COURTS

1959 No. 1977

The Sierra Leone and the Gambia Court of Appeal Order in Council, 1959

Made - - - -	*20th November*, 1959
Laid before Parliament	*26th November*, 1959
Coming into Operation	*19th May*, 1960

At the Court at Buckingham Palace, the 20th day of November, 1959

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), the Foreign Jurisdiction Act, 1890(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1.—(1) This Order may be cited as the Sierra Leone and the Gambia Court of Appeal Order in Council, 1959.

(2) This Order shall come into operation on such day (in this Order referred to as " the appointed day ") as the Governor may by Proclamation published in the Gazette appoint.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

" appeal " includes a reserved question of law and a case stated ;

" the Court " means the Sierra Leone and the Gambia Court of Appeal established by this Order ;

" the full Court " means the Court constituted in accordance with section 16 of this Order ;

" the Gambia " means the Colony and the Protectorate of the Gambia ;

" the Gazette " means the Sierra Leone Royal Gazette ;

" the Governor " means the Governor, Commander-in-Chief and Vice-Admiral of Sierra Leone and includes the officer for the time being administering the government and, to the extent to which the Deputy Governor is authorised to discharge the functions of the Governor, the Deputy Governor ;

" judgment " includes decree, order, conviction, sentence and decision ;

" Justice of Appeal " means a Justice of Appeal of the Court ;

" the President " means the President of the Court ;

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.

"the public seal" means the public seal of the Colony of Sierra Leone;

"Sierra Leone" means the Colony and Protectorate of Sierra Leone;

"superior court" means in relation to Sierra Leone the Supreme Court of Sierra Leone and in relation to the Gambia the Supreme Court of the Colony of the Gambia or the High Court of the Protectorate of the Gambia;

"Territory" means Sierra Leone or the Gambia.

(2) Any reference in this Order to the holder of an office by the term designating his office includes any person who is for the time being authorised to perform the functions of that office.

(3) The powers conferred upon the Governor by this Order shall be exercised by him in his discretion.

(4) Save as is in this Order otherwise provided or required by the context, the Interpretation Act, 1889(a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Establishment of Court of Appeal

3.—(1) There shall be a Court of Appeal for Sierra Leone and the Gambia which shall be styled the Sierra Leone and the Gambia Court of Appeal and shall be a superior court of record.

(2) The judges of the Court shall be a President, such Justices of Appeal, if any, as may be appointed under the provisions of this Order and the judges of the superior courts of the Territories.

(3) No office of Justice of Appeal shall be abolished while there is a substantive holder thereof.

(4) The Court shall be deemed to be duly constituted notwithstanding a vacancy in any office of judge of the Court.

Seal of the Court

4.—(1) The Court shall have and use, as occasion may require, a seal bearing the style of the Court and a device approved by a Secretary of State.

(2) Until such a seal is provided a stamp bearing the style of the Court and countersigned by a Registrar of the Court may be used instead.

Appointment of President and Justice of Appeal

5.—(1) The President and any Justice of Appeal shall be appointed by the Governor, by instrument under the public seal, in pursuance of Her Majesty's instructions given through a Secretary of State.

(2) A person shall not be qualified for appointment as President or as a Justice of Appeal unless—

(*a*) he possesses the qualifications, other than any qualifications with respect to age, necessary for appointment as a judge of a superior court of one of the territories;

(*b*) he has held office, either in a substantive or an acting capacity, as a judge of the West African Court of Appeal constituted under the West African Court of Appeal Order in Council, 1948(b).

(a) 52 & 53 Vict. c. 63. (b) S.I. 1948/1330 (Rev. VIII, p. 390: 1948 I, p. 1361).

Acting appointments

6.—(1) Subject to any instructions which may be given to him by Her Majesty through a Secretary of State, the Governor, as occasion may require, may by instrument under the public seal appoint a Justice of Appeal, a judge of a superior court of one of the Territories, or a person who possesses either of the qualifications referred to in subsection (2) of section 5 of this Order, to act as President or appoint such a judge or such other person as aforesaid to act as a Justice of Appeal.

(2) A person appointed under subsection (1) of this section to act as President or as a Justice of Appeal shall, unless he earlier resigns his office or is removed therefrom under section 8 of this Order, continue so to act until the end of the period for which he is appointed or, if he is not appointed for a specified period, until the Governor terminates his acting appointment on the ground that his services as Acting President or as an Acting Justice of Appeal, as the case may be, are no longer required:

Provided that in the case of an Acting Justice of Appeal the Governor shall not terminate his acting appointment without the concurrence of the President.

Tenure of office of President or a Justice of Appeal

7.—(1) Subject to section 8 of this Order and subsections (2) and (3) of this section, the President or a Justice of Appeal shall vacate his office—

(*a*) at the expiration of such fixed period as may be prescribed in the instrument by which he is appointed to his office; or

(*b*) if no such period is so prescribed, then

(i) in the case of a person who is appointed before he attains the age of sixty-five years, on the date on which he attains that age or on the expiration of a period of three years beginning on the date on which he is appointed, whichever is the later; and

(ii) in the case of any other person, at the expiration of a period of three years beginning on the date on which he is appointed.

(2) At the request of the President, the Governor may, by instrument under the public seal, direct that the President or any Justice of Appeal shall continue in office for such further period after the date when he would otherwise have vacated his office under subsection (1) of this section as may be necessary to enable the President or that Justice of Appeal, as the case may be, to deliver judgment or to do any other thing in relation to proceedings that were commenced before the President or that Justice of Appeal, whether sitting as a member of the full Court or as a single judge, before the date aforesaid.

(3) The President or a Justice of Appeal may at any time resign his office by writing under his hand addressed to, and received by, the Governor.

Removal of President or a Justice of Appeal

8.—(1) The President or a Justice of Appeal may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with subsection (2) of this section.

(2) The President or a Justice of Appeal shall be removed from office by the Governor by order under the public seal if the question of removing him from office has, at the request of the Governor made in pursuance of subsection (3) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act, 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(3) If the Governor considers that the question of removing the President or a Justice of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then

(*a*) the Governor shall by order under the public seal (which he may vary or revoke by a subsequent order) appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of removing the President or the Justice of Appeal from office should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Governor shall request that the question should be referred accordingly.

(4) Subject to the provisions of subsection (3) of this section, the provisions of the Commissions of Inquiry Ordinance of Sierra Leone(b) as in force on the appointed day, shall apply in relation to a tribunal appointed by an order made under that subsection as if the members thereof were commissioners appointed by a commission issued under the Ordinance and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(5) If the question of removing the President or a Justice of Appeal from office has been referred to a tribunal under subsection (3) of this section the Governor may suspend the President or, as the case may be, the Justice of Appeal from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor that he should not request that the question of removing the President or the Justice of Appeal from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(6) This section shall apply to any person appointed to act as President or as a Justice of Appeal as it applies to a substantive holder of such office but without prejudice to any provision in this Order for the termination of the appointment of such person when his services as Acting President or as an Acting Justice of Appeal are no longer required.

(a) 3 & 4 Will. 4. c. 41. (b) Laws of Sierra Leone, Rev. 1946, c. 38.

Salaries, etc. of judges

9.—(1) The President and any Justice of Appeal shall receive such salary as may be determined by a Secretary of State after consultation with the Governors of the Territories.

(2) A person appointed to act as President or as a Justice of Appeal shall receive such remuneration as may be determined by the Governors of the Territories.

(3) The salary of the President or a Justice of Appeal and the remuneration of any person appointed to act as President or as a Justice of Appeal shall not be reduced after his appointment.

(4) Any sums payable by way of salary or other remuneration under this section shall be a charge on and paid out of the Fund created under section 23 of this Order.

Pensions, etc. of judges

10.—(1) Subject to subsection (2) of this section the laws, regulations and other instruments for the time being in force in Sierra Leone relating to pensions, gratuities and other like benefits and conditions of office (including allowances which are not taken into account in computing pensions) which apply to the judges of the Supreme Court of Sierra Leone shall, subject to such adaptations, modifications and additions as a Secretary of State may from time to time direct, apply to the President and the Justices of Appeal, if any, as if they were judges of that Court.

(2) The pension rights and other conditions of office of the President or any Justice of Appeal shall not be made less favourable to him after his appointment; and for the purpose of this subsection, if he elects that one of two or more laws shall apply to him, that law shall be deemed to be more favourable than the other law or laws.

Precedence of judges

11. The President shall take precedence of all other judges of the Court and the seniority of the other judges shall be determined according to instructions to be given from time to time by a Secretary of State or in the absence of such instructions by the President.

Oaths to be taken by judges

12. A judge of the Court shall before entering upon the functions of his office make and subscribe before the Governor of either of the Territories or some other person authorised by him in that behalf, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Order.

Officers of the Court

13.—(1) There shall be such Registrars and other officers of the Court, appointed in such manner and on such terms, as a Secretary of State may direct.

(2) Any officer of the Court, not otherwise holding office under the Government of either of the Territories, shall be in the public service of Sierra Leone and accordingly any laws, regulations and other instruments for the time being in force in Sierra Leone, relating to pensions, gratuities and other like benefits to the terms and conditions of service (including allowances which are not taken into account in computing pensions) shall, save as may be otherwise expressly provided

therein and subject to the provisions of section 23 of this Order and to such adaptations, modifications and additions as a Secretary of State may from time to time direct, apply to them as if they were officers of the Supreme Court of Sierra Leone.

Concurrent appointments

14.—(1) Where the holder of any office constituted by or under the provisions of this Order is on leave of absence pending relinquishment of his office, the Governor may appoint another person to that office.

(2) Where two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) of this section then for the purposes of any functions conferred upon the holder of that office the person last appointed to the office shall be deemed to be the holder of the office.

Court may sit in divisions

15. The Court may sit in two or more divisions as may be directed by the President and every judge of the Court may sit in any division.

Number of judges

16.—(1) The Court shall be duly constituted if it consists of an uneven number, not being less than three, of the judges of the Court.

(2) The determination of any question before the Court shall be according to the opinion of the majority of the judges of the Court hearing the case.

Power of a single judge

17.—(1) A single judge of the Court may exercise any power vested in the Court not involving the determination of an appeal :

Provided that—

(*a*) in criminal matters, if a single judge refuses an application to exercise any such power in favour of the person making the application, that person shall be entitled to have his application determined by the Court constituted as provided by section 16 of this Order ;

(*b*) in civil matters, any order, direction or decision made or given by a single judge may be varied, discharged or reversed by the Court, constituted as aforesaid.

Judge not to sit on appeal from his own decision

18. A judge of the Court shall not sit as a judge on the hearing of of an appeal—

(*a*) from any judgment given by himself, or any judgment given by any court of which he was a member ;

(*b*) against a conviction or sentence if he was the judge before whom the appellant was convicted or sentenced.

Jurisdiction of Court

19. The Court shall have jurisdiction to hear and determine such appeals from a superior court of a Territory as may be prescribed by or under any law enacted by the Legislature of that Territory and, in connection with such appeals, shall have such powers and authorities as are conferred upon it by this Order or may be conferred upon it by or under any law enacted by the Legislature of that Territory and,

subject as aforesaid, for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the Court shall have all the powers, authority and jurisdiction vested in the court from which the appeal is brought.

Enforcement of order of the Court

20.—(1) A judgment of the Court given in any appeal shall be enforced in like manner as if it were a judgment of the court from which the appeal is brought.

(2) The Court shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court, which any superior court of either of the Territories has power to make as respects the area within its jurisdiction.

Law to be applied

21. The Court shall, in determining any appeal, apply the law of the Territory from the superior court of which the appeal is brought.

Rules of court

22.—(1) Subject to the provisions of this Order, the President and any two other judges of the Court selected by the President may make rules of court for regulating the practice and procedure of the Court in exercise of the jurisdiction conferred upon it by or under this Order and, in connection with appeals brought to the Court, the practice and procedure of any court from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section rules of court may be made for the following purposes:—

(*a*) for regulating the sittings of the Court and the selection of judges for any purpose;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;

(*d*) for providing for, and regulating, the hearing of appeals with the assistance of one or more assessors and prescribing their remuneration;

(*e*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;

(*f*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;

(*g*) for prescribing and regulating the powers and duties of officers of the Court;

(*h*) for prescribing the time within which any requirement of the rules is to be complied with.

(2) Rules of court shall not take effect until they have been approved by a Secretary of State:

Provided that if it is certified in any rules that it is necessary that they should take effect before such approval can be obtained such

rules may take effect accordingly, but may be disallowed by a Secretary of State and shall cease to have effect, without prejudice to anything lawfully done thereunder, on publication by the Court of notice of such disallowance.

(3) All rules of court made under the West African Court of Appeal Orders in Council, 1948 to 1957(a), and in force immediately before the appointed day shall, until amended or revoked by rules of court made under this Order, remain in force and, for the purposes of this Order, be deemed to have been made under this Order but shall be applied with any adaptations, modifications and additions which the Court may consider necessary or just in consequence of the provisions of this Order.

Financial provisions

23.—(1) There shall be established in Sierra Leone a fund to be called the Sierra Leone and the Gambia Court of Appeal Fund.

(2) Subject to the provisions of subsection (6) of this section there shall be paid into the said fund—

(*a*) all moneys which, immediately before the appointed day, are comprised in or due to the West African Court of Appeal Fund established by section 18 of the West African Court of Appeal Order in Council, 1948, as amended by the West African Court of Appeal (Amendment) Order in Council, 1955(b), and the West African Court of Appeal (Amendment) Order in Council, 1957(c);

(*b*) such contributions from the Territories as may from time to time be determined by their Governments with the approval of a Secretary of State;

(*c*) any revenues of the Court;

(*d*) any sum that may become due to the fund otherwise than by virtue of the foregoing provisions of this subsection.

(3) There shall be paid out of the said fund all expenses of the Court, including—

(*a*) the salaries, allowances and expenses of the President and any Justice of Appeal;

(*b*) the remuneration and expenses of any person appointed to act as President or as a Justice of Appeal;

(*c*) any allowances and expenses payable to the judges of the superior courts of the Territories by reason solely of their membership of the Court;

(*d*) any salaries, allowances and expenses payable to the officers of the Court by reason solely of their employment as such;

(*e*) any remuneration, allowances and expenses payable to assessors;

(*f*) the cost of the provision of premises for the use of the Court and of residences for the President, any Justice of Appeal, and any officer of the Court not otherwise holding office under the Government of either of the Territories.

(4) Where by virtue of section 10 or section 13 of this Order any pension, gratuity or like benefit or any other sum is payable out of public funds of Sierra Leone, the Government of the Gambia shall

(a) S.I. 1948/1330 (Rev. VIII, p. 390: 1948 I, p. 1361), 1955/1821, 1956/1700, 1957/279 (1955 II, p. 3168; 1956 II, p. 2979; 1957 II, p. 3059).
(b) S.I. 1955/1821 (1955 II, p. 3168). (c) S.I. 1957/279 (1957 II, p. 3059).

pay to the Government of Sierra Leone in respect thereof such contributions as may from time to time be determined by the Governments of those Territories with the approval of a Secretary of State.

(5) The general revenues of a Territory are hereby charged with the payment of any contribution from that Territory that is required to be paid into the said fund by virtue of paragraph (*b*) of subsection (2) of this section.

(6) All fees payable by virtue of any rules of court made under this Order shall be paid into the general revenues of the Territory wherein the proceedings in respect of which the same are payable were commenced.

Transitional provisions

24.—(1) Any proceedings which immediately before the appointed day are pending in the West African Court of Appeal may, as from that day, be carried on in the court established by this Order as if they had been commenced in that court and may for that purpose be amended, by order of any judge of that court or under any rule of court, in such manner as appears necessary or proper in consequence of the provisions of this Order:

Provided that, unless it is otherwise provided by any rule of court, a part-heard appeal shall be continued before the same persons as judges or shall be heard *de novo*.

(2) Any judgment of the West African Court of Appeal given, but not satisfied, before the appointed day may be enforced on or after the appointed day as if it were a judgment of the court established by this Order.

(3) All records of the West African Court of Appeal relating to proceedings commenced in either of the Territories shall on the appointed day be transferred to the court established by this Order.

Saving of existing appeal laws

25. The West African Court of Appeal (Civil Cases) Ordinance(**a**), and the West African Court of Appeal (Criminal Cases) Ordinance(**b**), of Sierra Leone and the West African Court of Appeal Ordinance(**c**), of the Gambia (being laws that provide for appeals from superior courts of the Territories to the West African Court of Appeal and matters incidental thereto) shall, subject to amendment or repeal by the respective Legislatures of the Territories, continue in force after the commencement of this Order, but shall have effect as if they were laws, enacted in pursuance of section 19 of this Order, providing for appeals from those superior courts to the court established by this Order, and matters incidental to such appeals, and for that purpose they shall be construed with the necessary adaptations and modifications and in particular as if references therein to the West African Court of Appeal and the judges and officers of that court were references to the court established by this Order and the judges and officers thereof.

(**a**) Laws of Sierra Leone, Rev. 1946, c. 264. (**b**) Laws of Sierra Leone, Rev. 1946, c. 265. (**c**) Laws of the Gambia, Rev. 1955, c. 6.

Revocation and retrospective amendment

26.—(1) The West African Court of Appeal Order in Council, 1948(**a**), the West African Court of Appeal (Amendment) Order in Council, 1955(**b**), the West African Court of Appeal (Amendment) Order in Council, 1956(**c**), the West African Court of Appeal (Amendment) Order in Council, 1957(**d**), and the West African Court of Appeal (Amendment) Order in Council, 1958(**e**), are revoked.

(2) Subsection (2) of section 7 of the West African Court of Appeal Order in Council, 1948, as set out in the West African Court of Appeal (Amendment) Order in Council, 1958, shall be deemed to have had effect as from the commencement of the last-mentioned Order as if the words " or any person who has held office as a judge of the West African Court of Appeal " had been inserted therein immediately after the word " Territories ".

W. G. Agnew.

SCHEDULE

(Section 12)

A. Oath or Affirmation of Allegiance

I ..... do swear [or solemnly and sincerely affirm and declare] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.

So help me God. (To be omitted in affirmation.)

B. Judicial Oath or Affirmation

I ..... do swear [or solemnly and sincerely affirm and declare] that I will well and truly serve Our Sovereign Lady Queen Elizabeth the Second in the office of..... ..... and will do right to all manner of people after the laws and usages of Sierra Leone and the Gambia without fear or favour, affection or illwill.

So help me God. (To be omitted in affirmation.)

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The purpose of this Order is to constitute a Court of Appeal for Sierra Leone and the Gambia to exercise the powers of an appellate court in relation to those territories which formerly were exercised by the West African Court of Appeal.

(a) S.I. 1948/1330 (Rev. VIII, p. 390 : 1948 I, p. 1361).
(b) S.I. 1955/1821 (1955 II, p. 3168).
(c) S.I. 1956/1700 (1956 II, p. 2979).
(d) S.I. 1957/279 (1957 II, p. 3059).
(e) S.I. 1958/1525 (1950 II, p. 2876).