SC/CIV. 6 AND 7/2018

IN THE SUPREME COURT OF SIERRA LEONE

(CIVIL JURISDICTION)

IN THE MATTER OF A PETITION AGAINST THE ELECTION OF HIS EXCELLENCY JULIUS MAADA BIO AS PRESIDENT OF SIERRA LEONE AS PER THE DECLARATION OF THE RESULT OF THE PRESIDENTIAL RUN-OFF ELECTIONS OF MARCH 31ST 2018 BY THE CHIEF ELECTORAL COMMISSIONER AND NATIONAL RETURNING OFFICER, MR. MOHAMED N'FAH ALIE CONTEH IN TERMS OF SECTIONS 32(1), 33, 36, 42, 45, 49, 122, 124(1)(a) AND 127(1) (AMONG OTHERS) OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991; OF SECTIONS 51(3), 52(2), 55, 94, 161(1), 161(2) AND 168(2) (AMONG OTHERS) OF THE PUBLIC ELECTIONS ACT NO. 4 OF 2012 AND THE ELECTION PETITION RULES, STATUTORY INSTRUMENT NO. 7 OF 2007.

IN THE MATTER FURTHER OF SECTIONS 74, 85, 87, 91, 92, 93 AND 147 (AMONG OTHERS) OF THE PUBLIC ELECTIONS ACT NO. 4 OF 2012; ALSO OF THE MARCH 2018 GUIDE FOR POLLING & COUNTING STAFF ISSUED BY THE NATIONAL ELECTORAL COMMISSION; ALSO OF THE MARCH 2018 POLLING & COUNTING PROCEDURES ISSUED BY THE NATIONAL ELECTORAL COMMISSION AND THE ELECTIONS 2018 TALLYING AND RESULTS PROCEDURES ISSUED BY THE NATIONAL ELECTORAL COMMISSION.

IN THE MATTER STILL FURTHER MORE OF SECTION 55(1) OF THE PUBLIC ELECTIONS ACT NO.4 OF 2012 F. ORDER 3, SUBRULES 2(1) & (5) OF THE HIGH COURT RULES 2007, CONSTITUTIONAL INSTRUMENT NO. 8 OF 2007, OF RULES 98 OF THE SUPREME COURT RULES, PUBLIC NOTICE NO. 1 OF 1982; AND OF SUBRULES 5(4) (AMONG OTHERS) OF THE ELECTION PETITION RULES, STATUTORY INSTRUMENT NO. 7 OF 2007.

BETWEEN: -

DR. SYLVIA OLAYINKA BLYDEN - 1ST PETITIONER/RESPONDENT
24 GARRISON STREET, FREETOWN

AND

THE CHIEF ELECTORAL COMMISSIONER - 1ST RESPONDENT
NATIONAL ELECTORAL COMMISSION - 2ND RESPONDENT
HIS EXCELLENCY JULIUS MAADA BIO - 3RD RESPONDENT/APPLICANT
SIERRA LEONE PEOPLES PARTY (SLPP) - 4THRESPONDENT/APPLICANT

AND

IN THE MATTER OF PETITION AGAINST THE ELECTION OF HIS EXCELLENCY RTD. JULIUS MAADA BIO AS PRESIDENT OF SIERRA LEONE AS PER THE DECLARATION OF THE RESULT OF THE PRESIDENTIAL ELECTIONS OF 31ST MARCH 2018 BY THE CHIEF ELECTORAL COMMISSIONER AND NATIONAL RETURNING OFFICER, MR. MOHAMED N'FAH ALIE CONTEH IN TERMS OF SECTIONS 32(1), 33, 36, 38 42, 44, 45, 122(1), 122(3), 124(1)(A) AND 127(1) (AMONG OTHERS) CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991.

AND

IN THE MATTER OF SECTIONS 2, 7, 12, 13, 16, 19, 51(3), 53, 53(2), 55, 74, 85, 87, 90-94, 127, 161(1), 162 AND 168(2) OF THE PUBLIC ELECTIONS ACT NO. 4 OF 2012 AND ALSO OF THE QUICK REFERENCE GUIDE FOR POLLING AND COUNTING 2012; PRESIDENTIAL, PARLIAMENTARY AND LOCAL COUNCIL ISSUED BY THE NATIONAL ELECTORAL COMMISSION.

AND

IN THE MATTER STILL FURTHERMORE OF SECTIONS 45(5) OF THE PUBLIC ELECTIONS ACT NO. 4 OF 2012.

AND

IN THE MATTER STILL FUTHERMORE OF SECTION 14(1) OF THE POLITICAL PARTIES REGISTRATION ACT NO. 3 OF 2002; OF ORDER 3, SUB-RULES 2(1) & 5 OF THE HIGH COURT RULES 2007; CONSTITUTIONAL INSTRUMENT NO. 8 OF 2007; OF RULE 98 OF THE SUPREME COURT RULES AND OF RULES 5 SUB-RULE (2) AND

RULE 89 OF THE SUPREME COURT RULES STATUTORY INSTRUMENT NO. 1 OF 1982.

BETWEEN: -

1. **DR. SAMURA MATTHEW WILSON KAMARA -2ND PETITIONER/RESPONDENT**
2. **HON. ALHAJI MINKAILU MANSARAY -3RD PETITIONER/RESPONDENT**
3. **DR. OSMAN FODAY YANSANEH -4TH PETITIONER/RESPONDENT**

AND

MOHAMED N'FAH ALLIE CONTEH -1ST RESPONDENT

NATIONAL ELECTORAL COMMISSION -2ND RESPONDENT

HIS EXCELLENCY JULIUS MAADA BIO -3rd RESPONDENT/APPLICANT

CORAM:

HON. JUSTICE DESMOND BABATUNDE EDWARDS CJ

HON. JUSTICE NICHOLAS BROWNE-MARKE JSC

HON. JUSTICE EKU ROBERTS JSC

HON. JUSTICE ALUSINE SESAY JSC

HON. IVAN ANSUMANA SESAY JA

REPRESENTATION:

DR. SYLVIA OLAYINKA BLYDEN - IN PERSON FOR THE FIRST PETITIONER

COUNSEL:

LANSANA DUMBUYA ESQ WITH HIM MR. F. MANSARAY FOR THE 2ND, 3RD & 4TH PETITIONERS

EMMANUEL SAFFA ABDULAI - FOR THE 1ST & 2ND RESPONDENTS

GEORGE BANDA-THOMAS ESQ WITH HIM MUSA MEWA, TUMA ADAMA JABBIE, MOHAMMED KENNEH ESQ, I. F. SAWANEH, L. M. BAYOH AND KENGENWEH ESQ FOR THE 3RD & 4TH RESPONDENTS/ APPLICANTS

RULING DELIVERED THIS 20TH DAY OF APRIL, 2021 BY JUSTICE DESMOND BABATUNDE EDWARDS CJ

BACKGROUND/INTRODUCTION

THE ELECTION

1. On the 7th & 31st March 2018, Sierra Leone's Presidential Election and the subsequent Presidential Run Off-Elections were respectively held in Sierra Leone. On the 13th of March 2018, the 2nd Respondent, the National Electoral Commission (NEC) (hereinafter referred to as NEC) pronounced the 7th March 2018 Presidential Elections Results with the SLPP's Candidate, Brigadier Rtd. Julius Maada Bio polling 43.257% of the votes cast coming first, while the APC Candidate, Dr. Samura Mathew Wilson Kamara, came 2nd polling 42.676% of the votes cast.

2. As there were other candidates in this 7th March 2018 Presidential Elections and none polled the required 55% of the votes cast to emerge victorious and President of Sierra Leone, the 1st Respondent as Chief Electoral Commissioner & National Returning Officer was compelled pursuant to Section 42(2)(f) of the Constitution of Sierra Leone Act No 6 of 1991 *(hereinafter referred to as 'the 1991Constitution ')* to set up the two candidates with the highest number of votes cast for a second round elections, the Presidential Run-Off Elections. The Presidential Run-off Elections were held on the 31st of March 2018 and on the 4th of April, 2018, the Results were declared. SLPP's Candidate Brigadier Rtd. Julius Maada Bio emerged as the winner with 1, 319,406 of the votes cast representing 51.81% of the votes Cast. He assumed Office as President of Sierra Leone immediately thereafter, after being sworn in as President

the very day pursuant to Section 42(3) of the 1991 Constitution and Section 54(1) the Public Elections Act No 4 of 2012 (hereinafter referred to as 'PEA No 4 of 2012').

3. These Elections were according to the general view of Local and International observers considered and/or held to be hugely peaceful and free from violence. The Petitioners' view, nonetheless, was that these elections were marred with irregularities, malpractices, harassment, fraud and even corrupt practices by officials and agents of NEC, the 2nd Respondent herein, in collusion with agents and operators of His Excellency The President, the 3rd Respondent herein & his Party the SLPP, the 4th Respondent herein, which required those results to be overturned with consequential and ancillary reliefs granted.

4. Consequent upon same, before 7 days from the declaration of the result on the 4th April 2018 expired, after which any action to challenge the validity of the Election Results would be statute barred 4 persons in the persons of Dr Sylvia Olayinka Blyden on the one hand and Dr Samura Mathew Wilson Kamara, Mr Minkailu Mansaray and Ambassador Dr Foday Yansaneh, on the other hand, challenged the validity of those Elections in 2 separate actions/ election petitions, to wit, SC6 / 2018 and SC 7 / 2018 respectively, with both actions filed on the same day i.e. on the 9th of April 2018.

THE PETITIONS

5. On the 9th April, 2018, four (4) persons challenged the validity of those Presidential Elections by petitioning to the Supreme Court. The first was the Petition from Dr Sylvia Olayinka Blyden intituled SC6/2018 while the 2nd is a petition by 3 persons in the persons of Dr Samura Wilson Mathew Kamara, Mr Minkailu Mansaray and Dr Foday Yansaneh (hereinafter referred to as Dr Samura Kamara & 2 others intituled SC7/ 2018. The gravamen of these petitions is detailed in their respective petitions. I would attempt to replicate them herein almost verbatim.

1ST PETITIONER'S CASE

6. In the case of the first petitioner Dr Sylvia Blyden she stated as follows:

1. That immediately after the March 7th 2018 elections there was a huge outcry of votes rigging across the country and that all the major political parties demanded a recount of all disputed poll results while challenging the credibility of the elections. 221 polling stations were excluded, including where the votes cast exceeded the number of registered voters (including voters included on the supplementary list).

2. That on 19th March 2018, in her capacity as a member of the 4-man APC Supervisory team, she attended a meeting with the Chief Electoral Commissioner and National returning officer as 1st Respondent, other members, NEC and representatives of 4th Respondent SLPP.

3. That at the meeting, it came out clearly that the March 7th 2018 presidential elections had been conducted in complete contravention of Section 94 and Section 91 of the PEA No 4 of 2012.

4. That the 1st Respondent and 2nd Respondent confessed to have broken the Law in how presidential elections should be conducted but stated it was due to a matter of expediency in view of which they decided to use a short-cut method instead of following the dictates of Sections 91, 93 and 94 of the Public Elections Act.

5. That consequent upon the above, she as voter now petitioner was very much alarmed and said such should not repeat during the Run-off elections.

6. That she told 1st and 2nd Respondents that by breaching Sections 91, 93 and 94 of the Public Elections Act, they had exposed the integrity of the transfer of the results to possible hacking by Information Technology criminals.

7. That she also brought to the attention of the 1st Respondent and the 2nd Respondent that the numbers for many of the results published on the website of the 2nd Respondent, just did not add up.

8. That on Friday, March 23rd 2018, the 1st Respondent and 2nd Respondent invited the APC and the SLPP alongside the entire Diplomatic and Consular Corp plus United Nations officials to witness a demonstration of their tallying systems.

9. That at that meeting in the presence of Diplomats and the Press, she, on behalf of the APC brought out a worrying discovery that Voter Register by Polling Centres which were published on the website of NEC the 2nd Respondent by the 1st Respondent, were at variance with another ***unknown*** set of Voter Register by Polling Centres which 1st Respondent and 2nd Respondent were using.

10. That when the NEC Website Voter Register was used to calculate around issues of over-voting and cancellations, the APC's Samura Kamara automatically became the lead candidate of the First Rounds but when the other ***unknown*** Voter Register was used, the SLPP's Julius Maada Bio turned into the lead candidate.

11. That the 1st Respondent publicly accepted the error and confirmed that he used the ***unknown*** Voter Register.

12. This clearly was why 1st Defendant had placed SLPP's Julius Maada Bio as the first-place candidate for the First Round.

13. That the 1st Respondent, the Chief Electoral Commissioner publicly promised to investigate and report back to the APC as to what was the reason for the variance given the fact that when one set of Voter Register is used, it changes the results significantly over when the other ***unknown*** Voter Register is used.

14. That at the time of filing this Petition, despite several reminders in writing and also through press releases, there has been no explanation from 1st Respondent as to why there were two different sets of numbers of voters on those Voter registers.

15. That rather, yet another Voter register was again issued to political parties on the eve of the Run-off Elections; now giving three (3) different sets of spreads of voters per polling station. Three different Voter Registers for the same presidential election.

16. The Run-off election was scheduled for 27th March 2018, but legal battles in court prevented that from happening. The elections finally were held on the 31st March 2018. After elections were closed on Election Day, 31st March 2018, the Respondents started counting the ballots in the presence of Party agents. Some APC Party agents deployed in the south-east of the country reported that they were violently intimidated and so had to leave without waiting for counting to conclude. Others reported widespread cases of over-voting in hundreds of polling stations in the south-east when using the third version of the Voter Register supplied to APC on March 30th, 2018.

17. That on the 2nd April 2018, the APC sent petitions to the Respondents for a recount of the polling stations where over voting have been reported. Although Respondents acknowledged receipt of the petitions, and assured APC Party that

the complaints will be looked into, the issues raised in the petitions were never addressed.

18. That on the 4th April 2018, the 1st Respondent went ahead, without full and frank disclosure of reasons behind the variance in Voter Registers neither assurances concerning ***over-voting*** raised by APC, to declare Julius Maada Bio as Winner of the Presidential Elections; contrary to the Public Elections Act of 2012.

19. That the influence of foreigners, notably former African Heads of States in persons of H.E. DR. Goodluck Jonathan of Nigeria and H.E. DR. John Mahama of Ghana, strengthened the resolve of 1st Respondent, 2nd Respondent, 3rd Respondent and 4th Respondent to flout the Laws of Sierra Leone, primarily Sections 91, 93 and 94 of the Public Elections Act of 2012.

20. That as a result of refusing to go by the PEA No 2012 which called for an organised District-Level tallying, many mistakes and other deliberate rigging actions happened in the tallying process thus skewing the results against APC.

21. That as a further result of 1st Defendant and 2nd Defendant refusing to effectively use their announced ***Parallel Tallying System*** with ***Microsoft Excel*** software during District-Level tallying, the 1st Respondent and 2nd Respondent connived with 3rd Respondent and 4th Respondent to cheat the APC and the APC candidate.

22. That as an even further result of insisting on using the specialized ***TALLY 2018*** software, a lot of cheating of the APC candidate happened by the computer system.

23. That for example, in Polling Centre 10157; Polling Station Number 01 in Port Loko District, she discovered at the Port Loko tallying centre that the suspicious TALLY 2018 software had cheated the APC candidate, Samura Kamara whose votes were automatically slashed from 279 votes to 223 votes whilst the results of the SLPP candidate, Julius Bio was automatically increased from 4 votes to 9 votes.

24. That overall, the 1st Respondent was partial against the APC in the conduct of the said First Round and also Run-offs of the Presidential Elections which he systematically planned and executed in favour of the 3rd & 4th Respondents to the detriment of the APC.

25. That since the Public Elections Act was created by Section 44 of the Constitution of Sierra Leone Act No 6 of 1991, the breach of the Public Elections Act whilst conducting the Presidential Election was and is therefore **unconstitutional.**

She prayed for the following reliefs:

1. A DECLARATION that the conduct of the March 7th, 2018 and March 31st, 2018 Presidential Elections and Presidential Run-off Elections respectively, were in breach of several *mandatory* dictates of the Public Elections Act No. 4 of 2012.

2. A DECLARATION that the conduct of the March 7th, 2018 and March 31st, 2018 Presidential Elections were conducted amidst intimidation, violence, impropriety, malpractices and several irregularities thus making them not to be free and fair.

3. A DECLARATION that the election of Julius Maada Bio, the SLPP candidate was therefore not valid and that he was not duly elected as President of the Republic of Sierra Leone.

4. That this Honourable Court directs another Presidential Election to be held within 90 days from the date of the judgement and Order.

THE CASE OF DR SAMURA KAMARA & OTHERS THE 2ND 3RD AND 4TH PETITIONERS

7. In the case of the 2nd, 3rd and 4th petitioners the content of their petition stated as follows:

1. That the conduct of the 31st March, 2018 Presidential Run-off Elections was improper and fraught with irregularities.
2. That they have annexed to their petition the following documents which in their opinion, might assist this Honourable Court in resolving the issues calling for determination herein: -
    i. Copies of Press Statements from the All Peoples Congress (APC) complaining incidences of electoral malpractices and irregularities.
    ii. Copies of Letters written by the APC and addressed to NEC complaining incidences of electoral malpractices and irregularities.
    iii. A copy of a List of all Polling Centres and the grand total of Registered voters within that Centre.
    iv. List of 221 Polling Stations excluded in final tally of the 7th March, 2018 Presidential elections because the votes cast exceeded the number of registered voters.
    v. Copy of the final results of the 7th March, 2018, Presidential elections.
    vi. A copy of a tabulated breakdown of 400 Polling Stations evidencing excess number of valid votes more than Registered Voters and the percentage of such excess over-voting of the Presidential elections of 7th March, 2018.

vii. A copy of an Analysis Report evidencing excess number of valid votes more than Registered Voters and the percentage of such excess over-voting of the 31st March, 2018 Run-Off Presidential elections.

viii. Copies of Voter Registration for the 7th March, 2018 and the 31st March, 2018 Presidential elections showing gaping discrepancies and inconsistencies.

ix. Affidavit of Horace Dove-Edwin, sworn to at Freetown, April, 2018.

3. The Petitioners averred that the election was not conducted substantially in accordance with the 1991 Constitution, or the 2012 Elections Act and the governing Regulations.
4. In particular, the Petitioners averred that NEC failed to establish and maintain an accurate Voter Register that was publicly available, veritable and credible as required by Section 42 of the 1991 Constitution, and Sections 12-22 of the Public Elections Act, 2012 and the Elections Regulations, 2007.
5. In addition, they claimed that the true number of registered voters was unknown and/or illusive, therefore, NEC did not have an accurate voters' register. They asserted that the 1st and 2nd Respondents changed the official number of registered voters and that the absence of a credible Principal National Voter Register vitiated the validity of the Presidential elections.
6. The Petitioners further asserted that the electoral management system adopted by the NEC was complex and had many shortfalls, contrary to the statutory requirement that it be a simple, accurate, verifiable, secure, accountable and transparent system. The Petitioners averred that the failure of the electronic system put in place by the NEC affected the validity of the Presidential elections. They submitted that NEC conceded at a point that the names of 38,000 voters were missing from or in the system and to date no credible explanation was offered to resolve what they termed the "Bermuda Triangle" of voters' particulars.

7. They averred that as required by Section 87(2) of the Public Elections Act of 2012, the 1st Defendant ought to have declared the results of every polling stations where over voting took place NULL and VOID but failed to do so noting that NEC ought not to have included the vote count of those impugned polling stations in the final tally of Results.
8. That on the 4th April 2018, the 1st respondent and chairman of NEC without full and frank disclosure of the over-voting concerns pronounced Brigadier Rtd. Julius Maada Bio as the Winner of the Presidential Elections contrary to the Public Elections Act No. 4 of 2012.
9. That following the March 7th Elections during which there was a huge outcry of votes rigging across the country and 221 polling stations were excluded, including where the votes cast exceeded the number of registered voters (including voters included on the supplementary list) on the 31st March 2018, after the counting of the ballots by NEC officers, there was widespread over-voting again in Kailahun, Kenema, Kono, Bo, Bonthe, Moyamba and Pujehun. There was a huge outcry of votes rigging in those areas and a major political party demanded a recount of all disputed poll results.

10. That notwithstanding the outcry, and challenge on the credibility of the run-off results, the 1st Respondent went ahead to include results of over-voting in Kailahun, Kenema, Kono, Bo, Bonthe, Moyamba and Pujehun as part of the final tallying. The inclusion of over-voting results in the final tallying had a prejudicial effect on the percentage votes won by Rtd. Brig. Julius Maada Bio.

11. Consequent upon the above the 1st and 2nd Respondents did not discharge their obligation under the Constitution, because the tallying and verification of the results did not happen at the polling stations.

12. Also, they stated that the 1st Respondent failed to carry out a transparent, verifiable, accurate and accountable election as required by Sections 33-38, of the 1991 Constitution in that there were several anomalies that occurred in the process of manual tallying, such as the votes cast in several polling stations exceeding the number of registered voters; differences between results posted and the results released by the1st Respondent; the use of fake RRF Forms to declare the results.

13. Furthermore, there was widespread intimidation, harassment and assault on Polling Agents of the Petitioners, particularly in the Kenema, Kailahun, Pujehun and Bo Districts by SLPP Operatives in collusion with NEC Officials. This laid the foundation for ballot stuffing to swell votes in favour of Rtd. Brig. Julius Maada Bio to the detriment of the 1st Petitioner in particular.

14. The Petitioner averred that the electoral process was so fundamentally flawed that it precluded the possibility of discerning whether the presidential results declared were lawful.

15. As a result of the particulars of irregularities referenced herein they claimed to have been deprived of victory in the election for the presidency of the Republic of Sierra Leone, and the 1st Respondent notwithstanding the irregularities declared Rtd. Brig Julius Maada Bio as President.

7. The Petitioners prayed as follows:

1. That the Court determines that the 1st Respondent acted illegally when he included results of polling stations where over voting was recorded in the final tallying.
2. That the Court directs that all results of polling station where over voting took place be excluded from the final tallying and final result declared by the 1st Respondent.

3. That the Court directs that the declaration of Rtd. Brig. Julius Maada Bio, as duly elected President in the Presidential Elections held on the 31st March, 2018 was invalid and cannot be supported by law.
4. Any other or further Order(s) that this Honourable Court may deem fit and just.
5. The COSTS of this Petition to be paid by the Respondents jointly and severally.

CONSOLIDATION OF PETITIONS

8. On an Application dated 29th May 2018 brought on behalf of the His Excellency Brigadier Rtd Julius Maada Bio and the Sierra Leone Peoples Party SLPP the 3rd and 4th Respondents respectively in the Election petitions brought by Dr Sylvia O Blyden as SC6 /2018 and Dr Samura Kamara & others as SC7 / 2018 the Applicants herein requested and or sought from this Honourable Court a consolidation of these separate petitions to One consolidated petition as these cases exhibit some common question of law or fact and that the right to relief arises from the same set of transaction. The Application was granted and consequently both sets of petitions were consolidated by the Supreme Court presided by my learned brother Justice N. C Browne-Marke JSC through order dated 18TH JULY 2018. Thus, the titled of the case changed to **SC6 and SC7 /2018.**

9. Most importantly it needs be said at the outset that both sets of Petitions did not contain exhibits and were mere allegations. They were supported by affidavits in support which also did not contain any exhibits and were filed under the **Electoral Laws Act 2002; Elections Petitions Rules Statutory Instrument No 7 of 2007**. Suffice it to say that on the 3rd of August 2018, after the court had given the order for consolidation dated 18th July 2018, the 3rd and 4th respondents/Applicants herein filed yet another application for the petitions herein to be struck out and with costs. The

Petitioners in their final closing arguments claimed that the Application for Consolidation constituted Fresh step.

THE APPLICATION

10. By Notice of motion dated 3rd August 2018 made under the consolidated petitions intituled SC6/2018 and SC7/2018, His Excellency Brigadier Rtd Julius Maada Bio (hereinafter referred to as HE the President) and the Sierra Leone People's Party (hereinafter referred to as the SLPP), the 3rd & 4th Respondents / Applicants herein applied to this Honourable Supreme Court for the following reliefs:

1. That this Honourable Court do make an order striking out the consolidated petitions herein on the following grounds: -
    a) that the Petitioners did not serve the Election Petitions SC 6/2018 and SC 7/2018 personally on the 3rd and 4th Respondents/Applicants herein within five days of the presentation of each election petition contrary to the Election Petition Rules EPR SI NO 7 of 2007 (hereinafter referred to as EPR 2007), to wit, Rules 12 (1) and (3) nor did the petitioners and agents deliver same to an appointed agent of the 3rdand 4thRespondents/Applicants as required by Rule 12 (2) OF EPR2007;
    b) That the Petitioners/respondents did not serve the petition herein on the Attorney-General and Minister of Justice who is not named specifically as a defendant-contrary to Rule 89 (3) of the Rules of the Supreme Court 1982. This ground was later abandoned;
    c) That the petitioners/respondents failed to comply with Rule 6 (1) of the EPR 2007 in that they failed to leave at the Registry a notice signed by them or on their behalf, giving the name of a legal practitioner who has the authority to act as their agent or stating that the petitioner acts for himself or herself;

d) That the petitioners/Respondents, severally, have failed to give security in the form of deposit in the sum of Le 1, 000,000.00 and by recognizance of that same amount entered into by two sureties or by payment of deposit money in lieu of any such recognizance contrary to EPR 2007, Rule 14 (2);

e) That the Petitioners/Respondents did not serve the 3rd Respondent/Applicant nor the 4th Respondent/Applicant with the notice of compliance with Election Petition Rules 2007, Rule14, as to the giving of security of costs, within five days of the presentation of the petition, contrary to Election Petition Rules 2007, Rule 12 (1);

f) That the Petitioners/Respondents have failed to comply with Rule 13 of the Election Petition Rule 2007 in that no affidavit of the time, place and manner of service of the petition was filed by them or on their behalf within three days of the service of each of the petitions.

2. Further and/or in the alternative that this Honourable Court do make an order striking out the consolidated petitions on the grounds that the affidavit filed in support of each petition:

   i. Is fundamentally and substantially flawed and defective;

   ii. Does not set forth as concisely as possible the nature of the reliefs sought by the petitioners and does not state the following:

      a) The capacity in which each petitioner is petitioning;

      b) The address for service of the petitioner or his or her counsel;

      c) The names and addresses of all parties who may be directly affected by the petition as is required by Rule 89 (2) of the Supreme Court Rules 1982;

   iii. Documents listed in the Petition SC 7/2018 to substantiate the several allegations contained in the said petition, have not been exhibited in the

supporting affidavit-Contrary to Rule 11 of Order 31 of the High Court Rules.

3. Further or alternatively that this Honourable Court do make an order that the consolidated petitions be struck out on the grounds that they disclose no cause of action.
4. That this Honourable Court do make an order staying all further or other proceedings in this Petition pending the hearing and determination of this application except in relation to this application herein.
5. Any other order that this Honourable Court may deem fit and just.'
6. That the costs of this application be costs in favour of the 3rd Respondent/Applicant and the 4th Respondent/Applicant.

12. The Application was supported by the affidavit of Musa Mewa sworn to on the 2nd of August 2018 and to which were attached the following exhibits viz; **Exhibits A1 and A2** which are Notices of Appointment as Solicitor of the Law firm of Brewah & Co Solicitors as Solicitor and Agent for the 3rd Respondent/Applicant herein dated the 4th May 2018 and the notice of acceptance by the Law firm respectively also dated 4th May 2018; **Exhibit B1 and B2** which are notices of Appointment of the Law firm of Brewah & Co Solicitors, as Solicitor and Agent for the 4th Respondent herein and the Solicitor's Acceptance as Agent respectively both dated the 23rd of April 2018 addressed to the 1st Petitioner; **Exhibit C1 and C2** which are Notices of Appointment as Solicitor and Agent for the 3rd and 4th Respondents and the Solicitor's acceptance as Agent for the 3rd and 4th Respondents herein dated 4th MAY addressed to the 2nd, 3rd and 4th Petitioners herein; **Exhibit D1 and D2** are copies of the respective petitions viz. **Exhibit D1** is the Petition intituled SC 6 / 2018 while **exhibit D2** is the Petition intituled SC7 / 2018 both consolidated herein as **SC6 and SC7 /2018**; **Exhibit E** is the Order of the Supreme Court Dated 18th July 2018 consolidating SC6 /2018 which is the Petition of Dr Sylvia Olayinka Blyden with SC7/2018 which is the Petition of Dr Samura Wilson Mathew Kamara, Minkailu Mansaray and Dr Foday Yansaneh all into one consolidated action intituled SC 6 and 7/2018; **Exhibit F1 and F2** is the

affidavit of service of the Election Petition SC6/ 2018 filed in respect of the 1st and 2nd Respondents and the 3rd and 4th Respondents/ Applicants respectively. It is was sworn to on the 20th of April, 2018 and **is** the affidavit of service of the election petition SC 7/2018 on the 3rd Respondent herein. It was sworn on the 12th of April 2018.

13. The Respondents/Applicants relied on the entire affidavit paragraphs 1 – 15. He also relied on supplemental affidavits and/or further affidavit sworn to on the 18th January, 2021 to which was attached a search fee advice and receipt both dated 15th January, 2021 showing that this Honourable court never made an order for substituted service of the petition. The Petitioner respondents opposed the Application and each, to wit, Dr Sylvia Blyden for the 1st Petitioner and Mr. Lansana Dumbuya for Dr Samura Kamara and the 2 others filed an affidavit in Opposition to which were attached several exhibits. In the case of the 1st Petitioner she filed an affidavit in opposition sworn to on the 5th September 2018 and a supplemental / further affidavit sworn to the 21st of January 2021. On the affidavit in opposition were attached the following exhibits, to wit, **Exhibit SOB1A** which is the Petition of Dr. Blyden intituled SC6 / 2018 before consolidation; **Exhibit SOB1B which** is the affidavit in support of the aforesaid petition SC6/2 018 and the certificate of Appointment to act by herself as petitioner in person; **Exhibit SOB 2** is a notice allegedly pursuant to Rule 7 of the Election Petition Rules 2007 that the 1st petitioner will be acting for herself and that she was her own agent in respect of this petition; **Exhibit SOB3 which** is purportedly a NOTICE OF COMPLIANCE filed ; **Exhibit SOB 4** is a copy of the NRA receipt dated 10th April 2018 seen on the receipt showing payment received from Dr Sylvia Blyden for the Petition; **EXHIBIT SOB 5** is receipt signed by one Jefferson Williams who claims to be acting on behalf of the Registrar of the Supreme Court for the sum of Le1,000,000.00 as money towards recognisances dated 9th April 2018; **Exhibit SOB 6** is the actual deposit of this money to the Judicial Sub treasury dated the 10th of April 2018; **Exhibit SOB 7** is an affidavit of service by Jefferson Williams senior bailiff in the Supreme Court of Sierra Leone sworn to on the 20th of April, 2018 to the

effect that on Thursday 12th April 2018 he did serve on the 1st 2nd and 3rd Respondents herein a copy of the Petition, affidavit in support of the petition, Notice of Appointment of self as Agent and Notice of Compliance leaving same with one Francess Jabati in the case of the 1st and 2nd Respondents at the National Electoral Commission Office at State Avenue Freetown and for the HE the president 3rd Respondent, one Sgt Ramatu Bangura at the Police Post at State House and that further, he did, on the 17th of April serve the 4th Respondent at Brewah and Co Solicitors, No 2 Siaka Stevens Street Freetown leaving same with one Shangarie Esq; **Exhibit SOB8** is a way book copy showing signatures from the said persons; **Exhibit SOB 9** is a Memorandum and Notice of Appearance entered dated the 17th of April 2018 for the 3rdRespondent / Applicant herein .The aforesaid affidavit in opposition was pursuant to the order of this court dated 3rd December 2020 refiled on the 24th of December 2020. The petitioner also filed a further affidavit sworn to on the 21st of January 2021. It had no exhibit.

14 In the case of Dr Samura Kamara & others as 2nd, 3rd and 4th Petitioners/Respondents, Lansana Dumbuya as their solicitor filed an affidavit in Opposition sworn to on the 14th of January 2021 to which were attached the following exhibits. **EXHIBIT LD1** which is a copy of the Petition including a statement of case; **EXHIBIT LD2** which is a copy of the Notice of Appointment of Solicitor and Agent and the acceptance thereof dated the 9th of April 2018 ; **EXHIBIT LD3** which is a copy of the Le1,000,000.00 deposit as security for cost ; **EXHIBIT LD4** is a copy of the purported NOTICE OF COMPLIANCE; **EXHIBIT LD5** which is copy of affidavit of service sworn to on the 12th April 2021 on the 1st , 2nd and 3rd Respondents herein and the way book page and **EXHIBIT LD6** which is a copy of notice of motion dated 13th April for Substituted service and the affidavit in support addressed to 1st, 2nd and 3rd Respondents herein. The Petitioners relied on their entire affidavits in opposition.

15. The above Application first came up for hearing on the 3rd of December 2020 and this court was able to give directions on the matter following the length of time this matter had laid idle with no action. Among the directions given was that each party could file further affidavits on or against the 21st of January, 2021. On the 21st of January 2021, before the Court could hear the arguments on the application of 3rd August 2018, counsel for the Applicant herein Mr George Banda-Thomas sought and obtained leave of the court to make an amendment to HE the PRESIDENT AND SLPP, the 3rd & 4th Respondents/Applicants' Notice of Motion dated 3rd August 2018 by the addition of the following 6th ground for striking out the Consolidated petitions SC Cases 6 and SC7 /2018. It reads thus:

> ***6.'Further or in the Alternative this Honourable Court do strike out the Petition SC6 and SC7/2018 on the ground that an Election Petition is not an Appropriate ORIGINATING PROCESS to Invoke the Originating Jurisdiction Of the Supreme Court'***

16. After the granting of this order, the motion was finally heard by this Honourable Court on the 2nd of February 2021 and by the 2nd Of March 2021 every party had been heard with the matter deferred for Ruling with a date to be fixed for the Ruling and notices to be sent.

Hearing of the Application by HE the President and the SLPP 3rd and 4th Respondents/Applicants

17. Mr George Banda-Thomas counsel for H.E. the President and the SLPP referred to the Notice of motion dated 3rd AUGUST 2018 and the affidavit in support filed therein sworn to on the 2nd of August 2018. The Court having given leave to all sides to file any necessary affidavit(s) on or before the 21st of January 2021, Mr Banda-Thomas also referred to and made use of the Affidavits of Brig Rtd Julius Maada Bio and Umaru Napoleon Koroma sworn to on the 12th and 18th of January 2021 respectively and lastly the supplemental Affidavit of Musa Mewa sworn to on the 18th of January

2021. The affidavit of Julius Maada Bio, President was to the effect that he won the Presidential run-off Elections on the 31st of March 2018 and was declared President of the Republic of Sierra Leone exhibiting the following documents – a certified statement from the Chairman and National Returning Office **Exhibited as JMB1** and a certified final result of the Presidential Run-off Elections Results declared on the 31st March 2018 **Exhibited as JMB2**; that after the declaration he was immediately sworn into office as President but that he was never personally served with **Exhibit JMB 3 & JMB 4** which are the Election Petitions of Dr Sylvia Blyden on the one hand and Dr Samura Kamara and 2 others on the other hand; that further, he was also not served with notice of compliance pursuant to Rule 14 as to the giving of security for costs and that it was not until the 4th of MAY 2018 that he as the 3rd respondent appointed Brewah and Co Solicitors as his Agent in respect of these petitions. The affidavit of Umaru Napoleon Koroma deposed to the fact that as Secretary- General of the SLPP, the 4th Respondent herein, he was never personally served with the petitions herein or a certified copy thereof and that further he was never served with a notice of compliance with the EPR 2007 Rule 14 as to the giving of security for costs; and that it was not until the 23rd of April 2018 that the 4th Respondent Appointed Brewah and Co Solicitors as the agent and legal representative in respect of these petitions. There was no objection to the use of these affidavits.

SUBMISSIONS & ARGUMENTS OF COUNSEL AND THE 1st PETITIONER IN PERSON

a) Arguments By George Banda-Thomas Counsel for HE the President and the SLPP, the 3rd and 4th Respondents /Applicants herein

18. To start his arguments on the motion, Counsel for HE the President and the SLPP, the 3rd and 4th Respondents/Applicants, Mr George Banda-Thomas went on to argue this 6th ground as their primary ground for requesting the striking out of the Petitions herein, to wit, 'that this Honourable Court do strike out both petitions herein consolidated as SC cases 6 and 7 /2018 on the ground that an Election Petition which

is the originating process adopted by both sets of Petitioners is not or was not the appropriate originating process to invoke the original jurisdiction of the Supreme Court'. He chose to argue same as his major and primary ground for applying to this Honourable Court for those consolidated petitions to be struck out with cost relegating the other grounds to 'in the alternative' should this ground fail. To buttress his submission, he referred the court to **Exhibits D1 & D2** which are the Petitions of Dr Sylvia Blyden, 1st Petitioner as SC 6/2018, and Dr. Samura Kamara & others, the 2nd, 3rd & 4th Petitions as SC 7/2018. He observed that an examination of both petitions do show that the petitioners having adopted the process of Petition through the Election Petition Rules 2007 were challenging the validity of the Election of the 3rd Respondent/Applicant herein as President and raising questions relating to the Election of the President. He referred this Honourable Court to Section 45 (2) of the Constitution and argued that they were asking 2 questions viz, Firstly, whether any provision of this Constitution or any law relating to the Election of a President under Sections 42 & 43 of this Constitution have been complied with and secondly, whether His Excellency, the President the 3rd Respondent/Applicant herein has been validly elected President under Section 42 of the Constitution or any other law, both of which, were questions regarding the interpretation and enforcement of the Constitution.

19.He argued that this being the case, Section 124 (1) (a) of the 1991 Constitution provided that the Supreme Court shall have original jurisdiction to the total exclusion of all other courts in all matters relating to the enforcement and interpretation of the 1991 Constitution. Such original jurisdiction, he noted, cannot and should not be exercised by any other means but by Originating Notice of Motion courtesy of Rule 89 of the Supreme Court Rules PN No 1 of 1982 (hereinafter referred to as 'the Supreme Court Rules 1982') which provides under part 16 thereof - under the rubric Original Jurisdiction, Rule 89 (1) –

'Save as otherwise provided in these Rules an action brought to invoke the original jurisdiction of the Supreme Court shall be commenced by

Originating Notice of Motion….which shall be signed by the plaintiff or the counsel'.

20. He argued that the framers of the 1991 Constitution were supposedly aware of the 1982 Supreme Court Rules yet in imposing such original jurisdiction on the Supreme Court by virtue of Section 45(2), 124 and 127 of the 1991 Constitution did not provide any alternative means to invoking the Supreme Court Original Jurisdiction but by the aforesaid means of Originating Notice of Motion which was already in existence. He argued that the beauty or advantage for proceeding with an Originating Notice of Motion vis a vis the Election Petition Rules SI NO 7 of 2007 (hereinafter referred to as the EPR2007) for a matter involving the 2 questions as stated in Section 45(2) of the 1991 Constitution as being what is stated in Rules 89 – 98 as being that 1) under the Originating Notice of Motion- the Notice of Motion is filed accompanied by an affidavit of service. 2) that it outlines clearly and distinctly the procedure to be followed from the beginning to the end of the proceeding and the process is relatively shorter straight forward and simple, stressing that you will not get the same under the EPR 2007 which is a very long protracted convoluted & confusing process from start to finish. He argued that after a Presidential candidate has won an election, sworn in and taken office as President, with his enormous functions as detailed in Section 40 of the1991 Constitution, it was certainly a must for any protest against the validity of his election while in office to be devoid of procedures complexities and longish timing which the EPR2007 process poses and is known for. This in itself makes the EPR process most inappropriate to invoking the original jurisdiction of the Supreme Court in such an important matter invoking the rights of voters. He argued further that when the Supreme Court wants applications before it by petition it had always stated so as with the proviso to Section 122 of the Constitution and rule 13 of the Supreme Court Rules but yet silent as to the originating process being specifically by Election Petition Rules. He deferred to the Case of **OPONJO BENJAMIN & OTHERS V NEC & OTHERS SC 4/2012 UNREPORTED** where Hon Justice Valesius Thomas JSC made it clear that the only way you approach the Supreme Court with respect to

Section 45(2) of the 1991 Constitution dealing with election petitions challenging the validity of the Presidential Election which is invoking the original jurisdiction of the Supreme Court is by Originating Notice of Motion.

21.On the issue of grounds 2 & 3 prayed, the 3rd &4th Respondent/applicant's counsel argued that the consolidated petitions SC6/2018 and SC7/2018 are fundamentally and substantially flawed and defective in that they do not set forth '***as concisely as possible'*** the nature of the reliefs sought by the Petitioners and do not state the following: -

a) Capacity in which each petitioner is petitioning;
b) The address for service of the petitioner or his her or her counsel;
c) The names and addresses of all parties who may be directly affected by the petition as is required by Rule 89 (2) of the Supreme Court Rules 1982;
d) And that secondly the documents listed in Petition SC 7/2018 to substantiate their case or allegations contained in the said petition have not been exhibited in the supporting affidavit contrary to Rule 11 of Order 31 of the HCR SI NO 8 OF 2007.

22. In support of this argument he referred this court to **Exhibit D1 & D2** which are the petitions by Dr. Sylvia Blyden on the one hand as SC 6/2018 and the 3 other petitioners Dr Samura Wilson Kamara and the 2 others as SC 7/2018 respectively. He observed that both petitions are substantially flawed in that they have not been brought under Rule 89 of the Supreme Court Rules 1982 which is the only legal means by which you invoke the original jurisdiction of the Supreme Court. In addition, this Rule required the Plaintiff/Petitioner to file a statement of case with the Originating Notice of Motion or in any case not later than 10 days from the filing of the Notice of Motion/Originating Notice of Motion. This statement of plaintiff's case must be such that -

a) It sets forth the facts and particulars of the claim, documentary or otherwise verified by affidavit upon which the plaintiff seeks to rely;

b) It states the names and particulars of the witnesses; if any, which he intends to call at the hearing; and
c) The plaintiff makes also a full list of the decided cases on which the plaintiff relied.

23. He argued that despite those requirements, looking at **SC 6/2018 and SC 7/2018** those petitions did not in any way follow the laid down requirements and in fact did not contain a precise statement of the claim the petitioners were making nor did they contain a precise statement of the remedy they were seeking and moreso showed no cause of action, hence they should and must be struck out.

24. On ground 1(a) Learned Counsel Mr. Banda-Thomas referred to Rule 12 (1) (2) & (3) and argued that this Rule required the Petitioner to serve the Respondents/ Applicants with the Election Petition to the person personally and not by any other means whatsoever and that the said service be effected within 5 days of its presentation. Also, where the Respondent has named an Agent or given an address of service that service can be delivered to the Agent of the Respondent or by leaving it at the address of that agent. Alternatively, an application can be made to a Judge for an order for substituted service. He argued that the combined effect of Rules 12 (1), 12(2) &12(3) is that it should be personal service. He referred to Rule10 as to what constitutes personal service and noted that it called for personal delivery to the Respondent and that where this was not practicable you come for substituted service.

He embellished his argument by referring to the affidavit of Julius Maada Bio sworn to on the 12th of January, 2021 in particular paragraph 5 thereof where His Excellency claimed that he was never personally served with **Exhibit DI and D2** the Petitions herein from Dr Blyden and Dr Samura Kamara and the 2 others respectively. He also referred to the affidavit of Musa Mewa sworn to on the 2nd August, 2018 where he exhibited the affidavit of service as **exhibit F1&F2** respectively. He argued that from the face of **Exhibit F1 & F2** there was no personal service. Also noting **Exhibit SOB7** which claimed that one Ramatu Bangura (Sgt 512) received the Petition at State House

Police Post, he argued that there was no evidence that she was an appointed agent and therefore she had no authority to receive the Petition, consequent upon same, that so called service never constituted personal service. By the same token he argued the affidavit of Julius Maada Bio showed that he only appointed an agent for service on the 4th of May, 2018 and the same is seen by **Exhibit A1 & A2**. This conclusively meant that at the time of the purported service he was not personally served as required by law. This he argued holds true for both petitioners. Further he argued, there was no order for substituted service within the time frame or at all as the Supplemental Affidavit of Musa Mewa has forwarded a search receipt exhibited in the Supplemental Affidavit which shows that no such order was made for substituted service as argued by Learned Counsel for Dr Samura Kamara and others.

25. He concluded by noting that the Petitioner had not complied with the mandatory provisions of Order 12(1), (2) & (3) & ought be struck out. He relied on the **John Oponjo Benjamin case** where it was held 'shall' in those provisions were mandatory.

26. Turning to ground 1 (c) He referred the court to Rule 6 (1) of EPR 2007 and referred the court to paragraph 6 of the affidavit of Musa Mewa sworn to on the 2nd of August, 2018. He also referred to the affidavit of Sylvia Blyden sworn to on the 5th of September, 2018 paragraph 4 thereof and to **Exhibit SOB 2** –the notice of Appointment pursuant to Rule 7. He submitted and/or argued that there was a clear distinction between Rule 6 and 7 noting that while Rule 7 is a notice given by a Member of Parliament or his agents and has nothing to deal with notice given by Petitioners agents in the sense that that the Rule provides and requires that on presenting a petition the Petitioner(s) shall leave at the Registry a notice signed by themselves or on their behalf giving the name of a legal practitioner or agent who they authorise as their agent or stating that they act for themselves as the case may be importing that the Notice of Appointment given by Sylvia Blyden **Exhibited as SOB2**

was out of place as Sylvia Blyden was not a member of Parliament and therefore wrong.

27. Referring also to the affidavit in opposition of Mr. Lansana Dumbuya sworn to on the 14th of January, 2021 paragraph 3 thereof, he noted **Exhibit LD 2** too was in this form despite the fact the Dr Samara Kamara and the 2 others were not Members of Parliament. He submitted that the knock-on effect of this was that the Petitioners failed, refused and neglected to leave at the Registry on presentation of the Petition a notice signed by the Petitioners on their behalf, the name of the legal practitioner who was authorised to act as agent or that he or she acts for herself. Consequently, they have all four of them failed to comply with the mandatory provisions of Rule 6 (1) and consequently the Petition ought to be struck out for lack of compliance.

28. On Rule 14 the provisions were read out and the learned counsel submitted or argued that 2 separate securities were as per the Rules required to be given; the 1st being a deposit of Le 1m while the 2nd security is a recognizance entered into by 2 sureties or by the deposit of monies Le 1 million each for the 2 sureties in lieu of recognizance. He noted that only 1 security was provided. On Rule 14 (2) he submitted that while Rule 1 requires or demands that securities be given 14(2) describes and defines the kind or form of security to be given. He referred this court to Paragraph 4 of the 1st Petitioner's Affidavit where she stated that she had fully complied with the requirements of Rule 14(1) and (2) but yet we see a hand written receipt and a government of Sierra Leone Judicial Sub Treasury Office receipt for only Le1,000,000.00 and nothing more. Mr Banda-Thomas argued further, she never in fact secured recognisance for 2 Sureties neither did she pay the security for the 2 sureties... The same scenario plays itself out concerning the 2nd, 3rd and 4th Petitioners/Respondents who can be seen by the affidavit of their solicitor and counsel Lansana Dumbuya in **LD 3** to have only paid Le 1 million as deposit with no

recognizance for 2 sureties or payment of Le1m each for the 2 sureties as is required by Rules 14 (1) & (2).

29. He emphasised that the requirement of Rule 14 (1) & 14 (2) by the use of the word 'shall' is a mandatory requirement and he added the word 'AND' and that this means it is conjunctive meaning deposit of security for cost for yourself the petitioner and having 2 recognisances or payment of security for cost for the 2 sureties.

30. Similar arguments were posed with respect to ground (e and f) emphasising that the word 'shall' used in those provisions were mandatory. Learned counsel referred to the case of **ARTHUR AGWUNCHANWANKO & 2 OTHERS V ALHAJI UMARU YARADUA& 40 OTHERS SC279/2007 UNREPORTED @Pg7** where it was held that the word "shall" is mandatory.

SUBMISSIONS OF SOLICITOR & COUNSEL FOR DR SAMURA KAMARA & 2 OTHERS THE 2ND 3RD AND 4TH PETITIONERS REPLIES

31. The Solicitor and Counsel for the Dr Samura Kamara & 2 others in his reply to ground 6 argued against the submission that filing a Petition using the EPR 2007 was not the proper way to invoke the original jurisdiction of the Supreme Court for bringing/or instituting an Election Petition pursuant to Section 45 (2) of the Constitution of Sierra Leone and Section 55 (1) of the PEA No. 4 of 2012. He also tried to debunk the submission that Rule 89 of the Supreme Court Rules 1982 using an Originating Notice of Motion supported by an affidavit and filing a plaintiff's statement of case was the ONLY way any petition pursuant to Section 45 (2) of the 1991 constitution and section 55(1) of PEA No 4 of 2012 could be brought to invoke the original jurisdiction of the Supreme Court.

32. He argued that while it could not be in doubt that Rule 89 provided a process of Instituting/invoking the original jurisdiction of the Supreme Court by Originating

Notice of Motion supported by Affidavit, it certainly could not be the only way by which you approach the Supreme Court. He submitted that for Presidential Election Petitions you can come by Election Petition which is also an originating process and the Supreme Court should be at liberty to accept such Petitions when they are instituted via the Election Petition Rules 2007. To do otherwise, he submitted, would be to render provisions such as sections 45(2) & 122 (1) & (3), Section 124, and Section 127 of the 1991 Constitution redundant or inapplicable.

33. Mr. Lansana Dumbuya sought to lay the blame on the Rules of Court Committee when he argued that the body to make Rules of Court is the Rules of Court Committee and where thy have failed to make rules specifically for Presidential Election Petitions that should not deprive the litigants from adopting any appropriate method for approaching the Court. In such a situation, they were right to have come before this court by Election Petition Rules 2007. He argued that even if there is another way of approaching the Supreme Court it would be wrong to debar the Petitioner who have come by another means when it is such a fundamental right of a voter to challenge the validity of the Election. He made reference to the case of **REPUBLIC V HIGH COURT ACCRA EX-PARTE AG (DELTA FOODS CASE) 998-99 SCGLR 595** *where the Supreme Court of Ghana applying a purposive approach dismissed an application to quash the proceedings in the trial court holding that the failure to name the Attorney -General as defendant in a suit where according to section 88(5) of the constitution he ought to have been so named was not in those circumstances fatal*. He argued that where a petitioner had come by any other means than the stated means, it would be of no use for the court to throw the Petitioner out on mere technicality without hearing the case on its merits.

34. He submitted that the correct approach would be for the court to determine whether the litigant had been prejudiced or not; and so far as he was concerned, the Respondents/ applicants have not shown or been able to establish that they suffered

prejudice or harm. He therefore referred this court to the case of **TSATU TSIKATA V ATT. GENERAL NO. 2 2001-2002 SCGLR PAGE 620 at 647** where again the Supreme Court reversed a decision that a criminal summons issued in the name of the President of Ghana rather than the Republic as per the Constitution contravened this provision and was therefore a nullity.

35.He concluded by saying that should the court decide the Petitions challenging the validity of the election which brought his Excellency into Office should have been brought or instituted by Originating Notice of Motion, then he would argue in the alternative that in fact SC/7/2018 fulfilled the requirements to be termed an originating Notice of Motion as he, on behalf of Dr Samura and others, have filed a Statement of case which is one of the requirements with respect to an Originating Notice of Motion.

36. He finally requested that the court should employ a purposive approach in determining the questions before the court. Thus, he ended up by saying where the Constitution has given a right - a fundamental right to an individual to contest the validity of an Election that right should not be taken away from them because they employed the wrong process to bring about the action to enforce those rights.

37.On grounds 1(a),1(c), 1(d) 1(e) and 1(f) which were proffered as grounds for the election petitions SC6 and SC 7 2018 to be struck out, the Solicitor for Dr Samura Kamara & others argued that these Rules cannot be mandatory despite the use of word 'shall'. On the other hand, he further argued if the argument was that the Petitioners did not comply with the aforesaid Rules, he submitted that it was the court's duty to serve most of the documents.

38. As regards Rule 14(2), he observed that the sum of Le 1, 000,000 was deposited and that the same was fulfilled as per the Rules. He submitted further that even if you say 2 other recognisances where necessary this was not mandatory as witnesses are

unlikely to be called in an election petition case except in special circumstances and specific or particular witnesses may be called at any time. On the issue of Notice of Compliance, he cited his affidavit in opposition paragraph 3 and argued that the same was correctly given as **Exhibited** as **LD 4**.

39. With regard to 1(f), he submitted that where service was required, the onus was not placed on the Petitioners but rather the Court. He adopted arguments under 1 (a) & (d) and referred to **Exhibit LD 5** the affidavit by Jefferson Williams an officer of the court senior bailiff affirming that he served certain persons at State House. He submitted that Rule 13 must be read in conjunction with Rules 5 (3) & Rules 5 (5) of EPR 2007. He argued that since presentation was done to or in the Master & Registrar's office, that presupposes that it was the Master and Registrar who was expected to serve and not the Petitioner.

40. Mr. Dumbuya referred to the case of **ARTHUR AGWUNCHANWANKO& 2 OTHERS V ALHAJI UMARU YARADUA & 40 OTHERS SC279/2007 UNREPORTED @Pg7** referred to by the Respondent stating that same had no place in the current proceedings as the facts were different. He submitted that any technicalities as to the Rules 1(a), 1(c), 1(d), 1(e) and 1(f) were defeated by Rule 52 of the EPR2007 and Rule 103 of Supreme Court Rules.

41. He went further to state and argue that this application must fail because the application was not made within a reasonable time and eventually made after the Respondents had taken a fresh step in the proceedings. He submitted that the Petition was filed on the 10th of April, 2018. On the 4th of May, 2018 the Applicant's filed a Notice and Memorandum of Appearance together with Notice of Appointment of Solicitors and Agent. On the 29th of May, 2018 the Applicant file a Notice of Motion for the consolidation of the cases. They filed affidavits in support of the application for consolidation which was first heard on the 29TH of May 2018 and on the 18th of July

2018, Judgment/Ruling was delivered. As a result of the above facts, he submitted relying on Order 2 of the High Court Rules pursuant to Rule 98 & 103 of the Supreme Court Rules that the consolidation application of 29th May 2018 constituted fresh Step.

42. On Grounds No. 2 & 3, the counsel for Dr Samura Kamara & 2 others argued that the petition filed showed cause of action and claimed certain reliefs. He stated that when the Respondent drew attention to the Affidavit of the Petition's case paragraphs 11, 12 and 13 he was looking at the petitioners' case and in addition he had filed a statement of case. That apart, they have requested for 4 reliefs. Thus, he concluded the petition was properly before the court and should not be struck out but rather heard on its merit.

43. He finally concluded by pleading with the court not to throw out the Petition as in his view amendments could be made to rectifying any non-compliance with the Rules in the interest of justice so as not to sacrifice justice in altar of strict technicalities or such.

SUBMISSIONS BY DR SLYVIA O. BLYDEN AS 1ST PETITIONER IN PERSON

44. The 1st Petitioner who was appearing in person observed that she had made this petition as a citizen who has a right to bring such a petition. In her submissions she relied heavily on paragraph 9 of her affidavit in opposition sworn to on the 5th of September, 2018 and argued that that none of the affidavits filed in support of the Applicants to strike out the petition attempted to debunk that paragraph such that the information therein was unchallenged, undisputed and uncontroverted-to wit that His Excellency the President entered Appearance on the 17th April 2018 as gleaned from **Exhibit SOB9** and so too the SLPP the 4th Respondent as per **Exhibit SOB 10** was actually served with the Petition. She submitted also while the Respondents/Applicants have applied and attempted to throw out her Petition on several grounds as listed in grounds 1(a), 1(c), 1(d), 1(e) and 1(f) for failing to comply with Rules 6, 12, 14 and 13

of EPR2007, it was her firm conviction that the Election Petition Rules had no mandatory application on a petition brought to the Supreme Court in respect of Presidential Elections. She sought to buttress the submission and belief by holding that a Presidential Elections Petition was radically different from Parliamentary Elections, an expression which she adopted from the Ruling of Justice Browne-Marke when consolidating both Petitions on the 18th of July, 2018. She observed or noted that while no mention of petition is made in the Constitution except with respect to the Chief Justice's removal, the President's removal and with respect to the proviso to 122 where any person may petition the President on some questions and the President in turn requests the opinion of the Supreme Court on the issue, Section 45(2) of the 1991 Constitution was very clear as to the fact that you can and must approach the Supreme Court alone when it comes to the issue of questioning the validity of the Election of the President.

45. She referred to the **John Oponjo Benjamin case** and submitted that while that Judgment made copious reference to the EPR2007, it never in fact came out to state categorically that it was a result of failure or noncompliance with any of those rules of the EPR 2007 that the Elections Petition of Oponjo Benjamin was thrown out. Instead, what she said she understood to be mandatory was the mandatory requirement of Section 55 (1) of Public Elections Act No. 4 of 2012 that all petitions be filed before the Supreme Court not later than 7 days from the declaration of results and that was exactly what she had done by the filing of SC 6/ 2018 which has now been consolidated with SC7 /2018.

46. She pondered that since the Supreme Court has not bound itself with EPR 2007 then what Rules are applicable, as there were no Rules for Presidential Elections PETITION, also trying to lay the blame on the Rules of Court Committee. She then charged the Supreme Court to give directions as to what Rules are applicable in the circumstances or direct the Rules of Committee to make Rules for Presidential

Elections petitions or challenge. Dr Olayinka Blyden argued that should the Court decide otherwise, that those Rules of EPR2007 were applicable, she in the alternative would adopt the argument of learned counsel Mr Lansana Dumbuya that those rules are not mandatory and that non-compliance should not invalidate or nullify the proceedings. In any case, however, she argued that because Rule 6(1) had a Rule 6(2) which was an option any purported mandatory value of Rule 6(1) was nullified and it was on the onus of Master & Registrar under Rule 6(2) to put out that notice.

47. On Ground 2-Dr Blyden adopted the argument of Learned Counsel Mr Lansana Dumbuya. She further referred to paragraph 14 of her affidavit in opposition sworn to on the 5th of September, 2018 which was in answer to paragraph 12 of the affidavit of Musa Mewa sworn to on the 2nd August, 2018, noting and arguing that she had stated quite concisely all the reliefs she had prayed for.

48. On Ground 3 for wanting her Petition SC 6/2018 to be struck out the 1st Petitioner made use of the definition of what a cause of action is, to wit, a fact or series of facts that enables one to bring an action against another. Relying on Cambridge's dictionary she also defined cause of action as an acceptable reason for taking legal action. She went on further to state that a suit or action may have several causes of action or just one cause of action. She relied on the case of **SC/2/2005 CHIEF HINGA NORMAN V SOLOMON BEREWA UNREPORTED** as in her opinion, having several causes of action. She however opined that in the Petition SC 6/2018 which she has brought her case has one cause of action and the same could be evinced or evidenced by the facts as deposed in her paragraphs 10, 11, 12, 13 & 15 of her affidavit in opposition sworn to on the 5th of September, 2018 and that she particularly relied on paragraph 13 of same which stated that the parties have not yet reached the required stage to exchange exhibits as per Rule 35 of the EPR2007.

49.Dr Blyden also reiterating her position on ground 2 prayed by the applicants stated that contrary to the submission by the counsel for the Applicant that the nature of her reliefs have not been concisely stated argued that she had proffered a number of reliefs and that those reliefs were not reliefs which the court could not grant. It was therefore wrong to state that she has not requested for any relief. She observed that her 4th and 5th reliefs prayed for were those reliefs specifically mandated under the 1991 Constitution by virtue of Sections 54(6) and (7) of the aforesaid constitution and what the 1991 Constitution states with respect to the subsequent removal of the President which were not Section 51 removals.

50. On the EPR 2007 being the wrong originating process as claimed by counsel for His Excellency the President and the SLPP, she submitted that she petitioned challenging the validity of the Election of Brigadier Rtd. Julius Maada Bio as President because of the PEA No 4 of 2012 which provided that you can petition against the validity of the Presidential Elections. That was exactly what she had done and thus could not say whether her so called petition was linked with enforcement of the 1991 Constitution, or at all.

51. In her closing arguments she stated and I quote *'My Lords the requirements of* ***FORM 8*** *under Rule 89 of the Supreme Court Rules 1982 would be found in her petition and its attachments as filed. Every information is there and I am asking this court to adopt argument of Mr Lansana Dumbuya that Election Petitions are Sui Generis. This last ground therefore fails.'*

SUBMISSIONS BY THE 1ST AND 2ND RESPONDENTS

52. Solicitor and Counsel, Mr Emmanuel Saffa Abdulai for the 1st and 2nd Respondents at this juncture decided to concur with the 3rd And 4th Respondents/Applicants submissions. The Court granted leave to the Petitioner in person to reply. She noted the submissions and was granted leave by the court to send in any written submissions

or authority as may be appropriate. Counsel for Dr. Samura Kamara and the 2 others adopted the same. To my writing of this Ruling, I am not aware that we received any further written submissions.

CONSIDERATION OF THE ISSUES

53. The above application and arguments relating thereto as detailed above raise a number of issues for consideration by this Honourable Court. In the application of 3rd August 2018 before us several grounds were raised why the Consolidated Petitions SC Case No 6 and 7/ 2018 ought to be struck out. Before delving into and giving apt consideration to any of those grounds I think it is pertinent to address the issue of the alleged unreasonableness of the Application to strike out the petitions and the allegation that the Respondents/Applicants took a fresh step by the filing of an application for Consolidation of Petitions, belatedly raised by learned counsel for Dr Samura Kamara & Others. An issue of such needs addressing now as a declaration/ order that the Application by the Respondents/Applicants was not made within reasonable time and/or the consolidation of petitions is a fresh step would almost certainly mean that the application of 3rd August 2018 ought not to be allowed.

54. To this end, it is pertinent to note that on the 29th of May 2018, Solicitors for HE the President and the SLPP applied to this Honourable court for the consolidation of petitions hitherto filed separately as SC6/2018 by Dr Sylvia Blyden and Dr Samura Kamara and 2 others as SC7/ 2018. The Order for the matters to be consolidated into one matter SC Case No 6 and 7/ 2018 was granted by this Honourable Court by a panel of 3 Justices viz, Hon Justice Nicholas C Browne-Marke, Hon Justice Emmanuel E. Roberts and Hon Justice Glenna Thompsons JJSC with Justice Browne-Marke presiding, on the 18th of July, 2018 and it was not until the 3rd of August 2018 that the application to strike out the Consolidated petitions on the several grounds herein presented, was made. As a result of same, counsel for Dr Samura Kamara and 2 others in his final closing arguments, claimed that the Application was not made within a

reasonable time and that the filing of the application for consolidation constituted a fresh step.

55. Without intending to make a short shrift of this issue it needs be emphatically pointed out that it was less than 3 weeks after the opportunity presented itself, after the consolidation, (the consolidation itself not being regarded as a fresh step) that the application by the HE the President and the SLPP, the 3rd and 4th Respondents/ Applicants herein, was made. This, by all intents and purposes, was within a reasonable time and not an unreasonable time as deposed to in paragraph 7 of the affidavit in opposition of Lansana Dumbuya sworn to on the 14th of January 2021. This cannot by any stretch of imagination be an unreasonable time for making this application. See the case of **REYNOLDS V COLDMAN (1887) 36 CH.D 453 CA** where it was held too late after a year to set aside service out of the jurisdiction. See also **PONTIN V WOOD (1962) 1QB 594** where it was held too late after 4 months to apply to set aside service of a writ claiming damages for injuries suffered.

56.Turning to the issue of the fresh step allegation, a fresh step could be defined as a step in the proceedings which **is only necessary or only useful if you intend defending against the action/ proceedings** or only necessary if you intend waiving any objection to the proceedings or have already waived the objection in the proceedings such that by you taking that step or procedure e.g. filing an application or affidavit in opposition you would have waived the irregularity or any intention of objecting to the irregularities in the proceedings at hand. The Applicants applied for consolidation but the application was not only useful or necessary to defend the action. It was necessary first and foremost to bring issues together on one front so as to manage the proceedings rather than having a multiplicity of cases with perhaps different panels on the same issue. It had nothing to deal with defending the action on merits as the Application to consolidate the petitions did not deal with any of the irregularities the

Applicants wanted to raise and eventually raised with this their eventual application which were only raised after consolidation.

57. It is pertinent to note that it was the Solicitor for Dr Samura Kamara and others, Mr Lansana Dumbuya whose affidavit in opposition raised the issue of the unreasonableness of the timing of the Application, but it never raised the issue of fresh step, so it is improper for him to be raising this now. Fresh step is inapplicable by the sets of facts relating to the consolidation which Mr Lansana Dumbuya has considered as fresh step. In the case of **HUNT V WORSFOLD (1896) 2CH.D 224** it was held there would be no waiver of your opportunity to bring out the irregularities where the step or procedure taken was reasonably necessary for other purpose. In the case before us, it is crystal clear that the consolidation was necessary for other purposes other than defending the action. See also **IN RE DULLES SETTLEMENT (1951) Ch.842 CA** where the step was taken for another reason other than defending the action, to wit, taken to assert an objection and not to defend the action. In the current case the consolidation was taken to assert an objection after proper and easy case management had been addressed through the Application and approval granted by the Supreme Court on 18th July 2018.

58. Against the foregoing, the submission of Mr Lansana Dumbuya that the Application by the 3 & 4th Applicants of 3rd August 2018 for striking out the petitions on the ground that the application was not made within a reasonable time and that the Application for consolidation dated 29th May 2018 constitutes fresh step, fails.

59. Having clarified this issue it brings us to the Application to strike out both proceedings on several grounds. In this connection there is ground 6 which is the primary ground, ground 2&3 in the alternative and ground 1(a), 1(c), 1(d), 1(e) and1(f) further in the alternative. These grounds will be handled seriatim starting with ground 1(a). Under Ground 1(a), the 3rd & 4th Respondents/Applicants claim that the

Petitioners did not serve the Election Petitions SC 6/2018 and SC 7/2018 personally on the 3rd and 4th Respondents/Applicants within five days of the presentation of their Election Petitions contrary to the Election Petition Rules EPR2007 Rules 12(1) and 12(3) nor did the Petitioners and agents deliver same to an appointed agent of the 3rd and 4th Respondents/Applicants as required by Rule 12(2) of the EPR2007. Our findings are clear that the Petitioners did breach Rules 12 (1) (2) and (3) of the Election Petition Rules 2007 in that the Petitioners failed refused or neglected to personally serve on the 3rd and 4th Respondents /Applicants within 5 days of the presentation of the petitions. The Petitioners, especially the 1st Petitioner, has made a heavy weather of the fact that she did serve by showing **Exhibits SOB 9** and **SOB10**. These do not in any way prove and constitute personal service. They showed solicitors for the 4th Respondent even before their Appointment as agent out of abundance of caution entering appearance without really been personally served any petition.

60.Turning to ground 1(c) which stated that the petitioners/respondents failed to comply with Rule 6 (1) of the Election Petition Rules 2007 in that they failed to leave at the Registry a notice signed by them or on their behalf, giving the name of the legal practitioner who had the authority to act as their agent or stating that the petitioner acts for himself or herself, the same could be gleaned from our findings, to wit, that they failed to leave at the registry a notice signed by them or on their behalf giving the name of a legal practitioner who had the authority to act as their agent or stating that the petitioner acts for himself or herself. What was done in both petitions was that in each petition both petitioners filed a Notice pursuant to Rule 7 of the EPR2007 rather than Rule 6 and the requirement of Rule 7 was not only completely different from Rule 6 but had no bearing on the current state of things as none of the petitioners were MPs.

61. With reference to ground 1(d) the argument of the Respondents/Applicants was that the petitioners severally breached Rule 14 (2) as they failed to give security in the form of, firstly, a deposit in the sum of Le1, 000,000.00 and secondly, by recognisance of the same amount entered into by 2 sureties or by payment of deposit of money in

lieu of any such recognisance. Here again our findings are quite clear from the exhibits presented that the 1st petitioner separately and the 2nd, 3rd and 4th Petitioners also separately but collectively did deposit the sum of Le 1,000,000.00, and that was all, and nothing more, with the second ambit of the requirement to give security by recognisance of the same amount entered into by 2 sureties or by payment of money in lieu of any such recognisance unattended to. This was quite insufficient and against the Rules which required that while that deposit of Le1,000,000.00 was necessary as a deposit, the rules required further that recognisances of the same amount be entered into by 2 sureties or by the payment of further deposits of the same amounts in lieu of the recognisances. Here again, the petitioners failed, refused or neglected to comply with Rule 14(2).

62. On ground 1(e) the complaint of the Respondent/Applicant was that the Petitioners/Respondents did not serve the 3rd & 4th Respondents/Applicants with the notice of compliance with Election Petition Rules 2007, as to the giving of security of costs, or personal service within 5 days of the petition as those rules i.e. Rules 14(2) and 12(1) were breached. Our findings again clearly show that this again was breached.

63. Lastly, the Respondents/Applicants claim that the Petitioners/Respondents failed refused or neglected to file an affidavit of the time, place and manner of service of the petition within three days of service of each of the petitions as was mandated by Rule 13 of the Election Petition Rules 2007. Our findings disclose that indeed none of such was filed within the time frame required, or at all.

64. The counsel for the Applicants argued that since each of these Rules and sub rules employed the use of the word 'shall' those provisions were mandatory and the non-compliance thereof meant that the petition ought to be struck out. He referred us to the case of **ARTHUR AGWUNCHA NWANKWO & 2 OTHERS V ALHAJI UMARU YARADUA & 40 OTHERS SC279/2007 UNREPORTED PAGE 7 thereof**, where it was held referring to cases like **IFEZUE V MBADUGHA (1984) SCNLR Pg 427 and NGIGE V OBI (2006)14 NWLR PT 991 pg1** that the word

'shall' when used in a statutory provision imports that a thing must be done. It is not permissive, it is mandatory. Learned counsel, Mr Banda-Thomas further argued that it was also a cardinal principle of interpretation of statutes that where words used in the provisions of a statute were clear, simple and unambiguous they should be given their simple natural and ordinary meaning. The counter argument by counsel for the 2nd, 3rd and 4th Petitioners/Respondents was that 'shall' does not always import a mandatory meaning and that the courts must be minded in the interest of justice so long as there is no prejudice, to apply a purposive approach to interpretation.

65. From the above, it is crystal clear that the petitioner/ respondents failed, refused or neglected to comply with any of those Rules alleged to have been breached. Our findings are very clear that the Petitioners breached Rules 6(1), 12(1), 12(2) &12(3), 14(2) and 13 as claimed by the Respondents /Applicants.

66. The big question or issue, however, is having failed to comply with those Rules whether the non-compliance was and is fatal? To wit, that by reason thereof the noncompliance, the Consolidated Election Petitions filed as **SC Case No 6 and SC7/ 2018** ought to be struck out. For the consolidated Petitions to be struck out for non-compliance would infer a mandatory application of word 'shall' especially so, in circumstances, where the words used import clear simple and unambiguous meaning as you would find in EPR 2007. This has serious implications, as the Consolidated Petitions ought be thrown out *ex debito justitae.* On the other hand, however, if notwithstanding the noncompliance as were detailed by our findings these noncompliance issues could be cured, remedied by amendment / direction from the court on terms as to cost, the use of the word 'shall' in those provisions would import a directory Application.

EPR 2007 -MANDATORY OR DIRECTORY APPLICATION /MEANING OF THE WORD "SHALL"

67. Under **HALSBURY'S LAWS OF ENGLAND 4TH EDITION VOLUME 44 PARA 933** under the rubric Mandatory and Directory enactment explanation was given as to what constitutes mandatory and directory provisions in a Statute thus:

> ***"Where a statute requires an act to be done in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as "mandatory", "absolute", "imperative" or "obligatory"; if, on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be "directory".***

68. The whole Election Petition Rules 2007, to wit, Rules 6, 12, 14 and 13 stated herein to have been breached adopt the use of the word 'shall' and it is a fact that the Rules employ clear simple and unambiguous meaning, but this notwithstanding, it is not every time you use the word 'shall' in a Statute that it gives a mandatory meaning.

69. In the case of **LAHAI TAYLOR V THE SHERIFF & ZIZER 1968/69 ALRSL PAGES 35-44** the Court of Appeal was faced with the issue to decide whether the word 'shall' in Sections 9 and 10 of the Execution Against Real Property Act Cap22 of The Laws Of Sierra Leone 1960 was directory or mandatory. The Court held it was only directory. To come to the conclusion that the word 'shall' in those sections were directory and not mandatory the court took into consideration the case of **MONTREAL STREET RAILWAY CO V NORMANDIN (1917) AC page 170.** The Supreme Court too in the OPONJO BENJAMIN case had recourse to the case of **MONTREAL STREET RAILWAY CO V NORMANDIN (1917) AC page 170**. In that case Lord Arthur Campbell said:

> ***'the question whether provisions of a Statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at.'***

70. In the Indian case of **THE STATE OF HARYANA & ANOTHER V RAGHUBIR DAYAL (1995) 1 SCC 133** the Supreme Court of India observed,

> ***"The use of the word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment or consequences to flow from such construction would not so demand. Normally, the word 'shall" prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'therefore ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve."***

71. With Similar tenor Halsbury's Laws of England 3rd Edition para 933 further states:

> ***"No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and in particular, at the importance of the provisions in question in relation to the general object to be secured …'***

72. It thus becomes clear to me that despite the use of word "shall" in all the breached provisions by the petitioners, to wit Rules 12, 6, 14 and 13 from EPR2007 we must examine the whole scope of those Rules and the purpose they seek to serve and the consequences that flow from them because of the breach to ascertain whether those provisions are mandatory or Directory. This inter alia emphasises the purposive approach in the scope of consideration.

73. In **SGG EDGER'S "CRAIES ON STATUTE LAW" LONDON, 7TH EDITION BY SWEET AND MAXWELL 1971,** the learned author offers explanation as to when a statute could be considered mandatory or directory thus:

> ***"If the Statute itself provides for a punishment or a penal consequence implying that the act so done or done otherwise would be invalid, naturally the provision is mandatory in nature."***

74. It is safe to say that nowhere in the Rules i.e. EPR 2007 are there provisions which say expressly 'if the Petitioners fail to comply with these rules then specifically striking out will be the consequences. Nowhere is the effect of non-compliance detailed in those EPR 2007 Rules. This is different from the Supreme Court Rules PN No 1 of 1982 where Rule 90 (3) of same provides:

> **'Where a statement of the Plaintiffs case is not filed within 10 days of the filing of the Notice of motion, the originating notice of motion shall be deemed to have been struck out'**

With the EPR2007 specifically with Rules 6, 12, 13, and 14 which are the alleged non complied provisions there are no such provisions detailing the consequences or penalty.

75. In the case of **Osman Abdal Timbo v The National Electoral Commission & others EP 7/2018 unreported** I had to deal with a situation wherein Section 78(2) of the 1991 Constitution had provided that the High Court to which any question as to the validity of the election of an MP is brought under 1 '***shall' determine the said question and give judgment thereon within 4 months after the commencement of proceedings before the court'*** The Petitioners had filed their case within the stipulated time of 21 days but then after legal wrangling here and there, 4 months had quickly elapsed and the respondents wanted to guillotine the proceedings for which jurisdiction was embedded and vested only in the High Court to challenge the validity of the election of Members of Parliament such that the petitions having been brought legally and within

the stipulated time frame would stop abruptly without no full adjudication and determination on the merits. I ruled the word 'shall' was only directory not mandatory. I ruled using the golden rule that the literal rule will produce absurdity and used the purposive approach, to wit, that it was the right of the petitioners to have their cases heard and determined on the merits so long as they were within the mandatory time limit for bringing their petitions. In that case also the independence of the Judiciary was at stake with the independence of the Judiciary being an entrenched provision vis-a-vis Section 78(2) not being an entrenched provision. Thus, the Judiciary could not be directed by parliament for something that was strictly within its mandate and power.

76. Lastly, however, it is pertinent to note Rule 52 of the EPR 2007 provides that 'no proceedings under the Electoral Laws 2002 shall be defeated by any formal objection.' In the case of **JOSEPHINE JACKSON EP 6/ 2018 J NO 2 UNREPORTED.** I debunked the argument that in so far as Parliamentary Elections are concerned the word 'shall' had a mandatory meaning. In the course of my Ruling, I had this to say about Rule 52 of the EPR2007. 'It would seem to me that Rule 52 is a guardian to see to it that all petitions brought under the EPR2007 is protected. It is saying, so long as a petition has been brought within the time limit of 21 days as per Section 139 &140 of the PEA No 4 2012 which amended time from 7-21 days, it must be allowed to be dealt with on its merits with one party winning or losing whichever is to be. The life of the petition cannot be cut short by mindless technicalities and objections. To do otherwise will be against the spirit of the EPR 2007 RULES.

77. Against the foregoing, we believe those provisions employing the use of the Word 'Shall' in the EPR2007, and specifically Rules 12, 6, 14 and 13, which as stated have been breached, *except that dealing with the time by which you should file your petition* are directory rather than mandatory.

78. The above notwithstanding, those rules under the EPR2007 adopted by all the petitioners herein to bring their petitions to no less a Court like the Supreme Court, clearly and distinctly, **DO NOT APPLY in the case of any challenge to/ petition**

against the validity of presidential elections in the Supreme Court of Sierra Leone and it is against this background that the Application to throw out/ strike out the Consolidated Petitions SC Cases 6 and 7 2018 succeeds.

WHAT IS THE RIGHT ORIGINATING PROCESS FOR BRINGING A PRESIDENTIAL ELECTION PETITION IN THE SUPREME COURT?

79. In the case brought before this court intituled SC Cases No 6 and 7 of 2018 the Petitioners herein, noting the provisions of the 1991 Constitution in Section 45(2) thereof and Section 55(1) of the Public Elections Act No 4 of 2012 made pursuant to Section 44 of the 1991 Constitution did file a Petition or what purports to be a petition in the Supreme Court. These Sections duly provide as follows: ***S45 (2) 'Any question which may arise as to whether (a) any provision of this Constitution or any law relating to the election of a President under Sections 42 and 43 of this Constitution has been complied with; or (b) any person has been validly elected as President under Section 42 of this Constitution or any other law, shall be referred to and determined by the Supreme Court.'***

S55. (1) of the Public Elections Act No 4 Of 2012 provides, on the other hand, that 'A person who is a citizen of Sierra Leone and has lawfully voted may in a presidential election challenge the validity of that election by petition to the Supreme Court within seven days after the declaration of the result of a presidential election under subsection (2) of Section 52.

80. The EPR2007 are the Rules that were severally used by the petitioners to file their Petitions in the Supreme Court. They alleged that the basis for this stems from the fact that not only is there no Presidential Election Petition Rules set up by the Rules of Court Committee but that Section 55(1) of the PEA No 4 Of 2012 expressly provide that '**A person**… **may in a presidential election challenge the validity of that election by petition to the Supreme Court within seven days after the declaration**

of the result….'. They claim the EPR 2007 which they used in filing their petitions to the Supreme Court was the only process envisaged by the PEA and indeed section 45(2) of the 1991 constitution for starting election petitions in the Supreme Court. They hold that **'By petition in the Supreme Court'** presupposes that it is by petition of which the only kind in so far as Election Petitions are concerned is that created by the ELECTION PETITION RULES 2007 which they have employed to challenge the validity of the election of Brigadier Rtd Maada Bio as President of Sierra Leone. They also argue that while it was glaringly clear that there was and is no presidential election petition rules this was a problem of and for the Rules of Court Committee failing to make such rules. They argue that should this submission fail then in a serious constitutional matter like this, the purposive approach to construction of provisions should be adopted it being a matter dealing with the fundamental right of a person who has voted to challenge the validity of the Presidential Election.

81. Counsel for His Excellency The President and the SLPP, the 3rd &4 Respondents/ Applicants herein vehemently opposed those arguments on the ground that there are Presidential Election Petition Rules for challenging the validity of Election Petitions pursuant to Section 45(2) of the 1991 Constitution and this was by no other means or process other than Originating Notice of Motion provided for in the Supreme Court Rules, PN No 1 of 1982. They claim that Presidential Election Petitions so to speak is a process to interpret or enforce the provisions of the 1991 Constitution by which the very constitution had made Rules as stated in the Rules of the Supreme Court P.N. No. 1 of 1982, Rules 89-98 thereof. These Rules were simple, clear, unambiguous unprotracted, non-convoluted and well suited for Presidential Elections challenge of the Presidential Election Results unlike the EPR 2007. It required the filing within 7 days from the Presidential Elections Results of an Originating Notice of Motion supported by an affidavit which would detail all the facts and cause(s)of action and then at the same time, but definitely not later than, 10 days thereafter, the filing of a Plaintiff's Statement of Case which should set forth the facts and particulars,

documentary or otherwise, verified by an affidavit upon which the Petitioner/ Plaintiff relies, the names of the witnesses, if any, whom he intends to rely and the list of authorities and their citation. Since such a process has not been adopted, they claim the petition filed ought be struck out.

82. As a court we note that the words used in Section 55 (1) of the Public Elections Act 2012 which was made pursuant to section 44 of the Constitution of Sierra Leone Act No 6 of !991 is that you challenge the validity of that election **'by petition to the Supreme Court within seven days'**

83. This has raised serious controversy because if we adopt a literal meaning of that phrase would suggest that you come by an originating process called Petition and this is what the petitioners respondents want this honourable court to believe and sanction, hence the reason for filing the election petition through the Election Petition Rules challenging the validity of the Election of Brigadier Julius Maada Bio as President. Three Things however fly/run against the Petitioners' Submissions.

84. **Firstly**, the expressed and inherent application of the EPR 2007 through which these petitions were brought is as stated in Section 1 of the EPR 2007 where it states that its applicability is for election petitions challenging the validity of an election of a member of parliament, to wit, whether a) a person has been validly elected as a member of parliament; and b) whether the seat of a Member of Parliament has become vacant. So that the Supreme Court, with all its powers, lacks jurisdiction to deal with a matter for which the High Court has exclusive jurisdiction and conversely the Supreme Court cannot handle petition through the EPR 2007 because it lacks jurisdiction. So the question is if it was intended that the originating process should be by Petition then it most certainly must be by a petition process or rules that are applicable in the Supreme Court and not Election Petition Rules that are not applicable in the Supreme Court but only in the High Court.

85. **Secondly**, the effect of filing with the wrong process in this particular situation unlike other situation is that it throws the matter outside the court's jurisdiction or scope. Jurisdiction and lack of it is a very serious matter in litigation. It is about what you have powers to do and what you do not have power to do. Primarily where you do not have power to do, purpose is absent and you would be acting outside scope. It would seem to me that the purposive approach should not be applied where it is an infringement against the court's jurisdiction which is guaranteed by the very 1991 Constitution. This is so because by Jurisdiction is meant the extent of the Courts powers to entertain action, petition or proceedings see the case of **DANIEL K CAULKER V KOMBA KANGAMA SUPREME COURT CIVIL APPEAL 2/74 per** C. O. E. Cole CJ unreported. In **A-G ANANBRA STATE V AG FEDERATION (1993) 6 NWLR PT 302 Pg. 692** it was held that 'a court is only competent to exercise jurisdiction in respect of matters where a) it is properly constituted as regards numbers of the bench and no member is disqualified for one reason or the other; or b) the subject matter of the case is within its jurisdiction and **there is no feature in the case which prevents the court from exercising its jurisdiction**; or c) The case comes by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.'

86. In the case of **HINGA NORMAN V SAMA BANYA AND OTHERS SC2/2005 JUDGMENT DELIVERED ON THE 31ST OF AUGUST 2005**, the Learned Chief then Justice Ade Renner Thomas CJ said on jurisdiction: A distinction ought to be made between two meanings frequently attributed to the word (jurisdiction) and which sometimes tend to lead to confusion. This distinction is aptly dealt with in the following dicta by RICKFORD. LJ in delivering his judgment in the case of ***GUARANTY TRUST COMPANY OF NEWYORK v HANNAY & COMPANY (1915) 2 KB 536 at 563***:- "The word jurisdiction and the expression the court has no jurisdiction are used in two different senses which I think often leads to confusion. The first and in my

opinion, the only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it is raised. But there is another sense in which it is often used, i.e. that although the Court has power to decide the question, it will not according to the settled practice do so except in a certain way and under certain circumstances'. This second meaning is the meaning of jurisdiction applicable in this case now before us.

87.**Thirdly**, for the originating process to have begun by petition pursuant to the Public Elections Act No 4 of 2012 is a blatant contravention of the 1991 Constitution which is the *grun norm*. This is because the right to challenge the validity of the presidential elections results had existed long before 2012 by virtue of Section 45(2) of the 1991 Constitution. Thus, even without Section 55 (1) of the PEA No 4 2012 voters had the right to challenge the validity of Presidential Elections results except that there was no law which proscribed the limits of making such a challenge to not more than 7 days. Thus, the right to challenge the validity of the Election results had long existed by the 1991 Constitution and it is not by section 55(1) that it came into force. Any provision which came after 1991 which is inconsistent becomes void to the extent of the inconsistency. Section 171(15) of the 1991 Constitution provides that **'This Constitution shall be the Supreme Law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void and of no effect'**

88.Thus the argument that Section 55(1) provided firstly a process and a process by petition by which you challenge the validity of the presidential election Results cannot hold in circumstances where Section 45(2) of the 1991 Constitution had provided prior to 2012 a section dealing with challenge to the validity of the Presidential elections after declaration of the results in the Supreme Court and there were enforcement provisions and procedure via Rules created by the Rules of Court Committee created

under the said Constitution for dealing with same in the Supreme Court. There being a process for invoking the original jurisdiction of the Supreme Court by Originating Notice of Motion via Constitutional provisions and later another separate and distinct process via Petition, which is totally different, and one that has its applicability rooted in the High Court, ***the process which is by petition in the Supreme Court becomes blatantly and glaringly inconsistent with the1991 Constitution.*** One may argue that Originating Notice of Motion is not expressly stated in the 1991Constitution as the means by which you institute action invoking the original jurisdiction of the Supreme Court. My answer is that it need not be; as lawyers, so long as the connections could be aptly made without inconsistency, it is sufficient. While it is clear that Section 45 (2) of the 1991 Constitution provides that questions regarding the validity of the election results must be referred to the Supreme Court, the very 1991 Constitution also provides that the Supreme Court has original jurisdiction see sections 122 and 124 of same and this original jurisdiction do come into play or existence so long as it involves a matter of interpreting and enforcing the constitution as provided in Sections 124 and 127 of the Constitution. This being the case, any matter where the issue is challenging the validity of the Presidential results becomes a quest to ensuring that that provision relating to section 45(2) is implemented with all force and fury. While there may be no Rules referred to in the 1991 Constitution there were rules already in existence prior to the 1991 Constitution which the 1991 Constitution specifically recognises and which become applicable in the circumstances.

89. In this regard one must specifically note that Under Section 145 of the Constitution the Rules of Court Committee is the Body authorised by the 1991 Constitution to make rules of procedure and practice for practice in our Courts and this is an authority surrendered to no other person else, not even, Parliament. The Rules of Court Committee under the 1978 Constitution provided for the Supreme Court Rules No 1 of 1982 and Rule 89 shows distinctly and clearly the way litigants can enforce provisions of the 1991 Constitution in the Supreme Court through Originating Notice

of Motion. The Supreme Court Rules, P.N. No. 1 of 1982 after its short title provides 'In exercise of the powers conferred on the Rules of Court Committee by subsection 2 of Section 120 of the Constitution of Sierra Leone 1978, the following rules are hereby made' of which Rules 89 -98 are part thereof.

90. In the 1991 Constitution under the rubric Laws of Sierra Leone, Section 170 (1) states that the Laws of Sierra Leone include a) this Constitution b) Laws made by or under the authority of parliament as established by this Constitution c) any Orders, Rules, Regulations and other Statutory instruments made by any person or authority pursuant to a power conferred in that behalf by the Constitution or any other Law, d) the existing Law and e) the common law.

91. It is without doubt that the Supreme Court Rules P.N. No 1 of 1982 fall under 1(c) above, in the sense that, they constitute Rules made by persons or authority **pursuant to powers conferred in that behalf by the Constitution that is the 1978 Constitution**, but they go beyond that, in that they come most importantly, under 1(d) also in that they form part of the 'existing law'. Under Sections 170 1(d), 170(4) and 176 and 177 the existing law is given distinct meaning and presence

Section 170(4) provides:

> **'The existing law shall save as otherwise provided in subsection 1, comprise the written and unwritten laws of Sierra Leone as they existed immediately before the date of the coming into force of this constitution and any statutory instrument issued or made before that date which is to come into force on or after that date.**

Section 176 of the 1991 constitution is to the effect that

> **'In this Chapter, the expression "existing law" means any Act, rule, regulation, order or other such instruments made in pursuance of, or continuing in operation under, the existing Constitution and**

having effects as part of the laws of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and may be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution; AND

Section 177 of the 1991 Constitution additionally provides further as follows

'The existing law shall, notwithstanding the repeal of the Constitution of Sierra Leone Act, 1978, have effect after the entry into force of this Constitutions as if they had been made in pursuance of this Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

92. The effect of all these provisions is that under the 1991 Constitution the provision of the 1978 Constitution dealing with the establishment and function of the Rules of Court Committee is retained to the extent that all Rules made under the 1978 constitution, to wit, the Supreme Court Rules P.N. No 1 of 1982 are deemed as forming part of our laws and do intricately form part of the current Constitution.

93. The originating process mentioned there as the way of invoking original jurisdiction of the Supreme Court thus becomes the only way and law applicable to challenging the validity of presidential election results pursuant to Section 45(2) of the Constitution otherwise called petitioning against the validity of the election of the president. The mention of 'By petition in the Supreme Court' becomes destitute of any legal effect to the Level of its inconsistency with the 1991 Constitution in the sense there cannot be another process of invoking the original jurisdiction of the Supreme Court by petition when the said Constitution already recognises and applies

Originating Notice of Motion Process through the supreme court rules / or existing Law. Alternatively, we do accept 'By petition to the Supreme Court' words conferring a right to institute a challenge in the Supreme Court and no more. We do not accept the argument that because the word petition is used its imports a technical meaning of an originating process for bringing election petitions. The ordinary meaning of the words 'petition' is then a right to file papers in the Supreme Court but not an originating process of election petition along the lines of EPR2007 which is only applicable in the High Court but rather through Origination Notice of Motion which is the only means recognised by the Constitution in the Supreme Court.

WHETHER THERE ARE NO PRESIDENTIAL RULES FOR ELECTION

94. The petitioners have in the alternative argued that if the argument is that they have brought action through the wrong originating process then this is a result of the Rules of Court Committee not having made any rules for challenging Presidential Elections Results. Our answer to this is that it is a blatant misconception to say that the Rules of Court Committee has not made Rules for presidential election petitions /challenge. It did when it provided Rules for bringing action invoking the original jurisdiction in the Supreme Court. Those Rules were made in 1982 by the Rules of Court Committee established pursuant to Section 120 of the 1978 Constitution and the said rules were saved under 1991 Constitution as if they were made under the 1991 Constitution by Sections 170(1)(d), 170(4), 176 and 177 therein referred to as the 'existing law'. What this means is that detailed rules of procedure have been prescribed/provided in relation to the exercise of jurisdiction conferred by the Constitution on the Supreme Court whether in its original, appellate, supervisory or advisory jurisdiction. Challenging the validity of a presidential election result pursuant to Section 45(2) and Section 55 (1) comes within the power of invoking the original jurisdiction as it involves interpretation & enforcement of the provisions as stated in Section 45 (2) of the 1991 Constitution and Section 55 (1) of PEA NO4 OF 201 so far as it relates to the time at which you bring petitions pursuant to Section 124 of the Constitution. Rule 89 of the

said Rules provides that any matter invoking the original jurisdiction of the Supreme Court must be by Originating Notice of Motion. The effect here is that instituting proceedings challenging the validity of a presidential election through the prescribed method of Originating Notice of Motion does not stop it from being a petition to the Supreme Court. Secondly, while there may not be any rules directly labelled or with a short title '**PRESIDENTIAL ELECTIONS RESULTS CHALLENGE OR PETITION RULES'** there are Rules existing within the context of the existing laws of Sierra Leone for challenging the validity of the presidential elections or petitioning against the validity of the elections which Rules are Rules 89-98 and 103 of the Supreme Court Rules PN No1 of 1982. There has been a lot of insinuation that the Rules of Court Committee should make Rules for challenging / petitioning the validity. Against the above background this is clearly unnecessary. It needs pointing out further that unlike other countries where Rules of Court Committees have mandatory powers; (Such is the case for Ghana under Section 157(2) of the 1992 Ghana Constitution), the powers of the Rules of Court Committee in Sierra Leone set up under Section 145 of the 1991 Constitution is subject to the 1991 Constitution and are directory – it states '**The Rules of Court Committee may make Rules'**. The import here is that because there are already Rules under the said constitution via the Supreme Court Rules 1982 there be not any further Rules. Worse still, it seems these rules for testing the validity of the presidential elections results, have never been properly tested, as nobody has brought Election Petitions through the right process even though it is waiting there to be used. Where it has not been properly tested, we cannot really know its weaknesses if any. Having said all, it is trite law that where the Rules of Court Committee has failed to make procedural rules for something dealing with a fundamental right of an individual this should not debar the litigant from adopting any appropriate method for approaching the court. This however is not the case here.

95. In the case of **JAUNDOO V AG OF GUYANA (1971) AC 972 @ 982** the High Court of Guyana held that in the absence of any provision as to the means by which

proceedings can be instituted, the High Court had no jurisdiction to entertain the application. The Privy Council up turning that decision, however, held that in the absence of any provision prescribing the method of access to the court, a person complaining of an infringement of his constitutional right could adopt any procedure by which the court might be approached to invoke the exercise of any of its power. In delivering the Judgment Lord Diplock had this to say;

> '**The clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have un inhibited access to the High Court is not defeated by any failure by parliament or the rule making authority to make provisions as to how that access is to be grained.'**

96. It is clear to see that the petitioners in their claim and fight for a straw to lean on, do associate themselves to such a decision on the purposive approach. A strict adherence to the dictates of such decision buttresses the fact that for you to make such an argument the process adopted must be the ***appropriate procedure applicable*** in the court which should have been adopted which the court in this case is grossly absent as the EPR 2007 which was adopted cannot be the appropriate procedure as its applicability is only in the High Court and the only process applicable in the Supreme court for invoking the original jurisdiction of the Supreme Court is by Originating Notice of Motion. The Supreme Court cannot be approached by any other method to enforce constitutional rights except by Originating notice of Motion.

97. Thus while there are rules, as claimed by the Applicants, the wrong originating process, and not only that, the only originating process has been flipped with dire consequences. The Petitions SC Cases 6 and 7 /2018 ought be struck out.

WHETHER INSTITUTING A PRESIDENTIAL ELECTION PETITION AGAINST THE VALIDITY OF PRESIDENTIAL ELECTION USING THE

WRONG ORIGINATING PROCESS IS FATAL AS TO RENDER THAT PROCESS USED OR ADOPTED, NOT CONSISTENT WITH THE CONSTITUTION, A NULLITY?

98. The Petitioners have claimed that even if you claim that the EPR2007 is inapplicable to invoking the Original Jurisdiction of the Supreme Court, once they have filed a petition, albeit through the wrong process, it being a case where they were exercising their right as a voter to challenge the validity of the Presidential Elections, they ought be given an opportunity to be heard on the merits and ought not be thrown out as prayed by the respondents/Applicants. In their argument all the petitioners advocated for the Purposive Approach to be used in interpreting the provisions of the Constitution when it comes to enforcing the fundamental right of a citizen and voter to challenge the validity of an election which they claim is the obvious case here. The big question then is whether the Purposive interpretation is applicable or can hold true in the light of the relevant provisions of the 1991 Constitution dealing with challenging the validity of the Presidential Election after declaration of the results by the National Electoral Commission on the 4th of April 2018.

99. The Petitioners claim support for this argument through basically 2 cases, viz, **the case of TSATU TSIKATA V ATTORNEY GENERAL NO. 2 2001-2002 SCGLR PAGE 620 647** where the Supreme Court of Ghana interpreting Section 125 of the Constitution of Ghana which provided thus ***'Justice emanates from the people and shall be administered in the name of the republic by the judiciary which shall be independent and subject to the constitution,'*** reversed a decision that a criminal summons issued in the name of the President of Ghana rather than the Republic as per the constitution contravened this provision and was therefore a nullity.

100. Mr Lansana Dumbuya counsel for Dr Samura- Kamara & others also referred this Court to the case of the **REPUBLIC V HIGH COURT OF ACCRA Exparte ATTORNEY GENERAL (DELTA FOODS CASE) (1998-1999) SCGLR 595**

where again the Supreme court notwithstanding paying due deference to Section 88(5) of the Constitution of Ghana 1992 which provided ***'The Attorney -General shall be responsible for the institution and conduct of all civil cases on behalf of the State ; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant'*** held, the failure to comply with those provisions with the plaintiff instituting the action against the Minister of Agriculture instead of the Attorney-General, was not fatal, instead dismissing the application to quash the proceedings in the Trial Court holding that the conduct of the defence were done by State Attorneys under the AG's Office .

101. In both cases a Purposive construction of the relevant Sections of the constitution was used to circumvent the strict textual literal interpretation of the relevant provision of the constitution. A Purposive approach to interpretation is where you use or construe constitutional provision in a beneficent benevolent broad liberal and purposive way so as to arrive at a better interpretation of the Constitution.

102. Turning to the two authorities relied upon these are not Statutes dealing with Election issues and would be wary to adopt same within the compass of them being persuasive authorities with due deference to their makers. I note too, that these cases do not show that there was harm or threatened harm that would result from the non-compliance or constitutional infraction or the ignoring of the Non-compliance by the Court through a liberal or benevolent interpretation of the constitution.

103. In **CARPENTER V BARBER 190 SO49, 51(FLA 1940)** a US court held 'Generally, the courts in construing statutes relating to elections hold that the same should receive a liberal construction in favour of the citizen whose right to vote they tend to restrict and in so doing prevent disfranchisement of legal voters.'

104. In another US case **WHITELY V HOLLIS RHINEHART JR 198 SO49 51(FLA 1940)** Terrel CJ said ***'Election laws should be construed in favour of the right to vote'.*** In Ghana her Ladyship Bamford Addo JSC in the **APALOO V ELECTORAL COMMISION 2001-2002) SCGLR 1** stated that 'The principle regarding the interpretation of electoral laws is that they should be construed liberally in favour of the right to vote rather than a denial of that right.'

105. Putting all these authorities together it is clear to me that the argument of the Petitioners, put simply, is that so long as an interpretation and enforcement of the constitution involves election issues those provision should be construed liberally in favour of the Right of the Voter to challenge the validity of the Elections. To this end much has been made about the right to vote being a fundamental right of every voter and the same is guaranteed under Section 31 of the 1991 Constitution thus ***'Every citizen of Sierra Leone being 18 years of age and above and of sound mind shall have the right to vote, and accordingly shall be entitled to be registered as a voter for the purposes of public elections and referenda.'***

106. Section 55 (1) of the Public Elections Act No 4 of 2012 provides further '***A person who is a citizen of Sierra Leone and has lawfully voted may in a presidential election challenge the validity of that election by petition***'. Also, it is clear that a voter who has lawfully voted in a presidential election has a fundamental right to challenge the validity of those elections. The above section has used the words lawfully voted which would imply that you are not only a voter but that you actually voted in the elections for which you now pose a challenge. This means that not every citizen and voter has ***locus standi*** to bringing an election petition but only those that have voted in the Presidential Elections. But does this fundamental right of the Person who has lawfully voted, like our humble Petitioners herein all have done, take precedence over the wrong process (to wit, using the EPR 2007 instead of the Originating Notice of Motion) being used to enforce those rights such that adopting the wrong process becomes non-fatal

using the purposive approach? I should think not. The reasons for this could be enumerated as follows. It is the fundamental right of all registered voters to vote and this court would take judicial notice of the fact that when it comes to Election day he goes to the polling station and is allowed to vote but if he or she acts foolishly by failing to follow the dictates of the Electoral Commission and Electoral laws as to how he or she should cast his ballot or put his mark on the ballot paper that person's vote is deemed void. That voter would have been granted access to his fundamental rights and would be deemed to have voted but yet still for want of proper or correct process his or her votes declared void & destitute of any effect. No body argues that even where there has been a breach or non-compliance of process or procedure through a void ballot by the voter, because of the fundamental right of the voter that voter should be allowed to vote again. In fact, this would be impossible and highly prejudicial. By the same token it would be wrong when the 1991 Constitution which is the *grun norm* has prescribed the means of instituting proceedings in the supreme court challenging the validity of the election of the president as through Originating Notice of Motion and the voter ***with locus standi*** fails to follow the process, because of his fundamental right, expect that his or her so called petition should not be declared void and their petition struck out or thrown out. To do otherwise, will be highly prejudicial, and a cause for uncertainty in Presidential Elections. Fundamental right has its limits and should not be lifted to the level it becomes highly prejudicial.

107. Nobody argues that because of the purposive approach votes voided should be recalibrated & put back because firstly you would not know who are the culprits for void ballots and secondly even if there was a way designed for you to know you would doing an election out of the time prescribed so that what you do within the election time is a ***fait accompli***. Our humble petitioners because of their fundamental right to vote and the locus standi they possess to challenge the validity to the presidential elections results were granted unrestricted access to challenge the validity of the presidential elections. Pursuant to such unrestricted right or access they filed their

petitions within the prescribed time of 7 days. Unfortunately, in doing same they employed the wrong process instead of the right Process of Originating Notice of Motion. Should it not now be clear that it is equally ***a fait accompli*** as they cannot now be given time outside this period to refile or amend their petition; worse still use that petition as it is and hear it on merits? I should think so.

108. That apart protecting the fundamental right to vote and protecting the fundamental right of a voter who has lawfully voted to challenge the validity of the elections do not stand on the same pedestrial. This is because right of the voter to challenge comes after voters would have exercised their choice and a winner presented represented by the higher or highest number of voters declared. To challenge or petition the elections results would be pitting yourself against not only the president but those voters' decision that have been declared winners and whose decision you could not alter without cogent reasons. While you would be exercising your voters' right well and good this involves voters' right where other voters who equally have rights have voted and the result of that voting declared with a winner emerging. Thus, in a Tanzanian case of **MADUNDO V MWESHEMI & A-G MWANZA HC MC NO 10 OF 1970** it was held ***'An election petition is more serious and has wider implications than an ordinary civil suit. What is involved is not merely the right of the petitioner to a fair election but the right of the voters to non-interference with their votes already cast i.e. their decision without satisfactory reasons.'***

109. Also quite clearly you would in the main be raising issues which you require to have been done properly by the respondents herein when you yourself have not done things properly. Against a presumption of regularity which holds true with the declaration of the results, this would be grossly unfair and highly prejudicial. Against this back drop there is only one situation which is correct and that is your wrongly filed petition ought to be thrown out. Looking at all the authorities submitted, there is

none dealing with provisions dealing with challenge of the election results by a voter and I would be reluctant to follow any to embellish the right of the voter in the name of purposive approach. The submission therefore by Dr Sylvia Blyden, Dr Samura Kamara and 2 others on the need to use the purposive approach therefore fails.

110 Lastly, on the issue of noncompliance we still believe that the argument on the Purposive approach cannot stand because the need to come by Originating notice of Motion and in the form prescribed in Rule 89 of the Supreme court Rules PN No 1 of 1982 is mandatory in that it has prescribed the consequences that should follow from noncompliance. Thus under Rule 90(3) of the Supreme Court Rules 1982 the Rules provide: **'Where a statement of the plaintiffs case is not filed within 10 days of the filing of the Notice of motion, the originating notice of motion shall be deemed to have been struck out.'**

111. If it provides striking out for those that have filed an Originating Notice of Motion but yet do not comply with the rules on filing the plaintiff's statement of case, what about those like in the current case that have failed refused or neglected to comply with the procedure on invoking the Original Jurisdiction of the Supreme Court which is a graver infraction. In the spirit of the legislation there could be no other result but to strike out the petition for failing to instituting the proceedings by the correct process.

112. To conclude this point the purposive approach is a very good way of interpreting the constitution and as could be seen it has been adopted a few times. But it is not always the right way. In the constitution there are so many competing rights. Even the president chosen and the voters who chose him have rights. You cannot hype the purposive approach against the other rules of interpretation. All the Rules for interpreting the constitution are important and you may choose one over the other when the need arises with a view to having the most liberal in the circumstances even if means adopting the literal strict textual meaning.

Without more on these points alone the petitions fail, ought to be struck out and are hereby struck out.

CURSORY GLANCE ON THE PETITIONS

113. We cannot end our consideration of the issues in this case without making some comments about the contents and substance of these petitions. We note that all the petitioners have one way or the other stated that they have in their respective petitions all the necessary information for the petition to be heard on its merits barring the fact that the wrong process may have been used. In her closing arguments Dr. Blyden the 1st Petitioner stated and I quote -

> ***'My Lords the requirements of form 8 under rule 89 of the 1982 Supreme Court Rules would be found in my petition and its attachments as filed. Every information is there and I am asking this court to adopt the argument of Mr Lansana Dumbuya that Election Petitions are Sui Generis. This last ground therefore fails.'***

114. By the same token we also note too that Counsel for Dr Samura Kamara and the 2 others, Mr Lansana Dumbuya filed their Petition supported by an affidavit and even later filed what he alleges to be a Statement of Case but which with all due respect to him was woefully short in meeting the requirements for a Statement of Case. Noting what all the petitioners have stated with respect to their respective Petitions as providing all the necessary information for their Petitions to be considered on its merits, this, it would appear to me affords a convenient juncture to consider grounds 2&3 of HE the President's and SLPP's /Application dated 3rd August 2018. Under grounds 2 & 3 of that Application, Mr Banda Thomas Counsel for both applied to this Honourable Court for the consolidated petitions intituled **SC Case No 6 and 7 2018** to be struck out because they are fundamentally and substantially flawed and defective in that they do not set forth '***as concisely as possible'*** the nature of the reliefs sought by the

Petitioners on the one hand and secondly, do not show any cause of action, in view of which, they ought be struck out.

115. With reference to ground 2 prayed in the aforesaid Application the emphasis is that the reliefs have not been set out ***'as concisely as possible'*** as against the reliefs not been stated at all. It is clear that the Petitioners did file for certain reliefs and in fairness those reliefs cannot be thrown out as outlandishly out of order or out of place. This notwithstanding, noting Section 45(2) of the 1991 Constitution dealing with challenge against the validity of the results of the Presidential Run-off Elections 2018, they could have or must have been more aptly put before the court. They have therefore not been set out *'as concisely as possible'*. I hasten however to state that this is not as serious enough as would lead to the striking out of that petition of Dr Blyden let alone Mr Dumbuya.

116. Turning to ground 3 as prayed in the said Application by the 3rd and 4th Respondents/Applicants, HE the President and the SLPP, it is a very serious matter to say the petitions show no cause of action. It goes to the root of the Petition, that is so say consideration as to whether the action or petition is maintainable or not or whether we can evince a right for the Petitioners to bring the petition based on the facts presented in this court. According to **JOWITTS DICTIONARY OF ENGLISH LAW 2nd edition @ page 297. *'Cause of action' means the fact or combination of facts which give right to sue … the phrase is of importance chiefly with reference to the Limitation Act. According to*** **'BLACK'S LAW DICTIONARY** (definition of terms and phrases of American and English jurisprudence ancient and modern) **REVISED 4TH EDITION** at page 278-279 'Cause of action' means ***'grounds on which an action may be maintained or sustained, ground or reason for the action'*** See the case of **EAST SIDE MILL & LUMBER CO V SOUTH EAST PORTLAND LUMBER & CO 155 Or 367 64P. 2D625, 627,628.** In another case cited in the said dictionary, to wit, **BREVICK V**

CUNARD SS. CO 63 ND 210 the meaning of 'Cause of Action' was held to be ***'that which was necessary for bringing an action'.*** In the most apt of the definitions in **MOBLEY V SMITH 24 ALo. APP 553, 138, So 551** and in **VICKERS V VICKERS 45 NEV 274, 302P31** 'Cause of action' was defined ***'as* averment *of facts sufficient to justify a court in rendering a judgment'.*** With similar force **Lord Esher said** in **READ V BROWN 22 Q.B.D 128** which was applied in **BENNET V WHITE (1910) 2 K.B. 643** ***'A 'cause of action' is the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.'***

117. Against these definitions and the claim that the Petitions are flawed and defective in that they show NO cause of action, it behoves me at this point to consider whether the Petitions as detailed in **SC6/ 2018 and SC 7 2018** do not show any cause of action. Put simply the inevitable conclusion from all these definitions is that facts presented in the Petitions must be such that, prima facie, they support a claim that the elections results were invalid. Where the facts as averred or presented could not support a claim that the election results were invalid, the petition is not maintainable and ought be struck out with cost.

118. Rules 89-90 of the Supreme Court Rules 1982 support this. In Rule 89 of the Supreme Court Rules there is a requirement that your Originating Notice of Motion should be supported by an affidavit and normally it is a fact that affidavits constitute evidence and provide a vehicle for exhibiting relevant documents. Similarly so, Rule 90 makes it compulsory for the Petitioner to state a Plaintiff's case on which should be included the set of facts and particulars, documentary or otherwise, verified by an affidavit upon which the plaintiff relies. While we accept that the wrong process was adopted this does not take away the fact that the petitions as presented should be or should have been loaded with the facts that would make the action maintainable – sufficient averments of facts that would justify the court in rendering a judgment.

119. A close look at the Petitions show that such facts were never presented by both Petitioners. In the case of the Petition of Dr Blyden the following is noted. In her entire Petition SC6/2018 now consolidated as SC Cases 6 & 7/2018 there are only mere allegations with no exhibits. Secondly, Dr Sylvia Blyden claims that there was a variance between voters' register published on website of NEC and a so-called unknown voter register. Without going into the details even at the outset it would appear to us that no matter which voters register was used it would have resulted in the same 2 persons contesting the Presidential Run-off elections that is Brigadier Rtd Julius Maada Bio and Dr. Samura Kamara. That apart this was an issue with the 7th March 2018 Elections for which no Petition was brought within the 7 days deadline as permitted by law.

120. As gleaned from paragraphs 6 1-15 supra of Dr. Blyden's Petition she did raise issues dealing with the 7th March, 2018 Presidential Elections. The result of the March 7 elections were published on the 13th of March 2018 and thereafter no petition emerged from same until more than 7 days after election results elapsed and only after the Run-off Elections and declaration of the second election results. But yet she is making allegations relating to March 7 elections on this petition and this is clearly out of order and statute barred because of the law to wit section 55 (1) of the PEA NO 4 of 2012 which is a mandatory provision and to the effect that any challenge to the validity of that March 7th Election should have been brought on or against 7 days after the declaration of that Election result on the 13th of March 2018. You cannot use those facts to ground culpability in the March 31st Elections and the ensuing results.

118. On her Petition, Dr Blyden averred 'that yet another voter register was issued to political parties on the eve of the Run-off Elections thus giving 3 different sets of spread of voters per polling station. These have not been produced or exhibited in the Petition. In her arguments she adopted Learned Counsel submission that Election Petitions are ***sui generis***. This no doubt is true and correct but it is this fact that has

placed a huge obligation on them as Petitioners. ***Sui generis*** interpreted literally means election petitions are of a special or particular kind or in a class by themselves but the import of elections being ***sui generis*** has several heads. It involves, inter alia, a combination of features to wit, the fundamental right of a voter which must be upheld, the non- interference with the voters' decisions by the petitioner except there is cogent and satisfactory reasons for such departure; the standard of proof in election petition cases which is higher than the normal civil suit standard of proof but lower than beyond reasonable doubt. This would suggest clear and convincing evidence. Thus in the Kenyan case of **SARAH MWANGUDZA KAI V MUSTAPHA IDD & 2 0THERS, ELECTION PETITION CASE NO 8 OF 2013 (2013) eKLR, GITHUA J** stated the reasoning for this higher standard of burden when he said this:

> "It is important for this court to address its mind to the burden and standard of proof required in election petitions. This is because election petitions are not like ordinary civil suits. They are unique in many ways. Besides the fact that they are governed by a special code of electoral laws, they concern disputes which revolve around the conduct of elections in which voters exercise their political rights enshrined under Article 38 of the Constitution. This means that electoral disputes involve not only the parties to the Petition but also the electorate… in the electoral area.
>
> It is therefore obvious that they are matters of great public importance and the public interest in their resolution cannot be overemphasised. And because of this peculiar nature of elections petitions, the law requires that they be proved on a higher standard of proof than the one required to prove ordinary civil cases."

119. We adopt this dictum as applicable in this case. As part of these features of Elections cases there is also A presumption of Regularity criteria or standard couched in the Latin maxim '***Omnia Praesumuntur rite et solemniter esse acta' which means that all public acts (that is acts of the Electoral Commission) are presumed to have been done rightly and regularly) and the Independence of the Electoral Commission.***

120. Thus going back to the voter registers until rebutted this court will not be out of place to conclude that only one was used for the 31st March Election by the Electoral Commission. In view of this presumption of regularity as a natural course of event petitioners are expected to provide the kind of evidence that would rebut such a presumption. None has been produced before this court. Until this presumption is rebutted, we cannot hold otherwise and truly speaking not much had been presented to rebut the presumption. In truth it must be further stated that as per Section 32(11) of the 1991 Constitution in the exercise of its functions the Electoral Commission shall not be subject to the direction or control of any person or authority. Except the courts by virtue of Section 171(13) of the 1991 Constitution. They were operating within their mandate.

121. That apart and further as stated in a Tanzanian case of **MADUNDO V MWESHEMI & A-G MWANZA HC MC NO 10 OF 1970.**
'An election petition is more serious and has wider implications than an ordinary civil suit. What is involved is not merely the right of the petitioner to a fair election but the right of the voters to non-interference with their votes already cast i.e. their decision without satisfactory reasons.'

122. Dr. Sylvia Blyden also claimed in her petition that some APC party agents deployed in the south east of the country reported that they were violently intimidated. This is hearsay in the absence of them providing evidence of same. While having the

opportunity to do so and even given opportunity to file additional or further affidavits by order of this court dated 3rd December 2020 on or before the 21st of January 2021, she failed, refused or neglected to do so, only filing an affidavit which had no record data or statistics of over voting.

123. Dr. Blyden claimed in her Petition that there were reported widespread cases of over voting in hundreds of polling stations in the south east when using the voter register used by NEC which she claimed was the 3rd version of voter register. I take judicial notice of the fact that Over-voting is easily proved when documents as in the 8th Schedule of the PEA No 4 2012 is produced in court. This document is referred to as statement of results of poll and is a form of result sheets in each polling station which is given to all party agents such that it should be readily available. Where same is produced over voting could be easy be deduced. None has been produced in court and it is but clear that over voting cannot be ascertained. Against the foregoing there is prima facie no evidence of over voting. The same can be said of the other allegations namely that of violence irregularity etc. You don't just say; you prove and moreso with records data and statistics. As things are, the 1st Petitioner have not even brought up the evidence which will lead us to consider whether those facts as stated could be carefully looked at and proved. There is no evidence of violence as alleged and no evidence of irregularity, let alone there being enough of such over voting as would be necessary to vitiate the elections results.

124.The effect of all this is there is truly as claimed by the Respondents /Applicants no facts alleged which gives the right to petition and this tantamount to there being No cause of action.

125. As regards to the Petition of Dr Samura Kamara & 2 others they too have not displayed any cause of action. They made references to the 7th March 2018 Elections which was already Statute barred in terms of bringing petition/challenge against its

validity; They also made reference to a set of documents which they were unable to or did not produce despite this huge onus of burden and standard of proof placed on them as petitioners and the presumption of regularity which is law of evidence in such circumstances. With respect to over voting the same considerations as with Dr. Sylvia Blyden applies.

126. Heavy weather was made of the NEC not complying with Sections 91, 93 and 94 of the PEA NO 4 OF 2012 by all the petitioners. These sections have nothing to deal with polling where the actual elections took place and there is no allegation or proof that the ballot papers were actually tampered with. Further a number of legal authorities show that Non-compliance with the law alone without evidence that the electoral process or the results had been materially or fundamentally affected is not the basis for invalidating an electoral outcome. **See the following cases THE CASE RAILA ODINGA CASE 2013; RAILA ODINGA AND ANOTHER V INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & OTHERS PRESIDENTIAL PETITION NO 1 2017 ; BUHARI V OBASANJO (2003) 17 NWLR PT850, 587;(2003) 11 SC 74.** The point being made here is that there is no evidence documentary or otherwise presented despite the ample opportunity given.

127. In the case of **MORGAN V SIMPSON (1974) 3 ALLER @ PAGE 728** Lord Denning said these words which have often guided courts when handling cases of Elections. After collating what had been happening in several cases involving elections he said: ***I suggest that the law can be stated in these 3 propositions:***

1. ***If the election was conducted so badly that it was not substantially in accordance with the law as to elections the election is vitiated irrespective of whether the result was affected or not; (that is shown in the Hackney Case; 31 LT 69, where 2 out of the 19 stations were closed all day, and 5,000 voters were unable to vote);***

2. ***If the election was so conducted that it was substantially in accordance with the Law as to elections, it is not vitiated by breach of the rules or mistake at the polls, provided that it did not affect the results of the election; (that is shown by the Case of Islington West DIVISION MEDHURST V LOUGH AND CASQUET, (1901)17 TLR 210, where 14 ballot papers were issued after 8 pm);***
3. ***But, even though the election was conducted substantially in accordance with the law as to elections nevertheless if there was a breach of the rules or mistake at the polls and it did affect the results then the election is vitiated. (That is shown by GUNN v SHARPE (1974) 2 ALL ER 1058, where the mistake in not stamping 102 ballot papers did affect the result).***

128. In the Islington case **His Lordship JUSTICE KENNEDY (1901) 17 TLR 210 @ P230 held @PAGE 230** held:-

> ***"An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinate in the conduct of the election where the court is satisfied that the election was notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, that is, the success of the one candidate over the other was not and could not have been affected by those transgressions…'***

129. It has often been opined that the net effect of such propositions is that an election once conducted would not be declared void invalid or vitiated unless and until it is proved that there are infractions or irregularities that actually affect the total votes casts at the polling stations and by extension the whole country and not the incidence of administrative errors or mistakes committed by officers charged with the conduct of such elections.

130. These propositions as to how to handle election cases in all fairness do not even arise in this case as, what has been presented and is before us, in the absence of detailed records data and statistics as exhibits, do NOT even reach the threshold for such consideration. It borders on frivolity. The inevitable conclusion is that there has been no sufficient averment of facts that would justify judgment one way or the other, hence no cause of action shown from both petitions and those petitions ought to be struck out.

CONCLUSION

131. In conclusion the Petitioners have failed refused or neglected to produce any evidence to rebut the fact that Brigadier Rtd Julius Maada Bio now president was validly elected as President of the Republic of Sierra Leone. All things considered, the Petition of Dr Sylvia Olayinka Blyden as SC6/2018 and that of Dr Samura Mathew Wilson Kamara, Minkailu Mansaray and Ambassador Dr Foday Yansaneh as SC7/ 2018 now consolidated as SC Cases 6 and 7 of 2018 are all herein struck out.

132. Predicated on the above, this Court hereby declares that the Election of His Excellency Brigadier (Rtd) Julius Maada Bio, the Sierra Leone Peoples' Party Candidate as President of Sierra Leone on the 4th of April 2018 following the 2018 Presidential Run-off Elections held on the 31st of March 2018, was and is VALID.

Each party to bear their own costs.

DATED THIS DAY OF APRIL, 2021.

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HON. JUSTICE DESMOND BABATUNDE EDWARDS CJ

I agree

…….

HON. JUSTICE NICHOLAS BROWNE-MARKE JSC

I agree

……

HON. JUSTICE EMMANUEL EKU ROBERTS JSC

I agree

……

HON. JUSTICE ALUSINE SESAY JSC

I agree

……

HON. IVAN ANSUMANA SESAY JA