The plaintiff was never cross-examined as to the figures he gave, thereby leaving the court under the impression that the defence admitted them. He was never contradicted nor even challenged as to the figures he gave. It was only in counsel's final address that he suggested that the figure of £250 income a month should be viewed with great caution.

I accept the plaintiff's evidence that while the cases were hanging over his head "his mind was not good to do any business." But the onus was on the plaintiff to adduce evidence and produced such books as might help the court arrive at a figure representing his loss of business for the period. But from the unchallenged evidence of the plaintiff on this point it is clear that he must have suffered some considerable loss. And upon a consideration of all the circumstances of the case, I award him £500 (Five hundred pounds) for loss of business from October 1956 to April 1957.

As regards general damages, the plaintiff was admittedly in a large way of business. He was a man of integrity and one of the defence witnesses averred that he would not doubt the plaintiff's integrity. It is clear that if Mr. Brown had used all the information available to him, the plaintiff would not have been arrested.

What to my mind aggravates the position is the uncontradicted evidence by the plaintiff as to what Mr. Brown said when he saw him after his arrest. From this evidence it is difficult to come to the conclusion that the defendant company was actuated by honest motives when they instituted criminal proceedings against the plaintiff. Though it is true that the defendant company continued to employ the plaintiff after his acquittal that could hardly be taken as adequate compensation for the humiliation and loss of reputation the plaintiff must have suffered in having to defend the criminal proceedings.

In view of all these considerations I award the plaintiff one thousand pounds (£1,000) general damages.

The order of the court is:

(1) The plaintiff succeeds in his claim.

(2) The defendants to pay plaintiff £665 (six hundred and sixty-five pounds) by way of special damages.

(3) The defendants to pay plaintiff £1,000 by way of general damages.

(4) The several sums of £665 and £1,000, making in all £1,665 to be paid in court and to be paid out to the plaintiff against his receipt.

(5) The defendants to pay the costs of the action.

(6) Costs to be taxed.

Freetown
Oct. 9,
1961

Bankole Jones
J.

[SUPREME COURT]

HON. PARAMOUNT CHIEF T. S. M'BRIWA . . . . *Plaintiff*

v.

TUBERVILLE AND OTHERS . . . . . *Defendants*

[C. C. 67/61]

Tort—Action for assault, false imprisonment, malicious prosecution and conspiracy—Action against members of Native Court—Whether defendants were persons "engaged in the public service"—Whether court exceeded jurisdiction in passing sentence—Whether court properly constituted—Whether criminal proceedings instituted by defendants—Protectorate Ordinance (Cap. 60, *Laws of Sierra Leone,* 1960), *s.* 38.

The District Commissioner of Kono District instructed the President of the Gbense Native Court to issue a warrant for the arrest of the plaintiff, and he gave instructions that plaintiff should be prosecuted for an offence contrary to section 15 of the Tribal Authorities Ordinance. Plaintiff was arrested on September 16, 1960 and taken before the Native Court, where he was charged with four separate offences against section 15. At the direction of the District Commissioner, the case was tried the same day and resulted in plaintiff's conviction on three of the four counts. He was sentenced to six months' imprisonment on each count, the sentences to run consecutively. The case was reviewed by the Assistant Commissioner, who altered the sentence to one of six months' imprisonment with hard labour. After plaintiff's release from prison, the record of his conviction was reviewed in the Supreme Court by writ of certiorari, and the conviction was quashed. Plaintiff then brought an action in the Supreme Court against the President and other members of the Native Court for assault, false imprisonment, malicious prosecution and conspiracy.

Held, for the defendants, (1) The President of a Native Administration Court is a person "employed or engaged in the public service" within the meaning of the Protectorate Ordinance and, therefore, is a protected person against whom no action, suit or other proceedings can be brought in respect of any act bona fide performed by him in execution of any order given to him by a District Officer.

(2) The court did not exceed its jurisdiction in passing sentence on the plaintiff.

(3) The court which tried the plaintiff was properly constituted.

(4) The criminal proceedings against plaintiff were not instituted by any of the defendants.

(5) The acts relied on as constituting a conspiracy on the part of the defendants were not unlawful in themselves, nor were they accomplished by the use of unlawful means.

Macaulay & Co. for the plaintiff.
Mrs. Ursula D. Khan for defendants.

Note: This decision was affirmed by the Court of Appeal on November 7, 1961 (Civil Appeal 67/61).

BANKOLE JONES J. The plaintiff claims the sum of £25,000 as damages for assault, false imprisonment, malicious prosecution and conspiracy. At the outset of the case counsel for the plaintiff informed the court that the writ of summons was not served on the 1st and 2nd defendants for good reasons. The proceedings therefore in this action are confined to the other defendants, namely, the 3rd, 4th, 5th and 6th defendants.

The plaintiff's case is clearly set out in his statement of claim which reads as follows:

1. The plaintiff resides in Jagbwema in the Fiama Chiefdom in the Kono District and is the member in the Sierra Leone House of Representatives for Kono South; the 3rd, 4th, 5th and 6th defendants are members of the Tribal Authority of the Gbense Chiefdom in the Kono District and the 3rd defendant is President of the Gbense Chiefdom Native Court and the 4th, 5th and 6th defendants are members of the said court.

2. On the 16th day of September, 1960, the 3rd defendant issued a warrant for the arrest of the plaintiff on a charge of attempting to undermine the lawful authority of Paramount Chief Kaimakainde contrary to section 15 of Cap. 245 of the Laws of Sierra Leone, which charge had been falsely preferred against the plaintiff by the Gbense N.A. Court in the Gbense Chiefdom Native Court itself.

3. On the 16th day of September, 1960, in consequence of the execution of the warrant mentioned in the foregoing paragraph, the plaintiff was arrested and taken to the Gbense Chiefdom Native Court on the same day, and the said court was presided over by the 3rd, 4th, 5th and 6th defendants who are members of the said court and also members of the Gbense Chiefdom Tribal Authority.

4. On the 16th day of September, 1960, the 3rd, 4th, 5th and 6th defendants detained the plaintiff in the said court for several hours, and purported to try him for the offence mentioned in the foregoing paragraph 2; purported to convict him to 18 months' imprisonment with hard labour and caused him to be imprisoned and conveyed him to the Assistant District Commissioner, Kono, who reduced the said term of imprisonment to six months' imprisonment and committed him to prison for the said term, which the plaintiff has since served.

5. On the 24th day of February, 1961, the aforementioned proceedings were brought before the Supreme Court on an application by the plaintiff for an order of certiorari and the said conviction was quashed with costs.

During his cross-examination the plaintiff deposed as follows: "The prosecution was brought against me by the Gbense Administration Court."

Counsel for the defence thereupon sought and was granted leave to amend his pleading by the addition of a sentence at the end of paragraph 2 of his defence. This paragraph now reads as follows with the amended portion in italics:

> "The 3rd defendant admits issuing a warrant for the plaintiff on the charge described in paragraph 2 of the statement of claim, but the defendants deny that the charge was falsely preferred against the plaintiff, and further deny that there was not reasonable and probable cause for preferring the said charge or, that anyone acted with malice in the preferring of the said charge. *And the defendants further deny that the Gbense Native Administration Court preferred the said charge or any other charge against the plaintiff.*"

The plaintiff in his evidence stated that he was arrested with a display of arms and driven under guard from his home to the Gbense Native Administration Court where he was tried on charges of attempting to undermine the lawful authority of Paramount Chief Kaimakainde. He however admitted that in his opinion the display of arms was a precautionary measure to prevent any disturbances. The members of the court, he said, were the four defendants, one M'bayo Kawa and two others whose names he did not know. He said that the 3rd defendant the President of the Court was the prosecutor who in the first instance asked him whether he was guilty or not without telling him what the charge or charges were. When he was asked if he had witnesses, he said he could not say as he did not know what he was charged with. Thereupon the 3rd defendant said "If you have no witnesses *we* have witnesses." After all this the court clerk read the charges to him and the plaintiff pleaded not guilty to them. What transpired is recorded in the Court Record—Exh. "B." The plaintiff however gave evidence enlarging on this record to show that the 3rd defendant took sole control of the proceedings by sending to call witnesses and by himself and another court member making improper remarks during the trial tending to show bias on their part. For example he said that at one stage the 1st defendant said "This is going to be the end" and thereupon the 5th defendant replied "Yes, as long as we have the police and the District Commissioner behind us." At another stage the 3rd defendant said "We are going

to break the pot this time." Now, the pot was and still is the symbol of the plaintiff's political party, and the plaintiff understood this remark to mean that the court was going to destroy the party of which he was the founder, President and leader by giving a " false judgment." At the close of the evidence in the case, 3rd defendant openly sought the views of members of the court regarding the sentence to be passed. Each expressed his view including M'bayo Kawa and the two other members of the court whose names he did not know. He was then sentenced to 18 months imprisonment—" six months for each meeting I held." After this he was driven in a police vehicle to the District Commissioner's office at Sefadu a distance of a mile and a quarter where the District Commissioner, Tuberville, instructed that he be taken into the office of the Assistant District Commissioner, Hoare. In the presence of the 3rd defendant, the Native Court Record Book was produced and Hoare asked plaintiff if he would make a statement. He made one. Hoare then reviewed the decision. He confirmed the conviction but reduced the sentence to six months. The review of Hoare is to be found in Exh. " C." After this the plaintiff was subsequently taken to Freetown prison where he served his sentence obtaining his release on January 15, 1961. Nine days after arriving at Kono from prison the plaintiff was elected Paramount Chief and on February 24, 1961, his conviction was set aside by the Supreme Court on certiorari proceedings.

The defence called three witnesses, namely: Dunstan Emanuel Modupeh Williams, Acting Senior Registrar of the Supreme Court, who produced the original Order of Court quashing the plaintiff's conviction (Exh. " E "), Hoare, the Assistant District Commissioner who reviewed the proceedings in the Gbense N.A. Court and who was originally the second defendant, and the 3rd defendant, the President of the Gbense N.A. Court. Hoare in his evidence said that the charges before the Native Administration Court appeared to be four in number and that the Native Court convicted on three of them but in his review (Exh. " C ") he considered that the Native Court was in error in taking various incidents as separate charges and he decided that there was only one charge. He said he reduced the sentence of 18 months (cumulative) to six months because he thought both that the sentence was severe and that the Native Court had exceeded their jurisdiction. He said that he did not know who drafted the charges before the N.A. Court. He said that when the case was brought before him for review, he headed his review " Gbense T.A.'s *v.* Hon. T. S. M'Briwa." His attention had not been drawn to the fact that the Native Court record was headed " Gbense N.A. Court *v.* Hon. T. S. M'Briwa." He said that this latter title was a mistake which in his experience was frequently committed by N.A. clerks because normally it is the T.A. which brings cases against accused persons and not the N.A. Court. At the review he said that the plaintiff made no allegations against the 3rd defendant. If he had made any he would have investigated them. All the plaintiff said to him was " I have nothing to say " apart from making a statement. He said that on the day in question, what time he could not precisely say, the D.C., Tuberville, asked him to review the case against plaintiff before plaintiff was brought to him and he refuted the suggestion that before reviewing the case, he had conspired with anyone to convict the plaintiff. He made sure before reviewing the case that everything was regular and in order.

The 3rd defendant, the President of the Court, stated that it was the D.C., Mr. Tuberville, who instructed him to issue the warrant for the arrest of the plaintiff. The D.C. told him that the Tribal Authority had been to see him

and informed him that the plaintiff was the cause of all the trouble in Kono District. Tuberville took the warrant to him at the Court Barrie where there were present the 4th, 5th and 6th defendants. On his instructions, he signed the warrant on behalf of the Tribal Authority and not on behalf of the Native Administration Court. The 3rd defendant said that the members of the court which tried the case consisted of himself the 4th, 5th and 6th defendants. There were no other persons who sat with them as judges. M'bayo Kawa he said represented the T.A. and he conducted the case on their behalf. He denied that he was prosecutor and repudiated the remarks alleged by the plaintiff to have been made by him and the 5th defendant tending to show bias on their part. He said that the case was tried on the day the warrant was issued and executed. Before he signed the warrant the D.C. told him what the charges were and instructed him that after the trial he should take the plaintiff to him. All the members of the court were present when the D.C. spoke to him and agreed that they would try the plaintiff. He had never discussed the case with the D.C. before the date of trial. He confessed that although P.C. Kaimakainde and himself are brothers of the same father, nevertheless he was not biased throughout the trial. He said that before the court actually tried the case, he had no views on the allegation that plaintiff was spoiling the country. It was after evidence had been taken that he believed the allegation and that all of them then found the plaintiff guilty. As to the question of taking the plaintiff to the D.C. he said he would have taken him in any case even if the court had found him not guilty. Two questions to my mind ought at the very outset to be disposed of, before considering the merits of the plaintiff's claim. They are as follows: (1) Who instituted the proceedings in the case against the plaintiff in the Gbense Native Administration Court, and (2) Was the 3rd defendant, the President of the Court, the prosecutor?

As to the first question Mr. Berthan Macaulay submitted that, as the title of the case is penned down in the Court Record Book (Exh. "B") by the court clerk as "Gbense N.A. Court *v.* Hon. T. S. M'Briwa," the inference, therefore, is that it was the court itself which instituted proceedings against the plaintiff. As against this there is evidence that it was the Tribal Authority which made the complaint to the District Commissioner Tuberville, who then prepared a warrant of arrest on which the plaintiff was subsequently arrested and charged before the court in question. It was Hoare's opinion, it will be remembered, that the court clerk had made a mistake, one which he said was frequently made by court clerks. Even without calling the court clerk in question to depose whether or not he had made a mistake, there is ample evidence from which this court can find that the proceedings in the N.A. Court were instituted by the Gbense Tribal Authority and not by the Native Court itself and I so find.

As to the second question, I do not believe the evidence of the plaintiff that it was 3rd defendant, the President of the Court who acted as his prosecutor. Although the Record (Exh. "B") does not state who the prosecutor was, yet I accept the evidence of the President that it was one M'Bayo Kawa who appeared on behalf of the Tribal Authority. A glance at the Record will show that, after plea had been taken, there was immediately recorded in one column the names of the prosecution's witnesses and in another column, as against defence witnesses, the word "Nil." The inference is that each side was asked to name its witnesses before evidence was taken and recorded. This, therefore, explodes the story of the plaintiff as to how the witnesses came to give evidence.

I find, after consideration of the evidence, that the 3rd defendant at no time acted as prosecutor in his own court in the case against the plaintiff.

Mr. Berthan Macaulay argued his claim under the following heads, namely, Assault and False Imprisonment, Malicious Prosecution and Conspiracy.

As to the claim relating to assault and false imprisonment the plaintiff relies on two separate incidents each of which he alleges constitutes an assault and false imprisonment. The first relates to the period between the plaintiff's arrest and his appearance in court and the second relates to his incarceration for six months in the Freetown prison.

Nowhere in his pleadings did the plaintiff complain about the first incident as amounting to detention. One of the incidents about which he complained is to be found in paragraph 4 of his statement of claim where he said that the defendants detained him *in court* for several hours. However in this court counsel sought to argue that under the Native Courts' Ordinance (Cap. 8) the Native Court has no power to issue a warrant in the first instance (s. 28). The warrant, therefore, under which the plaintiff was arrested, he submitted, was invalid and, therefore, up to the plaintiff's appearance in court, he had been falsely imprisoned. In my view this argument is improvised to buttress an afterthought. I therefore consider that I do not find myself called upon to decide the issue raised. But even if I was called upon to do so, I would say that when the 3rd defendant signed the warrant he did so as President of the Native Administration Court, under the order of a District Commissioner and therefore became a protected person against whom no action, suit or other proceedings can be brought—section 38 (2) of the Protectorate Ordinance (Cap. 60). This subsection reads:

> "No action, suit or other proceeding shall be brought against any person employed or engaged in the Public Service, acting under the Orders of a District Commissioner, in respect of any act bona fide performed by him in execution of any order given as aforesaid to any such person."

No one can pretend to deny that the President of a Native Administration Court who in this case on the evidence was appointed as such by a Provincial Commissioner, is a person engaged in the Public Service, and I do not accept any suggestion that he acted otherwise than bona fide.

As regards the second incident, the only question that requires consideration is whether the court exceeded its jurisdiction by inflicting a sentence of 18 months' imprisonment, and if so, whether such a sentence is not "void and of no effect" (s. 27 (1), Cap. 8) and one which no District Commissioner can in law review, because the original sentence was a nullity. The true position in my view is summed up in the evidence of the Assistant District Commissioner Hoare under cross-examination when he said:

> "The charges before the Native Administration Court appear to be four. The Native Court convicted on three charges. In my finding, I stated that I considered the Native Court to be in error in taking the various incidents as separate charges."

The Court Record shows that the plaintiff stood his trial on four charges. His plea was a general one of not guilty. The court found him guilty on three of these charges and the judgment said so. It said inter alia:

> "These are the reasons why the court feels that you go to prison for 18 months with hard labour for three charges against you, six months for each charge."

The court was entitled in law to pass such a sentence on each of the charges proved. In doing so, they did not exceed their jurisdiction, even though the effect was a cumulative sentence of 18 months. If the Assistant District Commissioner who reviewed the case thought that " there was in reality one charge," that was merely a matter, rightly or wrongly, of his own opinion and does not alter the position that there were in fact four charges before the court three of which were found proved and separate legal sentences imposed.

As to the other matters on which counsel relies as vitiating the conviction, I find no substance in his submission. I find that the court was properly constituted and that no member showed by word or deed any bias, nor was there outside interference with its deliberations. It would have been prudent, I think, if the President had not sat on this case as he was the brother of Paramount Chief Kaimakainde, but this is certainly no ground on which any court can award damages for false imprisonment against him or other member of the Native Court.

One word as to the constitution of the court which tried the plaintiff. The plaintiff said that his judges included, apart from the 3rd, 4th, 5th and 6th defendants, M'Bayo Kawa and two others, making a total of seven. The defence of course denies this. Section 26 of Cap. 8 requires that the names of the Chief or President and members of the court present who sit on any case should be recorded in the Minute Book, that is the Court Record. Looking at the Minute Book (Exh. " B ") I find that only four names are so recorded, namely the 3rd defendant as President and the other defendants as members of the court. It does therefore appear that Exh. " B " gives full support to the story of the defence and none whatever to that of the plaintiff.

As regards the plaintiff's claim for malicious prosecution, it is necessary that the plaintiff must show among other things, that he was prosecuted by the defendants or any of them, that is to say that the machinery of the law was set in motion against him on a criminal charge. If he fails to prove this, his claim falls to the ground. I have already found as a fact that the criminal proceedings in the case in question were instituted by the Tribal Authority against the plaintiff and not by the court itself or any of its members. It follows therefore that the plaintiff cannot sustain this claim.

As regards his last claim for conspiracy, counsel submitted that on the evidence, the facts show that the District Commissioner, Tuberville, was the architect of a plot to injure the plaintiff by imprisoning him. According to counsel, the District Commissioner used the Assistant District Commissioner, Hoare, and all the defendants as puppets in furthering the object of the conspiracy, well knowing that he and his assistant were protected by law—section 38 (1) of Cap. 60. He submitted that the defendants are however liable because they have no such protection in law. The facts, he argued on which such an inference should be drawn are as follows:

(a) That the District Commissioner instructed the 3rd defendant to sign a warrant for the arrest of the plaintiff.

(b) That the 3rd defendant signed the warrant on which the plaintiff was in fact arrested.

(c) That all the defendants agreed to try the plaintiff on the same day on which he was arrested.

(d) That the District Commissioner instructed the 3rd defendant to take the plaintiff to him after trial, an instruction which was intended to be an

order to the 3rd defendant and the other members of his court that the plaintiff must in any event be found guilty.

(e) That the 3rd defendant took the plaintiff to the District Commissioner after his conviction.

(f) That the District Commissioner had instructed Hoare to review the proceedings at a time when he did not know the verdict of the court.

Counsel tried to make capital of the fact on the evidence it appears that the District Commissioner had instructed his Assistant to review the proceedings before he knew that the plaintiff was in fact convicted. However, this is not how I read the evidence. The evidence is that the District Commissioner instructed Hoare to review the case, but there is no evidence as to what time of day he told him so. One thing is clear, namely, that he gave him his instruction before the plaintiff was taken to Hoare's office, and there is no evidence showing that the District Commissioner had not already known the court's verdict.

In my opinion, all the matters relied upon as piling up to constitute the offence of conspiracy are matters which were lawful and within the competence of the District Commissioner and the defendants to perform, and in the performance of which I find that none of them resorted to unlawful means.

In the circumstances therefore and for the reasons given, the plaintiff's entire claim fails and I dismiss it with costs to be taxed.

[COURT OF APPEAL]

Freetown
June 5, 1959

Bairamian, Ag. P. Hurley and Ames, Ag. JJ.A.

IN THE MATTER OF PIERRE SARR N'JIE, BARRISTER AND SOLICITOR OF THE SUPREME COURT OF THE GAMBIA

AND

IN THE MATTER OF RULE 7, ORDER IX OF THE FIRST SCHEDULE TO THE RULES OF THE SUPREME COURT, 1928

[Miscellaneous Civil Case No. S.63/58]

Practice and procedure—Suspension of legal practitioner—Whether deputy judge can represent judge in matter which is not "proceeding in the court"—Whether judge acting apart from Supreme Court has jurisdiction to suspend legal practitioner—Rules of the Supreme Court, 1928, Ord. IX, r. 7 (Cap. 5, Subsidiary Legislation of the Gambia, 1955)—Supreme Court Ordinance (Cap. 5, Laws of the Gambia, 1955) ss. 2, 4, 7, 15, 27, 72—West African Court of Appeal Ordinance (Cap. 6, Laws of the Gambia, 1955) s. 14*—Notaries Public Ordinance (Cap. 19, Laws of the Gambia, 1955) s.* 4*—Interpretation Ordinance (Cap. 1, Laws of the Gambia, 1955) s.* 11.

On September 22, 1958 a deputy judge in the Gambia suspended a legal practitioner from practising within the jurisdiction of the Gambia Supreme Court. From the order the practitioner appealed, claiming that the deputy judge did not have jurisdiction to make the order and that rule 7 of Order IX of the Rules of the Supreme Court, under which the order was made, was ultra vires.

Held, that the the Supreme Court Ordinance (Cap. 5, Laws of the Gambia, 1955) gave no jurisdiction to the deputy judge to make the order in question.