



CIV. APPEAL 60/ 2019

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

AHMED MANSARAY

-APPELLANT/ APPLICANT

AND

ABDUL MUNIRU LANSANA

11 KISSY BROOK OFF BLACK HALL ROAD

FREETOWN.

-1<sup>ST</sup> RESPONDENT

THE NATIONAL ELECTORAL COMMISSION

TOWER HILL

FREETOWN-

- 2<sup>ND</sup> RESPONDENT

THE NATIONAL RETURNING OFFICER

NATIONAL ELECTORAL COMMISSION

TOWER HILL

FREETOWN.

- 3<sup>RD</sup> RESPONDENT

THE REGIONAL COMMISSIONER

NATIONAL ELECTORAL COMMISSION

WESTERN URBAN DISTRICT

TOWER HILL

FREETOWN

- 4<sup>TH</sup> RESPONDENT

CORAM:

1. HON. MR. JUSTICE SENGU M. KOROMA JSC - PRESIDING
2. HON. MR. JUSTICE ANSUMANA I SESAY. JA
3. HON. MRS. JUSTICE TONIA BARNETT JUSTICE J

• COUNSEL:

1. A.S SESAY, A. MACAULEY, A. SHOWERS AND S. BAH- FOR THE APPELLANT/ APPLICANTS
2. M. MEWA, M.KENNEH AND I.F SAWANEH- FOR THE RESPONDENT

**RULING DELIVERED ON THE 16<sup>TH</sup> JULY, 2020.**

1. The Appellant/Applicant herein, AHMED MANSARAY applied to this Court by notice of Motion dated 27<sup>th</sup> February, 2020 seeking the following relief:
  - i) That this Honourable Court grants a stay of proceedings in this action pending the hearing and determination in the matter intituled.

**SC 8/2020**

**IN THE SUPREME COURT OF SIERRA LEONE**  
**(ORIGINAL JURISDICTION)**

IN THE MATTER OF THE INTERPRETATION OF SECTION 78 (4) OF  
THE CONSTITUTION OF SIERRA LEONE, ACT NO. 6 OF 1991

**AND**

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT  
NO. 6 OF 1991, SECTION 124 AND 125

**AND**

IN THE MATTER OF THE ELECTION PETITION CIV. APP 52/2019  
BETWEEN OSMAN ABDAL TIMBO AND SULAIMAN MARRAY  
& OTHERS

**AND**

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 53/2019  
BETWEEN JOHN SATTY KARGBO AND REV. HORACE E. VINCENT  
& OTHERS.

**AND**

IN THE MATTER OF ELECTION PETITION CIV. APP. 54/2019  
BETWEEN MOMOH KAMARA AND TENNYSON HINDOLO SANDY  
& OTHERS

**AND**

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 55/2019  
BETWEEN MOHAMED SHERIFF KASIM CAREW AND ALLIEU  
IBRAHIM KAMARA & OTHERS

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 56/2019  
BETWEEN ABU BAKARR F. SILLAH AND BENJAMIN TURAY &  
OTHERS

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 57/2019  
BETWEEN HARIYATU ARIANA BANGURA AND EMMANUEL  
SAHR GBEKIE & OTHERS

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 58/2019  
BETWEEN MUNIR ROLLINGS-KAMARA AND JOHN TELSON  
KOROMA & OTHERS

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 59/2019  
BETWEEN KADIE KALLON (NEE DAVIES) AND JOSEPHINE H.M.  
JACKSON & OTHERS.

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 60/2019  
BETWEEN AHMED MANSARAY AND ABDUL MUNIRU LANSANA  
& OTHERS

AND

IN THE MATTER OF THE ELECTION PETITION CIV. APP. 61/2019  
BETWEEN HON. KEMOKOH CONTEH AND AHMED JOSEPH KANU  
& OTHERS

IN THE MATTER OF AN ACTION PURSUANT TO THE  
SUPREME COURT RULES 1982 PART XV1, RULES 89-98 OF  
STATUTORY INSTRUMENT NO. 1 OF 1982

- |                                   |                            |
|-----------------------------------|----------------------------|
| 1. ABDUL ABDAL TIMBO              | 1 <sup>ST</sup> PLAINTIFF  |
| 2. JOHN SATTY KARGBO              | 2 <sup>ND</sup> PLAINTIFF  |
| 3. MOMOH KAMARA                   | 3 <sup>RD</sup> PLAINTIFF  |
| 4. MOHAMED SHERIFF KASSIM CAREW   | 4 <sup>TH</sup> PLAINTIFF  |
| 5. ABU BAKARR F SILLAH            | 5 <sup>TH</sup> PLAINTIFF  |
| 6. HARIYATU ARIANA BANGURA        | 6 <sup>TH</sup> PLAINTIFF  |
| 7. SIRAJIN MUNIRR ROLLINGS KAMARA | 7 <sup>TH</sup> PLAINTIFF  |
| 8. KADIE KALLON(NEE DAVIES)       | 8 <sup>TH</sup> PLAINTIFF  |
| 9. AHMED MANSARAY                 | 9 <sup>TH</sup> PLAINTIFF  |
| 10.KEMOKAI CONTEH                 | 10 <sup>TH</sup> PLAINTIFF |

C/O 5 HILL SIDE BYPASS ROAD

FREETOWN

AND

- |                                 |                             |
|---------------------------------|-----------------------------|
| 1. ABDUL SULAIMAN MARRAY CONTEH | 1 <sup>ST</sup> RESPONDENT  |
| 2. REV. HORACE E. VINCENT       | 2 <sup>ND</sup> RESPONDENT  |
| 3. TENNISON HINDOLO SANDY       | 3 <sup>RD</sup> RESPONDENT  |
| 4. ALLIEU IBRAHIM KAMARA        | 4 <sup>TH</sup> RESPONDENT  |
| 5. BENJAMIN TURAY               | 5 <sup>TH</sup> RESPONDENT  |
| 6. EMMANUEL SAHR GBEKIE         | 6 <sup>TH</sup> RESPONDENT  |
| 7. JOHN TELSON KOROMA           | 7 <sup>TH</sup> RESPONDENT  |
| 8. JOSEPHINE H M. JACKSON       | 8 <sup>TH</sup> RESPONDENT  |
| 9. ABDUL MUNIRU LANSANA         | 9 <sup>TH</sup> RESPONDENT  |
| 10.AHMED JOSEPH KANU            | 10 <sup>TH</sup> RESPONDENT |

C/O BREWAH & CO

PADEMBA ROAD

FREETOWN.

THE NATIONAL ELECTORAL COMMISSION

TOWER HILL, FREETOWN

-11<sup>TH</sup> RESPONDENT

THE NATIONAL RETURNING OFFICER

NATIONAL ELECTORAL COMMISSION,

TOWER HILL FREETOWN

-12<sup>TH</sup> RESPONDENT

THE WESTERN URBAN DISTRICT  
RETURNING OFFICER  
NATIONAL ELECTION COMMISSION  
WESTERN AREA  
TOWER HILL  
FREETOWN

-13<sup>TH</sup> RESPONDENT

- ii) Any further or other order(s) that this Honourable Court may deem fit and just
- iii) That cost of this Application be costs in the cause.

- 2. This Application was supported by the affidavit of AHMED MANSARAY sworn to on the 27<sup>th</sup> day of February, 2020 together with the Exhibits attached thereto.
- 3. To get a clearer picture of the issues for determination in this matter, I shall outline the relevant averments in the respective affidavits of both parties

#### **AFFIDAVIT IN SUPPORT**

- 4. After giving a background to the action, the Applicant made the following averments germane to his application
  - i) Paragraph 4: 'That I am reliably informed by my Solicitors and verily believe that the Appeal was required to have been heard and decided within 4 months from the date of filing'.
  - ii) Paragraph 5: 'That I am reliably informed and verily believe that the Appeal was assigned for determination on the 17<sup>th</sup> day of February, 2020; by a Notice of Motion dated 12<sup>th</sup> February, 2020; more than 8 months after the same was filed'. Copy of the Notice of hearing evidencing same was attached and marked "AM3".

- iii) Paragraph 6: 'That it has been more than 4 months since the said Appeal was filed and the said action has not been held and determined'.
- iv) Paragraph 7: 'That I am reliably informed by my Solicitors that based on paragraph 6 supra, my Solicitors have filed an application to the Supreme Court for interpretation of Section 78(4) of the Constitution of Sierra Leone'. The said Originating Notice of Motion was attached thereto and marked "AM4"
- v) Paragraph 8: 'That I am reliably informed and verily believe that any decision reached by the Supreme Court will have a nugatory effect if for any reason the Supreme Court in its interpretation holds a view contrary to that Court of this Court of Appeal'.

### **AFFIDAVIT IN OPPOSITION**

5. The 1<sup>st</sup> Respondent, **ABDUL MUNIRU MANSARAY** opposed the application by an affidavit sworn to on the 16<sup>th</sup> day of April, 2020. In the said Affidavit, the deponent **ABDUL MUNIRU LANSANA** averred as follows:
- i) Paragraph 2: 'That I am reliably informed by my Solicitors and verily believe that the conduct of this appeal is separate from an interpretation of section 78 (4) of the Constitution before the Supreme Court'.
  - ii) Paragraph 3: 'That I reliably informed that the Court of Appeal is the final Court of Appeal in Parliamentary Election Petition and therefore whatever the outcome of the application before the Supreme Court will not affect the Appeal process'.
  - iii) Paragraph 4: 'That I am reliably informed by my Solicitors and verily believe that Section 78(4) relied on by the Appellant/Applicant does not state that the Appeal should be stayed or stopped because it has not been heard within four months since the interest of Justice will not be served if the Courts were to allow matters to be determined by effluxion of time'.
  - iv) Paragraph 5: ' That I am reliably informed by my Solicitors and verily believe that seeking a stay of proceedings herein

does not preserve any res but merely seeks to delay the determination of the Appeal which delay is already the subject matter of their Application before the Supreme Court’.

- v) Paragraph 6: ‘That I am reliably informed by my Solicitors and verily believe that the Court of Appeal being the final Court of Appeal in Parliamentary petitions; the Courts decision in the instant Appeal will not be determined by the Supreme Court since the Supreme Court has no Appellant Jurisdiction in Parliamentary petitions’.

### **ORAL SUBMISSIONS OF COUNSEL:**

#### **a) COUNSEL FOR THE APPLICANT**

6. Africanus Sesay Esq. Counsel for the Applicant relied on the totality of the affidavit in support, more particularly paragraphs 2-8 thereof and submitted that Exhibit “AM4” was the Application before the Supreme Court under Section 124 and Section 125 of the Constitution of Sierra Leone, 1991 to interpret Section 78(4) thereof in its Supervisory jurisdiction. The intent of the Applicants was for the Supreme Court to declare that the Court of Appeal was functus Officio to hear the Appeal.
7. Africanus Sesay Esq. further submitted that at the time the Appeal was filed, the issue of time had not arisen which made this development an exceptional circumstance. In support of this, he relied on the Court of Appeal decision in the case of **DAWNUS (SL) LTD -V- TIMIS MINING CORPORATION MISC. APP. 18/2016 C.A.** – Paragraph 13, Page 4 thereof. He also referred to the Case of the **NATIOONAL ELECTORAL COMMISSION & ORS -V- ENGINEER (DR) EZEKIEL IZUOGU & ORS COURT OF APPEAL (LAGOS DIVISION) CA/L/145/92**
8. Mr. Sesay concluded by submitting that this Court was bound by his previous decision as was held in the Case of **KADIE KALLON -V- JOSEPHINE JACKSON**

#### **COUNSEL FOR THE RESPONDENT**

9. Musa Mewa Esq. Counsel for the Respondents relied on the affidavit in opposition in its entirety and submitted that Section 78(5) of the Constitution stated in no uncertain terms that the Court of Appeal shall be the final Court of Appeal in any matter pursuant to Section 78(3) shall not be inquired into by any Court.
10. Mr. Mewa argued that bearing in mind the nature and construct of Exhibit "AM4" attached to the affidavit in support, the second relief sought to wit: -  
'That the Applicant be reinstated ....." defeats the purport of their Application as the Applicant was not only approaching the Supreme Court for an interpretation but was also involving its Appellant jurisdiction. Mr. Mewa submitted that Section 125 was of no assistance to the Applicant as there was not application before the Supreme on any of the prescribed vehicles.
11. Mr. Mewa argued further, in respect of Section 125 of the Constitution, that the Application before this court was not for an interpretation but for a stay. This meant the Applicant should adduce sufficient argument to justify why it should be granted. It was the function of this Court to determine whether there was a case for a stay.
12. Mr. Mewa referred to Section 78(4) of the Constitution and submitted that the failure to assign the appeal for hearing was neither the fault of the Parties or of this Court as Constituted. Mr. Mewa referred to Section 120 (16) of this Constitution and drew an analogy based on this Section and Section 78 (4) and rhetorically asked whether in a situation where Judgment was delivered after three months, should the parties proceed to the Supreme Court for interpretation?
13. On the issue of whether a provision is directory or mandatory, he referred to the Indian Case of the **STATE OF HARYANA & ORS – V- RAGHUBIR DAYAL (1975) 1SCC 133**
14. Mr. Mewa concluded that the nature of the Application before the Supreme Court exceeded the jurisdiction conferred by Section 124 of the constitution in its entirety.



## ISSUE FOR DETERMINATION:

15. The issue here for determination is whether the Applicant has advanced sufficient reasons for this Court to stay the present proceedings.
16. On this point, Counsel for the Applicant relied on the Case of **DAWNUS (SL) LIMITED -V- TIMIS NINING** (Ubi supra). In this Case, the Applicant argued that “Parallel Proceedings in this Court (the Court of Appeal) and in the Court below would lead to a waste of previous judicial time especially in the event where the appeal proved successful. The Respondent’s submission against the Application rested mainly on the view that the processes in the Court below were not yet at the stage of a trial and they were yet but expedited discoveries which were inevitable in the Fast Track Commercial Court. Fynn- JA (sitting alone) had this to say “I am convinced that the circumstances in this particular case are beyond the usual circumstances. In my opinion, the situation in this case, as it includes a certified appeal that goes to the root of the jurisdiction to hear the matter at all ‘is uncommon and distinct from the general run of things” that one finds in most of the authorities on the subject. It is a difference that satisfies the concerns raised by George Gelaga-King – JA in those very words in **LUCY DECKER AND OTHERS –V- GLADSTONE DECKER MISC. APP 13/2002**”. I would venture to say that this was the ratio decidendi of this Ruling. I shall return to this Case in due course.
17. Counsel for the Applicant also referred to the Nigeria Case of **NATIONAL ELECTORAL COMMISSIONS & ANOR –V- ENGINEER (DR) EZEKIEL IZUOGU & ORS** (Supra). The parts of the Judgment the Applicant relied on are to be found in paragraph 5 (on the meaning of expression “Jurisdiction of the Court) and Paragraph 6 (Effect of exclusive conferment of Jurisdiction). The issues involved in this case were, whether the 1<sup>st</sup> Appellant was even served with the Writ of Summons, Statement of claim or other vital processes in the suit, and, whether the trial (High) Court had the jurisdiction to entertain the suit or empowered or had the right to

make the Order for bye-election as it did in this case. I have found it difficult to appreciate the relevance of this authority to the main issue for determination in this case.

18. Musa Mewa Esq. on the other hand argued that Section 78(5) of the Constitution of Sierra Leone, 1991 conferred exclusive jurisdiction on the Court of Appeal to determine any matter pursuant to Section 78(3) of the said Constitution and so the Supreme Court lacked jurisdiction to make any order concerning the reinstatement of the Applicant should the Supreme Court Order that the Court of Appeal was bereft of jurisdiction to hear the Appeal.

19. In determining this issue, it would be useful to state the relevant provisions in extensio:

- i) Section 78 (1): The High Court shall have jurisdiction to hear and determine whether:
  - (a) Any person has been validly elected as a member of Parliament; and
  - (b) The seat of a Member of Parliament has been declared vacant.
- ii) Section 78 (3) an Appeal shall lie to the Court of Appeal from the decision of the High Court on any matter determined pursuant to subsection (1), save that an appeal shall not lie in respect of any interlocutory decision of the High Court in such proceedings.
- iii) Section 78 (4): The Court of Appeal before which the appeal is brought pursuant to subsection (3) shall determine the appeal and give judgment within 4 months after the appeal was filed.
- iv) Section 78 (5): The decision of the Court of Appeal on matter pursuant to subsection (3) shall be final and not inquired into by any Court.
- v) Section 145 (1) of the Public Elections Act, No. 4 of 2012

20. All of the Provisions cited herein have one using in Common, to wit: the role of the Courts in resolving disputes arising from Parliamentary Elections, as they are; the High Court has Original Jurisdiction whilst the Court of Appeal has an Appellate and final Jurisdiction.
21. To put it simply, it is only the Court of Appeal that has the right to reverse a decision of the High Court in Parliamentary elections disputes. In other words, if the Court of Appeal is bereft of Jurisdiction to hear an appeal, then the Judgement of the High Court will stand. The Supreme Court has no jurisdiction to do otherwise
22. The Application to the Supreme Court-Exhibit 'AM4' was invoking its Original Jurisdiction to interpret Section 78(4) of the Constitution of Sierra Leone, No. 6 of 1991 and determine whether the Court of Appeal was functus to hear the Appeal. If the answer to the question was in the affirmative, that the Supreme Court declare that the Court of Appeal was time barred from hearing and determining the Appeals. Let me put this application in its correct context.
23. I am not in any way trying to usurp the powers of the Supreme Court to interpret Constitutional provisions by virtue of powers granted it by Section 124 (1) (a) of Act No. 6 of 1991. What I am doing is to establish that the application itself was misconceived. The Applicant was invoking firstly, the Original Jurisdiction of the Supreme Court which he had the right to do and secondly, its appellate jurisdiction which that court did not have. The legal effect of any Order of the Supreme Court in the affirmative would leave the Applicants in a limbo. The Court of Appeal could not hear his appeal because the Supreme Court had held that it was bereft of authority to do so nor would the Supreme Court have the power to reinstate him as it clearly did not have jurisdiction.
24. The foregoing scenario was not to my mind, the intention of parliament in enacting those provisions. The clear intention was that

the Court of Appeal should be the only Court authorised to look into the decision of the High Court. The rationale was to ensure that there was an expeditious conclusion of Petitions. By making such Provisions, all other Courts, including the Supreme Court could not exercise that any appellant jurisdiction regarding Parliamentary Elections Petitions. To this extent, time limit in Section 78(4) as in Section 120(16) of the Constitution is merely directory and not mandatory. If the said provisions were held to be mandatory, serious general inconvenience would be caused to innocent persons or general public without much furthering the object of the Act. Counsel must not be carried away by the use of the word 'shall'. Normally, the use of the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of parliament by a careful examination of the whole scope, the purpose it seeks to serve and the consequences that would flow from the construction placed thereon. In other words, the word 'shall' 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—see STATE OF HARYANA –V- RAGHUBIR DAYAL (supra).

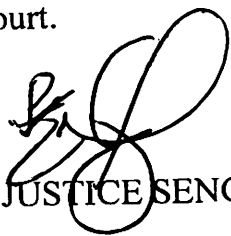
25. It is my conclusion therefore that the circumstances referred to by the Applicant as exceptional were really just ordinary. The Court must not be a conduit to deprive ordinary citizens of their right to procedural fairness. I would say that the circumstances warranting a stay of proceedings have not been properly made out. The case of **DAWNUS (SL) LIMITED** cited by Counsel for the Applicant could be easily distinguished. As I have mentioned earlier in this Ruling, in the DAWNUS case, the argument of the Applicant therein was that refusing the stay would lead having parallel proceedings in both the High Court and the Court of Appeal, the latter bring an appeal from the decision of the former and the other proceedings in the High Court on the substantive matter. In the instant application, the issue of parallel proceedings does not arise. The Applicant was invoking the original Jurisdiction of the Supreme Court to interpret a constitutional provision. These would not be parallel proceedings. The decision of the Court of Appeal in the matter would be final whilst that in the Supreme Court could be declaratory. The Supreme Court lacked

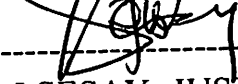
jurisdiction over the exercise of the appellate powers of the Court of Appeal in parliamentary election petition appeals.

26. Finally, it would be noteworthy that in Exhibit AM4, there is a prayer for the Supreme Court to stay the present proceedings. The Applicant is in effect seeking the same relief in this Court and in the Supreme Court.

27. For the reasons given herein, I order as follows:

1. That the Application for a stay of proceedings in these actions pending the hearing and determination of the Application, SC. 8/2020 to the Supreme Court is hereby refused.
2. That the Parties and the Registrar of the Court of the Appeal fix a date(s) for the hearing of the substantive Appeals.
3. Costs of this application shall be in the cause.
4. This Ruling shall apply to all related Applications before this Court.

  
HON. MR. JUSTICE SENGU MOHAMED KOROMA  
JUSTICE OF THE SUPREME COURT,

  
-----HON. MR JUSTICE  
ANSUMANA I SESAY- JUSTICE OF THE COURT OF APPEAL.

  
-----HON. MRS TONIA  
BARNETT- JUSTICE OF THE HIGH COURT.