

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW

SUIT NO. C.L. NO. S.049 OF 1974

BETWEEN NEHEMIAH STERLING PLAINTIFF
AND COLIN L. G. HARRIS DEFENDANT

Eric Frater for Plaintiff

Horace Edwards Q.C., and Noel Edwards Q.C., for Defendant

November 11, 1979; March 14, 1980; September 16,
17, 18, 1985; February 24, 25, 26, 1986; and

7/7/88

ORR, J:

Let me at the outset apologise for the delay in delivering this judgment. This case has been plagued with a litany of laches. I do not offer this as an excuse but merely to indicate the history of this matter.

The Writ of Summons was filed on the 23rd April 1974. Trial commenced on the 11th November, 1979, continued on the 14th March, 1980, and then lay dormant until 1984 when it was revived but no further hearing occurred until 1985 when the matter continued with a change of attorneys for the defence. After further hearing it was concluded in February 1986 when I reserved judgment.

The Maroons occupy a unique position in the history of Jamaica. The prowess of the only female National Hero, Nanny, is well known. In this action, some of her descendants are embroiled in a dispute over leadership.

In 1964 the Maroons of Moore Town in the parish of Portland elected the defendant, Colin Harris as their leader with the title of Colonel.

Disputes arose concerning his leadership and there was a purported election on the 1st August, 1973, at which the defendant was voted out of office and the plaintiff elected as the new leader with the style and title of President, a title hitherto unknown in the history of the Maroons.

The defendant refused to demit office on the ground that he was elected for life.

As a result the plaintiff brought this action in which he claims:

" (i) A DECLARATION -

- (a) That the defendant has been legitimately removed as Colonel of the Maroons by the Maroons meeting on their traditional Muster Ground on the 19th July 1973;
- (b) That the plaintiff was duly elected by the Maroons according to their traditional practice, as the elected leader of the Maroons of Moore Town on the 1st August 1973, and has thus replaced the defendant as Colonel of the Maroons.

(ii) AN ORDER -

That the said defendant do give up the documents entrusted to him when elected to office, and any documents received by him since his incumbency in office to the said plaintiff and in particular the lease documents in respect of Seaman's Valley."

The defendant in his defence admitted refusing to give up the documents entrusted to him as leader of the Maroons and asserted that he is still Colonel of the Maroons and was elected for life.

Much time was spent on an examination and refutation of the allegations against the defendant which led to dissatisfaction with his leadership.

The complaints in summary were to the effect that the defendant had not acted in accordance with Maroon customary law in dealing with the Maroons. In my opinion the merits or otherwise of these contentions are immaterial to a resolution of the issues for determination. In any democratic system of government, the electorate are at liberty to be as fickle as they choose in dismissing and electing leaders. One calls to mind the late great statesman Sir Winston Churchill, who was summarily discarded by the electorate after playing such a major part in the victory of England and her allies in the second World War.

It will be necessary to give an outline of the history of the Maroons in order to appreciate the issues involved.

I wish to express my gratitude to Mrs. Beverley Carey, herself a Maroon, who gave evidence for the Defence. She has done considerable research on the Maroons and was of invaluable assistance to me in my efforts to resolve the issues.

It is important to note that the Maroons have an oral tradition, their history has been handed down from person to person, not documented. This has given rise to conflict on various aspects of the customs of the Maroons.

OUTLINE OF THE HISTORY

After the arrival of the English a number of the Maroons went to the East of the Island to hide. In 1690 they were in the foothills of the Blue Mountains and moved inwards when pressed by the English forces and eventually set up a town called Nanny Town sometime in 1702. The custom was to name towns after the leaders. Thus Nanny was the Chief in charge of Nanny Town.

This town was under constant attack by the English soldiers from about 1733. As a result Nanny had the women and children removed to New Nanny Town which was subsequently renamed Moore Town.

In the West, Cudjoe signed a treaty with the English 1738 - 1739. This treaty related exclusively to the Leeward Maroons. Nanny was distrustful of the English and refused to sign a similar treaty.

Eventually Quao who was one of Nanny's followers signed a treaty on behalf of the Maroons. Nanny was present but refused to sign. This treaty set out the order of succession to Quao.

Nanny eventually moved to New Nanny Town and received her own Patent.

After her death there were various leaders of the Maroons of Moore Town culminating in the appointment of the defendant in 1964.

THE SYSTEM OF GOVERNMENT

There are no written laws. The Maroons are governed by customary law.

The defendant asserted that there were in existence By-Laws.

He had updated these By-Laws and had sent them to his publishers in the United Kingdom for inclusion in a book which he had written. Despite the protracted period occupied by the trial these By-Laws were never produced.

The defendant states that the By-Laws indicate that the Colonel is elected for life. However, no reliance can be placed on this statement in the absence of the By-Laws themselves.

At the head of the government is the leader styled the Colonel. After the treaty the Maroons acquired military status and titles and so that title of Colonel, then the highest rank in the British Army was acquired.

The Colonel is assisted by a Committee of some thirty-two (32) persons.

The senior member is the Major, then the Captain and Secretary. Meetings are summoned by the Captain or Major after consultation with the Colonel. Public meetings are held at the Muster Ground. The populace is summoned by means of the "OBRAFU" - Town Crier. It appears that he acts on authority of the Committee. The OBRAFU summons the people some days before the meeting.

On the day of the meeting the Abeng - a horn is blown which can be heard beyond the reaches of the OBRAFU. Both the plaintiff and defendant agreed that an official Abeng blower was appointed by the Committee.

THE ELECTION OF THE COLONEL

The only evidence in recent times was that of the appointment of the defendant who succeeded Colonel Downer. It was the plaintiff's case that Downer was voted out of office. The defendant said that Downer was tricked by the Committee and resigned as a consequence. The Defence also produced the minute book containing minutes of meeting held.

Although the plaintiff and his witnesses strongly denied that Downer had resigned, it is interesting to note the evidence of Mrs. Mary Green, 42 years of age, who is related to the

defendant. A former supporter of the defendant she was dissatisfied and demonstrated this by an out-burst in Court. She denied that Downer had resigned but said significantly:

" Colonel Downer asked the people to take it away from him. He gave it to the people because the people call for it ".

The statement clearly supports the contention of the Defence that Downer resigned as a Colonel.

Mrs. Carey in her research had the names of the Colonels from 1828 to 1835 and from 1865 to the present.

She was of the opinion that all the Colonels for which records existed died on the job.

She stated that after the abolition of slavery the Maroons had their own slaves and there was no necessity for them to hunt for slaves. The hunt was always led by the Colonel accompanied by the Major or Captain. When the hunt became unnecessary there was no need for the Colonel to resign on the ground of ill-health.

On the balance of probabilities I find that the Colonels all served until death. That it was the custom of the Maroons that the Colonels should be elected for life. That the Colonels could resign if dissatisfaction was expressed by the community and that Colonel Downer resigned as Colonel and the defendant was elected for life in his stead.

It is of note that the Maroons at Accompong elect a leader every five (5) years. No evidence was led however as to the basis for this practice nor the manner in which this order of succession was achieved.

Assuming however that my conclusions are incorrect, the question for decision is whether the purported election of the plaintiff was valid.

Notices were sent out to the adjoining communities. None were produced at the trial. The defendant admitted that he received a notice. His was the only evidence of the contents of the notice which read:

" Dear Mr. Harris,

There will be a meeting on Thursday evening in which you will have to play an important role.

(Sgd.) The Maroons of Moore Town".

The defendant, secure in his knowledge of the customs of the Maroons, treated this missive with contempt. It was his opinion that a meeting could not be summoned in this manner. He gave two versions as to his disposal of the notice.

(1) He had sent it to his publishers; and

(2) He tore it up and threw it in the wastepaper basket.

I accept his unchallenged evidence as to the contents of the notice.

Mr. Frater in his final address stressed the democratic traditions of this country, but surely fairness and decency should dictate that the leader of the Maroons should have received some intimation that his conduct would be called into question with a view to his possible dismissal. This at least, would have allowed him to rally his loyal constituents to his support.

The evidence of the plaintiff and his witnesses is that some two hundred (200) person attended the meeting.

There was no evidence as to the population of the community nor what percentage attended this meeting.

On the available evidence I cannot conclude that the purported election satisfied the norms for publicity and equal opportunity of voting which is enshrined in the democratic process.

The plaintiff has failed to prove that he was validly elected as leader of the Maroons.

There will therefore be judgment for the defendant with costs to be agreed or taxed.