

RULING

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SC.MISC.APP.1/2011

IN THE SUPREME COURT OF SIERRA LEONE

MONDAY 28TH FEBRUARY, 2011

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING

HON. JUSTICE S. BASH-TAQI - JSC

HON. JUSTICE P.O. HAMILTON - JSC

HON. JUSTICE V.A.D. WRIGHT - JSC

HON. JUSTICE M.E.T. THOMPSON - JSC

DR. BU-BUAKIE JABBI - PLAINTIFF

AND

THE SIERRA LEONE PEOPLE'S PARTY & OTHERS - DEFENDANTS

DR. BU-BUAKIE JABBI AS PLAINTIFF IN PERSON

EKE HALLOWAY ESQ., S.T. TEJAN-JALLOH ESQ., F.M. DABOR ESQ.,

S. BANJA TEJAN-SIE ESQ. A.Y. BREWAH ESQ., A.B. LANSANA ESQ.,
E.M.B.NGUAKUI ESQ., A. NGAVAO ESQ.J. KEBBIE ESQ. M.I. KAN'U ESQ.,
S.S. THOMAS ESQ., U. KOROMA ESQ., S.A. JAMIRU ESQ., A.B.S SANGAR!
ESQ. FOR 1ST, 2ND, 3RD 4TH DEFENDANTS.

RULING DELIVERED ON 28TH FEBRUARY 2011

U.H. TEJAN-JALLOH. CHIEF JUSTICE

This is an application by way of an *Interlocutory Notice of Motion* for an order granting the Plaintiff an *Interim Injunction* to restrain the 1st defendant from holding the Party Conference "**slated**" for **the 5th March 2011**, or any other Party Conference before or thereafter for the purposes of electing, selecting or voting for the Party "*Flag Bearer or Prospective Presidential Candidate* for the National Presidential Election pending and until the final determination by this Court of

the cause or matter, action or suit issued/instituted by the *Originating Notice of Motion* entitled as above”.

The application is supported by the affidavit of Dr. Bu-Buakie Jabbi sworn to on the 17th February, 2011 and filed herein, together with exhibits attached which are BJ1 substantive Card as Grand-Chief Patron Member No.5, BJ3A and BJ3B. Bank paying in slip and party receipt for the Flag Bearer Candidature fee payment, BJ7 selected extracts from the SLPP Constitution as amended. Plaintiff/Applicant letter dated 12th January, 2011, BJ10 substantive suit in the aforesaid *Originating Notice of Motion* praying for the following orders - *declaration, permanent injunction, order for defaulting compensation, an order for mandamus* and any other order or further relief, order or directive that the Court would deem fit, further and just in all the circumstances.

On the 22nd February 2011 Dr. Bu Buakie Jabbi swore to a further Affidavit in support of the Interlocutory Notice of Motion, exhibited to this Affidavit is the 1995 S.L.P.P. Constitution marked Ex. BJ 2, and yet again on the 28th February 2011 Dr Jabbi swore to a further Affidavit and filed herein.

The defendants did not file any Affidavit in opposition to the Interlocutory Notice of Motion.

Submissions

Dr. Jabbi submitted in sum and referred to the Affidavit filed and exhibited the document attached to this affidavit. Continuing Dr. Jabbi said that there is a serious issue to be tried.

The reason for this Injunction is that if the present position is allowed to go to the Presidential Elections it will be met with some objection to disqualify the present Aspirants. It is his duty as

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Presidential Aspirant to see that the Party does what is proper in accordance with the National Constitution. If the Conference goes on as planned and the process taken by the Conference is invalid and illegal, the S.L.P.P. will be disqualified from taking part in the forthcoming 2012 Presidential Election. It is been done in the interest of the Party.

Finally he submitted that he will undertake to compensate the defendants for any damages suffered as a result of this action.

In support of his submission he cited the following authorities F. Hoffman La Roche and others v Secretary of State for Trade and Industry 1974 2 A.E.R. p.11.28; Allen & Allen v Jambo Holdings Ltd. 1980 2 A.E.R. 502; Graham v. Campbell 1878 7 Chancery Division 490; NewComen v Coulson 1878 7 Ch. 764.

Mr. Eke Halloway in reply submitted in sum that the court should look at the Affidavit in Support and the other Affidavits - He refers to the American Cyanamide & Co. v. Ethercorn Ltd. 1975 A.C. 396 and upon the principle that the court should grant an Interlocutory Injunction. He said the guidelines in the American Cyanamide case supra is that: (i) there must be a serious question to be tried (ii) inadequacy of damages; (iii) balance of convenience and (iv) special case. He opposed the Notice of Motion, against the 5th of March Party Conference on the balance of convenience. There are 19 Aspirant vying for the leadership of the Party the Party has expended colossal amount to show case the aspirants. He said that the Plaintiff is only an Aspirant and not a Flagbearer and therefore is not in a position that he will suffer personal injury.

At this stage I would like to comment on the status of the application before me:- It is usual for an *Interim Injunction* to be

granted pending the granting of an *Interlocutory Injunction*, which seeks to restrain the defendant until the final determination of the matter.

However, it is equally not unusual for an *Interim Injunction* to be granted pending the determination of the substantive matter. Where an order for an injunction is included in the relief prayed for, as can be seen in the *Originating Notice of Motion*. The phrase "interim injunction" has gained currency and is now being used as an equivalent for an *Interlocutory Injunction*.

The purpose of an *Interim or Interlocutory Injunction*, therefore, is to preserve the status quo until the substantive matter is tried and determined. This application seeks to do just that - a temporary relief to maintain the status quo until the trial and the determination of the action.

The principle under which the Court will exercise its undoubted discretion to grant such relief is well established in the celebrated case of the *American Cyanamide & Co. v. Ethercorn Ltd.* 1975 AC. P.396 - "The Court must be satisfied that there is a serious not a frivolous issue for trial."

The Court should also consider the balance of convenience as the nature of the injury on the one hand, which the defendant will suffer, if the injunction is granted and turns out that the defendant was right and the injury which the plaintiff, on the other hand will sustain, if the injunction was refused, and it turns out that he was right. See *Halsbury Laws of England 3rd Edition Volume 21 Part. 366 Page 766.*

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There is no onus in the Plaintiff to make out a *Prima Facie* case before an *Interlocutory Injunction* is granted. See *America Cyanamide & Co v. Ethercorn Ltd. Supra.*

I have considered the application and the reply thereto, I have also had the opportunity of perusing the affidavit and exhibit in support of the application. I have also looked at the authorities cited and those my own researches unearth.

It is clear from the affidavit filed that there is a dispute between the plaintiff the defendants, and in pursuance of that dispute, the plaintiff has instituted an action asking among others for a declaration that the defendants have contravened the SLPP Constitution.

Therefore, on those assertions in the respective affidavits and the peculiar circumstance of the action, it is clear to me that there is sufficient material before me to come to the conclusion that there is a serious and substantial issue between the parties to be tried.

In the result I am inclined to exercise my equitable jurisdiction and grant the order for an Interim Injunction.

The Court hereby grants an interim injunction restraining the 1st defendant and members thereof including its national executive officers in the persons of the 2nd, 3rd and 4th defendants herein in their respective and or joint official party capacities alike, their servants, agents and

privies from convening, assembling, holding, organizing or running (or purporting so to do) the Party Conference to be held on the 5th March 2011 or any Sierra Leone Peoples Party Conference before then or thereafter and from conducting or organizing (or purporting so to do) the Party Conference to be held on the 5th March 2011. or any S.L.P.P. Conference before then or thereafter and from conducting or organizing (or purporting so to do before the proposed 5th March 2011 Party Conference or at any other Party Conference any nomination, election, selection or voting for the S.L.P.P. Flagbearer or prospective Presidential candidate for the National Presidential Election of 2012 pending and until after the final determination by this Supreme Court of the cause. matter, action or suit issued or instituted by the Originating Notice of Motion dated 11th February 2011.

It is further ordered that the Plaintiff/Applicant gives an Undertaking to this Court that the Plaintiff/Applicant herein compensate the 1st Defendant herein in damages for any loss arising from the grant of the foregoing interim injunction in the event that the final determination of the substantive action, matter, action or suit herein, at any rate so far as the issue in respect of the subject matter of the said interim injunction shall have been decided or determined in favour of the Defendants.

I make no order as to cost.

U.H. Tejan-Jalloh

HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING

I Agree.....*S. Bash-Taqi*.....

HON. JUSTICE S. BASH-TAQI - JSC

I Agree.....*P.O. Hamilton*.....

HON. JUSTICE P.O. HAMILTON - JSC

I Agree.....*V.A.D. Wright*.....

HON. JUSTICE V.A.D. WRIGHT - JSC

I Agree.....*M.E.T. Thompson*.....

HON. JUSTICE M.E.T. THOMPSON - JSC

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