

38/1962

1.

IN THE PRIVY COUNCIL

No. 22 of 1960

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

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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

- and -

68291

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

10

B E T W E E N:

CYRIL BUNTING ROGERS-WRIGHT  
(Respondent) Appellant

- and -

ABDUL BAI KAMARA (Applicant) Respondent

C A S E of the APPLICANT-RESPONDENT

Record

1. This Appeal is from a Judgment of the West African Court of Appeal, Sierra Leone Session, dated the 20th October, 1959, dismissing an appeal from a Judgment of the Supreme Court of Sierra Leone, dated the 19th February, 1959, ordering that the name of the Respondent-Appellant be struck off the Roll of Court, on the ground that he is no longer a fit and proper person to remain a member of the legal profession, and ordering that the authorities of the Middle Temple be duly informed of such striking-off.  
p.335  
p.298  
p.330  
p.329  
p.330

2. The proceedings were commenced by Notice of Motion, dated the 9th June, 1958, whereby the Applicant-Respondent (hereinafter called "the Applicant") gave notice of intention to move the Supreme Court for an Order that the name of the Respondent-Appellant (hereinafter called "the Respondent") be struck off the Roll of Court, on the grounds which were set out in the said Notice in terms as follows :-  
p. 1

Record  
p. 2.

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 Willan, 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.

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.

Copies of 13 Affidavits, relied upon by the Applicant in support of his said Motion, were served with the said notice.

3. The statutory provision under which the proceedings were brought is Section 26 of the Legal Practitioners (Disciplinary Committee) Ordinance, Cap.118. That Ordinance makes provision for a Disciplinary Committee, which has power to hold inquiries into allegations of professional misconduct against legal practitioners, and Section 26 thereof provides 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 the 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.

Order 39 rule 4 of the Rules of the Supreme Court provides as follows :-

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

4. The Supreme Court (Bairamian, C.J. Sierra Leone, and Wiseham, C.J. British Gambia, sitting as Puisne Judge of the said Court) heard the said Motion on 27 days between the 13th November, 1958, and the 18th December, 1958. In the course of the hearing 37 Affidavits (21 in support of the Applicant's case, 16 in support of the Respondent's) were read, and all the deponents (17 on behalf of the Applicant, and 17 on behalf of the Respondent, including himself) gave evidence and were cross-examined on their respective Affidavits. At the conclusion of the case, the Court found that the Applicant's case, as set out in the Notice of Motion, was proved on the evidence. The Court delivered one Judgment, signed by both learned Judges.

p. 329.

5. A number of Rulings on procedural points and concerning the admission of evidence were given by the Supreme Court during the hearing. Some of the said Rulings, viz. those set out below, were made the subject of grounds of appeal to the West African Court of Appeal:-

(i) On the 13th November, 1958 a preliminary objection that the Court ought not to hear the Motion, on the ground that the Applicant had not first brought the matter of his complaint before the Disciplinary Committee, was overruled.

p. 4.

p. 6.

(ii) On the 21st November, 1958, Counsel for the Respondent, during the cross-examination of one of the Applicant's witnesses, one Kanoko Kargbo, sought to play a record to the

p. 75.

Record

pp.84-86

witness with a view to asking him to identify his voice, presumably in order to seek to contradict him as to what was said by him at a certain interview. The Court ruled, on the 24th November, 1958, that the said record should not be played at that stage, although not deciding whether it would be admissible if sought to be introduced at an appropriate stage.

p. 87.

(iii) Prior to the 20th November, 1958, the Respondent had filed no evidence in answer to the Affidavits supporting the Applicant's case. On that date, after 7 of the Applicant's witnesses had given evidence, 14 Affidavits were served on behalf of the Respondent. On the

10

p. 88

24th November, 1958, the Court ruled that the Respondent was not entitled to put in the said Affidavits, but upon an application for the indulgence of the Court (which was not opposed by the Applicant) the Court ruled, on the 25th

20

p. 89

pp. 90-92

November, 1958, that the Respondent should be allowed to put in Affidavits on the terms :-

p. 91, 1.18

(a) That the Respondent's Affidavits should be limited to those already delivered (this was not opposed on behalf of the Respondent); and -

p. 91, 1.21 -  
p. 92, 1.19

(b) That the Applicant should have leave to put in Affidavits in reply; and

p. 92, 1.20

(c) That the Applicant should be granted an adjournment in order to prepare his evidence in reply.

30

p. 107.  
p. 93

(iv) On the 4th December, 1958, after 9 Affidavits had been filed on behalf of the Applicant, pursuant to the leave granted on the 25th December, 1959, and after hearing argument as to whether the same were Affidavits in reply, the Court ruled that (save for 3 portions of the evidence therein contained, which the Court directed should be disregarded) the said 9 Affidavits were to be admitted as being Affidavits in reply.

40

p. 107 - 109.

p. 109

(v) On the 4th December, 1958, an application was made on behalf of the Respondent to put in 2 further Affidavits, and for leave to file Affidavits in rejoinder. By a ruling given on

pp. 110 - 111.

the 4th December, 1958, the Court refused to admit the 2 further Affidavits; and by a further ruling given on the 5th December, 1958 (after further argument), the Court gave leave to the Respondent to file one Affidavit in rejoinder and directed that he himself should be at liberty to give evidence on one fresh matter of fact which was mentioned in one of the Affidavits in reply filed on behalf of the Applicant.

Record

p.113

(vi) On the 15th December, 1958, Counsel for the Respondent sought to put in an Affidavit of one Newland Kanu, who, however, was not present for cross-examination although he had been served with a subpoena on the 2nd December, 1958, and a warrant was issued for his arrest on the 12th December, 1958. Most of the said Affidavit was ruled inadmissible, mainly on the ground of hearsay; as for what was left, Counsel for both parties agreed to leave it to the Court's discretion to decide whether it should be read. The Court decided that, in the absence of the deponent, what remained of the said Affidavit should not be read.

p. 261

p. 211  
p. 214

pp.265 - 6.

p. 263, 1.31.

p. 266

The Applicant submits that all the said Rulings were right.

6. As regards the facts, the nature of the Applicant's case against the Respondent sufficiently appears from the following summary of parts of the evidence, contained in the Judgment of the Supreme Court (wherein the references to "strikers" means the Applicant and others, subjects of Paramount Chief Bai Sama, who had some time previously taken part in widespread "tax strikes", i.e. refusals to pay taxes, in the Protectorate of Sierra Leone):-

"The applicant stated in his affidavit that the Respondent was paid and did act for the Applicant and others against Paramount Chief Bai Sama, Santigie Koroma and Santigie Kamara, in the conduct of an enquiry held by Sir Harold Willan, a Commissioner appointed under the Protectorate Ordinance, Cap.185, to enquire into allegations against the said Chief and two others. The enquiry was held at Mapeterr in

p. 298, 1.20.

Record

"the Lokomassama Chiefdom from the 9th to the 22nd November 1956. The report is contained in pages 31 to 35 of the Report of the enquiry into the conduct of not only this Chief but other Chiefs as well.

The Applicant alleges that between the 3rd and 9th November, 1956, the Respondent solicited and obtained from the Paramount Chief Bai Sama the sum of £750 for the purpose of influencing his conduct as the legal representative of the Applicant and others at the enquiry in a manner favourable to the said Chief and the two others. The Applicant further alleges that the Respondent failed to give receipts for his fees received from the Applicant or for the £750 received from the Chief Bai Sama. 10

The Applicant in his affidavit of the 9th June, 1958 deposed that the strikers had paid the Respondent £400 as fees. The strikers were those who had refused to pay taxes and the disturbances caused had resulted in the enquiries. Applicant was a strike leader. In his affidavit of the 10th June, 1958, he said that in the case of the 13th complaint reported at page 33 of the Report already referred to, in spite of the 70 statements of witnesses available only 47 were called at the enquiry and that three people were not called as witnesses relevant to the 13th complaint. This resulted in a failure to prove the 13th complaint against the Chief and he had been dissatisfied with the conduct of his case by the Respondent as a consequence. The Respondent, he said, out of five witnesses relating to the 13th complaint, had taken the statements of three witnesses himself and then handed over the task to Mrs. Wilson, Barrister-at-Law, who was assisting Respondent, to take the statements of the remaining two witnesses. Respondent, he said, at the same time, instructed Mrs. Wilson to only call these two witnesses and that he would personally examine the three witnesses when he returned from Freetown. This was never done. The charge failed. The Applicant said he was dissatisfied." 20 30 40

p. 300, 1.9.

" The second witness, Paramount Chief Bai Sama, stated in his affidavit that about the 5th November 1956 he was sent for by the Respondent to go and see the Respondent at Old Port Loko.

10

20

30

"He did go in the company of Santigie Koroma, Santigie Kamara, Konko Kamara, Soriba Kanu and Madam Tigida Kamara. The Respondent, he said, told him that he was sure he would be dethroned and on being shown some papers and not understanding English, he sent for Paramount Chief Bai Koblo, who later arrived. The latter then told him that if he, the Chief Bai Sama, did not pay the Respondent £1000 he would lose his crown. They arranged to meet in two days' time. On the 8th November the Chief Bai Sama accompanied by the same six people went to Bakolo and there met the Respondent. The Respondent was not content with £500, so a further sum of £250 had to be fetched and the Respondent finally accepted a total of £750 and promised to help the Chief Bai Sama. In evidence the Chief said he understood that Respondent was going to refund the strikers' money and he was surprised when he saw the Respondent in Court stand up and appear for the strikers. As a result the Chief was unrepresented at the first day's sitting of the enquiry, having cancelled his own lawyer's engagement. The Chief had to ask for an adjournment and he re-engaged his own lawyer for the second adjourned date of hearing. Although one small complaint was proved against the Chief at the enquiry, nothing subversive of good government was found against him."

.....

40

50

"The 3rd witness, Paramount Chief Bai Koblo, supported the Chief Bai Sama in his affidavit and said that when he was sent for to Old Port Loko, the Respondent told him that the allegations against P.C. Bai Sama were very serious and Respondent showed this witness a bulky file of papers. Another Paramount Chief, Alikali Modu III, whose enquiry had just terminated, Respondent said, would be dethroned, but the allegations against P.C. Bai Sama were much more serious. P.C. Bai Sama was trembling, the witness said, and the Respondent had asked for £1000 to help the Chief Bai Sama. The same party went to Bakolo three days later when the sum of £750 was paid to the Respondent. The circumstances of a tender of £500 in the first instance, the refusal by the Respondent to accept it, the further send out for £250, and the final acceptance of £750 by Respondent are deposed to by this witness."

p. 301, 1.5.

Record

Referring to the witnesses Paramount Chief Bai Sama, Paramount Chief Bai Koblo, and 5 other witnesses, the Judgment summarises the main points of their evidence as follows :-

p.303, l.18

"The last seven witnesses comprise the party of the Chief Bai Sama and six others, who all deposed to visiting the Respondent late one night at Old Port Loko, being subjected to a request for £1000 to help the Chief from being dethroned, meeting the Respondent again some days later at Bakolo late at night, and paying over the sum of £750 to the Respondent. The conversations on both occasions are sworn to in their respective affidavits.

10

Corroborative evidence by an independent witness, one Saidu Sesay, was summarised in the Judgment as follows :-

p.306, l.44.

"Witness No.14, Saidu Sesay, said he was the owner of the house in Port Loko where Respondent resided during the enquiry into Alikali Modu's conduct. He saw Respondent's driver Amadu drive off and fetch P.C. Bai Sama and others the night the enquiry ended. He was sitting behind a curtain first and heard a conversation in the parlour. Then after Bai Koblo's arrival the conversation continued in the bedroom and he took a seat outside and heard the remainder of the conversation again. He was asked to repeat the conversation and he corroborated the other witness in material particulars of the substance of the demand for £1000, the offer of helping the Chief, the desire of the Respondent to save the Chief from losing his staff of office and other details already deposed to by the other witnesses ....."

20

30

p. 318, l.24.

Of this witness, the learned trial Judges said: "his evidence forcibly struck us as true".

7. The defence of the Respondent is summarised in the Judgment in the following terms:-

40

p. 305, l.19.

"The Respondent denies any money transaction between himself and P.C. Bai Sama. The Respondent alleges an alibi on both the material occasions at Port Loko and Bakolo. The Respondent further alleges that this motion is the result of a political plot and conspiracy to ruin and disgrace him. That is the defence of the Respondent in short."

8. The standard of proof applied by the Supreme Court is stated in the following passage in the Judgment:-

Record

"Although this is not a criminal case, we are satisfied 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 decisions 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 satisfied beyond all doubt that the allegations are true."

p. 316, 1.45

9. Having reviewed the evidence at length, the learned Judges formulated the issues to be decided as follows :-

1. Did the Respondent solicit and receive the sum of £750 from Paramount Chief Bai Sama and, if so, what was the purpose of the said payment?
2. Did the Respondent issue receipts for fees received from the strikers and for the money received from the said Chief?
3. Did the Respondent suppress any evidence in his conduct of the case on behalf of the strikers at the enquiry into the said Chief's conduct?
4. Is the alibi of the Respondent true and was the Respondent absent from Port Loko and Bakolo on the two material occasions alleged?
5. Is the motion the result of a plot or conspiracy to ruin the Respondent and is the evidence against him fabricated?

p. 317, 1.20.

10. The Court considered the 1st, 4th and 5th issues together, as they are "knit together". They observed that, as regards the 5th issue, Counsel for the Respondent had conceded that he had not made out a case of conspiracy. The Court came to the conclusion that all 3 issues must be answered in favour of the Applicant and against the Respondent. In consequence, it was held that what the

p. 317, 1.39

p. 325, 1.27.

p. 327, 1.3

p. 329, 1.12.

Record

p. 329, 1.36

Applicant had proved was "ample to show professional misconduct of the worst kind", and that "the Respondent is no longer a fit and proper person to remain a member of the legal profession".

11. In the course of considering the 1st, 4th and 5th issues, the Court dealt with an argument put forward on behalf of the Respondent, that the members of Paramount Chief Bai Sama's party must be treated as "accomplices" :-

p. 325, 1.40.

"We have considered the question of accomplice evidence. The categories of accomplices have been fully set out in Davies vs. D.P.P. (1954) A.C. p.390, and does not allow of further extension. We have nevertheless approached our findings on the footing that we are fully warned and appreciative of the dangers of accomplice evidence, but we can find nothing to label any of the witnesses as accomplices. It is true that they gave the Respondent money, but it was in consequence of his own demand and his telling them that the Chief would be dethroned, and we do not think that they had any criminal intent. None of the party of the Chief Bai Sama understood that Respondent was to suppress evidence and defeat the ends of justice. They were just simply victims of Respondent's rapacious demand. In a state of genuine anguish over an impending enquiry, under sudden pressure exerted on them, they understood that if money was paid to Respondent the Chief Bai Sama's office would be saved. For these reasons, none of the witnesses can be regarded by us as accomplice."

10

20

30

p. 327.

12. The 2nd issue was decided on the facts against the Respondent but the Court considered that the breach of the relevant statutory provisions involved in the failure to issue receipts, merged into the more serious professional misconduct of which he was found guilty. The 3rd issue was decided in favour of the Respondent.

p. 330, 1.1.

p. 327.

40

pp.335 - 351.

p. 351.

13. The West African Court of Appeal (Nihill Ag.P., Hearne, Ag. J.A. and Ames Ag.J.) delivered one Judgment, signed by all three members of the Court. The Court held that there was no ground which would justify it in disturbing the findings of fact arrived at by the Supreme Court.

14. The principal questions raised by the Respondent on the Appeal, and the conclusions of the Court of Appeal, were as follows :-

- Record
- (1) It was contended that the procedure followed by the Supreme Court was inappropriate to an inquiry into professional misconduct. The Court of Appeal, while expressing agreement with this view, held that it was the procedure prescribed by the law of Sierra Leone, and that the Supreme Court did not commit any error in any of the many orders made during the course of the proceedings. p. 341, 1.1.  
p. 351, 1.17.  
p. 341, 1.10.  
p. 341, 1.17.
- 10 (2) It was contended that, because of the procedure followed, material evidence was excluded. The Court of Appeal, after giving careful consideration to each item of evidence said to have been thus excluded, rejected this contention. p. 341, 1.3.  
p. 351, 1.25.
- (3) The Court of Appeal refused an application to call fresh evidence, covering some of the above-mentioned evidence said to have been wrongly excluded by the Supreme Court, as well as other evidence referred to as fresh facts. The grounds stated for the refusal were (i) as regards the allegedly "excluded" evidence, it was not new evidence in any sense, and (ii) as regards the "fresh facts" - p. 346, 1.38.
- 20 "Nothing has been said to us to indicate even in the broadest outline what these fresh facts are or any reason given why such facts could not, by reasonable diligence, have been available at the time of hearing." p. 347, 1.26.
- 30 (4) It was contended that the Supreme Court applied a wrong standard of proof, and, in particular, misdirected itself in relation to the defence of alibi. The Court of Appeal held that the Supreme Court applied the correct standard of proof and that its Judgment is free from misdirection. p. 347, 1.42.  
p. 349, 1.35.  
p. 351, 1.33.
- (5) It was contended that the evidence of Paramount Chief Bai Sama and his party is suspect because they were all accomplices. The Court of Appeal (a) upheld the view of the Supreme Court that they were not accomplices, but (b) held that, even if they were, there was corroboration by the evidence of the independent witness, Saidu Seray, whose evidence the learned trial Judges said forcibly struck them as true. p. 349, 1.36.  
p. 349, 1.46  
p. 350, 1.7.
- 40

Record  
p. 350, 1.13

pp. 350, 351.

(6) It was contended that the Supreme Court did not adequately consider the defence, and that several discrepancies in the evidence were overlooked or disregarded. The Court of Appeal rejected this contention. They referred to Watt or Thomas v. Thomas (1947) A.C. 492, and observed that in this case the conclusions of fact were reached by two Judges.

The Applicant submits that the conclusions of the Court of Appeal on all points are right.

10

15. On the 1st February, 1960, the Respondent was granted Final Leave to Appeal to the Privy Council.

16. The Applicant submits that this Appeal should be dismissed with Costs for the following, amongst other,

R E A S O N S

- (1) BECAUSE there are concurrent findings of fact in both Courts below.
- (2) BECAUSE the Judgment of the Supreme Court of Sierra Leone is right for the reasons therein stated.
- (3) BECAUSE the Judgment of the West African Court of Appeal is right for the reasons therein stated.
- (4) BECAUSE the Rulings of the Supreme Court of Sierra Leone given in the course of the proceedings are right for the reasons therein stated.

20

RALPH MILLNER.

---

IN THE PRIVY COUNCIL

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

BETWEEN:

CYRIL BUNTING ROGERS-WRIGHT  
(Respondent) Appellant

- and -

ABDUL BAI KAMARA  
(Applicant) Respondent

C A S E

of the APPLICANT-RESPONDENT

T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
Victoria Street,  
London, S.W.1.  
Solicitors for the Applicant-  
Respondent.