Misc Appl 16/10 2010 D No. 1

IN THE HIGH COURT OF SIERRA LEONE

PETITION - PARAMOUNT CHIEFTAINCY PETITION ELECTION ACT NO 10 OF 2009

BETWEEN: MARTIN DUMBUYA

LAMIN K DUMBUYA - PETITIONERS

AND

THE MINISTER OF INTERNAL AFFAIRS

THE PROVINCIAL SECRETARY, NORTHERN PROVINCE

THE NATIONAL ELECTORAL COMMISSION (NEC)

THE ATTORNEY-GENERAL & MINISTER OF JUSTICE

ABU KOROMA (A.K.A. DUMBUYA) - RESPONDENTS

COUNSEL:

C F MARGAI ESQ for the Petitioner

L M FARMAH ESQ, Principal State Counsel for 1st,2nd & 4th Respondents

N D TEJAN-COLE ESQ for the 5th Respondent

JUDGMENT

1. By Petition dated the 19th day of January,2010, the Petitioner Petitioned this Court, for an Order Nullifying the Declaration of Rights made by the 2nd Respondent on the 5th day of November,2009 in respect of the Paramount Chieftaincy election in the Sanda Loko Chiefdom, Bombali District. The grounds for this prayer, are that the Gazettes containing the names of the electors for this election were published after the Declaration of Rights Meeting, when they should have been published before that Meeting; and that, objection having been raised by the Petitioners to the candidature of the 5th Respondent at that meeting, the 2nd Respondent in his role as Declaration Officer, failed to put the objection to a vote, as required by Section 13 of the Chieftaincy

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Act,2009; and that consequently, a hold should be put on the election being held or conducted.

2. By Notice of Motion dated 20 January,2010, the Petitioners applied to this Court for an Injunction restraining the holding of the Election until that Application, and the Petition and had been heard and disposed of. The Application was supported by the joint affidavit of both Petitioners. Exhibited thereto, were letters of complaint about the 2nd Respondent's conduct at the Declaration Meeting, addressed to the 1st Respondent, and to which they, and their Solicitors, received no reply. Also exhibited, is a copy of the Petition. As I do not propose at this stage to go into the merits of the Petition, I shall say no more about the gravamen of the Petitioners' complaints. What matters at this stage, is whether, the Petitioners have established that they have a claim of right in law; that there is a serious issue to be tried; that the refusal of an Injunction will lead to the matter, the subject matter of their complaints, being disposed of, without their petition being heard, and Damages will not adequately compensate them for the injury they will thereby suffer; and that the Balance of Convenience lies in Granting the Injunction.
3. At the start of these proceedings, Mr FARMAH, raised objection to the Motion being heard on the ground that the Petitioners had no Cause of Action against his clients, since he had come to this Court by the wrong procedure, namely, by Petition. His argument was that a Petition in respect of a Paramount Chieftaincy election could only be brought after the holding of the election, and that there was no authority for questioning the 2nd Respondent's actions or decisions, at the Declaration stage, by way of Petition. I agreed with his submission that a Petition was not one of the methods sanctioned by either the Chieftaincy Act, or the High Court Rules, for the purpose of these sort of proceedings; but I went on, at page 6 of my minutes of the proceedings, to point out that Order 2 Rule 1(3) of the High Court Rules,2007permitted this Court, not to wholly set aside the proceedings because the wrong originating process had been used, though it was still open to Mr Farmah to apply to this Court under Order 2 Rule 2 for the proceedings to be set aside for irregularity.
4. Having dealt with this preliminary objection, the Court heard the substantive Application on 2 February,2010. I pointed out to Mr Margai

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that the I was not satisfied, on the basis of the affidavit evidence filed, that the objection to the 5th Respondent's candidature, had been taken in the proper manner and in the presence of persons other than the Petitioners themselves, and he agreed to provide proof of this. This he did by way of another joint affidavit deposed and sworn to on 4 February,2010 by Sub-Chief PA SANTIGIE TURAY and PA ALPHA DUMBUYA, two persons who deposed that they were present at the Declaration Meeting; that the 1st Petitioner took objection to the candidature of the 5th Respondent, but that the 2nd Respondent had said that "it was not the time to exclude anyone as the right to exclude an aspirant was reserved to him and the assessors."

5. In his affidavit in opposition deposed to on 8 February,2010, the 5th Respondent denies in paragraph 9 thereof, that objection was taken to his candidature. Unfortunately, the 2nd Respondent, who was the linch-pin of the whole exercise, has thought it fit to give his version of events, and I am left with that given by the two Petitioners, and their supporters, named above. As I was not prepared to act on the say-so of just the Petitioners themselves as to what transpired at the Declaration Meeting, I am not equally prepared to act or to rely on just the say-so of the 5th Respondent. Other than himself, nobody else in these proceedings, has claimed that no objection was taken to his candidature. The fact that he goes on, in that affidavit, to explain the use interchangeably, by him of the names Dumbuya and Koroma, and his rights to the Chieftaincy, perhaps indicates – I can put it no higher than that - that there may have been an objection to his candidature.
6. His Counsel, Mr Tejan-Cole, addressed the Court on the significance of an Interlocutory Order such as an Injunction, and the necessity that an urgent need ought to be established before it could be granted. Further, that there was no provision in our Laws for putting a hold on the election. Action could only be taken after the election in accordance with the provisions of Section 18 of the Act. I agree with Counsel that there are no express provisions in the Act for the bringing of an action in relation to the Declaration of Rights. But, as I pointed out in the BONDI case, this Court will not shut its eyes to a manifest irregularity in the conduct of a person exercising Quasi-Judicial functions, such as the 2nd Respondent when he acts in the role of a Declaration Officer.

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Irrespective of the fact that the usual process for correcting such an irregularity is by way of Judicial review, this Court cannot wash its hands off, Pilate-wise, and turn away a litigant, where it is clear, an express legislative provision, such as Section 13(3) of the Act has been breached.; particularly where, as in this case, the person concerned, the 2nd Respondent has not said anything to gain-say the specific allegation made by the Petitioners. This breach seems to me to be of much more considerable importance than the late publication of the Gazette, which matter I believe, should be dealt with at the trial stage. And as I do not wish the Petitioners to rest on their oars after obtaining this Order, I shall take the liberty of making Orders regarding the future conduct of the action, if it does become necessary to proceed to trial.

7. In the result, I make the following Orders:

1. This Honourable Court Grants an Injunction RESTRAINING the 3rd Respondent herein, THE NATIONAL ELECTORAL COMMISSION and any of its Officers from holding a Paramount Chieftaincy Election in the Sanda Loko Chiefdom, Bombali District until a fresh Declaration of Rights is held or conducted by the 2nd Respondent herein; OR, until the hearing and determination of the Petition herein. For the avoidance of doubt, this Injunction is directed at the 3rd Respondent only.
2. This Honourable Court Orders that a fresh Declaration of Rights Meeting be held as soon as possible, in accordance with the express provisions of Sections 5,6,8,9,10,11,12,13 and 14 of the Chieftaincy Act,2009.
3. The INDEMNITY BOND executed by the Petitioners jointly on 1 February,2010 and filed on 2 February,2010 shall remain enforceable against the Petitioners by ANY OR ALL OF THE RESPONDENTS in the event that this Injunction is Set Aside by a Superior Court, and/or, it is later shown that the Petitioners were not entitled to the same.
4. In the event that a fresh Declaration of Rights is not held or conducted by the 2nd Respondent as Ordered above, this Petition shall proceed to trial; and consequentially, the Respondents shall respectively, if they deem it necessary, file their Answers and any Cross-Petitions to the said Petition, within 7 days of the date of this Order inclusive of public holidays.

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5. The Petitioners shall, if they so wish, file their Reply and Answer to any such Answers and Cross-Petitions, within 10 days of the date of this Order, inclusive of Public Holidays
6. All witness statements and documents to be used or tendered at trial, shall be filed and served against Thursday 4th March,2010. All admissions which ought to be made, shall be made against that date.
7. This file shall be put before a Judge on Friday 5th March,2010 for the purpose of ensuring compliance with these directions.
8. The date of trial is fixed for Monday 8th March,2010.
9. Liberty to Apply
10. Costs in the Cause.

N C BROWNE-MARKE

Justice of Appeal

22 February 2010
~~22 March 2010.~~