EVALUATING THE MANDATE OF TRIBAL HEADS IN THE WESTERN AREA-DOES IT INCLUDE THE POWER TO ADJUDICATE?

By Alimamy Sultan Koroma Esq.

1. INTRODUCTION

As the proud grandson and namesake of a former Susu Tribal Head in Freetown, I am keenly aware of the significant role Tribal Authorities play towards national development. In fact, since Freetown became a British Crown colony in 1808 and the subsequent exodus of provincials into same, there has always been a need to have some form of leadership that would promote their interest, strengthen unity and uphold their customs in the Western Area. Tribal heads have served this need for generations and our history books are replete with examples of outstanding tribal leaders such as Kande Bureh who served his people with distinction.

Despite their significant roles, the question of whether they can exercise judicial authority has plagued tribal headmanship for decades. In 1967, The Government of Brigadier Andrew Juxon Smith banned them outright on the basis that tribal authorities undermined national unity and are incompatible with the laws. But in 1975, they made a comeback and as Barbara E. Harrel-Bond puts it “the civilian government not only extended official recognition but also took other legislative and administrative steps which could further emphasize ethnicity and enhance the position of headmen in urban areas throughout the country.”

Today, it is believed that there are well over 150 tribal courts in the Western Area adjudicating mainly on customary law, but also on any matters brought before them be it civil or criminal. Unlike a formal court, there are no rules of evidence, legislations or principles of equity and natural justice to inform judgments. The result has been an appalling abuse of human rights especially against women and children.

It is against this backdrop that I have sought to enquire whether these “courts” have any legal basis or authority to try cases.

2. HUMAN RIGHTS VIOLATIONS

Between January and August 2018, I took up a part-time job at Lady Ellen Women’s Aid Foundation as Legal Officer. LEWAF is a nongovernmental organization that promotes access to justice for women and children in two of the most deprived communities in the
Western Area- Calaba Town and Waterloo. My role as Legal Officer included working with traditional authorities in order to protect human rights.

During the said role, I came to gain first-hand experience about the excesses and human rights abuses prevalent in MAJORITY of the tribal courts. Two of these experiences stand out.

In one case, a 27 year old housemaid and single mother appeared before a local chief on accusations of witchcraft and abusive language. She was accused by her former employer who owed her over Le 500,000 in backlog salaries. In less than 1 hour of hearing, the chief found her guilty of both counts and she was ordered to confess the details of her witchcraft. When she refused, she was assaulted, chained and locked up for two weeks with little or no food.

In another case, a 16 year old single mother in Yams Farm was summoned before a tribal headman in Waterloo. She had been accused by her neighbor of threatening language and defamatory libel. As soon as she arrived in court, she was instructed to repay the “cashie” of Le 50,000 before proceedings could commence. Since she could not repay the said amount, the chief detained her together with her four month old baby. Fortunately, the issue was brought to our notice and one of our paralegals promptly intervened. The Chief eventually released her but only after four hours of detention and thanks to the incessant crying of her baby which greatly disturbed proceedings.

3. THE LAW

There are essentially five (5) key legislations relating to the authority of tribal heads in the Western Area. They are the Tribal Administration (Western Area) (Amendment Act) 1975 No. 11 of 1975, Local Courts Act 2011, the Chieftaincy Act 2009, The Local Government Act 2004, and the Constitution of Sierra Leone, Act No. 6, 1991. Of these, the Tribal Administration (Western Area) (Amendment Act) 1975 No. 11 of 1975 and the Local Courts Act 2011 are the most instructive.

The Tribal Administration Act is the principal legislation that defines the power and functions of tribal authorities in Freetown. The act clearly restricts the authority of tribal authorities to administrative functions. There is nowhere in the said act that empowers tribal authorities to try cases, and according to the distinguished learned Chief Justice COE COLE “the act shows quite clearly and in specific terms that in the Western Area no tribal authority is to exercise judicial functions.”

The Local Courts Act of 2011 is also relevant in understanding the administration of justice at the local level. Its long title gives a clue as to the purpose of the act. It reads “Being an act
to provide for the establishment and operation of Local Courts, the administration of justice in the provinces and for other related matters”. The act defines “customary law” as “any rule other than a rule of general law, having the force of law in any Chiefdom of the provinces…. “ The Western Area not being a chiefdom in the province, it follows therefore that all local courts within it are illegal.

Furthermore, Section 2 of the said act provides that local courts are presided over by Chairmen and Vice Chairmen (not chiefs) who are appointed by the Chief Justice. Section 44 makes it an offence punishable by a fine of Le 200,000 or 1 year imprisonment or both, for anyone to illegally sit as a local court without authority. In other words, these chiefs are actually committing an offence.

Another relevant legislation is The Chieftaincy Act, 2009 which defines the powers and functions of Paramount Chiefs or Chiefs. Section 29 defines the roles of chiefs and includes inter alia collection of tax, promoting customs and making bye laws.

And finally section 23 of the Constitution of Sierra Leone 1991 guarantees provision to secure protection of law. A defendant must be “be afforded a fair hearing within a reasonable time by an independent and impartial court ESTABLISHED BY LAW”.

4. CONCLUSION

There is no ambiguity in the law regarding the judicial authority of tribal headmen in the Western Area- they have no authority whatsoever to adjudicate on cases. Save for mediation purposes, tribal headmen lack the locus standi to summon anyone to their “courts”

That said, we have to be mindful of the fact that the “mainstream justice sector” simply lacks the resources, independence and accessibility to deliver justice in a timely and cost effective manner. As OSIWA noted in its report entitled Sierra Leone: Justice Sector and the Rule of Law, “Poor coordination within the sector continues to inhibit complete reforms, while undue executive influence remains a relentless problem. Long delays in hearing cases, lack of adequate legal aid services, discriminatory laws and allegations of corruption continue to impede universal access to justice.”

Faced with this reality, litigants in the Western Area have turned to kangaroo courts which are comparatively faster, easier and cheaper as a last resort to meet their legal needs.

While sensitizing the public would help expose the illegality of these so called courts and hopefully reduce their clientele, until and unless we reform the judiciary, we can be assured that the tribal head in Waterloo who unlawfully detained that poor girl and her baby would continue to hear cases despite my rambling on social media.
Alimamy Sultan Koroma is a Barrister and Solicitor of the High Courts of Sierra Leone and an LLM candidate (Class of 2019), University College Dublin, Ireland. His key interests are human rights law, constitutional law and criminal law.