

IN THE SUPREME COURT OF SIERRA LEONE

COURT:

C.O.E. COLE,	Chief Justice (Presiding)
S.C.S. BETTS,	Justice of the Supreme Court
A. LIVESBY LUKE,	Justice of the Supreme Court
S.J. FORSTER,	Justice of the Supreme Court
C.A. HARDING,	Justice of Appeal

Civil Appeal No. 2/74

DANIEL K. CAULKER - APPELLANT

AND

KOMBA KANGAHA - RESPONDENT.

J U D G M E N T 18TH JUNE, 1975

Dr. W.S. Marcus Jones with him
Garvas Betts, Esq., for the Appellant
Lee Smith, Esq., for the Respondent.

Cole, C.J.:- This is an appeal from the judgment of the Court of Appeal for Sierra Leone dated the 11th day of April, 1974, allowing the appeal from the judgment of Garne, J., dated the 16th day of March, 1973, in an action in which the respondent in this Court was plaintiff and the appellant was defendant. The subject matter of the action touched and concerned certain premises at one time known as 41 Kainkordu Road, Koidu Town, Kono District, but later came to be known as 83 Main Kainkordu Road. There is no dispute between the parties as to the identity of the premises in question. I shall therefore in this judgment hereafter refer to it as "the said premises."

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By a specially indorsed Writ of Summons dated the 17th day of March, 1972, the respondent claimed possession of part of the said premises, mesne profits at the rate of Le.40 per month and damages for trespass. In his Particulars of Claim, he alleged, amongst other things, that at all times material to this action, he was the owner of the said premises and the appellant was in occupation of part of the said premises; that despite several demands by the respondent since April, 1964, for the appellant to quit the said premises, the appellant refused to do so.

The appellant by his amended Defence disputed the ownership by the respondent of the said premises and averred in effect that he was the owner by purchase of the said premises. To this the respondent joined issue.

It is clear therefore that at the close of the pleadings, one of the main issues which had to be determined by the trial Judge was ownership of the said premises. This naturally involves the question of title to the said premises.

The trial came to an end on the 16th day of March, 1973, when the learned trial Judge delivered his considered judgment dismissing the respondent's claim on the main ground that the evidence of the respondent did not support the pleadings. It should be noted in passing that there had been previous litigation between the said parties regarding the said premises before the High Court in 1968, the record of proceedings of which case was tendered in evidence in the present case and marked exhibit 'A'. In the former case, the appellant was plaintiff and the respondent was defendant. The respondent in that case raised the question of jurisdiction of the High Court to try that case but was

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overruled by the learned trial Judge. The learned trial Judge, however, after hearing evidence, dismissed both the claim of the appellant and the counterclaim of the respondent. There was no appeal against the judgment in that case. For the purpose of this present appeal, these facts are not very material, except, perhaps, regarding the issue of costs.

From the judgment of Warner, J, dated the 16th March, 1973, the respondent appealed to the Court of Appeal for Sierra Leone on three grounds, namely -

- "1. The learned trial Judge misdirected himself as to the nature of the appellant's counterclaim in the previous action between the same parties above and which is exhibit 'A' in this action.
2. The learned trial Judge was wrong in law when he said the appellant was indirectly using his Court as an appellate Court.
3. The judgment is against the weight of evidence."

The Court of Appeal for Sierra Leone in their judgment dated the 11th day of April, 1974, said, *inter alia* -

"To allow the appeal and set aside the decision of the Court below dismissing the appellant's action with costs. We order that the respondent within 30 days to deliver possession of the 2 rooms occupied by him in the premises formerly known as 41 Kainkonda Road,

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Kono District, and now known as 83
Kainkoru Road, Koidu Town, that the
respondent do pay to the appellant
his profits at the rate of Le.28
per annum from the date of issue of
the writ of Summons herein."

The appellant being dissatisfied with this
judgment and order has appealed to this Court on a
number of grounds. The first principal question posed
for our consideration is -

"Whether the High Court of Sierra Leone
had any jurisdiction to entertain this
suit in view of the fact that the matter
between the parties which the Court had
to determine was a question of title to
land in the Provinces, and whether the
proper forum ought not to have been the
local Court in the Kono District."

It should be observed at the outset that on
examination of the record of proceedings before the
Courts below this question of jurisdiction was never
raised. I am of the view, however, that since the
pleadings before the learned trial Judge disclose
sufficient material on which the issue of jurisdiction
can be based, this Court can properly entertain the
question in spite of the fact that it was not raised
in the Courts below. I wholeheartedly adopt the views
expressed in the Privy Council case of CHIEF KWAME
ASANTE v. CHIEF KWAME TAYAI (1949) 11 N 40 at page
41 that -

"If it appeared to an appellate court
that an order against which an appeal
was brought had been made without

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jurisdiction, it would never be too late to admit and give effect to the plea that the order was a nullity."

I shall not confine this legal doctrine to orders only but would extend it to cover judgments or other decisions of any court. This ought to be the case for, in my considered view, jurisdiction is not only the legal authority but it is also the extent of the power of a court or judge to entertain an action, petition or other proceeding. Due consideration ought to be given to it at any stage - particularly so where that jurisdiction is conferred or taken away by statute.

Now, what is the gravamen of this principal question of jurisdiction raised by learned Counsel for the appellant? It is this. He contends, amongst other things, that in the first place, from the pleadings it is clear that the said premises was land situated in the Provinces; secondly, that the pleadings disclose that one of the main issues before, J., had to determine was the title of either party to the said premises; thirdly, that no question of any title to a leasehold granted under the Provinces Land Act (Cap. 122) arose; and lastly, that therefore the jurisdiction of the High Court was ousted by virtue of the provisions of Section 21(a)(1) of the Courts Act, 1965 (No. 31 of 1965). These contentions automatically call for the construction of Sections 18(1) and (2) and 21(a)(i) of the Courts Act, 1965 for the purposes of this appeal. These three subsections are as follows:

"18. (1) The High Court shall exercise the jurisdiction and powers conferred

upon it by the Constitution and any other enactment.

(2) Except as provided in subsection (2) of Section 7 and Section 19 or its jurisdiction is expressly excluded by an enactment, the High Court shall exercise unlimited original and supervisory jurisdiction in all causes and matters in the same manner and with the same powers and authorities as immediately before the commencement of this Act."

"21. Nothing in this Act shall be deemed to invest the High Court with jurisdiction in regard to -

- (a) any action or original proceedings -
 - (i) to determine the title to land situated in the Provinces other than the title to a leasehold granted under the Provinces Land Act."

These three subsections should be read together. It is my considered opinion that section 18 is subject to Section 21. Therefore, where in any action any question arises for determination relating to title to land situated in the Provinces, unless, of course, the question relates to title to a leasehold granted under the Provinces Land Act (Cap 122), the jurisdiction of the High Court is ousted. No question arises for consideration in the present appeal of any leasehold granted to either party of the said premises under the Provinces Land Act. Both parties were each claiming ownership of the said premises which was disputed by the other side.

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The High Court therefore, had to determine and in fact determine this issue.

The expression "title to land" is not defined in the Courts Act, 1965. It is also not defined in the Provinces Land Act nor in the Interpretation Act, 1971 (No. 13 of 1971). But the expression "land" is defined in Section 4 of the Interpretation Act, 1971.

It includes -

"land covered by water, any house, building or structure whatsoever and any estate, interest or right in, to or over land or water".

In the circumstances, I interpret the expression "title to land" for the purposes of this appeal to mean this - namely, which of the two parties to this appeal is entitled to the ownership of the said premises. This interpretation, in my view, clearly called for a determination by the High Court of the question of title to land situated in the Provinces. This question, both the High Court and the Court of Appeal, did determine. It is my considered view that neither court had any jurisdiction under the aforementioned provisions of the Courts Act, 1965 to have determined this question nor did the High Court have any jurisdiction in law to have tried the action.

The legal position being such as I have found it to be, it is not surprising that Mr. Doe Smith, learned Counsel for the respondent, with his usual candour had to concede to this principal question. He should be commended for this. As I mentioned earlier, he himself had in the previous action in 1968 raised the issue before the High Court but he was overruled.

It might be of interest to compare the present section 21 (a)(i) of the Courts Act, 1965, with the provisions of Section 11 of the Courts Act (Cap 7) which latter Act was repealed and replaced by the Courts Act, 1965. Section 11 of the Courts Act (Cap 7) ^{is relevant} as far as ~~this appeal is concerned~~ reads as */c.a.c.* follows:-

"11. In addition to the jurisdiction conferred by this or any other Act, the High Court shall, within Sierra Leone and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities, which are vested in or capable of being exercised by Her Majesty's High Court of Justice in England:

Provided further that nothing in this Act shall be deemed to invest the Court with jurisdiction in regard to -

(a) any question arising exclusively between natives -

(i) involving title to land situate within the Provinces."

The Courts Act, 1965, which, as I have already said, repealed and replaced the Courts Act (Cap 7) came into force on the 7th October, 1965. It would be seen that, in comparison, up to the 6th October, 1965, for the jurisdiction of the High Court in matters involving title to land situated within the Provinces to be ousted such matters must also arise exclusively between "natives". The present legal position in relation to the High Court's jurisdiction regarding title to land situated in the Provinces appears to be

rather all-embracing. The main questions to be considered as the law stands at present are, in my view -

- (a) Is the land in question situated in the Provinces, and if so,
- (b) Does the action relating to the said land raise for determination by the High Court the issue of title to such land other than title to a leasehold granted under the Provinces Land Act?

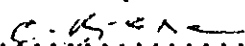
If these questions are answered in the affirmative, then the jurisdiction of the High Court is ousted. This is exactly the position in the present case.

I hold that the whole trial before Warner, J., was a nullity because of want of jurisdiction. Having so held it follows that the judgment and orders of the Court of Appeal are consequently null and void. In the circumstances, it is unnecessary for me to consider the other principal questions raised in this appeal.

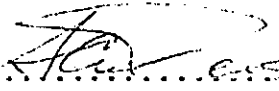
I would allow the appeal and set aside the judgment and order of the Court of Appeal as well as the judgment and order of the High Court.

I now turn to the question of costs. It is true that costs should follow the event and that the appellant having succeeded in his appeal should have his costs. In view, however, of the peculiar circumstances of this case where the very question of jurisdiction on which the appellant now succeeds before us had previously been raised by the respondent in the 1963 action before Browne-Jarke, J, as he then was, but was strongly opposed by this very appellant, I would order in the name of equity that each party


bears his own costs in this Court, in the Court of Appeal and in the High Court. Any costs which may have been paid in either of the Courts below by either party should be refunded. In this connection, I would give liberty to apply.

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C.O. B. Cole - Chief Justice

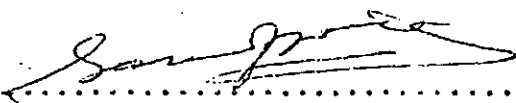
I agree

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S. C. W. Betts - Justice of the Supreme Court


I agree

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E. Livesey Lake, - Justice of the Supreme Court

I agree

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S.J. Forster - Justice of the Supreme Court

I agree

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C.A. Harding - Justice of Appeal

