

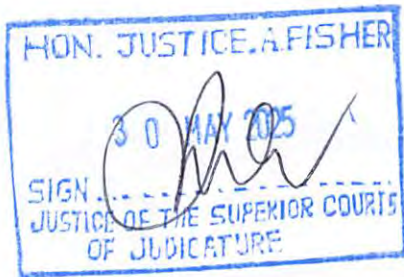
Neutral Citation Number Civ.app 2/23 {2023} U1 (General Civil Division)

Case No: Misc. app  
231/2022

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

Law Court Building  
Siaka Stevens Street  
Freetown

Date: 29 May 2025



Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

Unity Party

Appellant

-and-

Political Parties Registration Commission

Respondent

Mr CB Davies for the Plaintiff

JJ Campbell Esq for the Defendant

Hearing dates: 19, 22 June 2023

APPROVED JUDGEMENT

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

THE HONOURABLE MR JUSTICE FISHER J

**The Honourable Mr Justice Fisher J:**

1. The appellant in this action is a political party and seeks to appeal against the decision of the Respondent which was notified to it by letter dated 6<sup>th</sup> day of April 2023. The appeal is expressed to be made pursuant to the Provisions of section 40(3) of the Political Parties Act, No 25 of 2022.

The Notice of Appeal.

2. The notice of appeal is dated 22<sup>nd</sup> May 2023 with three grounds of appeal. The notice of appeal erroneously cited the Court of Appeal as the appropriate court from whom the reliefs were sought. The appellant subsequently filed an amended notice of appeal dated 20<sup>th</sup> June 2023 and cited the High Court as the correct court. The grounds of appeal are set out as follows:

1. That the respondent was wrong in fact and misdirected itself in its conclusion in the letter dated 6<sup>th</sup> April 2023, that the appellant did not conduct ward, constituency, district and national executive elections according to article 19 of its constitution.
  2. The Respondent was wrong in fact and misdirected itself in its conclusions in the letter dated 6<sup>th</sup> April 2023 that the appellant has contravened article 19 of its constitution.
  3. That the decision of the Respondent is against the weight of the evidence presented to it by the appellant.
3. The appellant seeks the following reliefs:
  1. That the appeal be allowed, and the decision of the Respondent contained in the letter dated the 6<sup>th</sup> day of April 2023 be set aside

as the appellant has not contravened the code of conduct of the respondent.

2. That this court do order, that elections conducted by the appellant electing its executives as detailed in its letter dated the 24<sup>th</sup> day of February 2023 with the subject "submission of the newly elected wards, constituencies and district executives" were conducted in compliance with Article 19 of the Appellant's constitution.
  3. That the court do order that the national delegate conference held by their client in which its national executive was elected, was in compliance with Article 19 of its constitution.
  4. That this court do order that the respondent informs the electoral commission of Sierra Leone in writing not later than 48 hours after the order of this court that the appellant is qualified to contest in public elections in Sierra Leone as a registered political party.
  5. That the Respondent pays the costs of the appeal.
4. The appellant also filed a synopsis of appeal dated the 20<sup>th</sup> day of June 2023. It is expedient that I deal with the appellant's synopsis of appeal, albeit in summary form and where I consider relevant.

Jurisdiction of the High Court to hear the appeal.

5. The appellant submits that section 132 of the 1991 Constitution of Sierra Leone has original appellate jurisdiction conferred upon it and the Political Parties Act 2022, also confers an appellate jurisdiction on the High Court and in that light section 40(3) confers an appellate jurisdiction on the High Court to hear the appellant's appeal.

6. With respect to the jurisdiction issue, the appellant poses two questions which can be set out as follows:

1. Is the appellant before the High Court of Justice?
2. Has the appellant approached the High Court by an appeals process?

**Section 40 of the Political Parties Act 2022.**

7. With respect to this section, the appellant poses the following issues for consideration.

- a. Has the appellant in its appeal invoked the powers of section 40(3) of the Political Parties Act 2022?
- b. Is the appellant a political party for purposes of the Political Parties Act 2022?
- c. Is it the wish of the appellant to contest in a public election?
- d. Did the Respondent raise issues of contravention of the code of conduct with the appellant as contained in the Act?
- e. Has the Respondent attempted to resolve an alleged contravention of the code of conduct with the appellant as per section 40(2)(a) of the 2022 Act?
- f. Has the respondent issued a warning to the appellant to desist from an alleged contravention as per section 40(2)(b) of the 2022 Act?
- g. Has the Respondent invoked and acted on the provisions of section 40(2)(d) by disqualifying the appellant from contesting in the Public Elections Act 2023, it intended to contest in?

h. Is the appellant aggrieved with the decision of the Respondent?

8. With respect to these issues, and in particular with respect to whether the appellant is before the High Court, the appellant submits with respect to para (a), that the answer is in the positive by way of the notice of appeal dated 22<sup>nd</sup> May 2023. The answer to para (b) is also in the positive as the appellant is a registered political party with a final certificate of registration issued to it by the respondent dated 25<sup>th</sup> October 2017 in fulfilment of the provisions of part VI of the PPA 2022.
9. With respect to the provisions of Section 40 of the said Act, the appellant raises a number of issues for consideration. There is no dispute with respect to the issues raised in para (a) and (b). With respect to para (c), the appellant submits that it was their wish to contest the 2023 elections and had informed the respondent that it wished to contest the said elections by way of several letter exchanges and compliance with the processes incidental to contesting the elections. With respect to para (d), the respondent did raise issues of contravention of the code in the following words:
- "That the alleged refusal by the appellant to conduct its required elections has contravened the provisions under code 7(i)(b) of the Political Parties Registration Commission (PPRC) code of conduct."*
10. The appellant submits that the allegation against it is that it failed to recognise the duty of the Electoral Commission to take measures to conduct a free and fair elections under the Public Elections Act 2022 as provided for under code 7(1)(b) of the code of conduct in the second schedule of the PPA Act 2022.

11. The appellant poses the question of how the purported failure to conduct lower-level wards, constituencies and district executive elections amount to failure to recognise the duty that the electoral commission has to take measures to conduct a free and fair elections under the PEA Act 2022. The appellant refers to section 60 of the PEA Act 2022, which places the onus on political parties like the appellant to provide to the Electoral Commission a list of candidates for the public elections on the condition that there must be a statutory declaration from the following persons, party leader, party secretary, national leader.
12. Had the appellant not conducted lower-level elections it would not have a party leader, party secretary or national leader to depose to the statutory declaration and in effect this will hinder the conduct of free and fair elections by the electoral commission. The appellant maintains it has its national and district executives duly elected and functioning.
13. The appellant claims the answer lies in section 60 of the Public Elections Act No 17 of 2022. The section places the onus on political parties like the appellant to provide to the electoral commission a list of candidates for the public elections on the condition that there must be a statutory declaration from the following persons.
14. The appellant submits that the respondent relies upon the tendency for there to be hindrance in the duties of the electoral commission in properly preparing for a public election under the public elections Act 2022 as a result of the non-conduct of the relevant elections that will provide each political party with the person qualified to depose to the statutory declaration is the alleged contravention of the code of conduct as contained in the PPA Act 2022 as complained of in the Respondent's letter of 6<sup>th</sup> April 2023.

15. The appellant submits that the respondent cannot deny that it has disqualified the appellant from contesting the public election and cannot deny that its decision was based on the provisions of section 40 of the PPA Act 2022 as that is the only provision made available to the respondent to exercise the power to disqualify the appellant in the manner the Respondent has chosen to do. The appellant argues that it seeks to challenge the respondent to show where it derives the authority and on what basis it took the decision to prevent the appellant from contesting in the public elections, if it was not under the provisions of section 40 of the Act which the appellant relies upon.
16. With respect to the issue of whether there was an attempt to resolve the matter, the appellant submits that there were meetings and correspondence between the parties with respect to resolving the matter of conduct. They refer to a letter dated 6<sup>th</sup> March 2023.
17. The respondent issued a warning as the letter dated 6<sup>th</sup> day of April 2023 was a warning issued to the appellant by the Respondent in accordance with the provisions of section 40(2)(b) of the Act.
18. The appellant argues that the respondent did issue a warning to the appellant to desist from contraventions as per section 40(2) of the PPA Act 2022. That upon receipt of the said letter, solicitors for the appellant wrote to the Respondent on the 24<sup>th</sup> April 2023 referencing the decision of the Respondent and informed them that they had wrongly arrived at the decision in their letter dated 6<sup>th</sup> April 2023 and the Respondent was requested to review its decision, which they failed and deliberately refused to do.

19. The respondent disqualified the appellant from contesting in the public elections it intended to contest in. The respondent had instructed the Electoral Commission not to recognise the appellant as a political party intending to contest the election which led the Electoral Commission to disqualify the appellant by not including them in the election process. The appellant further submits that the respondent cannot deny that its decision to disqualify the appellant was premised on the provisions of section 40 of the PPA 2022. It is the only provision available to the respondent to prevent the appellant from taking part in the elections.

20. The appellant challenges the Respondent to prove where it derives its authority and on what basis it took the decision to prevent the appellant from contesting in the elections if it is not in accordance with the provisions of section 40.

21. The appellant submits it has satisfied the elements required for the operation of section 132(1) of the 1991 Constitution and section 40(3) of the PPA Act 2022 and the court therefore has jurisdiction to hear the appeal.

#### Capacity of the appellant to present the appeal.

22. The appellant argues that the appellant has capacity to present this appeal as it is a registered political party with a final certificate of registration dated 25<sup>th</sup> October 2017. The appellant being a registered political party is not entitled to claim rights under section 35 of the Constitution of Sierra Leone 1991 as that section only deals with unregistered associations. The court has the capacity to present the appeal.

#### The divisions of the High Court



23. The appellant presented the appeal to the General Civil division of the High Court. They argued that the General Civil division has authority to hear and determine civil and criminal matters to which the High Court has an appellate division. They relied upon the Constitutional instrument No 4 of 2019 of the High Court Division Order 2019. They further argued that section 40(3) of the PPA Act 2022 gives the High Court an appellate jurisdiction by stipulating that an appeal may go to the High Court and consequently the appeal is brought to the proper division of the High Court.

24. The appellant in its synopsis, argued the following grounds of appeal:

Ground 1

25. With respect to this ground, the appellant submits that in compliance with article 19 of its constitution dated October 2019, it conducted its ward, constituency and district executive elections as follows:

1. Kailahun, Pendembu on the 23<sup>rd</sup> December 2022.
2. Pujehun on the 24<sup>th</sup> December 2022
3. Tonkolili and Magburaka held on the 14<sup>th</sup> January 2023.
4. Port Loko on the 14<sup>th</sup> January 2023.
5. Bonthe, Mattru Jong on the 23<sup>rd</sup> January 2023.
6. Bo City on the 24<sup>th</sup> January 2023.
7. Kenema City on the 25<sup>th</sup> January 2023.
8. Kono on the 28<sup>th</sup> January 2023.
9. Western Rural Waterloo on the 29<sup>th</sup> January 2023.
10. Karene on the 2<sup>nd</sup> February 2023.
11. Moyamba on the 3<sup>rd</sup> February 2023.
12. Koinadugu on the 4<sup>th</sup> February 2023.
13. Western Urban on the 9<sup>th</sup> February 2023.

14. Kambia on the 10<sup>th</sup> February 2023.

15. Bombali on the 11<sup>th</sup> February 2023.

26. The appellant further argued that it complied with the provisions of article 19 of its constitution, which requires it to conduct elections at zonal, sections, chiefdoms, constituencies and any other organs. In support of this submission, they exhibited delegates lists that were used with respect to the elections in Kailahun, Pujehun, Tonkolili, Port Loko, Bonthe, Kono Western Urban, Karene, Kambia and Bombali. Photographs taken were exhibited.

27. They further argued that the appellant complied with code 4 of the code of conduct as on each occasion it applied for and was granted police protection in each district to conduct the various wards, constituencies and district executive elections and there was no report of violence.

28. The appellant further argued that it informed the respondent of its wards, constituencies and district elections and that the respondent was invited to the conduct of the elections and in the letter dated 12<sup>th</sup> January 2023, the letter of invitation was exhibited. A copy of the waybook was also exhibited. A copy of the list of elected officials were also exhibited.

29. They also argued that they informed the respondent of its regional and national party conference and elections which were scheduled to be held on the 2<sup>nd</sup> and 3<sup>rd</sup> March 2023 and police clearance was also sought. He local police authorities of the various venues and times of the appellant's regional national conference and was granted the necessary police clearance for its regional and national conference/election. A copy of the police clearance was exhibited.

30. The appellant further submitted that it commenced its national party conference on the 2<sup>nd</sup> March 2023 and concluded with the election of its regional and national executives on the 3<sup>rd</sup> March 2023. They submitted further that during the first session of the national party conference, the secretary of the appellant received a letter dated the 2<sup>nd</sup> March 2023 from the Sierra Leone police informing them that the clearance that had previously been issued on the 28<sup>th</sup> February 2023 had been withdrawn.

31. Having spent a huge amount on costs and preparations already undertaken by the appellant and in the absence of official communications from the Respondent, the appellant proceeded with and concluded its national party conference, and the elections were then subsequently held on the 3<sup>rd</sup> March 2023.

## Ground 2

32. This ground of appeal essentially argues that the Respondent was wrong in fact and misdirected itself when it concluded in its letter dated 6<sup>th</sup> April 2023 that the appellant had contravened article 19 of its constitution.

33. They argued that the Respondent was wrong in law to have concluded that the appellant contravened article 19 having regard to the matter already pleaded above in para 30 to 47 of the synopsis and consequently should re-conduct the wards, constituencies and district elections which said elections had already been conducted.

34. Specifically, they argued that the appellant made efforts and requested the respondent to provide details of its investigations into the appellant's conduct and its engagement with them but received no response from

them. It is the appellant's case that it has on many occasions and by letter dated 24<sup>th</sup> April 2023 from its solicitors, challenged the respondent to provide evidence to substantiate its decision in its letter dated 6<sup>th</sup> April 2023. A copy of the said letter was exhibited.

### Ground 3

35. With respect to this ground of appeal, the appellant submitted that with respect to the submissions at para 30 to 50, the evidence presented in support of the submissions they argued that the decision of the respondent is against the weight of the evidence presented to it by the appellant.

36. In its final submissions, the appellant made the following conclusions in support of its submissions which can be summarised as follows:

1. That the High Court has original appellate jurisdiction conferred upon it by the 1991 Constitution.
2. That the PPA Act 2022 confers appellate jurisdiction on the High Court by section 40(3) to hear this appeal.
3. That the appeal is before the High Court of Justice by an appeal process.
4. That the General Civil Division of the High Court has the authority to hear and determine the appeal pursuant to order 7 of the Constitutional Instrument No 4 of 2019, the High Court Divisions Order.
5. That the appellant in filing its appeal had invoked the powers of section 40(3) of the PPA Act 2022.

6. That the appellant is a political party as provided for in the Act and more particularly as required under section 40(3) of the PPA Act 2022 and that it wished to contest the public elections in 2023.
7. That the respondent did raise issues of contraventions of the code of conduct with the appellant in its letter of 6<sup>th</sup> April 2023 by alleging that the appellant had violated its constitution which implies failure to recognise the duty of the electoral commission to take measures to conduct a free and fair elections under the Public Elections Act 2022 as provided for under code 7(1)(b) of the code of conduct in the second schedule of the PPA Act 2022.
8. That the respondent attempted to resolve an alleged matter of conduct with the appellant as per section 40(2)(a) of the PPA Act 2022.
9. That the respondent issued a warning to the appellant to desist from an alleged contravention as per section 40(2)(b) of the PPA Act 2022.
10. That the respondent disqualified the appellant from contesting the public election it intended to contest in as per section 40 (2)(d) of the PPA 2022 which is permissible for any infraction by a political party under the code of conduct.
11. The appellant is aggrieved with the decision of the respondent and has the capacity to present the appeal as it is a registered political party with a final certificate of registration issued to it by the Respondent.

12. That the appellant is in compliance with article 19 of its constitution dated October 2017 conducted its ward, constituencies and district executive elections.
13. The appellant on several occasions and by various modes of communication notified the Respondent of the conduct of its ward, constituencies and districts elections in various parts of the Republic of Sierra Leone and provided detailed timetable for each election.
14. That the appellant did inform the respondent of its regional and national party conference and elections which was to be held on the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> March 2023 and also obtained police clearance for the said conference and elections.
15. That the appellant fully complied with codes 4(1) of the code of conduct in the 2<sup>nd</sup> schedule of the PPA Act 2022 by obtaining police clearance for its regional and national conference.
16. That the appellant commenced its national party conference on the 2<sup>nd</sup> March 2023 and concluded with an election of its regional and national executives on the 3<sup>rd</sup> March 2023.
17. That the appellant had not violated its constitution and has not contravened the code of conduct of the PPA 2022.
37. In conclusion the appellant urged the court to uphold the appeal and grant the orders prayed for in order to prevent the respondent from depriving the appellant from performing its constitutional role and further depriving its members from enjoying their democratic rights as enshrined in the constitution of Sierra Leone.

The Respondent's case.

38. The respondent for its part argued against the appeal on two principal grounds. Firstly, they raised a preliminary objection to the appeal being heard on the basis that:

1. That the appellant had failed to invoke the constitutional provision that gives the High Court the appellate jurisdiction to hear and determine matters for the appeal, wit section 132(1) of the Constitution of Sierra Leone Act no 6 of 1991.
2. That the appellant had further failed to invoke the supervisory jurisdiction of the High Court by failing to reference section 134 of the Constitution.
3. That section 40(3) of the PPA Act 2022 deals exclusively with decisions based on the breach of the code of conduct as prescribed in the second schedule of the Act is with respect to national elections and not inter party elections that the letter of the 6<sup>th</sup> April 2023 goes to address.

39. The respondent made two primary submissions which can be summarized as follows:

1. That the phrase "any other law" in section 132 (1) may include section 40 (3) of the Political Parties Act 2022 and as such the appellant must invoke section 132(1) of the 1991 Constitution before mentioning the Political Parties Act 2022, on the face of the appeal.
2. That the court could only grant prayers sought by the appellant if the above provision is invoked on the face of the appeal and failure

to put same on the face of the appeal presumably negates the court from hearing the appeal.

40. On the contrary, the respondent submitted that should the appeal be heard, the following matters should be taken into account. That the decision to appeal against decision of the respondent as contained in its letter dated 6<sup>th</sup> April 2023, is wholly absurd and out of place as the letter refers to:

1. A previous meeting held at the Respondent's office.
2. The need for the appellant to carry out lower-level elections in accordance with its constitution.
3. That the respondent received a letter from the appellant dated 24<sup>th</sup> February 2023, with a list of newly elected members.
4. That the respondent conducted an investigation which revealed that the delegate list presented was bogus as some persons claimed to be non-members of the appellant.
5. That the appellant was advised to conduct all lower-level elections in the presence of the Respondent.

41. With respect to these points the respondent argued against the appeal on five principal grounds, which can be summarised as follows:

1. That the Respondent is responsible for the regulation supervision and monitoring of political parties including the appellant pursuant to section 12 (2) (a) of the Act and the letter appealed against was in relation to the functions of the respondent. Essentially the respondent argues that it has a duty to ensure that the political parties work in conformity with their constitution and they should



be monitored by the Respondent at all times whilst performing their functions.

2. That contrary to para 11 of the appellant's synopsis the letter dated 6<sup>th</sup> April 2023 does not deal with the code of conduct as prescribed in the second schedule as the second schedule deals with participation in national elections and not internal elections which is conducted through the party constitution which was why the Respondent referred to article 19 of the said constitution on elections and appointments which requires all party posts to be filled by democratically conducted elections at National party convention, zones, sections, chiefdoms constituencies and any other organ.
3. That on receipt of the letter dated 24<sup>th</sup> February 2023, submitting names of executive members for wards, constituencies and district executives and pursuant to section 12(2) of the Act, the respondent conducted an investigation into the delegates lists presented by the appellant and proved that some names on the list denied being members of the appellant. The respondent referenced Bo which is exhibited in A and B.
4. That the letter dated 6<sup>th</sup> April 2023, appealed against by the appellant has no bearing or reference to the conduct or roles of the electoral commission as implied by the appellant in paragraph 12-1 of the appellant's synopsis.
5. That there was nothing in the letter dated 6<sup>th</sup> April that disqualified the appellant from contesting the public elections contrary to what is slated in para 16 -17 and 20-23 of the

appellant's synopsis and therefore cannot form part of the basis of the appeal as merely advising the appellant to conduct lower level elections before the respondent does not in itself invalidate any political party from contesting the national elections.

42. The starting point for consideration of this appeal ought to be the jurisdiction of the court. In the light of the fact that the respondent has raised the issue, this court must satisfy itself that it has the requisite jurisdiction to entertain the appeal.

### The law

43. The jurisdiction of the High Court to hear appeals is primarily set out in the 1991 Constitution of Sierra Leone and other relevant statutory provisions which I have already referred to.

### The Constitution

44. Section 132 of the 1991 Constitution confers jurisdiction on the High Court to hear civil and criminal matters, and such jurisdiction may be conferred by the constitution and any other law. The said provision provides as follows:

*"132. (1) The High Court of Justice shall have jurisdiction in civil and criminal matters and such other original appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law".*

45. Further, subsection 2 provides as follows:

*(2) The High Court of Justice shall have jurisdiction to determine any matter relating to industrial and labour disputes and administrative complaints.*

46. Most significantly sub section 4 provides as follows:

*(4) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such appeal, and for the purposes of any other authority expressly or by necessary implication given to the High Court of Justice by this Constitution or any other law, the High Court of Justice shall have all the powers, authority and jurisdiction vested in the Court from which the appeal is brought.*

47. The above provisions clearly show that the High Court has the power to hear any matter relating to an administrative complaint and has the power to utilise the powers conferred upon the lower or court or administrative tribunal.

48. In addition to these powers, the High Court also has a supervisory jurisdiction, which is conferred upon it by section 134 of the said constitution. The said section 134 provides:

*134. The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of habeas corpus, and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers."*

49. The use of the words "adjudicating authority" confers a supervisory jurisdiction over the activities of the respondent which is a statutory body.

50. The respondent has argued that the appellant did not invoke the constitutional provision that gives the court jurisdiction to hear the

appeal. They argued that this court could only grant prayers sought by the appellant if the constitution provisions are invoked on the face of the appeal and failure to put the same on the face of the appeal negates the court from hearing the said appeal.

51. It is arguable that granting orders not explicitly prayed for by a party in an application is generally not permissible, as courts are bound to the scope of the application. However, exceptions exist particularly where the court can exercise discretionary powers or when it's deemed necessary to achieve justice.

52. The courts are generally bound as in other common law jurisdictions, to consider the specific reliefs sought in an application. The common law is part of the laws of Siera Leone by virtue of the provisions of section 170 (1)(e) of the 1991 Constitution, which vests a number of common law powers on the High court of wide jurisdiction. There are specifically three exceptions to the general rule where the High Court can exercise its common law powers.

1. The High Court can exercise discretionary power which allows it to grant orders that are not strictly prayed for, especially if those orders are deemed necessary to achieve justice or to effectively address the issues before it.
2. The High Court can also invoke its inherent powers to make orders that are incidental to its jurisdiction, even if not specifically requested.
3. The High Court is also able to consider the wider interest of justice and the public interest in instances where the granting of

such an order is necessary in the public interest or to prevent injustice.

53. There is a specific and significant legal principle that arises in this context. A court such as the High Court cannot ignore legal provisions, especially constitutional provisions, irrespective of whether those provisions are invoked except in specific circumstances mentioned above. The High Court is therefore able to address issues that are relevant to the case, even if they are not explicitly raised in the pleadings.

54. I am reinforced in this conclusion by the decision of the Supreme Court of Sierra Leone in *Evelyn Ayo Pratt and Jacqueline Carew Civ App 5/2005*, in which the Hon Justice ME Tolla-Thompson JSC (deceased), when addressing the jurisdiction of the court had this to say:

*"There is a settled principle of law that a court ought not to decline jurisdiction if it can assume discretionary powers which will not amount to a violation or usurpation of the court's jurisdiction. Such a power is usually described as an adjunct or incidental to the court's jurisdiction under which it operates"*

55. Having regard to the duty of the courts to apply constitutional provisions, I am satisfied that assuming a discretionary power to hear this appeal would not amount to a violation or usurpation of the court's jurisdiction. In the light of the fact that this is a case involving the respondent, which is a statutory body charged with regulating political parties, the Political Parties Act 2022 must also be considered.

56. The Appellant's notice of appeal is made pursuant to the provisions of Section 40(3) of the Political Parties Act 2022 which provides as follows:

*"A political party or independent candidate aggrieved by a decision of the Commission under this section may appeal to the High Court"*

57. At the heart of section 40 is the provisions of section 1 which provides as follows:

*"A political party, including its candidates, officials, members and supporters or an independent candidate wishing to contest a public election shall be bound to observe the code of conduct prescribed in the second schedule".*

58. This provision in sub section 1 is mandatory and requires compliance by all political parties wishing to contest a public election. Where there is a contravention of subsection 1, sub section 2 of section 40 provides as follows:

*(2) "Where a political party contravenes subsection 1, the commission*

*(a) shall endeavour to resolve the matter with the political party or independent candidate as the case maybe;*

*(b) may issue a warning to the party or candidate to desist from the contravention.*

59. It is necessary to consider the powers of the respondent commission as set out in the Act. The primary function of the Commission is set out in section 12 sub section 2 para (a-f). Specifically at para (a), the Commission is empowered to regulate, supervise and monitor the affairs or conduct of political parties so as to ensure their compliance with the constitution and this Act.

60. Having set out the relevant legal and statutory framework, this court must determine and ask itself a simple question, which is what is the conduct of the Respondent complained of by the appellant?

The conduct complained of

61. The primary conduct complained of by the appellant is set out in the letter dated 6<sup>th</sup> April 2023. The appellant has claimed that the respondent instructed the Electoral Commission not to recognise the appellant as a political party intending to contest the elections of June 2023, which the Electoral Commission has acted upon by not including the appellant in the election process. Consideration has to be given to the letter and other documentary evidence.

Documentary evidence

62. I am particularly constrained in this matter. The documentation in this case is virtually non-existent. The plaintiffs have referred to a bundle of documents having been filed for the appeal and have made references to these documents in a bundle that was purportedly filed, but no such bundle was received. Instead, a number of documents were simply provided to the court. The defendants have not relied on a bundle and none was filed. They have also not relied upon any documents as part of their case, save for the submissions made.

63. In any event, I shall make reference to the documents provided by the appellant, where relevant.

Chronology of events

64. On the 28<sup>th</sup> February 2023, the Sierra Leone police responded to an application for clearance to conduct a national convention dated 24<sup>th</sup> February 2023. The police granted the clearance sought. On the 2<sup>nd</sup> March 2023, the police rescinded the clearance which had earlier been given on the basis that the Respondent had informed it that it was carrying out an investigation into the executive list of the party submitted to it.

65. On the 1<sup>st</sup> January 2023, the applicant wrote to the respondent with respect to a letter written to them on the 28<sup>th</sup> December 2022. The letter challenged several issues in that letter of the 22<sup>nd</sup> December 2022, in which the applicants were accused of being undemocratic and that certain portions of their constitution were not in accordance with the 1991 Constitution. The letter called for dialogue and requested that specific areas of the constitution be pointed out to them as to what the alleged contraventions were.

66. On the 12<sup>th</sup> January 2023, the applicant sent a letter to the respondent inviting them to witness the holding of elections at Port Loko and Tonkolili slated for the 14<sup>th</sup> January 2023. The venues were also disclosed.

67. On the 19<sup>th</sup> January 2023, a letter of invitation was written by the applicant to the respondent, informing and inviting it to its Lower-level ward, constituency and district executive elections in two districts.

68. On the 24<sup>th</sup> February 2023, the applicants wrote to the Respondent and its chairman, informing them that the party had completed the process of electing members at the lower-level elections across different districts. The letter also informed the Respondent that it will be holding its



national party conference on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> March 2023 and will seek to make some amendments to its constitution.

69. On the 2<sup>nd</sup> March 2023, the Respondent wrote to the police responding to a letter seeking clarification. The letter informed the police that it was not aware of any lower-level elections and questioned the delegates list for the proposed conference. The letter concluded that it was conducting an investigation into the lists of executives submitted to it by the party and will make its findings public. The letter concluded that it was constrained to participate in the national delegates conference.

70. On the 17<sup>th</sup> March 2023, the applicants wrote to the Respondent advising it on the outcome of its internal investigations, which revealed that elections were held and that the party would provide further clarification in due course.

71. On the 6<sup>th</sup> March 2023, the applicants wrote to the Respondent raising a number of issues. The letter was written by one Femi Claudius Cole, as chairperson and leader of the party. The contents of the said letter can be summarised as follows:

1. That the applicant met with the respondent regarding their plans for holding district executive elections.
2. That the Respondent insisted that all elections must be held at the ward and constituency levels.
3. That it was made clear to the executive secretary of the Commission that the applicant would hold its elections in the wards and constituencies where they have membership. Timetables that gave the dates and locations for the elections were forwarded to the commission. All elections were filmed, and photographic

evidence was diligently recorded. The commission was notified and invited to the convention and the dates time and place for the event were notified to the commission. The police were notified, and a police clearance certificate was issued.

4. Three days prior to the Convention, the secretary general began receiving calls from several newly elected executives that a staff of the commission had called and the person had failed to introduce themselves and in many cases were interrogatory in their questioning with the initial question being "which party do you belong to".
5. That she had spoken to party leaders and confirmed that they have never had their executives been called by the PPRC and questioned why her party was being called.
6. That on the first day of their convention, the police arrived to stop the program stating that they did not have police clearance and when confronted with the clearance, they were informed that the clearance had been rescinded, after calls from the Commission instructing them to stop the convention as the commission was investigating the lower-level election. They questioned whether it was not for the courts to issue injunctions?
7. They lamented the fact that the commission chose not to continue to dialogue and instead cancelled the convention. They attempted to reach the chairman but to no avail. In the light of the costs of travelling around the country, the party members took the decision to hold the elections in their compound of their party office.

8. That the elections were successfully completed and the entire process was filmed and photographed for further verification. The letter concluded that the substantive executive of the party would be presented to the Commission.

9. The applicants offered to meet with the commission to answer questions, to provide clarification and evidence needed to conclude the verification exercise of the elections. They then signed off the letter seeking an appointment.

72. Another letter dated 13 March 2023, sought details of all PPRC district offices in order to facilitate communications.

73. On the 24<sup>th</sup> March 2023, the appellants wrote to the respondent seeking to know the outcome of the investigation into the lower-level elections and referred to an engagement they had with the Respondent in which they were promised that the outcome would be revealed. The letter referred to preparations being made for the outcome of the general elections in June 2023. It appears no response was provided by the respondent to the appellant with respect to that letter, and if one was provided, it was not placed before the court for adjudication.

74. The appellant referred to a document which they refer to as Exhibit B, which is a letter dated 6<sup>th</sup> April 2023, which essentially is the basis of the appeal. The said letter was written by the respondent and sent to the Appellant. I have perused the contents of the said letter. In that letter, the following points which are of relevance to the consideration of this matter are noted:

1. That they refer to a letter sent by the Secretary General with respect to a meeting on the 4<sup>th</sup> April 2023.

2. That at a previous meeting held on the 9<sup>th</sup> January 2023, they were advised to conduct their party's lower-level elections in accordance with their party's constitution, in particular, article 19.
3. That contrary to those instructions, the Commission received a letter on 24<sup>th</sup> February 2023, titled "submission of newly elected wards, constituencies and districts executives and to further inform the commission of the conduct of the regional and national delegates conference which was scheduled to be held on 2<sup>nd</sup> and 3<sup>rd</sup> March 2023.
4. That the Commission was not obliged with a letter stating the commencement date of the party's ward elections. As well as the venues for holding such elections and the Commission's regional and deputy directors were not aware of the holding of any such elections.
5. The letter also referenced the provisions of section 12(2)(c) of the Political Parties Act 2022, the Commission chose to investigate the delegate list and noted that a number of responses from those whose names were on the executive list stated that they were not members of the Unity Party and the few who affirmed being members of the party, informed the PPRC that they did not participate in any lower level elections but were rather called upon and given executive positions.
6. Consequent upon the responses received the Commission advised itself not to participate in the national delegates conference and that was communicated to the Sierra Leone Police, in response to a letter from them seeking clarification.

7. Even when the conference was aborted, the party proceeded to its offices and purported to elect a national executive.

8. That in the light of the above issues raised, the Commission was constrained to recognise the outcome of the abortive conference. They were advised to go and conduct the lower-level election from ward level to regional level under the supervision of the Commission before holding a National Delegates conference and they were reminded of a letter addressed to all political parties to respect their functionality and encourage to comply with the dictates of that letter.

75. On the 24<sup>th</sup> April 2023, solicitors for the appellant wrote to the Respondent seeking a review of the decision dated the 6<sup>th</sup> April 2023. Essentially, the letter from the solicitors asserted that the appellant in accordance with article 19 of its constitution, conducted its ward, constituency and district executive elections in a number of districts in Sierra Leone. A number of assertions were made and in conclusion the letter sought a review of the decision and to reverse its decision contained in its letter dated 6<sup>th</sup> April 2023.

76. The letter sought a conclusion that the party's elections were in compliance with Article 19 of its constitution and that the national executive was elected in compliance with article 19 of the said constitution. The letter concluded with informing the respondent that an appeal would be lodged with the High Court should their request be ignored.

77. A lot has been said about the constitution of the appellant, in particular, Article 19, which makes the following provision:

Article 19 of the Unity Party Constitution

78. It is not entirely clear as to how article 19 of the Constitution becomes relevant in this case. The said article 19 deals with powers of national officers and their roles within the party structure. I shall rather deal with the other issues relevant to the appeal, in particular, the powers of the Commission.

The powers of the Commission.

79. Section 12(1) and (2) of the Political Parties Act makes provision for the Commission to regulate including the registration of political parties. Subsection 2 further provides:

"Without prejudice to the generality of subsection (1), it shall be the function of the Commission to:-

- a. Regulate, supervise and monitor the affairs or conduct of political parties so as to ensure their compliance with the 1991 constitution and this Act;
- b. Monitor compliance of political parties with the terms and conditions of their registration;
- c. Monitor the accountability of political parties to their membership and to the electorate of Sierra Leone
- d. Promote political pluralism and the spirit of constitutionalism amongst political parties;
- e. Do all other things to contribute to the attainment of the object stated in sub section (1)

80. Section 39 and 40 sets out prohibited conduct by political parties and the code of conduct by which political parties are bound.

81. With respect to section 40, political parties are bound by a code of conduct which is prescribed in the second schedule of the Act. Where a political party contravenes the code, the Commission may take the following actions:

1. Endeavour to resolve the matter with the political party.
2. May issue a warning to the party to desist from the contravention.
3. May impose a fine that it may determine on the political party, or
4. May disqualify the party from contesting the election.

82. Sub section 3 provides that a political aggrieved by a decision of the Commission under this section may appeal to the High Court. The question for consideration is whether there is a breach of the code of practice as set out in the second schedule, which then triggers a right of appeal to the High Court.

### Codes of practice

83. There are several provisions of the code of practice. It should be noted that the respondent did not specifically refer to the codes of practice or any breaches thereof. However, having reviewed the codes of practice, it appears that the only issue on the facts of this case that may arguably amount to a breach of the codes of practice from the Respondent's point of view, is schedule 2 para 7 sub para 2 (a) and (c). Para a requires every political shall give effect to any lawful direction, instruction or order of the Electoral Commission or an authorised members employee or officer of the Commission or any of them.

84. Sub paragraph C requires political parties to cooperate with any investigation of the Commission. The letter of the 6<sup>th</sup> April 2023, refers to a failure to comply with instructions but they do not appear to specifically consider that there is a breach of the codes of conduct.

Did the Appellant fail to comply with instructions?

85. It is the respondent's position that in the meeting held on the 9<sup>th</sup> January 2023, the appellant was advised to conduct their lower-level elections, but they rather provided a list of names in a letter dated 24<sup>th</sup> February 2023. They argued that the appellant did not inform them of the commencement date of the ward elections as well as the respective venues for holding the elections.

86. The evidence reveals that prior to the 6<sup>th</sup> April 2023, the appellant did on the 12<sup>th</sup> January 2023, send a letter to the respondent inviting them to witness the holding of elections at Port Loko and Tonkolili. The evidence further reveals that on the 19<sup>th</sup> January 2023, a letter of invitation was written by the appellant to the respondent, informing and inviting it to its Lower-level ward, constituency and district executive elections in two districts.

87. On the 24<sup>th</sup> February 2023, the appellant again wrote to the respondent and its chairman, informing them that the party had completed the process of electing members at the lower-level elections across different districts.

88. I find as a matter of fact that the appellant did inform the respondent of the holding of its lower-level elections as at the 24<sup>th</sup> February 2023. I do not accept the assertion in the letter of the 6<sup>th</sup> April 2023, that the respondent was not obliged with a letter stating the commencement of



the party's ward elections and the respective venues for holding the election.

89. The appellant wrote to the respondent on the 24<sup>th</sup> March 2023, seeking to know the outcome of the investigations conducted by the Respondent into the lower-level elections and referred to an engagement they had with the respondent in which they were promised that the outcome would be revealed. This letter did not receive a response.

90. However, on the 17<sup>th</sup> March 2023, the appellant specifically confirmed that it was aware that the respondent had conducted investigations into the lower-level elections. In that letter it confirmed that it had conducted its own investigations into the claims of what the party executives said when questioned by the PPRC and that elections were held.

91. As a matter of fact, the appellant was aware that the respondent was conducting investigations into the lower-level elections, hence the decision to conduct its own investigations. The respondent did inform the police who then rescinded the clearance it had earlier given on the 2<sup>nd</sup> March 2023.

92. From the available evidence, in particular the letter of the 6<sup>th</sup> April 2023, the respondent have not explicitly stated that the appellant is in breach of any provisions of the code of conduct as set out in the second schedule, or that their decision as conveyed in the letter of 7<sup>th</sup> April 2023 was with respect to breaches of the code of conduct. On the contrary, it specifically stated in its letter that it was acting pursuant to its supervisory powers which are granted to it by section 12 (2)(c) of the 2022 Act, in order to ensure accountability. The respondent's arguments

as specifically argued by Mr Campbell was based upon the powers of the commission as specifically set out in section 12(2)(c) of the 2022 Act.

93. I find no evidence in this case that the respondent has specifically alleged or relied upon breaches of the code of conduct as set out in the second schedule of the Act, in its decision letter dated 6<sup>th</sup> April 2023. On the contrary the respondent has based its decisions on its regulatory powers as provided by statute. Equally there is no evidence that the Respondent disqualified the appellant from contesting the elections in June 2023, neither did it instruct the National Electoral Commission to do so. Save for the assertions by the appellant, no evidence was produced to support the said assertion.

94. The letter of 6<sup>th</sup> April 2023, the Respondent advised the appellant to go and conduct its lower-level elections from ward to regional level under the supervision of the commission before holding a national delegates conference. This letter did not disqualify the appellant from contesting the elections. The appellant could have conducted the ward elections and its delegates conference in time for the elections, if it wanted to but it rather held on to the belief that it had done so, notwithstanding the fact that it had been told by the respondent that there were anomalies with that election which prompted them to conduct their own investigations. Further the respondent had advised that they would not recognise the elections they had conducted. As the regulator, prudence dictates that the appellant as a political party should have taken steps to regularise the situation rather than persisting in its insistence that it had conducted its elections.

95. Having regard to the facts of this case as established, the question for the court was whether the appellant was correct to invoke the appellate

provisions in section 40(3) of the Act, having regard to the decision conveyed in the letter of the 6<sup>th</sup> April 2023.

Statutory Right of Appeal or Judicial Review

96. Judicial review and statutory appeals are distinct mechanisms for challenging public body decisions. Judicial review focuses on the lawfulness of the decision-making process, while statutory appeals address the merits of the decision itself. Judicial Review is a procedure that reviews the legality of how a decision was made, not the outcome itself, and the grounds of such challenges are frequently based on illegality, irrationality, procedural impropriety, or breach of natural justice. Judicial Review is not a substitute for appeal on the merits of the decision.

97. Statutory appeals on the other hand, requires a review of the merits of the decision, based on the provisions of the specific statute creating the right of appeal. A statutory right of appeal does not necessarily preclude judicial review, especially for issues not covered by the appeal process. Statutory appeals are defined by the specific legislation that creates them

98. It is my considered judgement that where a specific reference has been made as to the basis of the decision, it cannot be proper or appropriate to rely upon an implicit basis for the decision of the decision maker. The wording of section 40(3) clearly restricts the right of appeal to decisions taken by the Commission under the said section 40, which was the clear intention of Parliament. An appeal right is only triggered where the decision is taken in relation to contraventions of the code in the second schedule.

99. In the absence of a right of a statutory right of appeal, what other remedies are available to an aggrieved party. The Commission is a creature of statute having been established by the provisions of section 3 of the 2022 Act. Its decisions are there subject to supervision by the courts, pursuant to its powers under section 134 of the 1991 Constitution, by way of Judicial Review. Judicial review and statutory appeals are two different ways to challenge decisions made by public bodies, but they differ in their focus and scope. Judicial review focuses on the legality of the decision-making process, while statutory appeals allow for a review of the decision's merits based on legal or factual errors.

100. In *Glencore Energy UK Ltd v The Commissioners for her Majesty Revenue and Customs* 2017 EWCA CIV 1716, the Court of Appeal held that it is only in the most exceptional circumstances that the Courts will intervene by way of judicial review when there is a statutory appeal process available. The court held that "

1. the basic principle that judicial review is a remedy of last resort such that, where an alternative remedy exists, it should be exhausted before any application for judicial review is made.
2. For the Court to interfere where Parliament has provided a statutory appeal procedure there must be exceptional circumstances, such as a serious error of law amounting to an abuse of power or where a public authority is acting "*in defiance of the rule of law*."

101. The court was at pains to point out that the principle that judicial review will be refused where a suitable alternative remedy is available, is not in doubt. Treating judicial review in ordinary circumstances as a

remedy of last resort fulfils a number of objectives. It ensures the courts give priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids expensive duplication of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimizes the potential for judicial review to be used to disrupt the smooth operation of statutory procedures which may be adequate to meet the justice of the case. It promotes proportionate allocation of judicial resources for dispute resolution and saves the High Court from undue pressure of work so that it remains available to provide speedy relief in other judicial review cases in fulfilment of its role as protector of the rule of law, where its intervention really is required.

102. For reasons of this kind, it has long been established at the highest level that "Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision". *In re Preston* [1985] 1 AC 835, 852D per Lord Scarman; see also p. 852F ("I accept that the court cannot *in the absence of special circumstances* decide by way of judicial review to be unfair that which the commissioners by taking action against the taxpayer have determined to be fair" [emphasis in original]); and p. 862B-F per Lord Templeman, with whom the other members of the appellate committee agreed ("Judicial review process should not be allowed to supplant the normal statutory appeal procedure"; unless the circumstances are exceptional and involve an abuse of power of a serious character, as explained at pp. 864F-H and 866G-867C).

103. In this instant case, the courts do have discretion to judicially review the decision of the Respondent Commission, but the appellant has not prayed for judicial review. I will refer to the Supreme Court case of Ibrahim AH Basma and others v Adnan Youssef Wanza Civ App 4/2007 in which The Hon Justice ME Tolla Thompson JSC (Deceased) held that "There is a settled principle of law that a court ought not to decline jurisdiction if it can assume discretionary powers which will not amount to a violation or usurpation of the Courts jurisdiction". Where a court assumes jurisdiction wrongly, it would be acting without jurisdiction.

104. Parliament in this case has limited the court's jurisdiction to hearing an appeal that falls within the confines of section 40(3) of the 2022 Act. If it had intended to confer a wider right of appeal, it would undoubtedly have done so. Notwithstanding, the court's power to grant relief is also constrained by the established rules of procedure and practice. For instance, the Supreme Court has held that it cannot grant orders if the applicant has not followed the correct procedures or rules. Whilst the principle of granting only the relief prayed for is generally followed, the court retains a degree of discretion and may consider exceptional circumstances in doing so. For example, the court may grant an order even if it is not specifically prayed for, if it is necessary to achieve a just and equitable outcome, or if it is deemed to be a necessary consequence of the main order.

105. In public law, a failure to provide adequate reasons by a public body can be grounds for challenge if the failure significantly prejudices the affected party. Public bodies are generally expected to provide reasons for their decisions, particularly in situations where those decisions significantly affect individuals or groups. A failure to provide reasons can

be a ground for challenge but the claimant must demonstrate they have been substantially prejudiced by this failure. It may also attract a Judicial Review challenge. Where an alternative appeal route is available against the public body's decision, judicial review may not be the appropriate avenue.

### Disposal

106. Having extensively reviewed the notice of appeal and evidence before this court, it is my considered judgement that this appeal cannot succeed for the reasons given above. The right of appeal is not triggered by decisions that fall outside of the scope of section 40(3) of the 2022 Act. Similarly, this court cannot exercise its discretion to consider judicial review where it is not prayed for and where to do so in the context of this appeal would amount to usurpation of the will of Parliament. However, the court has a limited avenue to assume jurisdiction in exceptional circumstances. I do not find such exceptional circumstances in this case.

107. The courts must apply the public law principle of "due deference" and should give significant weight to the decisions of Parliament or the executive, especially in areas where they have expertise, democratic legitimacy, or a policy-making function. This principle acknowledges that certain issues are better resolved by elected bodies or specialized agencies. Deference is often given when the decision-maker possesses expertise, democratic legitimacy, or a policy-making role. For example, in areas like national security or social policy, the courts may defer to Parliament's or the executive's judgment. The respondent is the specialized body tasked with dealing with such matters.

108. I do not find there is a justifiable need to go outside of the due deference principle in this case. To do so would amount to a usurpation of the will of parliament which is impermissible.

UPON hearing Mr CB Davies of counsel for the appellant AND Mr JJ Campbell of counsel for the defendants AND UPON reading the notice of appeal, supporting affidavits and exhibits attached;

IT IS HEREBY ORDERED AS FOLLOWS:

1. That appeal filed by the Appellant is hereby dismissed.
2. The costs of the appeal summarily assessed at nle 30000 is to be borne by the appellant and payable to the Respondent within seven days of the date of this order.

The Hon Mr Justice A Fisher J

