18

SC.MISC. APP. 2/2011

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF GOVERNMENT NOTICE NO.166 DATED 19TH MAY, 2009 AND ISSUED UNDER THE HAND OF H.E. THE PRESIDENT OF SIERRA LEONE PURPORTEDLY ACTING IN ACCORDANCE WITH THE ADVICE OF THE CABINET AND IN EXERCISE OF POWERS CONFERRED UPON HIM BY SUBSECTION (1) OF SECTION 25 OF THE PROVINCES ACT. CAP.60 OF THE LAWS OF SIERRA LEONE, 1960.

IN THE MATTER OF THE HONOURABLE MR. JUSTICE ABDULIA SHEIK FOFANAH COMMISSION OF INQUIRY AND TWO ASSESSORS APPOINTED BY H.E. THE PRESIDENT OF SIERRA LEONE BY VIRTUE OF THE FOREGOING GOVERNMENT NOTICE NO.166 DATED 19TH MAY, 2009, AS AFORESAID, TO INQUIRE INTO THE CONDUCT OF PARAMOUNT CHIEF DR. ALPHA MADSERAY SHERIFF II OF BIRIWA CHIEFDOM BOMBALI DISTRICT, IN THE NORTHERN PROVINCE OF THE REPUBLIC OF SIERRA LEONE AND "TO DETERMINE WHETHER HIS CONDUCT HAS BEEN OF A KIND SUBVERSIVE OF THE INTERESTS OF GOOD GOVERNMENT".

IN THE MATTER OF THE PROVISIONS UNDER SECTIONS 32(1), 33, 72(3) AND (4) AND (5), 122, 124, 127, 147, 148, 149 AND 171(15) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO.6 OF 1991; SECTIONS 2(1) AND 6 OF THE NATIONAL ELECTORAL COMMISSION ACT 2002; SECTIONS 2(3), 13(1) AND (2), 20, 21 AND 48 OF THE INTERPRETATION ACT, NO.8 OF 1971; SECTION 20 OF THE LOCAL TAX ACT, NO.15 OF 1975; AND SECTIONS 4, 19, 20, 21, 28, 30 AND 32 OF THE CHIEFTAINCY ACT, NO.10 OF 2009; AMONG OTHERS.

BETWEEN:

P.C. DR. ALPHA MADSERAY SHERIFF II – PLAINTIFF
BIRIWA CHIEFDOM, BOMBALI DISTRICT

AND

1. **ATTORNEY-GENERAL &**
   MINISTER OF JUSTICE - 1ST DEFENDANT
   GUMA BUILDING,
   LAMINA SANKOH STREET
   FREETOWN

2. **MINISTER OF LOCAL GOVERNMENT &**
   COMMUNITY DEVELOPMENT - 2ND DEFENDANT
   YOUYI BUILDING, BROOKFIELDS,
   FREETOWN

3. **NATIONAL ELECTORAL COMMISSION - 3RD DEFENDANT**
   15 INDUSTRIAL ESTATE, WELLINGTON,
   FREETOWN

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH	-	**CJ**
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. BUBUAKI JABBIE FOR PLAINTIFF/APPLICANT

KEKURA BANGURA SNR. STATE COUNSEL FOR 1ST AND 2ND RESPONDENT

C.J. PEACOCK ESQ., B. CUMMINGS (MS.), H. BONNY (MS.) 3RD DEF./RESPONDENT

Ruling delivered on the 15th June, 2011.

TEJAN-JALLOH C.J. - On Thursday 2nd June, 2011, we granted permission to Dr. Bubuaki Jabbie to move his interlocutory notice of motion dated the 18th March, 2011. He then sought and obtained leave of the Court to use additional exhibits to wit, BJ10, BJ11 and BJ13 sworn to on the 16th day of May, 2001, as well as CMJ11 sworn to the 31st day of May 2011.

In sum, the application is for the relief of two orders of mandamus and two interim injunctions. They appear on the face of the interlocutory notice of motion dated 18th March, 2011.

A Court or a tribunal has a public duty to hear and determine any case within its jurisdiction which is properly brought before it Mandamus is frequently granted to enforce this duty on the part of the inferior Courts and statutory tribunals, which will be ordered to hear and determine according to law. In this respect, the *Constitution of Sierra Leone under Section 125* empowers the Supreme Court supervisory jurisdiction over all Courts in Sierra Leone and over any adjudicating authority. It also provides that in the exercise of its supervisory jurisdiction, it shall issue such directions and orders of mandamus as it considers appropriate for the purpose of enforcing or securing the enforcement of its supervisory powers. Thus two issues come to mind.

Firstly, has this Court jurisdiction to entertain this application? It is obvious from the arguments advanced by counsel for the Plaintiff/Applicant that the subject matter of this application concerns and touches on a Commission of Inquiry set up under the provisions of the *Commission of Inquiry Act, Chapter 54 of the Laws of Sierra Leone and the Provinces Act, Chapter 60 of the Laws of Sierra Leone.*

Section 25 of the latter Act imposes a duty on the President to appoint a Commission to inquire into the Conduct of any Chief which has been subversive of the interest of good government upon the receipt of a report of a Provincial Commissioner. Subversive conduct includes disputes or crucial disagreements or differences

between Chief and his subjects and it is beyond dispute that the establishment or setting up of a Commission to adjudicate between the two factions, all be it, is a recommendation to the President. In my opinion, I hold that the Commission of Inquiry is an adjudicating body under *Section 125 of the Constitution and* this Court is competent and has jurisdiction to hear the application.

The second matter for consideration is the nature of the remedy of the order of mandamus. The prerogative remedy has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. It is normally granted on the application of a private litigant, though it may equally well be used by one authority against another. The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him and now mandamus plays a conspicuous part in the machinery of government. Certiorari and prohibition deal with wrongful action, mandamus deals with wrongful inaction.

The essence of mandamus is that it is a royal command. It is at this stage relevant to mention that the application for mandamus in this action touches the report of the Provincial Secretary and the publication of the report of the Hon. Justice Fofanah. There is a public duty on the part of His Excellency to appoint a Commission to inquire into the conduct of the Paramount Chief, upon the report of a Provincial Secretary on the conduct of such a Chief, if it is

subversive of the interest of good government. That is clearly spelt out in *Subsection (1) of Section 25 of the Provinces Act. Subsection (2)* of the Act makes it mandatory for the Commissioner to make a report to the President. In these two situations an order of mandamus may be made. But the other *Subsections of Section25* and no other law imposes a public duty on the President to publish either the report of the Provincial Secretary or the report of the Commission of Inquiry.

It follows that the application of mandamus must fail and I so hold.

The question of interim injunction is another matter. It must be observed that the term interlocutory injunction is sometimes used to mean interim injunction. In other words interchangeable. On careful analysis of the application, it is to put on hold the exercise of the Declaration of Rights provided for under the Chieftaincy Act, 2009 – Act No.10 of 2009.

Undoubtedly, the applicant in this case has a legal right to make the application. However, it must be borne in mind that an application for an interlocutory injunction is not a trial on the merits and usually no oral evidence as to opportunity for cross-examination. *American Cyanamide case 1975 AC 386* a decision of the *House of Lords* has revolutionised the approach of the Courts re interlocutory applications inter parties. It would seem that the applicant does not need to show a prima facie case in the sense of

convincing the Court that on the evidence before it he is more likely than not to obtain a perpetual injunction at the trial. The Court must be satisfied that the claim is not frivolous or vexatious. In other words, that there is a serious question to be tried. This means that the applicant will fail if he cannot show that he has any real prospects of succeeding in his claim for a permanent injunction at the trial.

It is only and only if he has shown that there is a serious question to be tried, then will the case go to the second stage. This is the inadequacy of damages (to either side). The Court should go on to consider if the Plaintiff were to succeed at the trial in establishing his right in a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial.

Thus if damages would be an adequate remedy and the defendants would be in financial position to pay them, no interlocutory injunction should normally be granted, however strong the applicant's claim appeared at that stage. Where damage would not adequately compensate the applicant for the temporary damage, and he is in a financial position to get a satisfactory undertaking for damages, an award for damages pursuant to that undertaking, would adequately compensate the defendant succeeding at the trial,

an interlocutory injunction may be granted. If the applicant is not in a financial position to honour his undertaking as to damages and appreciable damage to the defendant is likely, an injunction must be granted. However, where there is a doubt as to the adequacy of the respective remedies in damages available to either party or both, then the question of balance of convenience arises. This stage inevitably involves disadvantage to one or the other side, which damages cannot compensate. The wider public interest may in some cases properly be considered as decisive.

In the instant application the interim injunction has been sought not to proceed with the Declaration of Rights of the forth coming Chieftaincy Election and the election itself.

The *Chieftaincy Act 2009* enables the applicant qua aspirant to participate in the exercise and applying the first stage of the Cyanamide case supra, he is eligible as an aspirant candidate. But this is not the end of the issue, he has not as he is legally obliged to do file an undertaking as to damages under *Order 35 Rule 9 of the High Court Rules applying Rule 98 of the Supreme Court Rules, 1982.*

As of now the Declaration of Rights for the Chieftaincy election has been carried out and the exercise is spent. It must be pointed out also that the behaviours of the plaintiff may also argue against an injunction. "He who comes to equity, must come with clean hands"; and accordingly the application of a party with unclean hands is

likely to fail. The uncleanliness may consist of untruth evidence: *see Amstrong v. Sheppard Short Ltd. 1959 2QB 384.* Counsel for the applicant in the case before us knew that the Declaration of Rights had been held, but gave the Court the impression that it was to be held on the 3rd June, 2011 a day after the Court's sitting on the 2nd June. The institution of Chieftaincy is an entrenched provision in our basic document, to wit, the *Constitution.* It is in the public interest and good governance that vacancy of Chieftaincy must be given the expediency required and not inordinately delayed or prolonged to cause dissatisfaction and disquet by the citizenry. I find no merit in the application it is accordingly dismissed. The Court does not act in vain.

No costs awarded.

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

I AGREE.....
HON. MRS. JUSTICE S. BASH-TAQI - JSC

I AGREE.....
HON. MR. JUSTICE P.O. HAMILTON - JSC

I AGREE.....
HON. MRS. JUSTICE V.A.D. WRIGHT - JSC

I AGREE..... M.E.T. Thompson.
HON. MR. JUSTICE M.E.T. THOMPSON - JSC

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REGISTRAR SUPREME COURT

REF: CJ/HJ