PALMER *v.* THE GOVERNOR

SUPREME COURT (Smith, C.J.): November 18th, 1952
(Civil Case No. 241/52)

[1] **Civil Procedure—parties—capacity—action must be brought against individual, corporation or authorised official or official body to be effective—Governor can sue or be sued only in personal name:** A legal action, to be effective, must be brought against a named individual or a corporation, sole or aggregate, or an official individual or body which is specifically authorised to sue and be sued in his or its official name; the Governor of the Colony of Sierra Leone is neither a corporation sole nor an official authorised to sue and be sued in his official name, and can therefore sue or be sued only in his personal name (page 259, lines 15–36; page 260, lines 1–17; page 260, lines 32–41).

[2] **Constitutional Law—Governor—legal proceedings—Governor neither corporation sole nor authorised to sue and be sued in official name—proceedings must be in personal name:** See [1] above.

The plaintiff brought an action against the defendant for a declaration of the invalidity of certain legislation and injunctions to prevent the defendant doing certain acts.

The Sierra Leone (Legislative Council) Order in Council, 1951 was passed by the King in Council to provide for a Legislative Council in Sierra Leone constituted in accordance with the provisions of that Order. The plaintiff sought a declaration that the Order was invalid and could not apply in the Colony of Sierra Leone, and injunctions to prevent the defendant giving effect to it. The defendant raised a preliminary objection that he could not be sued in his official capacity, but only in his personal name.

Cases referred to:

(1) *De Verteuil* v. *Knaggs*, [1918] A.C. 557; (1918), 118 L.T. 738.

(2) *Dyson* v. *Att.-Gen.*, [1911] 1 K.B. 410; (1910), 103 L.T. 707.

(3) *Eleko* v. *Officer Administering Government of Nigeria*, [1931] A.C. 662; (1928), 8 Nig. L.R. 1, distinguished.

(4) *Esquimalt & Nanaimo Ry. Co.* v. *Wilson*, [1920] A.C. 358; [1918–19] All E.R. Rep. 836.

(5) *Mostyn* v. *Fabrigas* (1774), 1 Cowp. 161; 98 E.R. 1021.

(6) *Sloman* v. *Governor and Government of New Zealand* (1876), 1 C.P.D. 563; 36 L.T. 454, *dictum* of Mellish, L.J. considered.

O.I.E. During and *R.W. Beoku-Betts* for the plaintiff;
Paterson, Att.-Gen., for the defendant.

SMITH, C.J.:

This is an action brought against a defendant who is named as His Excellency the Governor of Sierra Leone, claiming a declaration that the Sierra Leone (Legislative Council) Order in Council of April 9th, 1951 is invalid and could not apply to the British territory known as the Colony of Sierra Leone, and three injunctions restraining the defendant from doing certain acts.

In the defence, after pleading that the facts alleged in the statement of claim disclose no cause of action, the defendant pleads in para. 9: "The defendant will further contend that there is no right of action in the plaintiff against the defendant for any of the reliefs claimed in the plaintiff's said statement of claim."

At the trial the Attorney-General for the defendant took the preliminary objection that no action can be brought against "The Governor of Sierra Leone" in that name, nor does the description given make him capable of being sued in this court, and he has quoted a number of authorities, some of which I shall refer to.

The Attorney-General admits that the Governor can be sued in this court, but maintains the he can only be sued in his own personal name, and he has cited to me a number of cases, commencing with *Mostyn* v. *Fabrigas* (5) and ending with *De Verteuil* v. *Knaggs* (1), where Governors have been so sued and judgment given for or against them.

He has drawn my attention to certain public officers and public bodies, both in Sierra Leone and in England, who are empowered by law to sue or be sued in the courts in their official names, *e.g.*, the Attorney-General, where rights of the Crown are affected, the Controller of Customs, the Railway Management and others, where certain rights and liabilities affecting their particular offices fall to be adjudicated upon. But, he submits, the office of Governor is not one of those offices; the office is not that of a corporation sole, and if action is desired against him, it must be brought in his personal name so that any judgment given would be binding on him alone and not on his successors in office.

In so far as the rights of the Crown may be affected by the action, he submits that the proper procedure is by petition of right or, if that is not applicable, by a suit against the Attorney-General either as the principal defendant (*Dyson* v. *Att.-Gen.* (2)) or an intervener (*Esquimalt & Nanaimo Ry. Co.* v. *Wilson* (4)).

While it is true that certain colonial governments, by special provisions relating to them, may sue and be sued as so named, the Attorney-General submitted that the instruments creating the office of Governor in this Colony, both the Letters Patent of 1924 and the new Letters of 1951, are quite silent on this point and do not create the Governor a corporation.

Finally, I was referred to the case of *Sloman* v. *Governor and Government of New Zealand* (6), in which the Court of Common Pleas refused to allow service of a writ against the defendant on the ground that neither the Governor nor the Government of New Zealand nor both together were a corporation or corporations. In his judgment in that case Mellish, L.J. said (1 C.P.D. at 567; 35 L.T. at 457):

> "The secretary of state for India has been made a corporation sole, and for some purposes other secretaries of state have been made corporations sole . . . . [B]ut I have great doubt whether any colonial act could make him a corporation sole."

All the judges in this case were quite definite that, with the defendants so described, no individuals could properly be served with the writ and therefore substituted service could not be allowed.

In reply to these arguments, Mr. During has stressed that it is quite clear that Governors can be sued in the courts of their own colonies, and that while the cases cited indicate that the suits were brought in their private names, no principle is established by these cases that a Governor cannot be sued in the name of his office and must be sued in his own name. He agreed however that the office of Governor is not a corporation, but sought to distinguish some of the cases that have been cited. He also laid stress on the case of *Eleko* v. *Officer Administering the Government of Nigeria* (3) as at least one instance in which a Governor was made a party to litigation by the name of his office.

While I should have preferred that this case had run its full course so that I could have decided on the merits of the main issues between the parties, I am of opinion that the contentions of the Attorney-General are sound. An action to be effective must be brought against some named individual or against some corporation, sole or aggregate, or against some official individual who or official body which is specifically authorised to sue and be sued in his or its official name. I can find no authority for holding that the office of Governor is either a corporation or an official post specifically authorised to sue or be sued in his official name. The *Eleko* case (3)

was not an action but an application for *habeas corpus*, to which special rules and practice apply. A writ of *habeas corpus*, though sometimes issued to a named individual, is more usually issued to the keeper of the prison and the name of the particular keeper is not required to be stated. Though no objection seems to have been taken in the *Eleko* case that the Officer Administering the Government ought to have been cited in his personal name, this does not appear to be a precedent which I should follow in this case, and as it was a *habeas corpus* proceeding is clearly distinguishable from an ordinary action.

I hold therefore that the defendant is sued in the wrong name and I dismiss the action against him, but without prejudice to any claims which the plaintiff may have against the defendant in his own individual name. There will be no order for costs.

Suit dismissed.

ALLIE and OTHERS *v.* ALHADI (OFFICIAL ADMINISTRATOR)

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Porter, Lord Normand and Lord Cohen): November 27th, 1952
(P.C. App. No. 22 of 1951)

[1] **Civil Procedure—appeals—matters of fact—appellate court will not set aside concurrent findings:** Concurrent findings of fact by two courts will not be set aside by an appeal court (page 264, lines 18–21).

The appellants brought an action against the respondent in the Supreme Court for the revocation of a will.

A dispute arose as to the genuineness of one of a series of wills allegedly left by the same testator. The appellants, who were named as executors in one of the wills, instituted the present proceedings against the Official Administrator, who had undertaken the administration of the estate, on the ground that one of the beneficiaries had suppressed the will as originally drafted and substituted a forged one in its place.

The Supreme Court (Beoku-Betts, Ag.C.J.), after hearing the evidence adduced by the appellants, adjourned the proceedings and directed the record to be forwarded to the Attorney-General to consider whether a *prima facie* case existed for a prosecution for forgery. The Attorney-General decided not to prosecute; and the Supreme Court dismissed the action for revocation of the will.