

EP 2/2021

2021

M.

NO.2

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

**IN THE MATTER OF A PETITION AGAINST THE DECISION OF THE
DECLARATION OF RIGHTS MEETING TO REMOVE ALIE TAMBA MARRAH AS
ASPIRANT FOR THE PARAMOUNT CHIEFTAINCY ELECTIONS OF NEYA
CHIEFDOM FALABA DISTRICT IN THE NORTHERN REGION OF THE REPUBLIC
OF SIERRA LEONE HELD ON THE 18TH DAY OF DECEMBER, 2020**

AND

**IN THE MATTER OF SECTIONS 5,8,9,10,11,12,13 & 14 OF THE CHIEFTAINCY
ACT NO. 10 OF 2009**

BETWEEN:

**ALIE TAMBA MARAH
PORPON VILLAGE
NEYA SECTION
NEYA CHIEFDOM
FALABA DISTRICT**

- PETITIONER/RESPONDENT

AND

**THE DIRECTOR OF LOCAL GOVERNMENT - 1ST
RESPONDENT/APPLICANT
MINISTRY OF LOCAL GOVERNMENT AND RURAL DEVELOPMENT
YOUYI BUILDING
FREETOWN**

**THE NATIONAL ELECTORAL COMMISSION - 2ND RESPONDENT
NEC BUILDING
TOWER HILL
FREETOWN**

**THE CHAIRMAN - 3RD RESPONDENT
THE NATIONAL ELECTORAL COMMISSION
NEC BUILDING
TOWER HILL
FREETOWN**

**THE DISTRICT ELECTORAL OFFICER - 4TH RESPONDENT/APPLICANT
THE NATIONAL ELECTORAL COMMISSION**



**MONGO BENDUGU
FALABA DISTRICT
THE PROVINCIAL SECRETARY
NORTH REGION
MENA HILLS
MAKENI CITY**

- 5TH RESPONDENT

**SHEKU TERENA MARAH
NEYA CHIEFDOM
FALABA DISTRICT**

- 6TH RESPONDENT

**KALIE GBONDO MARAH
NEYA CHIEFDOM
FALABA**

- 7TH RESPONDENT

COUNSEL

S.M. KONTEH ESQ

- PETITIONER/RESPONDENT

E. SARKOH ESQ

- RESPONDENT/APPLICANT

**RULING DELIVERED ON THE 24 DAY OF FEBRUARY 2022 BY THE HON, MR.
JUSTICE KOMBA KAMANDA – JA**

The 1st and 4th Respondents/Applicants by a notice of motion dated the 14th day of July, 2021 have applied to the court seeking the following reliefs: -

1. That this Honourable court grants leave to the 1st and 4th Respondents to short serve the application herein notwithstanding that two clear days' notice has not been given to the petitioner.
2. That this Honourable court strikes out the petitioner's application of 29th January, 2021 and all orders emanating thereof for injunction against the Respondents for being in contravention of section 18 of the state proceedings Act (Act No. 14) of 2000.
3. That an interim stay of execution of the injunction order of the Hon. Mr. Justice S.O.M. Taylor JA dated 22nd March, 2021 be granted pending the hearing and determination of this application.
4. That the injunction order of the Hon. Mr. Justice S.O.M Taylor JA dated 22nd March, 2021 be set aside for noncompliance with Section 18 of the State Proceedings Act (Act No. 14 of 2000).
5. Any other or further order(s) that this Honourable Court may deem fit and just.

6. That the costs of the Application be borne by the Petitioner herein.

The application is supported by the affidavit of Aaron Mansa Conteh, sworn to on the 14th day of July, 2021. Attached to the said affidavit are three exhibits to wit:

Exhibit AMC1 intituted EP2/2021 is the petition filed herein by the Petitioner/Respondent.

Exhibit AMC2 is a miscellaneous application by way of an ex-parte notice of motion filed in the court dated the 29th day of January, 2021.

Exhibit AMC3 are orders of the Honourable Justice S.O.M. Taylor in respect of the notice of motion dated the 29th day of January, 2021.

Counsel for the 1st and 4th Respondents/Applicants E. Sarkoh esq is opposed to the injunctive reliefs granted by the Hon. Mr. Justice S.O.M. Taylor – JA dated the 22nd March, 2021. He submitted that the said injunctive reliefs are in contravention with Section 18 of the State Proceedings Act No. 14 of 2002. He also argued that the Learned Judge had vacated the injunctive reliefs he had granted in a similar matter in the case of **FRANCIS SORIE JAWARA AND OTHERS AND SORIE S. JAWARA, THE PROVINCIAL SECRETARY NORTHERN PROVINCE AND OTHERS MISC. APP. 271/21**

Counsel also submitted that the petition which is the substantive matter filed herein is also in contravention with Section 18 of the Chieftaincy Act, 2009 on the basis that a petition can only be filed after the conduct of a chieftaincy election and not prior to the conduct of the said election. He relied on the case of **ALHAJI ABDULAI BUNDU KAMARA AND PROVINCIAL SECRETARY AND OTHER MISC. APP. 493/14**. Counsel finally submitted that it is wrong to approach the court by way of a petitioner for declaration of right, rather the petitioner ought to have come by way of judicial review.

In reply Counsel for the Petitioner/Respondent S.M. KONTEH esq is opposed to the application herein. He relied on the affidavit of Alie Tamba Marah sworn to on the 22nd day of December 2021. Attached to the said affidavit is an Audio Message of elders allegedly supporting the candidacy and legitimacy of the Petitioner/Respondents claim of right to the Chieftaincy.

S.M. Konteh esq argued that, the authorities relied on by his learned friend can be varied on the basis that the circumstances are not the same in that, the later deals with the gazette of Chiefdom Counsellors list, while the present scenario is dealing with a declaration of right after the first round of election has been conducted. Counsel also argued that the petitioner approached the court after the postponement of the second round of election indefinitely, as such they ought to approach the court to present their

case because the entire process leading to the second round was marred with irregularities. He finally submitted that the State Proceedings Act also recognizes the right of the parties and for declarations to be made.

In my considered view the main issues in contention in this matter are: -

1. Whether filing or bringing a petition after the first round of election is permissible to prevent the holding of a Paramount Chieftaincy Election?
2. Whether injunctive reliefs can be granted in the instant case to forestall the conduct of a Paramount Chieftaincy Election.

It is important to note that the instant matter deals primarily with the election of a paramount Chief and that such election is therefore primarily governed by the Chieftaincy Act No. 10 of 2009. It is therefore, a special specie of elections distinct from other set of elections. I have perused the Chieftaincy Act in its entirety and must state that for the purposes of the instant matter, it is relevant to consider Section 18 of the aforesaid Act which state: -

"The validity of the election of any person as a Paramount Chief may be challenged by any candidate or councilor of the chieftaindom council within seven days after the declaration of the result of the election by a petition addressed to the High Court on the ground that –

- (a) The person so elected**
 - i. Is not qualified under section 8**
 - ii. Is disqualified under section 9**
 - iii. Was elected on the basis of any claim of a materially false nature under subsection (2) of section 1: or**
- (b) The election was otherwise improper".**

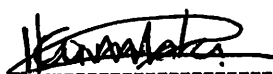
The said provision of the law in my view is as crystal as clear in that, a party who intends to challenge the validity of election of a Paramount chief can do so only after the conduct of the election. Therefore, in the instant case, it is premature for the petitioner to challenge the outcome of an election that has not been conducted by way of a Petition. I have thoroughly perused the length and breadth of the Chieftaincy Act Supra, and have seen no provision that contradicts Section 18 of the said Act. It is also explicit that if the framers of the Act wanted the process to be challenged before the election of a Paramount Chief, they ought to have invented clear provisions in the law. But where that

is conspicuously absent, there is nothing this court can do to prevent the invocation of Section 18 in such circumstances as in the instant case.

In my considered view, the purpose of Section 18 of the Act is to avoid unnecessary disruptions leading to the elections. This clear position of the law was also well articulated in the case of **MISC. APP. 493/13 ALHAJI ABDULAI BUNDU KAMARA AND OTHERS V PROVINCIAL SECRETARY NORTHERN PROVINCE AND OTHERS**, where the Learned Judge A.H. CHARM J (as he then was) opined **"It must also be noted that this Application is tantamount to bringing a petition to prevent the Paramount Chieftaincy Election from going on. The Chieftaincy Act which regulate the conduct of Paramount Chieftaincy election does not provide for pre-election petitions. What it provides for is the election petition (see Section 18) of the Act. Though pre-election injunctions have being granted in certain instance, I dare say this is a practice which should be discouraged as it runs counter to the provisions of the Chieftaincy Act No. 10 of 2009"**.

In view of what I have said, the injunctive reliefs granted in the instant matter is a non starter. In fact, the Learned Judge who granted the injunctions in this matter had on a subsequent occasion in the case of **MISC. APP.271/21 FRANCIS SORIE JAWARA AND ANORS V THE PROVINCIAL SECRETARY NORTH** stated in his Ruling dated 9th day of June, 2021, **"That pursuant to section 18(1) and (2) and the Provision thereto as contained in paragraphs (a) and (b) of the State Proceedings Act of 2000, injunctive reliefs and orders for specific performance cannot be granted against the Government or its Representatives"**. In my considered opinion, the Petitioner/Respondent herein does not have legs to stand on by way of opposing the notice of motion dated the 14th day of July, 2014. In the circumstance, I order as follows:

- 1) That the injunctive reliefs granted by Hon. Justice S.O.M Taylor – JA dated the 22nd day of March, 2021 are hereby vacated.
- 2) That the election of Paramount Chief of Neya Chiefdom Falaba District in the Northern Province of the Republic of Sierra Leone be proceeded with and the election is to be conducted within Thirty days.
- 3) Each party to bear its costs.



HON. MR. JUSTICE KOMBA KAMANDA - JA