

MOHAMMED K. GAMANGA . . . . . Petitioner  
v.  
JOSEPH M. KAMANDA . . . . . Respondent

Bankole Jones  
Ag.C.J.

[E.P. 26/62]

*Elections—House of Representatives—Validity of election—Petition alleging corrupt and illegal practices and non-compliance with the Electoral Provisions Act, 1962—Whether non-compliance with Act affected outcome of election—Burden of proof.*

*Corrupt and Illegal Practices—Undue influence—Interference with election meeting—Conduct in polling stations—Whether corrupt practices may have affected outcome of election.*

*Electoral Provisions Act, 1962 (No. 14 of 1962), ss. 25, 28, 32, 64, 69, 72, 74, 85, 87.*

At the election for the House of Representatives on May 25, 1962, respondent defeated the candidate with the next highest number of votes in the Kenema North constituency by 229 votes. Petitioner brought an election petition alleging that sections 25 and 74 of the Electoral Provisions Act, 1962 (the Act), had not been complied with and that respondent and his agents, in particular the paramount chief of the Gorama Mende chiefdom, A. K. Kanja, had been guilty of corrupt and illegal practices. To show non-compliance with the Act, petitioner alleged that "at Gawama Polling Station, the presiding officer was drunk even before the polling hour of 8 o'clock in the morning and remained in such drunken stupor until the hour of 2 o'clock in the afternoon. The polling station was therefore not opened until that hour. . . ."

Regarding corrupt and illegal practices, petitioner alleged, inter alia, that the paramount chief, A. K. Kanja, "threatened the tribal authorities and other office holders . . . with loss of their office or degradation of the same if they did not vote for the respondent"; that he "did interfere with a public meeting convened by the propaganda secretary of the Sierra Leone People's Party on behalf of . . . the S.L.P.P. candidate"; and that on election day he wrongfully entered two polling stations during the hours of voting "and failed to obey the orders of the presiding officers that he should leave the stations and further misconducted himself in such polling stations. . . ."

*Held*, for the petitioner, (1) the burden of proof was on respondent to show that the non-compliance with the Act could not have affected the result of the election.

(2) The election was conducted in accordance with the principles laid down in the Act and such non-compliance with the Act as there may have been did not affect the result of the election.

(3) The corrupt and illegal practices committed by A. K. Kanja for the purpose of procuring the election of the respondent prevailed so extensively that they could be reasonably supposed to have affected the result of the election.

Cases referred to: *Re Kensington North Parliamentary Election* [1960] 2 All E.R. 150; *North Durham Case* (1874) 2 O'M. & H. 152.

*Berthan Macaulay* for the petitioner.

*Cyrus Rogers-Wright* and *Kutubu I. Kai-Samba* for the respondent.

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"On May 8, 1962, at Konta in the compound of one Bockari Sama, the respondent and/or his agents, in particular the said paramount chief [A. K. Kanja], threatened the tribal authorities and other office holders in the town with loss of their office or degradation of the same if they did not vote for the respondent, contrary to section 72 of the Act."

The evidence relating to this allegation came from Francis Hinga Kobba and I accept it unreservedly. I do not believe the paramount chief's denial of it. I find the allegation proved.

As to (b), Mr. Berthan Macaulay relies only on the following portion, which reads:

"On May 11, 1962, at the said Konta, the respondent and/or his agents, in particular the said paramount chief [A. K. Kanja], did interfere with a public meeting convened by the propaganda secretary of the Sierra Leone People's Party on behalf of Bavoray Gamanga, the S.L.P.P. candidate."

On the whole of the evidence regarding this allegation I find that although the paramount chief cunningly yet openly canvassed for the respondent, he did not "interfere" with the meeting in the sense in which he could be penalised under sections 85 and 87 of the Act. Although this by itself, as was conceded by Mr. Berthan Macaulay, would not constitute good ground for avoiding the election, yet viewed from his previous and future activities, it appears to supply proof of an organised modus operandi on his part.

As to (c), which reads as follows:

"On May 23, 1962, at Tungi Town, the respondent and/or his agents, in particular the said paramount chief [A. K. Kanja], did cause the beating of a drum for the purpose of calling the tribal authorities and other townsmen in the town. Upon the assembly of such tribal authorities and townsmen, the paramount chief threatened the tribal authorities with loss of office and the townsmen with imprisonment or other similar restraint, contrary to section 72 of the Act."

I find this allegation substantially proved although denied by the paramount chief.

As to (d), which reads as follows:

"On May 25, 1962, that is, election day, both at Tungi (i) and Tungi (ii) polling stations, [the paramount chief] did wrongfully enter on several occasions during the hours of voting and failed to obey the orders of the presiding officers that he should leave the stations and further misconducted himself in such polling stations, all of which is contrary to sections 28 and 32 of the Act."

I find that on the evidence this allegation has not been proved. At the highest, it was only proved that the paramount chief unfortunately made a nuisance of himself in the polling stations named.

Now the question I have to decide is whether the corrupt practices laid on the doorstep of paramount chief A. K. Kanja, even though, on the evidence, not proved to be an agent for the respondent, but clearly committed for the promoting or procuring of the election of the respondent, so extensively prevailed that they may reasonably be supposed to have affected the result of the election.

In answering this question one has to take into consideration the fact that the paramount chief is the head of the tribal authority, the fountain from which all law and order and even public opinion springs.

On the evidence, this paramount chief appears to have embarked on a campaign of corrupt practices for the sole purpose of influencing the free will of the electors of his chieftdom, albeit the largest chieftdom of the constituency. On May 8 he made known to a crowd consisting of the tribal authority, section chiefs and villagers at Konta his support of the candidature of the respondent. He threatened to dislodge all office holders from their offices if they did not vote for the respondent. Again, on May 11, he openly canvassed for the respondent in a meeting held at Konta under the auspices of the petitioner. Also on May 23, two days before election day, at a full meeting of the tribal authorities, section chiefs and town chiefs, he caused to be distributed photographs of the respondent as well as those of his symbol, the matchet. He told all present that on election day they should drop their voting papers in the box which carried the photograph of the respondent and that of his symbol. He said that the reason why they should vote for the respondent was because he (the respondent) had made their roads motorable. He ended by threatening them all with removal from office if they did not vote for the respondent.

Now, when one considers the society where all this happened, and where it must be conceded that the vast majority of the electors are illiterate, could it be said that intimidation of this nature to the elders of the people who may or may not have disseminated the will of the paramount chief to their subjects did not constitute corrupt practices which so extensively prevailed that they may reasonably be supposed to have affected the result of the whole election? The yardstick, after all, is not whether the corrupt practices did in fact influence the result, but whether they may have influenced it. As I see it, the policy and theory of the law is that every man upon whom the election franchise is conferred should judge for himself who is the best and preferable candidate and give his vote accordingly. In this case, I find that this was not so but that the will of the paramount chief may have affected the result of the election. In the *North Durham Case* (1874) 2 O'M. & H. 152 at p. 157 Bramwell B. in his judgment stated, *inter alia* :

“I am of opinion that, where there has been so large an amount of intimidation that it is uncertain whether the result would have been the same without it, it cannot be said that the election was free or that it represented the real opinion of the constituency, but that it must be held void on account of that uncertainty.”

In the present case, I find on the evidence that there has been a large and inordinate amount of intimidation, an intimidation which shamelessly stemmed from the very source of an autocratic authority, permeating through all the sinews of governmental bodies, to probably the bare bones of the electorate. In such circumstances, what the judge has to do is to say that the burden of proof is cast upon the constituency whose conduct is incriminated, and unless it can be shown that the gross amount of intimidation could not possibly have affected the result of the election it ought to be declared void. Now in questions of this sort one must look not only to the amount of intimidation, but to the absolute majority which has been obtained. “. . . You are to look at the probable effect of intimidation, which consists of two things, the extent and operation of the intimidation, and the majority which the sitting members got” (the *North Durham Case*, p. 157).

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It is obvious that I have come to the conclusion that corrupt practices extensively prevailed. But they prevailed only in one place, namely, the Gorama Mende chiefdom—the largest and decisive chiefdom in the constituency. The result in this chiefdom was as follows: Bavoray Gamanga 1,877 votes, the A.P.C. candidate 4,119 votes and the respondent 7,412 votes. The respondent scored the highest votes in the whole constituency in this chiefdom. How is it possible to say under these circumstances with certainty that the result was not affected by the corrupt practices of the paramount chief even though the result of the entire election produced a narrow majority of only 229 votes in the respondent's favour? Such a state of things having been proved, I find myself bound to say that the election is avoided on account of the corrupt practices of the paramount chief, A. K. Kanja. I accordingly declare that the respondent, J. M. Kamanda, was not duly returned or elected and that the election held on May 25, 1962, is void. The respondent is ordered to pay the costs of these proceedings.

Freetown  
Oct. 5,  
1962

Dobbs Ag.P.J.

[SUPREME COURT]

DORIS SPENCER . . . . . Appellant  
v.

V. B. GIBSON . . . . . Respondent

[Mag.App. 44A/62]

*Real Property—Landlord and tenant—Ejectment—Whether mother member of son's "family"—Whether mother engaged in son's "whole-time employment"—Rent Restriction Act (Cap. 52, Laws of Sierra Leone, 1960), s. 12 (1) (d)—Rent Restriction (Amendment) Act, 1961 (No. 27 of 1961), s. 7.*  
*Appeals from Magistrates' Courts—Procedure where one or both parties attend—Appeals from Magistrates' Courts Act (Cap. 16, Laws of Sierra Leone, 1960), s. 18—Courts (Appeals) Act, 1960 (No. 18 of 1960), ss. 12, 30.*

Appellant lived on the ground floor of No. 50, Campbell Street, Freetown, as the tenant of respondent. Respondent brought ejectment proceedings against appellant in the Police Magistrate's Court, relying on section 12 (1) (d) of the Rent Restriction Act, which provides:

"Where the rental value of any dwelling-house or shop has been determined under this [Act] . . . no order or judgment for . . . the ejectment of a tenant therefrom shall be made or given by any court unless— . . . (d) in the case of a dwelling-house, it is reasonably required by the landlord for occupation as a residence for himself or his family or for some person engaged in his whole-time employment."

Respondent testified that he lived at No. 50, Campbell Street and that he needed the ground floor for his mother who cooked for him and took care of his house. The trial magistrates gave judgment for respondent, holding that his mother was "engaged in his whole-time employment."

At the hearing of the appeal, appellant did not appear and was not represented by counsel. Respondent was represented by counsel and also appeared in person.