Privy Council Appeal No. 49 of 1933.

Ohene Moore - - - - - - - - - *Appellant*

v.

Akesseh Tayee - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH OCTOBER 1934.

Present at the Hearing:

LORD ATKIN.
LORD ALNESS.
SIR SIDNEY ROWLATT.

[*Delivered by* LORD ATKIN.]

This is an appeal from the judgment of the West African Court of Appeal, Gold Coast Session, reversing a judgment of the Provincial Commissioner of the Western Province who had reversed a judgment of the Native Tribunal of the Omanhene of Beyin, and the question in the case is whether or not the Provincial Commissioner had jurisdiction to entertain at all the appeal from the Native Tribunal. The action was brought by the plaintiff for damages for trespass on his land and for unlawfully arresting the plaintiff's men. The Native Tribunal had given judgment for the defendant.

Now the rules regulating appeals from the Paramount Chief's Tribunal (which this was) are laid down by the Native Administration Ordinance, which is now Chapter 111 of the Laws of the Gold Coast Colony 1928. By section 77, sub-section (1):—

> "A party desiring to appeal from a Paramount Chief's Tribunal shall first obtain the leave of such Tribunal so to do; provided that, if the said Tribunal shall have refused such leave, the Provincial Commissioner's Court or the District Commissioner's Court may nevertheless grant leave to appeal."

Then by sub-section (2) it is provided :—

> " Leave to appeal from the Paramount Chief's Tribunal shall not be granted unless and until the Appellant shall either have paid the costs in such Tribunal or shall have deposited therein or in the Court to which the appeal is being taken a sum of money sufficient to satisfy such costs ; and such Court shall not grant a stay of execution with respect to the said costs."

An application was made to the Native Tribunal Court for leave to appeal and the Native Tribunal granted conditional leave to appeal on the following conditions. The respondent was " to deposit £10 into Tribunal against cost of making up and transmission of appeal record ; (2) to enter into bond in sum of £21 2*s*. 6*d*. in two sureties of £25 each to be justified against costs in Appeal Court ; (3) to give notice of the appeal to all parties affected by the appeal ; (4) conditions to be fulfilled within one month from date." On an affidavit by the respondent that those conditions had been fulfilled final leave to appeal was eventually given. Two bonds were entered into. One was a bond in the sum of £21 2*s*. 6*d*. and the other was in the sum of £50, each given by two sureties and each was conditional for the payment of costs in the Appeal Tribunal. So that in fact no provision was made for the costs in the first Court at all.

Now the unfortunate thing is that that order so made by the Court of first instance did not comply with the provisions of the statute which provides that " Leave to appeal from a Paramount Chief's Tribunal shall not be granted unless and until the appellant shall either have paid the costs in such Tribunal or shall have deposited therein or in the Court to which the appeal is being taken a sum of money sufficient to satisfy such costs." To begin with, a bond is not payment of money, and in the second place, if it had been a payment of money, these particular bonds are not conditioned for payment of the costs in the Native Tribunal but were conditioned for payment of costs in the Appellate Court, though the amount of money, £21 2*s*. 6*d*., appears to be the amount of the taxed costs in the Native Tribunal Court. It is sufficient to say that the statutory condition upon which alone leave to appeal could be given was not fulfilled. When the appeal came before the Provincial Commissioner this point was taken, and he perhaps not unnaturally treated it as a technicality which he could sweep aside, and ordered that the costs incurred by the respondent, £21 2*s*. 6*d*., in the Court of first instance should be at once paid to his Court, and that was eventually done. He then proceeded to allow the appeal.

Unfortunately, as was found by the majority of the Court of Appeal and as their Lordships think, the Provincial Commissioner had no jurisdiction to make any order at all, because no appeal was properly before him. After all, it is to be remembered that all appeals in this country and elsewhere exist merely by statute and unless the statutory conditions are fulfilled no jurisdiction is given to any Court of Justice to entertain them.

It is not unnatural that Mr. Justice Howes, dissenting in the full Court, did his utmost to try and uphold this order; but their Lordships find themselves unable to accept his reasoning. In the first place, he came to the conclusion that the costs referred to were only the costs in the Native Tribunal so far as they related to preparing and getting ready the appeal. That, in their Lordships' view, is not the meaning of the section which applies to the respondent's taxed costs of the hearing in the original Court. The other grounds which are referred to by the learned Judge relate to powers which are given to an Appellate Court to adopt certain procedure, to waive rules, and to try and do substantial justice—all very important powers, but which can only be brought into play once the Appellate Court is seised of the appeal and has jurisdiction to entertain it.

But the objection lies *in limine*, in that the Provincial Commissioner had no jurisdiction at all; and therefore the reference to these powers unfortunately is irrelevant to the question of the Provincial Commissioner being able to give relief. It is quite true that their Lordships, as every other Court, attempt to do substantial justice and to avoid technicalities; but their Lordships, like any other Court, are bound by the statute law, and if the statute law says there shall be no jurisdiction in a certain event, and that event has occurred, then it is impossible for their Lordships or for any other Court to have jurisdiction.

For these reasons their Lordships have come to the conclusion that the judgment given by the learned Chief Justice in the Court of Appeal is correct and they adopt his reasoning, and will therefore humbly advise His Majesty that this appeal should be dismissed.

In the Privy Council.

OHENE MOORE

v.

AKESSEH TAYEE.

DELIVERED BY LORD ATKIN.

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