

Neutral Citation Number Misc. App. 1/21 C1 General and Civil Division

Case No: cc 1/2021

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

Law Court Building
Siaka Stevens Street
Freetown

Date:9 August 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

**Alfred Peter Conteh
(Suing by his Attorney Rashid Santigie Sesay)**

Plaintiff

-and-

**Dr Ernest Bai Koroma
Alhaji Osman Foday Yansaneh
All Peoples Congress
Political Parties Registration Commission**

Defendants

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**JM Jengo of Counsel for the Plaintiff
A Showers of counsel for the 1st defendant
AS Sesay and R A Nylander of counsel for the 2nd defendant
SK Koroma, A Macauley and OS Kamara of counsel for the 3rd defendant**

Hearing date: 4 August 2021

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APPROVED RULING

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. On the 19th day of April 2021, I gave ruling upon an application made by the defendants, specifically the 3rd defendant for a variation of the injunction I granted on the 26th day of February 2021, against all three defendants. The plaintiff had applied for an interim injunction restraining the 1st, 2nd and 3rd defendants from holding any conference, convention or meetings geared towards selecting or electing delegates or candidates into the party executive for the day to day running of the All Peoples Congress Party.
2. After giving my ruling, the defendants being dissatisfied with the ruling, sought leave to appeal against the ruling to the Court of Appeal. On the 28th May 2021, I refused leave to appeal on the basis that I was satisfied that having reviewed the proposed grounds of appeal, the grounds of appeal had no arguable merits, principally on account of the fact that it was the defendants themselves who sought the variation of the injunction.
3. By way of a notice of motion dated 27th July 2021, the 3rd defendant sought a number of orders including an extension of time to comply with the orders I granted on the 19th April 2021. In support of the application, counsel relied upon the affidavit in support sworn to by the 2nd defendant Alhaji Foday Osman Yansaneh on the 27th day of July 2021, with exhibits attached. The 2nd defendant, Alhaji Osman Foday Yansaneh swore to an affidavit in support on the 29th July 2021, with one exhibit attached. He also swore to another affidavit on the 4th day of August 2021, with two exhibits attached.
4. It is necessary to highlight some of the relevant exhibits contained in the affidavit.
 1. Exhibit OFY1-26 is the ruling of the court 19th April 2021.
 2. Exhibit OFY27 is a copy of a press release issued by the 3rd defendant and signed by the 2nd defendant in which it stated that the orders of the 19th April 2021, will be complied with by the 3rd defendant.

3. Exhibit OFY28 is a schedule of proposed activities, in furtherance of compliance with the court order.
 4. Exhibit OFY 29-32 are copies of notices extending the tenure of executive members of the party.
 5. Exhibit OFY33 is a list of planning committee members to plan the emergency national delegates conference.
5. In addition, counsel for the plaintiff filed an affidavit in opposition, sworn to on the 3rd day of August 2021 by the attorney of the plaintiff, Rashid Santigie Sesay, with 4 exhibits attached. The exhibits relied upon are already before the court. The affidavit in opposition makes six key points:
1. That the 2nd defendant is not the legitimate secretary general of the party on account of the fact that he was not elected to the position as provided for by the 1995 APC constitution and even if elected, his tenure has come to an end.
 2. That the 2nd defendant is acting in a manner inconsistent with the 1995 Constitution, by the 2nd defendant continuing to carry out functions illegally.
 3. That the court should vacate the interim orders and proceed to deal with the substantive application speedily.
 4. That the defendants have failed to comply with the orders of the court for 54 and ½ days and have only come for an extension in order to further entrench themselves in their illegal occupations of their positions.
 5. That if the extension is granted, the defendants would continue to entrench themselves in office.
 6. That all steps taken after the expiry of the 56 days as stated in the order of 19th April 2021, will cause confusion and militate against the holding of the emergency convention.

6. The plaintiff filed a notice of intention to cross examine the 2nd defendant which was granted following opposition to the application by Ady Macauley esq for the 3rd defendant. Under cross examination, the 2nd defendant, in summary, stated the following:
 1. That he was the secretary general of the opposition All Peoples Congress Party.
 2. That the exigencies of the situation made it difficult for the 3rd defendant to comply with para 66(5) of the ruling of 19th April 2021.
 3. That he never instructed solicitors to appeal against the holding of the convention, but admitted they felt disenfranchised by the injunction.
 4. That their people were of the opinion that they could not hold elections without reference to those injuncted and in any event, they were so close to the holding of the convention, when they were made the subject of an injunction by the court.
 5. However, they told their people they should comply with the order. He repeated that he did not seek an appeal but he repeated that he felt disenfranchised.
 6. That he went to the 4th defendant the regulator of political parties to explain the difficulties in holding elections. He had requested the lawyers to go to the 4th defendant to seek clarification. He claimed the 4th defendant requested them to seek clarification from the judge.
 7. He indicated his willingness to comply with any orders given by the court, as they have mobilised their people and found resources. They did not have money to comply and it was not an easy task holding 132 constituencies.
 8. That if the request for extension is granted they will sensitise their people and that he was not applying to extend the time because he wanted to extend his time in office.
7. I heard submissions from both counsel who relied upon the respective affidavits in support of their case, with few submissions. I have also had

regard to the affidavit in opposition, which at para 10 deposed to the fact that the defendants waited and dishonoured the orders of the court for almost 55 out of 56 days, and have now come to the court for an extension of time, in order to extend their unlawful occupation in office. They aver that the court should order an interim body to be appointed from the council of elders to man the affairs of the party, in a bid to ensure a smooth transition to a democratically elected executive.

Analysis of the evidence.

8. As I have pointed out, on the 19th of April 2021, I gave a number of orders. It is perhaps necessary that I set out these orders, for purposes of clarity.

“66. Consequent upon the above, I shall make the following orders:

1. The terms of the injunction granted by this court **on 26th day of February 2021** continues in force, subject to the following variation set out in **sub paragraphs 2-11**.
2. The 3rd defendant shall hold an emergency national delegates conference, for the sole purpose of adopting the amended draft constitution and to deal with any unresolved membership issues.
3. The following office holders are restrained from taking part as delegates in the emergency national delegates convention:
 - I. All members of the National Advisory Committee.
 - II. The National Secretary General.
 - III. The Assistant National Secretary General.
 - IV. The National Organising Secretary.
 - V. The Assistant National Organising Secretary.
 - VI. The National Publicity Secretary.

- VII. The Assistant National Publicity Secretary.
 - VIII. The National Treasurer.
 - IX. The five regional chairmen.
 - X. The 16 districts chairmen.
 - XI. The 132 constituency chairmen.
4. All other members of the National delegates conference (**not restrained in paragraph (66)((3) above)**) are eligible to take part in the emergency national delegates conference., as delegates.
 5. The 3rd defendant shall ensure that the following elections are conducted **no later than 25th June 2021** from the date of this order:
 - I. Elections of twenty delegates for the women's congress;
 - II. Elections of twenty delegates for the youth league;
 - III. Elections of five delegates by each constituency.
 6. A full delegates list shall be prepared by the 3rd defendant and submitted to the 4th defendant PPRC, **no later than 4pm on Friday the 9th day of July 2021.**
 7. The 3rd defendant shall publish a copy of the original draft constitution as submitted by the Constitutional Review Committee in two daily national newspapers with wide circulation, **within 7 days** of this order; and in addition;
 - I. Serve a copy of the said draft constitution on this court;
 - II. Serve a copy of the said draft constitution on the solicitors for the plaintiff;

- III. Make a copy available at the registered headquarters of the party in Freetown and every regional district and constituency office around the country and in the diaspora.
 - IV. Serve a copy of the said draft constitution on the 4th defendant PPRC in accordance with the provisions of section 24 of the Political Parties Act 2002.
8. The 4th defendant PPRC shall determine the time for the coming into effect of the amended constitution, in accordance with the provisions of section 24(2) of the Political Parties Act no 3 of 2002.
 9. The 3rd defendant shall hold the emergency national delegates conference **within 56 days**, from the date the 4th defendant determines the amended constitution shall have come into effect.
 10. The 4th defendant PPRC shall supervise the conduct of the emergency national delegates conference.
 11. There shall be no orders as to costs, with respect to the application made by the 3rd defendant.
 12. The 2nd defendant shall pay the costs to the plaintiff with respect to the unsuccessful application, summarily assessed at **Le5,000,000.00, forthwith.**
 13. The matter shall be adjourned to **Monday the 20th day of September 2021** for the hearing and determination of the substantive action.
 14. All matters each party intends to rely upon, if not already served in accordance with the directions given on **13th September 2021**, shall be filed in accordance with those directions, in particular **directions 5 (1-4)** no later than **4 pm on 13th day of September 2021.**

9. These were the orders I granted on the 19th April 2021. I have reviewed all of the above orders in a bid to determine whether there has been full or partial compliance with any of the said orders. I therefore make the following findings:

1. On the available evidence before me, there has been no compliance with any of the orders by the defendant, save for the payment of costs, for which I have no evidence as to compliance or non-compliance.
2. The emergency national delegates conference has not been held within 56 days as required by the order, even though it was the defendants themselves that requested for a variation of the injunction order, to facilitate the process of holding the emergency national delegates conference.
3. The elections for the women's congress, the youth league and the five delegates for each constituency, that the 3rd defendant was ordered to conduct no later than 25th June 2021, have not been conducted, as ordered.
4. The 3rd defendant was ordered to prepare a full delegates lists and submit the same to the 4th defendants no later than 4pm on the 9th July 2021, have not been complied with.
5. The 3rd defendant was also ordered to publish a copy of the original draft constitution, as submitted by the Constitutional Review Committee in two daily newspapers with wide circulation within 7 days of the order of the 19th April 2021 and to serve a copy of the said draft constitution on the court and solicitors for the plaintiff, make available a copy at the registered headquarters of the party in Freetown and every regional district and constituency office around the country and to serve a copy of the draft constitution on the 4th defendant. Again, regrettably, none of these orders have been complied with either fully or partly.

10. Having noted the fact that none of the relevant orders have been complied with and having regard to para 13 of the affidavit in support dated 27th July 2021, which provides no sufficient explanation as to why the orders of the court had not been complied with, I considered it expedient to hear evidence under oath, albeit by cross examination from the 2nd defendant who is the national secretary general of the 3rd defendant, if I am to exercise the discretion, which I have to extend the time for compliance, such time for compliance with the existing orders having being expired. I have set out a summary of the evidence at para 6 above. I now need to evaluate that evidence.
11. The 2nd defendant secretary general who was under oath before me gave reasons as I have set out above for the non-compliance with the court orders. I have to say I am astounded by the reasons he gave for non-compliance with the orders of the court. It was the defendants who came to court to seek a variation of the injunction, on the basis that time was not their side and it was imperative that they proceed to a national delegates conference as soon as possible. I was therefore right to conclude in granting the variation, that they were in all respects, ready to hold such a national delegates conference, hence the determination to seek a variation of the injunction order. In fact, it was Mr Macauley who indicated to the court that they were ready, willing and able to go to the national delegates conference to adopt the constitution, if only the court were minded to grant them the variation sought. I find it extraordinary to now receive an explanation for non-compliance on the basis of inadequate resources.
12. Secondly, and even more serious was the explanation given by the national secretary general under oath, that he never instructed his lawyers to file an appeal against the holding of the convention, but admitted they felt disenfranchised. He again repeated the issue of feeling disenfranchised for a second time, whilst being cross examined by Mr Jengo.
13. On the 28th day of May 2021, I gave a ruling upon an application filed by the defendants through their lawyers seeking leave to appeal to the Court of

Appeal. That application was supported by an affidavit sworn to by Alhaji Foday Osman Yansaneh on the 4th day of May 2021. Before I proceed to deal with the contents of that affidavit, it is of serious concern that Alhaji Foday Osman Yansaneh in evidence before me on oath testified that he never instructed his lawyers to appeal. I now have reason to wonder why lawyers would file an application seeking leave to appeal, without the instructions from the client. If that were a true representation of the state of affairs, it would constitute serious professional misconduct against the lawyers concerned.

14. However, I decided to go back and consider the contents of the said affidavit to which I have referred, in order to determine whether there were instructions given to the lawyers to appeal, and if so who gave those instructions. Upon perusal of the said affidavit, I discovered that there were instructions given to the lawyers to file an appeal and these instructions were recorded in para 6 of the affidavit sworn to by Alhaji Foday Osman Yansaneh, which was lawfully sworn on the 4th day of May 2021 and reads as follows.

“That being dissatisfied with the contents of exhibit C1 (the ruling) I have now instructed my solicitors to appeal against the same in the Court of Appeal and have been shown a copy of the draft proposed notice of appeal, which was exhibited as Exhibit D.”

He went further to aver at para 7 of the same affidavit that *“I am reliably informed by solicitors and verily believe that Exhibit D, reveals strong grounds of appeal and I have a good chance of succeeding with my appeal in the Court of Appeal.”*

15. It is clearly established from the contents of the said affidavit, that the secretary general Alhaji Foday Osman Yansaneh did instruct his lawyers to file an appeal, which is clearly contrary to his assertions on oath in the witness box. I consider his evidence of not having instructed his lawyers to file an appeal is wholly false and misleading and arguably amounts to perjury and by extension contempt not only of the orders of the court, but also in the face

of the court. In any event, such a false answer damages the credibility of the reasons given for non-compliance of the orders of the court.

16. Further, immediately the ruling was pronounced in open court, JF Kamara esq, counsel for the 1st defendant, sought leave to take instructions from the 2nd defendant national secretary general, in open court. Upon his return some five mins later, he announced to the court that he had taken instructions from the 2nd defendant national secretary general and his instructions were to immediately file an appeal against the ruling. It is difficult to reach any other conclusion other than the assertions on oath of the 2nd defendant national secretary general that he did not instruct his lawyers to file an appeal, was wholly untruthful and misleading.

Contempt of court

17. Section 120(5) of the 1991 Constitution, Act no 6 of 1991, provides that the superior courts of judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of this Constitution. There are two types of contempt of court. Civil contempt is conduct that is not, in itself, a crime but is punishable by the court in order to ensure that its orders are observed. It is the act of deliberately failing to obey or respect the authority of a court of law or legislative body. Contempt of court is punishable by a fine, sequestration of assets and imprisonment.

18. In *Patel v Patel and others 2017 EWHC 3229 CH December 2017*, in which a number of defendants faced committal for contempt of court for giving false evidence to the court by way of witness statements and affidavits, the Judge said thus:

"in any proceedings of whatever sort, be they civil or criminal, putting false evidence knowingly before the court is capable of undermining the integrity of the court process and is extraordinarily serious."

19. A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court". The message being

given by the Court is loud and clear - if you breach orders of the Court you do so at your peril and you face imprisonment for doing so.

20. Counsel in that case had argued that there is arguable illegality disclosed in the application and the affidavit in support, such that the balance of convenience lies in granting an interim injunction. I have also had regard to the decision of the court in *Masri v Consolidated Contractors International Company* [2011] EWHC 1024 (Comm) where it was stated that in order to establish that someone is in contempt it is necessary to show that:

1. they knew of the terms of the order
2. they acted (or failed to act) in a manner which involved a breach of the order, and
3. they knew of the facts which made their conduct a breach (applying *Marketmaker Technology v Obair Group International* [2009] EWHC 1445 (QB)).

21. Having found that the defendants are already in breach of the orders of the court dated 19th April 2021, I do not accept the explanations provided by the 2nd defendant national secretary general of the 3rd defendant, on the basis that the evidence given on oath is inconsistent with his earlier sworn testimony in his affidavit and is therefore unreliable and not credible. I am satisfied that the real reason for breaching the orders of the 19th April 2021, was simply because the 2nd defendant and others were dissatisfied with the ruling and felt there was no need to comply as they believed they had good grounds of appeal and would be successful on appeal.

22. Notwithstanding my rejection of the evidence, I need to give consideration as to whether in the light of my rejection of the reasons advanced by the national secretary general, I ought to grant the necessary extension of time sought.

23. When I delivered my ruling on the 19th April 2021, I was particularly concerned that democracy needed to be enhanced and I made the following comments para 58.

“Where a political party such as the 3rd defendant has indicated a willingness to abide by democratic principles in the review and adoption of a new constitution which it is suggested is more democratic, this court is duty bound to ensure that assistance is given to the 3rd defendant to ensure it maintains the spirit and tenets of section 35(2) of the 1991 Constitution, by doing all it can within the law, to facilitate the process of compliance with democratic tenets.”

24. I still hold on to those comments and I do not consider the 3rd defendant party should be punished for the conduct of the 2nd defendant. Whilst the issue of punishment would be dealt with subsequently, I consider it appropriate to grant the extension of time sought by the defendants but upon the understanding that future breaches of the orders of the court would not be tolerated and where evidence of breaches of the orders are discovered of any orders I propose to make, I will not hesitate to apply the provisions of section 120(5) of the 1991 Constitution.
25. Exhibit OFY 27, now demonstrates a clear commitment to comply with the orders of the 19th April 2021. I have also had regard to exhibit OFY28 which exhibits a proposed timeline of events. In particular, I have also had regard to exhibit OFY33, which a list of persons who have been co-opted to form a technical planning committee.
26. Having regard to the issues and disagreements within the party structure and the air of suspicion that exists, I shall make the following orders to ensure that the purpose, sought to be achieved, ie the adoption of a new draft constitution, is adopted in a transparent and democratic manner.

UPON HEARING Mr Ady Macauley and JM Jengo of Counsel and upon consideration of the relevant documents adduced by both parties;

IT IS HEREBY ORDERED AS FOLLOWS:

1. That this court orders that there shall be an emergency delegates conference technical planning committee, consisting of 21 members, whose sole function shall be to undertake the planning and preparation leading up to the emergency national delegates conference, and whose composition, shall be as follows:
 1. The 3rd defendant shall nominate nine representatives, plus the chairman, who shall not be a member of the current executive, but an elderly and respected member of the 3rd defendant party, making a total of ten members. The nominated representatives shall not include the 2nd defendant national secretary general of the party.
 2. The plaintiff shall nominate four representatives, one of whom shall be the secretary to the Committee.
 3. The diaspora membership of the party shall be entitled to nominate three representatives to serve on the committee.
 4. The NRM who previously commenced litigation on this issue shall be entitled to nominate two members to serve on the committee.
 5. The so called “big six” shall be entitled to nominate two members to serve on the committee.
 6. The 2nd defendant national secretary general shall coordinate and implement the decisions of the emergency delegates conference technical committee, within the 3rd defendant party.
 7. The committee in the exercise of its mandate shall consult with the chairman of the 4th defendant.
2. The above parties who are mandated to nominate representatives shall forward the names and contact details of their nominees to the

chairman of the 4th defendant, no later than 4pm on the 11th August 2021, failing which, the right to nominate is lost.

3. The 2nd defendant, national secretary general, shall provide unfettered access to the resources of the 3rd defendant party, that will facilitate the smooth operations of the Committee.
4. The 2nd defendant, National Secretary General shall publish a copy of the original draft constitution as submitted by the Constitutional Review Committee in two daily national newspapers with wide circulation, within 7 days of this order, and in addition, shall;
 1. Serve a copy of the said draft constitution on this court, the chairman of the 4th defendant and the solicitor for the plaintiff within seven (07) days of the date of this order, in any event no later than 4pm on Monday 16th August 2021.
 2. Make a copy of the said draft constitution available at the registered headquarters of the 3rd defendant party in Freetown and at every district office around the country and in the diaspora.
5. The 2nd and 3rd defendants shall ensure that the elections for the 20 delegates for the women's congress, the 20 delegates for the youth league and the five delegates from each constituency shall be concluded no later than **Tuesday 31st August 2021** in accordance with the following timetable:
 1. The elections for the 5 constituency delegates elections are to be conducted on twelve consecutive days, including a polling day and a travelling day for each of the six electoral districts in the country, namely Western Rural, Western urban, North, North-west, south and east, though not necessarily in that order.
6. The 2nd defendant National Secretary General shall provide a list of registered members of the 3rd defendant party, as at the 19th April 2021, to the chairman of the 4th Defendant, not later than **4pm on**

Friday the **13th August 2021**. The said list shall serve as the electoral register for the elections of the five constituency representatives at the emergency national delegates conference.

7. The twenty delegates for the women's congress shall be elected by the Women's congress, (including one from each district).
8. The twenty delegates for the youth league, shall be elected by the youth league (including one from each district).
9. The 2nd defendant shall forward to the chairman of the 4th defendant, the final list of delegates for the emergency national delegates conference and serve the same on the court and the solicitor for the plaintiff, by way of a supplemental affidavit, no later than **4pm on Tuesday the 7th day of September 2021**.
10. The 2nd defendant shall publish the final delegates list on **Wednesday 8th September 2021**.
11. The 2nd and 3rd defendant shall hold an emergency national delegates conference commencing on the **17th September 2021** and ending on the **19th September 2021**.
12. The agenda for the emergency national delegates conference shall be drawn up by the emergency delegates conference technical planning committee, in consultation with the chairman of the 4th defendant.
13. The matter shall be adjourned to **Wednesday the 6th day of October 2021** for the hearing and determination of the substantive action.
14. All matters each party intends to rely upon for the substantive hearing, if not already served in accordance with the directions given, shall be filed upon the court and each party to the proceedings no later than **4pm on Monday the 4th day of October 2021**.
15. Costs shall be in the cause.