two disc records from a tape recording machine.

(d) In disregarding certain discrepancies in the Respondent's evidence and in particular the impossibility of the Appellant being in Court at Freetown at 4 p.m. on the 8th November and arriving at Bakolo between 3 p.m. and 5 p.m.

(e) In directing themselves regarding the onus of proof in relation to the Appellant's defence of alibi.

(f) In failing to hold that the evidence of P.C. Bai Sama, P.C. Bai Koblo, Tigida Kamara, Santigi Koroma, Santigi Kamara, Konko Kamara and Soriba Kanu must be considered as tainted and regarded with suspicion.

(ii) Whether the Court of Appeal were correct in holding that under Rule 30 of the West African Court of Appeal Rules it was not open to them to refuse to admit such affidavits and tape recordings in evidence.

(iii) Whether the Court of Appeal erred in failing themselves to consider the evidence and, in particular, the impossibility of the Appellant being in Court at Freetown at 4 p.m. on 8th November and at Bakolo between 3 p.m. and 5 p.m. on the same day.

Record

3. On the 9th day of June 1958 the Applicant (hereinafter referred to as the Respondent) issued a Notice of Motion in the Supreme Court of Sierra Leone naming the Appellant in this Appeal as Respondent and asking the said Court to strike the Respondent to the motion (hereinafter referred to as the Appellant) off the Roll of Court. The grounds of the said Notice were set out in the following terms:-

"1. The Respondent was engaged and paid to act, and did act, as the Legal representative of the Complainants (including the Applicant) against Paramount Chief Bai Sama, Santigie Koroma and Santigie Kamara at and for the purpose of an Inquiry held by Sir Harold William, a Commissioner appointed under Section 36 (1) of the Protectorate Ordinance (Cap. 185) to inquire into the conduct of the said Paramount Chief Bai Sama and the said Santigie Koroma and the said Santigie Kamara, which Inquiry was held at Mapeterr in the Loko Massama Chiefdom from the 9th to the 22nd November, 1956. Between about the 3rd and the 9th November, 1956, the Respondent solicited and obtained from the said Paramount Chief Bai Sama a sum of money to wit £750 (Seven hundred and fifty pounds) for the purpose of influencing his own (i.e. the Respondent's) conduct as the Legal representative of the said Complainants at the said Inquiry in a manner favourable to the said Paramount Chief Bai Sama and the said Santigie Koroma and the said Santigie Kamara.

p.2, l.12.

2. The Respondent failed to give receipt for any of the money received as aforesaid from the said Complainants and the said Paramount Chief Bai Sama."

At the same time notice was also given that upon the hearing of the said motion the Respondent would refer to thirteen affidavits, copies of which were served upon the Appellant together with the Notice of Motion.

p.3, l.39.

Record

p.4. 4. On the 13th day of November 1958 the said Motion was called before the Supreme Court, whereupon the Appellant on his own behalf raised a preliminary point regarding the procedure to be adopted having regard to the terms of s.26 of the Ordinance referred to in paragraph 2 (i) above. The said s.26 is as follows:-

> "26 (1) Notwithstanding that no inquiry may have been made by the Committee, the Supreme Court shall have power for reasonable cause to admonish any legal practitioner or to suspend him from practising within the jurisdiction of the Supreme Court during any specified period, or may order the Master to strike his name off the Roll of Court.
>
> (2) Any application to the Supreme Court to exercise the powers under sub-section (1) shall be made by motion in accordance with the Rules of Court."

After argument by the Appellant and learned counsel for the Respondent, the Supreme Court made the following ruling:-

p.6, l.18. "RULING

> In our opinion there is no duty in an applicant who moves under s.26 of Cap.118 to show any reason why he did not proceed before the Disciplinary Committee under s.3. The words 'for reasonable cause' in s.26 (1) relate to the words which follow, viz: 'to admonish' etc.; they do not relate to the word 'inquiry'. S.26 empowers the Court to entertain 'any application' brought in accordance with sub-section (2) and to do so notwithstanding that no inquiry has been made by the Committee. It is not contended for the respondent that the notice of motion and affidavits do not disclose a case to be inquired into. The motion will therefore proceed."

5. It is respectfully submitted that the Supreme Court fell into error in deciding to hear and determine the matter on the basis that the notice of motion and affidavits in support thereof disclosed a case to be inquired into in that the said Court at the time of the Ruling was not aware of the

Record

extent to which the allegations of the Respondent were in issue and whether a trial based upon evidence given by affidavit was appropriate. Further, in so deciding the Supreme Court did not give effect to the submissions made by the Appellant that the purpose of the legislation was the same as had been held in England, namely, to make legal practitioners masters in their own house and that the Court should only entertain the matter if there was some reason why an investigation by the Disciplinary Committee would not be appropriate. It is therefore respectfully submitted that the Supreme Court should have applied the authorities cited to them by the Appellant on this point namely, Re a Solicitor (1928) 72 S.J. 368 and Re Martin 49 E.R. 856.

6. If (which is disputed) the Supreme Court Ruling set out in paragraph 4 above was correct, it is respectfully submitted that the Supreme Court fell into error in having the matter determined by evidence upon affidavit coupled with the tendering of witnesses for cross-examination. Upon this aspect of the case the West African Court of Appeal observed:-

> "We are at one with Mr. Foot in thinking that a procedure designed for a Chancery motion was ill fitted and cumbersome when applied to an enquiry under the Legal Practitioners (Disciplinary Committee) Ordinance, but the fact remains that the Applicant's motion was well founded according to the law of Sierra Leone and that the Respondent's counsel, and he had many helpers, at no stage made any application for the matter to be taken out of the ambit of Order XXXIX, once the preliminary objection to the jurisdiction had been overruled. Neither can we say that in any of the many orders made during the course of the proceedings did the Judges in the Court below commit any error in law - for the most part it was a matter for their discretion, and from the record it is evident that they did attempt to maintain a fair balance between the parties and were prepared to give indulgence to the Respondent where they thought it was essential to his defence. Clearly once the Court had decided, it would seem with some reluctance, that it could not go back and have the whole case heard

p.341, l.5.

Record

on oral evidence, disregarding the affidavits, finality had to be reached at some stage."

And in a brief summary at the end of the judgment:-

p.351, l.17. "(a) We take the view most strongly that the procedure followed was ill adapted and unsuitable for this kind of enquiry, and that it occasioned frustration and difficulty both to the Court and to the parties. Nevertheless it was a procedure sanctioned by the Lex locus and in its application the Court committed no error which calls for correction." 10

7. The Appellant submits that the Supreme Court ought to have followed the practice established by the English authorities that the Court should only hear and determine the complaint by means of evidence upon affidavit if the Disciplinary Committee were either unable to carry out an enquiry as in Re a Solicitor (1928) 72 Sol. Jo. 570 or where the evidence upon which the order to strike off the Roll was not sought to be controverted as in Re Wheare (1893) 2 Q.B. 439. 20

8. After the Ruling given by the Supreme Court as set out in paragraph 4 above, the Respondent sought to put in a further five affidavits. The Court
p.7, l.25. applying R.S.C. 0.39 r.4, ruled that they should not go in.

p.9. 9. On the 14th day of November 1958 the Respondent gave evidence and was followed by the other deponents to the affidavits. Each deponent was tendered for cross-examination. Such evidence 30 continued on the 15th, 17th, 18th, 19th and 20th days of November. On the 21st day of November
p.75, l.2. during the cross-examination of the witness Kanoko Kargbo counsel for the Appellant proposed to play a record for the witness to identify his voice on it. Counsel for the Respondent objected. Legal argument took place the following day during which counsel for the Appellant referred to Harry Parker
p.75, l.26. Ltd. v. Mason [1940] 2 K.B. 590; an article entitled "Mechanical Aids to Evidence" [1958] Crim. 40 L.R. 5 and Phipson on Evidence 9th Edn. p.497. The Court reserved its ruling which was given on the 24th day of November in the following terms:-

p.84, l.26. "The question is whether a record may be played and the witness Kanoko Kargbo asked to

identify his voice. The notes of his evidence read as follows (so far as relevant):- Record

Bai Bai told me that he heard that Bai Sama had given £750 to Respondent; Bai Bai did not say we the strikers must demand £400 back from Respondent. I believed Bai Bai ... . I told Respondent what Bai Bai had told me. I did not say I did not believe it because it was impossible for it to happen without the strikers knowing it: I told him that I believed it. Adama Bangura was present during this conversation; Yoro Kargbo was; Pa Colebay was not.

At that point Mr. Macaulay wished to play a record for the witness to identify his voice on it, and Mr. Millner objected. We have considered the arguments. There is no direct authority.

Suppose the conversation was not mechanically recorded. At a later stage the Respondent would seek to call Adama Bangura or Yoro Kargbo to contradict the witness's version of what he said to the Respondent, and there would be argument on whether the Respondent could call them for such a purpose; and this point would have to be decided befire either could be heard. This point has not been argued; nor would it arise until Adama or Yoro was called.

The mechanical evidence is on a par with Adama or Yoro: if they could not be called to contradict the witness Kanoko it would not be possible to have the mechanical evidence to contradict him; but, as in their case, this point must wait for argument and decision at the appropriate stage. This consideration inclines us to the view that the record should not be played now.

We appreciate Mr. Macaulay's point that he wishes to play the record for the purpose of the witness identifying his voice. But if it were to be played, the witness would be asked: Is it your voice saying this and that and the other? and notes would have to be taken of everything whether admitted or denied

Record

by the witness or attributed by him to another person, with the result that what is on the record would go down in the notes of the Court. We must assume that the witness will be truthful and admit his voice, but unless notes are taken of the words he admits to be in his voice, there will be no useful purpose served. It is not possible to limit him to merely saying I can hear my voice here and there. It may not be intended, but the result will be that the Court will be hearing evidence either affirming or contradicting the witness's version of what he said. It would be on a par with interposing Adama or Yoro to give evidence on what the witness Kanoko said; which cannot be done at this stage, if it can be done at all - a point left for decision when the time comes.

Another point which must wait for decision at the appropriate time is whether the recording can be put in evidence as having been faithfully made etc., subject of course to the primary point of whether it is permissible for the Respondent to adduce evidence to contradict the witness's version of what he said. There will be no prejudice to the Respondent if the record is not played now. If later he succeeds in having it in evidence, Mr. Millner has said that the witness may be recalled.

We are of opinion that the record should not be played now."

10. The Appellant submits that the Supreme Court drew an erroneous analogy with the position arising where witnesses for a defendant will be called in order to contradict witnesses called for a plaintiff in that counsel for such a defendant is obliged to put to the witnesses called for the plaintiff, the evidence that will be given on behalf of the defendant. The purpose of requesting to play the record was to give the witness Kanoko Kargbo the opportunity of identifying his voice and the recording itself was not sought at that stage to become part of the Appellant's case.

p.87.

11. On the 24th day of November 1958 counsel for the Respondent informed the Court that four days previously fourteen affidavits had been served by the Appellant. Argument was then heard on whether affidavits could be put in after the commencement

Record

of the hearing of the motion. It was contended on behalf of the Appellant that he would not be able to tell what affidavits were required from him until the Respondent had concluded his case. On the following day the Supreme Court ruled that the affidavits could be put in as a matter of indulgence, but that the Respondent would have the right to put in affidavits in reply. The Court in explaining its ruling on the second point stated as follows:- pp.90-92.

> "We think in the circumstances that the right course would be to say to the Applicant that he may call any witnesses he wishes strictly in reply and shall deliver to the Respondent affidavits in reply, to help the Respondent in his cross-examination. Subject to what Counsel may have to say, we would be inclined to limit the cross-examination of witnesses who have been cross-examined to the additional evidence they give; but would not be inclined to limit it in regard to witnesses called for the first time." p.92, 1.9.

12. On the 1st day of December 1958, counsel for the Respondent informed the Court that nine affidavits in reply had been delivered. The Supreme Court then considered the affidavits and heard objections made as to their compliance with the Ruling of the Court. Thereafter two applications were made on behalf of the Appellant, the first being that an affidavit by one John Nelson Williams filed on the 27th day of November 1958 be admitted. To this affidavit was exhibited a recording made by the deponent of conversations between the Appellant and certain of the Respondent's witnesses in which one Adamu Bangura had acted as interpreter on the 17th day of May 1958. There was also exhibited to the said affidavit a transcript of a statement made by the witness Kanoko Kargbo during the said conversations as interpreted. p.93, 1.4. p.109, 1.33. pp.360-4.

13. On the 4th day of December the Supreme Court ruled that the said affidavit would not be allowed as it had not been filed on the 25th day of November, which was the day the Court allowed the Appellant to file affidavits as a matter of indulgence. The Appellant submits that he was severely p.111, 1.10

Record

prejudiced by this ruling in that the said affidavit was of crucial importance to him particularly as the recording exhibited thereto was the only corroborative evidence available in support of the Appellant's version of the conversation. Moreover, the matter of the recording had been fully brought to the notice of the Court and the contents of the said affidavit would have been anticipated by the Respondent particularly in view of the matters leading to the Ruling of the Court set out in paragraph 9 above.

14. With regard to the recording in relation to the evidence of Kanoko Kargbo, the West African Court of Appeal stated as follows:-

p.343, l.2.

> "Mr. Macaulay for the Respondent then asked permission to play a disc record in order that the witness might be asked whether he identified his voice. Mr. Millner objected and after argument the Court ruled that they could not allow the record to be played at that stage. It was pointed out that although the purpose might be to play the record merely for identification purposes, the Court would perforce have to listen to something which later on might be held inadmissible. This ruling was given by the Court on the day before their ruling of the 25th November, which we have already examined. By the latter ruling the disc was clearly inadmissible since its reception in evidence would require a series of affidavits to support it, which had neither been sworn or filed. Again, even assuming that the faithfulness of the record could have been proved, and the evidence of Kargbo discredited in this one particular, we cannot say that the point was so material that it must have raised a reasonable doubt in the minds of the judges as to the truth of the Applicant's complaint."

15. With regard to the recording in relation to the evidence by Chief Bai Sama, the West African Court of Appeal stated as follows:-

p.343, l.30

> "Here again the same considerations apply. It is true that there is a direct conflict between Bai Sama's affidavit dated 29th November, 1958, to the effect that when he went to the

Record

Respondent's office in February, 1958, he asked the Respondent "for a receipt for £750 which I gave him", and the Respondent's evidence that "Bai Sama did not ask for a receipt for £750 or any other sum". It is also true that the playing of the record, provided it was shown by other evidence, to have been a faithful and full reproduction of the conversation, from which no part or parts had been expunged (and the possibility of this might have been raised in cross examination) would have resolved the conflict in favour of Bai Sama or the Respondent. But, as in the case of the other alleged recording, the grounds for its reception had not been established; and we do not think that the contradiction of Bai Sama if proved, that he made a demand for a receipt for £750 at a particular time and place (as to which his recollection might have been at fault) must have raised a reasonable doubt in the minds of the Judges, bearing in mind the strong view that they took when assessing the relative credibility of the parties, in regard to the truth of the Applicant's complaint."

16. The Appellant submits that, in respect of both parts of the recording, the West African Court of Appeal failed to appreciate the importance of the Appellant being able to bring before the Court all possible material to show that the witnesses called by the Respondent were either deliberately not telling the truth or else were gravely mistaken in their recollections of the conversations they had had with the Appellant relating to the subject matter of the complaint.

17. The second application on behalf of the Applicant was to put in affidavits in rejoinder on the ground that six out of the eleven affidavits put in by the Respondent by way of Reply were by new deponents. On behalf of the Appellant it was submitted that such deponents were entitled to be discredited in particular with regard to their being conspirators with other witnesses against the Appellant. The Supreme Court refused to allow the Appellant to file further affidavits with the exception of one by Salu Bangura, of whom it was stated that knowledge that he would be able to give relevant evidence had only been known during the preceding week. p.110, l.1.

Record

The Appellant submits that as a result of the ruling of the Supreme Court he was unable to present his case fully and suffered grave prejudice thereby. In dealing with three of the affidavits which the Appellant sought to file in order to discredit the evidence of one Saidu Sesay, the West African Court of Appeal observed as follows:-

p.346, l.22.

> "It may be in point to remind ourselves here that the evidence of Sallu Bangura (watchman to Sesay in 1956) whom the Court allowed the Respondent to bring forward as a special indulgence was totally rejected by the Judges. If believed, it would have gone far to destroy the credit of Sesay, for he affirmed that the Respondent did not sleep in his master's house on the night of the 3rd November and that he did not see the arrival of Bai Sama and his party during the night although he was the night watchman posted on the verandah of the house. The Respondent did at least have this chance given him to discredit Saidu Sesay but it failed. We cannot be sure that the evidence of these three deponents we are now considering would have been more successful, if admitted."

18. In both Courts below the Appellant strongly relied upon various discrepancies in the evidence called for the Respondent, and in particular upon the manifest contradiction between the evidence of the Respondent himself and the evidence of Dunstan Emanuel Modupe Williams, Chief Clerk of the Police Magistrates Office, Freetown. The Respondent deposed that he paid the Appellant £100 on 8th November at Bakolo at about 4 p.m. in the afternoon, and that the Respondent reached Bakolo in his car at about 3 p.m. The witness Williams deposed that the Appellant was one of the Accused in a criminal proceeding before the Magistrate at Freetown on the 8th November, 1956, and that the Court sat at 4 o'clock in the afternoon to continue the hearing. It was submitted in both Courts below that this contradiction cast grave doubts upon the reliability of the Respondent's evidence. The Supreme Court, in their judgment, made no reference to this matter. This omission was brought to the attention of the West African Court of Appeal, who dealt with it as follows:-

p.14, l.1.

p.259.

Record

"Lastly it is claimed that the Court below did not adequately consider the defence and that several discrepancies in the evidence were overlooked or disregarded. For example, the judgment is criticised on the ground that nowhere in it is there a precise reference to the fact that, whereas it is accepted as proved that the Respondent was in Court at Freetown at 4 p.m. on the 8th November, the Applicant in his evidence was positive that he arrived at Bakolo well before sunset - somewhere between 3 and 5 p.m. - clearly an impossibility. The fact that the Judges did not draw specific attention to this discrepancy in the judgment is correct but we cannot assume that therefore it necessarily escaped their minds. We think it pertinent here to cite the well-known passage in the judgment of Lord Simonds in Watt or Thomas v. Thomas (1947 A.C. 492). -

> "Your Lordships were therefore invited to find that the learned Judge had forgotten or ignored this evidence, and to hold that his judgment was thereby vitiated - I believe this to be fundamentally unsound criticism. The trial Judge has come to certain conclusions of fact; Your Lordships are entitled, and bound, unless there is compelling reason to the contrary to assume that he has taken the whole of the evidence into consideration."

A fortiorari must this be the case where the conclusions of fact have been reached by two judges."

It is submitted that the Court of Appeal erred in holding that the observations of Lord Simonds in Watt or Thomas v. Thomas (supra) applied to the present case. The judgment of the Supreme Court was sought to be impugned not because the learned Judges had failed to mention certain witnesses, but because they had failed to deal with an obvious contradiction, and in so doing had failed to consider an important part of the Appellant's case.

It is further submitted that the Court of Appeal erred in that, although they were invited so

Record

to do, they failed themselves to consider the contradiction in the evidence and the doubt which it cast upon the case for the Respondent.

19. It was further submitted in the Court of Appeal that the Supreme Court had misdirected itself regarding the onus of proof in relation to the alibi sought to be set up by the Appellant. The nature of the alleged misdirection and the finding of the Court of Appeal appear in the following passage from the Court of Appeal's judgment:-

> "We can now at long last leave procedure and turn to the other grounds of attack made by Mr. Foot on the judgment of the Court below. The main submission has been this; that because this was in form a civil matter, the learned Judges forgot that in substance it was at least a quasi criminal proceeding and therefore applied a wrong standard of proof, which became particularly evident in their consideration of the Respondent's alibi, when indeed they were guilty of a serious misdirection. Actually the Judges set themselves a standard of proof as high as, if not higher than, the standard approved by their Lordships of the Judicial Committee in Bandari's Case cited supra. We quote from their judgment. -
>
> > "Although this is not a criminal case, we are satisifed without a discussion of the authorities, that the greater the gravity of the allegations, the greater the standard of proof required and we are approaching our decision having fully warned ourselves that the highest standard of proof should be set as opposed to a mere balance of probabilities. On that footing the grounds of this motion must be proved to the extent that we must be fully satisified beyond all doubt that the allegations are true."
>
> Mr. Foot admits this, but submits that they lost sight of their own lodestar when they came to examine the Respondent's defence and particularly in relation to his alibi, and he rests his submission on two passages in the judgment viz:-

Record

(a) "To establish an alibi there should be proof that a person is positively in some place other than the one alleged so that it can then be said that it would be impossible for him to be present at the same time in two places far removed."

(b) "The alibi of the respondent fails."

If the former passage stood alone and divorced from its context it might suggest that the Court had overlooked the general principle that in a criminal case, except in insanity, there is never an onus on the accused to prove his defence since throughout the trial the onus remains on the prosecution to prove the offence. Taking the passage in context however we are more than satisfied that the Judges fell into no such error. What was under consideration at this point in the judgment was the proved fact that the Respondent was in Freetown at 4 p.m. and probably appreciably later, on the afternoon of the 8th November, 1956. To put the picture into perspective it must be remembered that the night of the 8th - 9th November, 1956 is the second material date in the Applicant's case, because it is on that night that it is alleged that Bai Sama and his associates paid the sum of money over to the Respondent at Bakolo, which had been asked for at the previous meeting with the respondent at Port Loko during the night of the 3rd - 4th November. It will also be remembered that these dates were fixed in everyone's memory by the fact that on the 3rd November one Inquiry had ended and on the 9th the other Inquiry had begun. Now the Respondent did adduce evidence, which if believed, would have established that he left Port Loko for Freetown before nightfall on the 3rd November and did not reach Bakolo until just before the opening of the Inquiry on the morning of the 9th November.

In the last few sentences of the judgment before the passage complained of the Judges had accepted it as proved that the Respondent was in Freetown at 4 p.m. on the 8th November "and a few minutes thereafter" but they then

Record

pointed out, quite correctly, that he could still have been in Bakolo the same night as the distance could be covered easily by motor car in three hours. There then followed the passage we are considering. In our view the Judges here are merely stating the necessary ingredients for a successful alibi where there is direct evidence to be countered of a particular event taking place at a particular time. Viewed as such there can be no criticism.

As to the passage where the Judges declared that the alibi had failed, we are satisfied after taking into account their general direction as to the standard of proof the Court intended to follow, that what was meant was, that the respondent had failed to raise a reasonable doubt in their minds that the evidence of Bai Sama and his friends was true - not that the respondent had failed to discharge an onus."

It is submitted that the Court of Appeal erred in holding that what the Supreme Court meant was that the Appellant had failed to raise a reasonable doubt in their mind. It is further submitted that in the material part of their judgment, the Supreme Court applied the wrong standard of proof in relation to the defence of alibi and that the error could not be cured by general words about the standard of proof at an earlier stage in their judgment.

20. It was submitted on behalf of the Appellant in both the Courts below that the evidence of P.C. Bai Sama, P.C. Bai Koblo, Tigida Kamara, Santigi Koroma, Santigi Kamara, Konko Kamara and Soriba Kanu must be regarded as tainted or accomplice evidence and must therefore be regarded with great suspicion. Both Courts below held, it is submitted wrongly, that these witnesses were not accomplices and that their evidence was in no way tainted.

21. The Appellant humbly submits that the dismissal of the appeal by the West African Court of Appeal dated the 20th day of October 1959 be set aside, that the Judgment and Order of the Supreme Court of Sierra Leone dated the 19th day of February 1959 be reversed and that the Motion brought by the Respondent against the Appellant be ordered to stand dismissed for the following, amongst other,

R E A S O N S

1. BECAUSE the Supreme Court erred in deciding to hear and determine the complaint made against the Appellant and that having so decided, the said Court adopted a procedure which was unsatisfactory and inappropriate and resulted in the Appellant suffering injustice.

2. BECAUSE the Supreme Court erred in refusing to admit certain evidence on behalf of the Appellant which was made upon affidavit.

3. BECAUSE the Supreme Court erred in refusing to admit certain evidence on behalf of the Appellant which consisted of two disc recordings from a tape recording machine.

4. BECAUSE the Supreme Court failed to consider the discrepancies in the evidence including in particular the discrepancy between the Respondent's evidence and that of the witness Williams, and because the Court of Appeal misdirected themselves with regard to such omission.

5. BECAUSE the Court of Appeal failed themselves to consider the said discrepancies.

6. BECAUSE the Supreme Court erred in directing themselves regarding the onus of proof in relation to the Appellant's defence of alibi, and the Court of Appeal failed to correct such error.

7. BECAUSE both Courts below failed to hold that the evidence of P.C. Bai Sama, P.C. Bai Koblo, Tigida Kamara, Santigi Koroma, Santigi Kamara, Konko Kamara, and Soriba Kanu must be considered as tainted and regarded with suspicion.

8. BECAUSE the Court of Appeal erred in holding that under Rule 30 of the West African Court of Appeal Rules it was not open to them to admit in evidence the affidavits and tape recordings sought to be relied upon by the Appellant.

DINGLE FOOT.

E.F.N. GRATIAEN.

No. 22 of 1960

IN THE PRIVY COUNCIL

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

SIERRA LEONE SESSION

CYRIL BUNTING ROGERS-WRIGHT

- v -

ABDUL BAI KAMARA

CASE FOR THE APPELLANT

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Appellant's Solicitors and Agents.