

Neutral Citation Number Misc App 301 {2021}

C25 (General Civil Division)

Case No: Misc 301/2021

IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN  
GENERAL CIVIL DIVISION

Law Court Building  
Siaka Stevens Street  
Freetown

Date: 14 June 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

Tommy S Conteh  
Abdul Karim Sesay  
Abdul Majid Kabia

Plaintiffs

-and-

Attorney General and Minister of Justice  
Political Parties Registration Commission  
National Chairman, Sierra Leone Peoples Party  
Secretary General, Sierra Leone Peoples Party  
Regional Chairman, Sierra Leone Peoples Party

1<sup>st</sup> Defendant/Respondent  
2<sup>nd</sup> Defendant/Respondent  
3<sup>rd</sup> Defendant/Respondent  
4<sup>th</sup> Defendant/Respondent  
5<sup>th</sup> Defendant/Respondent

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DE Taylor of Counsel for the Plaintiff

No representation for the Defendant

Hearing date: 11 June 2021

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APPROVED ORDER

I direct that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FISHER J

**The Honourable Mr Justice Fisher J:**

1. The Plaintiffs in this matter have filed an originating notice of motion dated the 8<sup>th</sup> day of June 2021, seeking a number of orders, fourteen in total, which are prayed for on the face of the originating notice of motion. It is necessary at this time to summarily set out the prayers of the plaintiff as they appear on the face of the originating notice of motion, as follows.

1. That this court grants an order, quashing the decision of the 2<sup>nd</sup> defendant dated 7<sup>th</sup> May 2021, cancelling the constituency elections held at Constituency 105,107 and 108, on two grounds:

I. That the adjudication of the elections dispute is ultra vires the powers granted in section 6(2)(a) of the Political Parties Act 2002, to the PPRC, as the said intervention amounts to a contravention of the rules and regulations for the conduct of executive elections of the Sierra Leone Peoples Party 2021.

II. That the conduct of the 2<sup>nd</sup> defendant in adjudicating disputes arising out of elections in the said constituency 105,107 and 108, is unlawful and an appropriation of the power of the High Court of Sierra Leone in the absence of an election petition within the party's mechanism for elections petitions.

2. That the court declares unlawful, the intervention of the Secretary General of the Sierra Leone Peoples Party through a public notice dated 17<sup>th</sup> April 2021.

3. A declaration that the elections of the chairmen for constituencies 105,107 and 108 is in accordance with the Sierra Leone Peoples Party National Constitution 2020.

4. An Order that the 4<sup>th</sup> defendant publish the results of the elections for constituencies 105,107 and 108 held on the 10<sup>th</sup> April 2021, as there was no petition of the outcome of the elections.

5. That an interim injunction be granted restraining the 4<sup>th</sup> defendant from interfering with the elections results of chairmen of Constituencies 105,107

and 108 and the outcome of the elections, pending the hearing and determination of this application.

6. That this court orders the regional chairman to sign the election results for the said constituencies 105,107 and 108 and forward the same to the 3<sup>rd</sup> and 4<sup>th</sup> defendants for onward publication.
7. That this court grants an interlocutory injunction restraining the 4<sup>th</sup> defendant from interfering with the results for chairmen in the said constituencies and the outcome of the said elections dated 10 April 2021, pending the hearing and determination of this matter.
8. That this court grants an interim injunction restraining the 4<sup>th</sup> defendant from conducting any elections that would adversely affect or alter the outcome of election results of chairmen and their respective executives of the said constituencies, conducted on the 10<sup>th</sup> April 2021, pending the hearing and determination of this application.
9. This ground is similar to ground 8 above save for the added inclusion of the words “or alter”.
10. That this court grants an interlocutory injunction in similar terms as in ground 8 and 9 above.
11. That this court grants an interim injunction against the 2<sup>nd</sup> defendant restraining them from interfering in anyway whatsoever with the outcome of the elections for the said constituencies conducted on 10<sup>th</sup> April 2021.
12. That this court grants an interlocutory injunction against the 2<sup>nd</sup> defendant restraining them from interfering in anyway whatsoever with the outcome of the elections for the said constituencies conducted on 10<sup>th</sup> April 2021.
13. Any further order the court deems fit ; and
14. Costs.

2. In support of the application is the affidavit of Christian Habib Thorpe, the district chairman of Rural East of the Sierra Leone Peoples Party, herein after referred to as the SLPP, sworn to on the 8<sup>th</sup> day of June 2021, with exhibits attached thereto.
3. Further, the plaintiffs have filed a supplemental affidavit sworn to by the same Christian Habib Thorpe on the 8<sup>th</sup> day of June 2021, with two exhibits attached. The plaintiffs have also filed an undertaking in damages, should it turn out that the injunction ought not to have been granted.
4. I have read the supporting affidavit and the supplemental affidavit and I consider it necessary to give a summary of the plaintiffs' pleaded case in the affidavits mentioned above. In summary the facts deposed to can be summarised as follows:
  1. That elections were conducted on 27<sup>th</sup> March 2021 in various constituencies in the East Rural District.
  2. That as District Chairman, he and the district secretary validated the results. Subsequently, zonal elections were held on 10<sup>th</sup> April 2021, which were supervised by himself and the district chairman, which he characterised as successful. He however signed the results as district chairman.
  3. That the regional chairman Hon Manso Dumbuya sent unauthorised officials to conduct parallel elections in all the four constituencies in undisclosed locations.
  4. That parallel results were also submitted to the regional chairman, which he inappropriately approved and refused to approve the authentic election results. He cited the fact that no petition was made against the results of the elections which he supervised.
  5. That the elections he conducted as district chairman were certified and approved by the National Chairman, Dr Prince Harding. He also deposed to the fact that the 5<sup>th</sup> defendant failed to or refused to sign the results of the elections which he conducted.

6. That after the conduct of the district elections in the east rural district, the national secretary general issued out a press release that nullified all the elections conducted in the east rural district until further notice.
  7. That letters were sent to the PPRC against the decision of the national secretary general, protesting against the decision to rerun elections that were ostensibly, successfully conducted.
  8. That the intervention of the national secretary general and the PPRC were in contravention of the SLPP constitution 2020, as well as the rules and regulations for the conduct of all executive elections of the SLPP 2021.
5. The plaintiffs therefore seek an interim and an interlocutory injunction in order to support the legitimacy of the elections and to uphold the rules of the SLPP governing elections.
  6. Where a plaintiff seeks an injunction, the laws governing such grants of injunctions should be carefully considered.

The relevant law on injunctions.

7. Order 35 of the High Court Rules 2007 provides the legal basis for the granting of interlocutory injunctions. Order 35 rule 1 sub rule 1 provides:  
*“(1) The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just”.*
8. In deciding whether to grant an injunction, the court must take into account whether it is just and convenient to grant the order sought. The general principles underlying the grant of an injunction have been set out in the case of **American Cyanamid v Ethicon 1975 A.C. 396**. The court held in that case that so long as an action was not frivolous or vexatious the only substantial factor the court takes into account is the balance of convenience.
9. The court must consider whether there is a serious issue to be tried and in which way the balance of convenience lies. The court must also consider whether damages are an adequate remedy for the Plaintiff. In answering these questions, the court has to

consider the nature of the evidence before it and in so doing I have considered the affidavits before me. However, as this is an ex parte application, I need to carefully consider the rules on the grant of such applications. The common practice by counsel in the courts have been to seek interim injunctions on an ex parte basis with limited or no adherence to the rules governing such injunctions.

#### Ex parte interim injunctions

10. An applicant for an interim injunction who proceeds to file an ex parte application for an injunction and without giving the respondent even informal notice of the application, must set out the reasons why in his evidence before the court and justify in such evidence the reference to circumstances of secrecy and urgency that justify the application for such an ex parte application. Such injunctions by their very nature are made in circumstances of secrecy and urgency.
11. The importance of the general principle that applications (including applications for injunctions) should only be made without notice in cases of “exceptional urgency” was emphasised in *Franses v Somar Al Assad and Ors (supra)*, at para 67. It is apparent from Henderson J.’s judgment that:
  1. Urgency brought about by inaction on the part of the applicant is unlikely to attract much judicial sympathy;
  2. The reasons for proceeding without notice should not be confined to bare assertions; what is required is “a proper analysis of the issue and a reasoned explanation supported by references to the evidence.
12. A litigant making an ex parte application is under a “compelling duty” to make full and frank disclosure and “especially on an ex parte application for relief which freezes the defendant’s assets, invades his privacy and threatens his reputation. This was the situation in *Memory Corpn plc v Sidhu (No 2) (supra)* at p 1453 as per Robert Walker LJ; p 1459 H to 1460 A per Mummery LJ.
13. The authorities clearly reveal that the Court will only grant an injunction on such an application if there are good reasons for not giving the respondent any notice (e.g.

the matter is so urgent that the applicant does not have time to tell the respondent that he intends to seek an injunction, or where giving notice would lead to a serious risk of evidence being destroyed or assets being dissipated before the injunction is heard. What is however clear is the court may only grant such injunctions in the exercise of discretion where it appears just and convenient to do so.

14. In the Supreme Court Annual practice, at 29/1A/21, the authors referred to the basis upon which an ex parte injunction will be granted. Such injunctions are only granted in cases of emergency or urgency and it must be shown that there are strong grounds to justify urgency, either because the matter is too urgent to await a hearing on notice or because the very fact of giving notice may precipitate the action which the application is designed to prevent.
15. Having reviewed the affidavits in support and the supplemental affidavit it appears to me that there is insufficient evidence at this stage of proceedings, to show any kind of urgency in this case. It seems to me that on the strength of the plaintiffs' case that the elections have been run and the results certified, albeit incorrectly and allegedly unlawfully. I have reservations as to the nature of the plaintiffs' case in seeking to injunct a proposed election, for which there is no evidence before me of such a pending election and most importantly on the plaintiff's own pleaded case, elections have been conducted and there is no petition in place with respect to the election. I would not comment upon the evidence at this stage, until I hear some evidence from the defendants. In the circumstances, I shall make the following orders.

**UPON HEARING DE TAYLOR ESQ OF COUNSEL IN AN EX PARTE APPLICATION FOR AN INTERIM INJUNCTION;**

**IT IS HEREBY ORDERED THAT:**

1. The interim injunction sought by the plaintiff on an ex parte basis, is unsuitable to be heard ex parte, and is therefore refused;
2. The Plaintiff is ordered to serve this application on the defendants, within 48 hours of this order, in any event no later than **4 pm on the 16<sup>th</sup> June 2021.**

3. There shall be an inter-partes hearing on Thursday 24<sup>th</sup> June 2021.
4. Costs shall be in the cause.

The Hon Mr Justice A Fisher J.