Freetown
June 28,
1962

Bankole Jones
Ag.C.J.

[SUPREME COURT]

AMADU HASSAN . . . . . *Petitioner*

v.

JOHN KAREFA-SMART . . . . . *Respondent*

[C.C. 192/62, E.P.1]

Election Petition—Validity of nomination—Validity of nomination paper—Jurisdiction of Returning Officer and Electoral Commission—Whether nominator can withdraw nomination—Rules of natural justice—Audi alteram partem—Electoral Provisions Act, 1962 (No. 14 of 1962), ss. 15 (1), 16, 18.

The petitioner and the respondent were candidates for the House of Representatives at the election held on May 7, 1962, in the Tonkolili West constituency. On that day, each candidate submitted his nomination paper in accordance with section 15 (1) of the Electoral Provisions Act. Petitioner's nomination paper was signed by three nominators and two witnesses as required by law.

At 4 p.m. on May 7, Lamin Keister, one of petitioner's nominators, went to the Returning Officer with one of respondent's nominators, a Mr. Hallowell, and made a written statement (Exhibit "A1") to the effect that his signature on the nomination paper had been fraudulently procured. He asked leave to withdraw his nomination. Mr. Hallowell took the following objection: "That at least one of the nominators, Lamin Keister, did not sign the nomination paper in the presence of two witnesses as required by law."

The Returning Officer sent for the petitioner, who asked permission to call the two witnesses in whose presence he said Keister had signed the nomination paper. The Returning Officer denied petitioner's request, and then declared petitioner's nomination invalid "in accordance with section 16 (2) (*b*) of the Electoral Provisions Act." Petitioner then appealed to the Electoral Commission, which refused to hear petitioner's witnesses and upheld the Returning Officer's decision. The Returning Officer declared that respondent had been duly elected, and petitioner petitioned the Supreme Court asking for a declaration that respondent was not duly elected and that the election was void.

Held, for the petitioner, (1) the Returning Officer and the Electoral Commission exceeded their jurisdiction in embarking on an investigation as to whether petitioner's nominator gave his free and unfettered consent to the nomination and whether he signed the nomination paper in the presence of two witnesses, because these are matters for the courts to investigate on an election petition.

(2) The Electoral Commission exceeded its jurisdiction in taking into consideration matters which had not been raised before the Returning Officer.

(3) The Electoral Commission exceeded its jurisdiction in deciding that Keister's withdrawal of his nomination rendered petitioner's nomination invalid, because this was a decision on petitioner's nominaton and not on his nomination paper.

(4) The Returning Officer and the Electoral Commission erred in holding that a nominator can withdraw his nomination.

(5) The Electoral Commission violated the rules of natural justice in denying petitioner the opportunity of challenging Keister's statement (Exhibit "A1").

Cases referred to: *Pritchard* v. *The Mayor, Aldermen and Citizens of the Borough of Bangor* (1888) 13 App.Cas. 241; *Ceylon University* v. *Fernando* [1960] 1 W.L.R. 223.

Macaulay & Co. for the petitioner.
John E. R. Candappa for the respondent.

BANKOLE JONES AG.C.J. The petitioner, Amadu Hassan, and the respondent, Dr. John Karefa-Smart, were the only candidates at the election holden on May 7, 1962, for the Tonkolili West constituency, and the Returning Officer returned the respondent duly elected. It arose in this way. Both candidates submitted their nomination papers pursuant to section 15 (1) of the Electoral Provisions Act, 1962 (hereinafter referred to as "the Act"), on May 7, 1962. There is evidence that the petitioner delivered his at 10.35 a.m. on that day. There is no evidence as to what time the respondent deliverd his, but this is of no moment. What is material is that no objection was taken to the nomination paper of the respondent, but one was taken to that of the petitioner. The petitioners nomination paper (Exhibit "A") on the face of it shows that there were three nominators who satisfied the requirements of the law. The paper itself was subscribed by two witnesses in the manner required also by law. At 4 p.m. on the day in question, that is, at a time after all nomination papers should have been delivered to the Returning Officer, one of the petitioner's own nominators, by name, Lamin Keister, went to the Returning Officer together with one of the respondent's nominators, a Mr. Hallowell, and made a written statement to the effect that his signature on the nomination paper had been fraudulently procured. He therefore asked leave to withdrew his nomination. The objection which was in fact taken was taken by Mr. Hallowell and reads as follows: "That at least one of the nominators, Lamin Keister, did not sign the nomination paper in the presence of two witnesses as required by law."

It would appear that at this juncture the Returning Officer rightly sent for the petitioner. When the nature of the objection was made known to him, the petitioner sought permission to call the two witnesses in whose presence he said Lamin Keister had appended his signature to his nomination paper. The Returning Officer refused to grant this indulgence on the ground that he was not holding a court. The petitioner then appealed to the Electoral Commission in Freetown whose chairman is Mr. Fenton. He attended the hearing with his witnesses but again he was told that it was not necessary to call them because on the face of Mr. Lamin Keister's statement (Exhibit "A1") he was left with only two nominators which rendered his nomination invalid.

This is the background setting, against which the petitioner prays this court on three grounds, apart from an alternative fourth ground, to declare that the respondent, Dr. John Karefa-Smart, was not duly elected or returned and that the election was void.

Mr. Berthan Macaulay argued grounds 1 and 3 together. These grounds read:

Ground 1

"That both the Returning Officer and the Electoral Commission in rejecting your petitioner's nomination acted beyond the ambit of their powers in deciding on the validity of your petitioner's nomination as distinct from

the validity of your petitioner's nomination *paper* as is required by section 16 of the Electoral Provisions Act, 1962, No. 14 of 1962."

Ground 3

"That on any view, neither the Returning Officer nor the Electoral Commission are empowered under section 16 of the Electoral Provisions Act, 1962, to inquire whether or not a nominator whose name and subscription appear on the nomination paper gave his consent to the nomination or otherwise; that any such inquiry or investigation is a matter for the courts on an election petition."

Now, I think it will be conceded that a Returning Officer derives his power from section 16 of the Act and particularly section 16 (2). He is entitled to hold a nomination *paper* invalid *only* on one or more of four grounds stated in this section 16 (2). In the exercise of this power, he is expected to act judicially and he must, therefore, proceed with the utmost bona fides and impartiality. In Parker's Election Agent and Returning Officer (6th ed.) at p. 143, I find the jurisdiction of a Returning Officer clearly defined:

> "But he (the Returning Officer) cannot decide any question which might be raised with respect to a *nomination* as distinguished from a nomination paper. . . .
>
> "He is to satisfy himself as to the validity of the nomination paper and to determine any *formal objection* arising on the face thereof."

In *Pritchard* v. *The Mayor, Aldermen and Citizens of the Borough of Bangor* (1888) 13 App.Cas. 241, it was held that a Returning Officer had no jurisdiction to determine the question of the disqualification of a candidate, the proper method for determining that question being by election petition. His primary function is to determine whether the nomination paper is in statutory shape. See also *Watson and others* v. *Ayton* [1946] K.B. 297.

In the instant matter, it is not denied that the nomination paper (Exhibit "A") is in statutory shape, and if, as was done here, the Returning Officer and/or the Electoral Commission embarked on an investigation as to whether or not a nominator gave his free and unfettered consent to the nomination or signed the nomination paper in the presence of two witnesses, this, I opine, on the authorities, is outside the scope of the jurisdiction of any Returning Officer or the Electoral Commission, because these are matters for the courts to investigate on an election petition.

It is, however, instructive to consider the objection taken before the Returning Officer by Hallowell and both the Returning Officer's decision and that of the Electoral Commission. The only objection before the Returning Officer was that the nominator Keister did not sign the nomination paper in the presence of two witnesses as required by law. The decision of the Returning Officer is as follows:

> "In view of the attached statement which has been made before me by Mr. Lamin Keister, the nominator, I uphold the objection and declare Mr. Amadu Hassan's nomination invalid in accordance with section 16 (2) (*b*) of the Electoral Provisions Act (No. 14 of 1962)."

Section 16 (2) reads: "The Returning Officer shall be entitled to hold a nomination paper invalid only on one or more of the following grounds. . . . (*b*) That the paper is not subscribed as so required."

The expression " subscribed as so required " can only refer to the signatures of the witnesses: see Schofield on Parliamentary Elections (2nd ed.), p. 157. I find that on Exhibit " A " the signatures of the witnesses were subscribed as required by law.

On the face, therefore, of the nomination paper, it appears that the decision of the Returning Officer was wrong. This decision made reference to an " attached statement," that is, the statement of Keister—Exhibit " A1." The burden of this statement is that, although Keister signed his name, he did so because he was tricked or deceived into putting his signature to the paper in the belief that he was nominating another person. There is no allegation in this statement, except a veiled one, in terms of the objection, and no questions were directed to Keister in this court as to whether he signed in the presence of the witnesses whose names appeared on the nomination paper. It appears, therefore, that the Returning Officer did not bring his mind to bear upon the allegation of Keister in his statement, nor did he give a decision on this allegation. When the matter came up on appeal before the Electoral Commission, the members of this Commission considered objections which were not before the Returning Officer, for example, that the nominator, Lamin Keister, did not intend to nominate the petitioner but another person. They did, however, consider the objection before the Returning Officer and found that the withdrawal of Mr. Keister's nomination left the petitioner with only two nominators and held that the petitioner's nomination was invalid.

In my view they had no right to take other matters into consideration which did not form the subject-matter of the objection before the Returning Officer and the Returning Officer's decision. In doing so they exceeded their jurisdiction. Also, in deciding that Mr. Keister's withdrawal of his nomination rendered the nomination of the petitioner invalid, they went wrong, because this was a decision on the nomination of the petitioner and not one on the petitioner's nomination paper. It follows, therefore, that the petitioner must succeed on grounds (1) and (3).

I do not, however, intend to base my decision only on these grounds because important matters of law and fact arise on the other grounds.

Ground 2 reads: " That there is no provision in the Electoral Provisions Act, 1962 (as wrongly assumed by the Electoral Commission), for a nominator as distinct from a candidate to withdraw his nomination."

This ground was not argued by Mr. Candappa. I find myself in complete agreement with Mr. Berthan Macaulay. Nowhere in the Act can I find any provision enabling a nominator to withdraw his nomination. Section 18 makes provision for a candidate to withdraw his nomination and even he has to do so by notice in writing signed by him and delivered to the Returning Officer *not later* than four o'clock in the afternoon of the 10th day before the first day appointed for the election. If the candidate purports to withdraw in the manner provided in the Act, but does so, for example, eight or nine days before election day, such a withdrawal cannot be countenanced and the Returning Officer has no power to declare his nomination invalid. How much stronger then is the case weighted against a nominator who purports to withdraw his nomination on nomination day.

Assuming, however, that a nominator has the power, derived, let us say, from his common law right of freedom of action, to withdraw his nomination for whatever reason, should he be allowed to do so after nomination was closed, and if in fact he was so allowed, would this accord with the spirit and

tenor of the whole Act? Certainly the voices of all members of our Parliament which " ayed " this Act will, I think, unanimously concur in saying " nay " to this. It seems to me, therefore, that the Returning Officer, as well as the Electoral Commission, erred in holding that a nominator, to wit, Lamin Keister, could withdraw his nomination in the manner he did or at any time. The petitioner, therefore, also succeeds on this ground.

If, however, I am wrong in the conclusion I have reached on counsel's three main grounds, then there is an alternative fourth ground for the court's consideration.

Ground 4 reads:

> " In the alternative, assuming that the Returning Officer and Electoral Commission are empowered to hear evidence on the matter referred to in the foregoing ground (3), the inquiry or investigation in this case was contrary to the rules of natural justice in that the petitioner was denied the opportunity of challenging the testimony of those who alleged that one of his nominators had not consented to his nomination and also was refused the opportunity of calling evidence to show that the nominator in question had in fact consented to the said nomination."

Mr. Candappa submitted that a Returning Officer and the Electoral Commission are not bound to hear evidence and, therefore, there being no obligation to hear evidence, the question of natural justice does not arise. He said that what in fact took place was that the Returning Officer merely heard a man who had a complaint to make and that the recording of such complaint cannot be regarded as the taking of evidence.

On the facts, I find that the man who made the complaint was Lamin Keister, the nominator of the petitioner, and that the statement he made (Exhibit " A1 ") affected the decision of the Returning Officer. On appeal I find also that the members of the Electoral Commission, even to a greater extent than the Returning Officer, allowed this statement to affect their decision.

The complaint of the petitioner is that he was refused the opportunity of producing evidence or statements or even making a statement himself to controvert the statement of Lamin Keister either before the Returning Officer or before the Electoral Commission. He contends, therefore, that a decision given under these circumstances would be one founded on principles which run contrary to the rules of natural justice.

Mr. Berthan Macaulay put the general proposition of the law in this way when he said that " if a person or an authority is performing a judicial function, the performance of which might result in prejudice to another, then he must give that other an opportunity to controvert any allegation which he proposes to rely on in order to reach a decision. If this is not done any decision reached will be declared null and void by a court of law."

In these proceedings the witness, Fenton, in his evidence, stated, inter alia:

" We were not prepared to receive any evidence or statements from petitioner or hear any witness to controvert the statement of Keister."

This unfortunate attitude, no doubt taken in good faith, is supported by a passage in the decision of the Electoral Commission which reads as follows:

> " Amadu Hassan (the petitioner) counterclaims that Dr. Karefa-Smart and his friends went off to Rochen some 50 miles away and brought one of Mr. Hassan's alleged nominators, Mr. Lamin Keister, to Magburaka and

took him to the Returning Officer and frightened him into making the statement he did make to the Returning Officer. Mr. Lamin Keister's statement, however, is in the D.O.'s handwriting and signed by Mr. Keister. . . .

"The withdrawal of Mr. Keister's nomination, therefore, left Mr. Amadu Hassan with two nominators only."

It seems to me that, although the Electoral Commission was not obliged to hear evidence or take statements, yet it must comply with the elementary and essential principles of fairness. The Electoral Commission was not bound to treat the matter as a trial. They could have obtained information in any way they thought best, and it was open to them, if they thought fit, to question witnesses, but a fair opportunity should have been given to the petitioner to correct or contradict any relevant statement to his prejudice and the statement of Lamin Keister was to his prejudice: see *Ceylon University* v. *Fernando* [1960] 1 W.L.R. 223. I find that in the instant matter the Electoral Commission, with respect, went wrong because they failed to comply with the requirements of natural justice. They offended the audi alteram partem rule, a rule which has an impressive ancestry, one even enshrined in the Scriptures: see St. John, vii, 51: "Doth our law judge any man before it hear him, and know what he doeth?" In these circumstances I am bound to declare the decision of the Commission null and void.

One last matter. It has been submitted that this court has no jurisdiction to inquire into the truth or falsity of Lamin Keister's allegation, because this is a matter which should have been decided by the Electoral Commission, if at all. The defence led evidence in this court on this issue, and although I agree that this court lacks jurisdiction, yet if it had, it could have come to no other conclusion on the balance of probabilities than that the petitioner's story is true, namely, that when Lamin Keister signed the nomination paper he did so freely and with full knowledge of the fact that he was nominating the petitioner and that he signed in the presence of the two witnesses whose names appear on the nomination paper.

It follows, therefore, that, for the reasons given on each and all of the petitioner's grounds, this court has no option but to uphold the petition in its entirety. I accordingly declare that the respondent, the said Dr. John Karefa-Smart, was not duly returned or elected and that the election holden on May 7, 1962, was void. The respondent is ordered to pay the costs of these proceedings.

[SUPREME COURT]

Freetown
July 2, 1962
Bankole Jones J.

MANFRED ONIKE COLE . . . . . *Petitioner*

v.

MARCUS CHAMBERLAIN GRANT . . . . . *Respondent*

[E.P. 5/62]

Election Petition—Motion to strike out petition—Service of notice of presentation of petition—Whether objection to service is "formal objection"—Service on employee in respondent's place of business—House of Representatives Election Petition Rules (*Vol. VI, Laws of Sierra Leone*, 1960, *p.* 405), *rr.* 15, 16, 17, 59.