

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

BOIMA LUSENI KPANA NYAMBE

- PLAINTIFF

AND

1. NATIONAL ELECTORAL COMMISSION - DEFENDANTS
2. GEORGE BANYA
(PROVINCIAL SECRETARY, SOUTH/
DECLARATION OFFICER)
3. ALEX MAADA KAINPUMU

C F EDWARDS ESQ (with him, A M MUSA Esq) for the Applicant

N D TEJAN-COLE Esq for the 3rd DefendantJUDGMENT

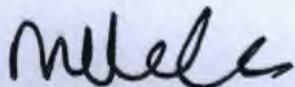
1. By Notice of Motion dated 5 March, 2010, the Applicant applied to this Court for an extension of time within which to file a Petition challenging the validity of the Paramount Chieftaincy election held in the Bum Chiefdom, Bonthe District on 24 December, 2009. The Application is supported by the affidavit of the Applicant, deposed and sworn to on 5 ~~December, 2009~~ ^{March}. Exhibited to the affidavit are: "BLKN1" which is a copy of an Order of this Court dated 18 January, 2010 refusing an identical Application dated 6 January, 2010 and also, dismissing the Petition dated 6 January, 2010, and "BLKN2" a copy of the proposed Petition.
2. The Applicant gives the reasons for his Application in paragraph 10 of his affidavit. There was a problem with transportation from Bum Chiefdom to Freetown, to consult a Solicitor; it was the festive season, and the offices of Solicitors were closed for the Christmas break; but he was lucky to be able to consult Mr Musa who indeed filed the Petition referred to above, dated 6 January, 2010 which Petition was unfortunately, dismissed because it had been filed out of time without the leave of this Court.
3. The grounds for the ^{Application} ~~Petition~~ are to be found in paragraphs 5 to 7 of the affidavit. In my view, they are not very strong grounds: the closeness of the vote in the second round, as deposed to in paragraph 4, may be

perhaps be the chief cause for wanting to Petition the result of the election.

4. However, a more fundamental point has arisen as regards this Application, that is, whether this Court has jurisdiction to extend the time within which a Petition in respect of a Paramount Chieftaincy election could be brought. In addition to arguing that this Court has no jurisdiction to do so, Mr Tejan-Cole has argued further that I cannot review my Decision Dismissing the Petition dated 6 January, 2010.
5. Mr Musa argues that Order 3 Rule 5(1) of the High Court Rules, 2007 applies to all matters, be they Petitions or Writs of Summonses. That Rule provides that: "*The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment or order or direction, to do any act in any proceedings.*" The difficulty with this argument is that it presupposes that this Rule applies to proceedings which have not yet begun. The period which could be extended under this Rule, is the period within which a person is required to do any act in any proceedings. For instance, the period of validity of a Writ could be extended if the Plaintiff has been unable to serve the same within 12 months; the period within which to file a Defence could likewise, be extended. In both cases, proceedings would have begun. But here, the originating process has not yet begun. Consequently, only the Statutory provision conferring the right to bring a Petition could confer that right. The provisions of the Limitation Act, 1961 set out the Limitation periods for most civil actions. Likewise, Section 18 of the Chieftaincy Act, 2009 has set out the Limitation period for the bringing of a petition relating to a Paramount Chieftaincy election. It makes no provision for an extension of time. Order 3 Rule 5(1) cannot therefore assist the Applicant. Order 9 Rule 1 makes the position clearer. It provides that "*These Rules apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by any other enactment.*" The provisions of Section 18 of the Chieftaincy Act, 2009 provide for, in my considered opinion, and I so Adjudge, Petitions of a particular class, i.e. Chieftaincy Election Petitions, in respect of which, special provisions have been made, to wit: that all Petitions should be filed within 7 days of the Declaration of the result of a Paramount Chieftaincy election. The reference by Mr Musa to the case of

MACAULEY v DIAMANTOPOULOS (1962) 2 SLLR, 14, HC. is therefore irrelevant to the issues in this Application. M. M.

6. Even if I were to accept (which I do not) the argument, that the provisions of Section 18 contemplated the existence and application of Order 3 Rule 5(1) to this Application, BENNION'S STATUTORY INTERPRETATION 1ST Edition 1984 tells me at page 553 paragraph 254 that: "*An Act may be construed in the light of delegated legislation made under it. On principle such legislation cannot amend an Act, except where power is given for it do so. It follows that (apart from such excepted cases) a provision of delegated legislation which is inconsistent with an Act is likely to be held ultra vires and void.*" Of Course, the High Court Rules, 2007 were not made pursuant to the Chieftaincy Act, 2009, and I will not of course, go so far as to declare them ultra vires, so long as they are confined and deployed to those matters which fall within their compass. They were made by a competent authority, the Rules of Court Committee pursuant to powers conferred in that behalf by Section 145 of the Constitution of Sierra Leone, 1991. Further, I do not need to do so. As I have stated above, Rule 5(1) clearly applies to pending proceedings, and not to anticipated or intended proceedings. At page 141 of BENNION paragraph 58, the Learned Author states that: "*Any provision of an item of delegated legislation is ineffective if it goes outside the powers which (expressly or by implication) are conferred on the delegate by the enabling Act. The provision is then said to be ultra vires (beyond the powers).*" The attempt by Mr Musa to extend Rule 5(1) to an Act, the Chieftaincy Act, 2009 ought therefore to be resisted by this Court as that Rule is confined to proceedings pending in the Court.
7. For these reasons, the Application dated 5th March, 2010, is refused with Costs to the 3rd Respondent who has been the only party which has appeared, and has been represented in these proceedings. Such Costs shall be Taxed, if not agreed.



N C BROWNE-MARKE

Justice of Appeal

15 March, 2010